Section D7 Bail

End of Document

INTRODUCTION

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail

D7.1

Bail in criminal proceedings is governed by the Bail Act 1976 (BA 1976) (see s. 1(6) of the Act). 'Bail in criminal proceedings' is defined in s. 1(1) of the Act as: '(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued'. The procedural rules relating to bail are set out in CrimPR Part 14 (see Supplement, R14.1 ***et seq***). This section is chiefly concerned with bail from magistrates' courts and the Crown Court. For bail in appeals to the Court of Appeal, see D7.5 and D27.14.

The BA 1976 is set out at D7.134 ***et seq***.

COURTS' POWER TO GRANT BAIL

D7.2

A magistrates' court, when adjourning a case, may remand the accused (see the MCA 1980, ss. 10(1) and 18(4), at D5.29, for the jurisdiction to adjourn and remand at the preliminary stages of a case). Under the MCA 1980, s. 128(1), a remand by a magistrates' court may be in custody or on bail, in accordance with the BA 1976. For the time restrictions on remands in custody and the possibility of remands in the absence of the accused, see D5.33. Magistrates also have power to grant bail for the period of any remand for reports etc. after summary conviction (see the MCA 1980, s. 10(3), and also the PCC(S)A 2000, s. 11, for remands on bail for medical examination). Where a magistrates' court sends an accused to the Crown Court for trial under the CDA 1998, s. 51, the accused may be kept in custody or released on bail (see D10). Similarly, committals for sentence may be in custody or on bail. Where a magistrates' court has summarily convicted an accused and passed a custodial sentence, it may grant bail pending the determination of an appeal to the Crown Court or to the Divisional Court by way of case stated (MCA 1980, s. 113). The CAJA 2009, s. 115, provides that a person charged with murder may not be granted bail except by order of a Crown Court judge (see D7.4).

Bail by the Crown Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > COURTS' POWER TO GRANT BAIL

D7.3

Under the Senior Courts Act 1981, s. 81(1)(a) to (g), the Crown Court may grant bail to any person:

(a) who has been sent in custody for trial in the Crown Court;

(b) who has been given a custodial sentence following conviction in the magistrates' court (whether by guilty plea or a finding of guilty after trial) and who is appealing to the Crown Court against conviction and/or sentence;

(c) who is in the custody of the Crown Court pending disposal of the case (so whenever the Crown Court adjourns a trial or adjourns between conviction and sentence, it has a discretion to grant the accused bail for the period of the adjournment);

(d) and (e) whose case has been decided by the Crown Court but who has applied to the court to state a case for the Divisional Court's opinion or is seeking judicial review of the decision;

(f) to whom the Crown Court has granted a certificate that the case is fit for appeal to the Court of Appeal, whether against conviction or against sentence; and

(g) who has been remanded in custody by a magistrates' court on adjourning a case under the PCC(S)A 2000, s. 11, the CDA 1998, s. 52(5), or the MCA 1980, ss. 10, 17C, 18 or 24C, provided the magistrates' court has granted a certificate that, before refusing bail, it heard full argument.

All the above powers are subject to the CJPO 1994, s. 25 (see D7.8).

D7.4

Bail Jurisdiction in Murder Cases The CAJA 2009, s. 115(1), provides that a person charged with murder may not be granted bail except by order of a Crown Court judge. A person who appears before a magistrates' court charged with murder must be committed (in custody) to the Crown Court (s. 115(4)). A Crown Court judge must then make a decision about bail as soon as reasonably practicable and, in any event, within the period of 48 hours (excluding weekends and public holidays) beginning with the day after the day on which the person appears before the magistrates' court (s. 115(3)). These provisions apply whether or not the accused is charged with any offences in addition to the murder charge (s. 115(6)).

Bail by Court of Appeal (Criminal Division)

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > COURTS' POWER TO GRANT BAIL

D7.5

The Court of Appeal has jurisdiction to grant bail to a person who has served notice of appeal or notice of application for leave to appeal against conviction and/or sentence in the Crown Court (Criminal Appeal Act 1968, s. 19). The Court of Appeal also has power to bail a person who is appealing from it to the Supreme Court (s. 36). These powers are again subject to the CJPO 1994, s. 25 (see D7.8).

Where the Court of Appeal quashes a conviction and orders a retrial, it has power to grant bail under the Criminal Appeal Act 1968, s. 8(2)(a). However, in *X* [2004] All ER (D) 400 (Feb), it was held that once a fresh indictment has been preferred in the Crown Court following the quashing of a conviction and the ordering of a retrial, the Court of Appeal no longer has jurisdiction in relation to bail. It follows that, once a fresh indictment has been preferred, jurisdiction in relation to bail belongs with the Crown Court.

PRINCIPLES GOVERNING BAIL

End of Document

Presumption in Favour of Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PRINCIPLES GOVERNING BAIL

D7.6

Section 4(1) of the BA 1976, together with sch. 1 (see D7.142), creates a rebuttable presumption in favour of bail (sometimes referred to, somewhat inaccurately, as a 'right to bail'). It provides that: 'A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act'. Subsections (2) to (4) of s. 4 then define the persons who benefit from the presumption in favour of bail. They are any person:

(a) who appears before the Crown Court or a magistrates' court in the course of or in connection with proceedings for an offence, or applies to a court for bail (or for a variation of the conditions of bail) in connection with those proceedings (s. 4(2));

(b) who has been convicted of an offence and whose case is adjourned for reports before sentencing (s. 4(4)); and

(c) who has been brought before the court under the SA 2020, sch. 10, for alleged breach of a requirement of a community order (s. 4(3)).

Apart from cases where the accused has been convicted and the hearing has been adjourned for pre-sentence reports, s. 4(1) does *not* apply once a person has been convicted of an offence (as is made clear in the proviso to s. 4(2)). Therefore, an appellant seeking bail pending determination of an appeal against conviction and/or sentence cannot rely on the presumption in favour of bail. Neither can an offender who is committed to the Crown Court for sentence following conviction in a magistrates' court. In both those situations, there is power to grant bail, but its grant or refusal is entirely at the discretion of the court. It should also be noted that s. 4(1) does not apply to bail from the police station, although, once a detainee has been charged, the PACE 1984, s. 38(1), imposes on the custody officer a duty to grant bail unless its refusal can be justified on grounds similar to those which would justify a court refusing bail under the BA 1976 (see D2.47 ***et seq***) Whenever bail is granted in criminal proceedings (whether or not subject to the presumption in s. 4), the general provisions of the Act concerning bail apply (e.g., a person who fails without reasonable cause to surrender commits an offence under s. 6).

D7.7

Bail Following Indication of Guilty Plea at 'Plea before Venue' Hearing In *Rafferty* [1999] 1 Cr App R 235, the Court of Appeal dealt with the position where an accused enters a guilty plea at the 'plea before venue' procedure (see D6.11 ***et seq***.), and is then committed for sentence to the Crown Court. Thomas J said (at p. 237) that, in most such cases, it would not be usual to alter the position as regards bail or custody. When a person who had been on bail pleads guilty at the plea before venue, the usual practice should be to continue bail, even if it is anticipated that a custodial sentence will be imposed by the Crown Court, unless there are good reasons for remanding the accused in custody. If the accused is in custody, then it would be unusual, if the reasons for the remand in custody remain unchanged, to alter the position.

Exceptions to the Presumption in Favour of Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PRINCIPLES GOVERNING BAIL

D7.8

No Bail for Homicide or Rape if Previous Conviction Under the CJPO 1994, s. 25 (see D7.10), the court may not grant bail to an accused who is charged with (or has been convicted of) murder, attempted murder, manslaughter, rape or attempted rape, or certain other offences under the SOA 2003, if the accused has been convicted of any of these offences (or culpable homicide) in the past, unless it is of the opinion that there are exceptional circumstances which justify it. In a case where the previous conviction was for manslaughter, the restriction applies only if the accused received a custodial sentence for that offence. 'Conviction' is widely defined to include a finding that the defendant was not guilty by reason of insanity, or was found to have done the act or made the omission charged in a case where the defendant was unfit to plead. Previous convictions in other EU Member States are treated as being relevant previous convictions if the corresponding offences in the UK would be so treated.

It was suggested by the Law Commission in its paper *Bail and the Human Rights Act 1998* (Law Com No. 269) that the CJPO 1994, s. 25, is liable to be misunderstood and applied in a way which is incompatible with the ECHR, Article 5. The problem with s. 25 is that it appears to create a statutory presumption against the grant of bail in cases to which it applies. If so, it conflicts with the Convention's starting point of the presumption of liberty, and substitutes a presumption of custodial remand. The Commission suggested that the court should go through the usual process of balancing factors for and against the granting of bail. Because of the provisions of s. 25, however, it should give special weight to those counting against the grant of bail. Thus, the court would take all relevant circumstances into account, but might nonetheless deny bail because the case fell within s. 25, where it might not otherwise have done so.

D7.9

Section 25 was considered by the House of Lords in *R (O) v Harrow Crown Court* [2006] UKHL 42, [2007] 1 AC 249. The particular issue was the effect of s. 25 upon the right to bail of a defendant during the currency of the custody time-limit provided by the Prosecution of Offences Act 1985, s. 22, and upon the expiry of such a custody time-limit (see D15.7 ***et seq***. for detailed discussion of custody time-limits). The House of Lords held that, where an application for bail is made during the currency of the custody time-limit, s. 25 should be read as placing an evidential burden on the accused to 'point to or produce material which supports the existence of exceptional circumstances' (per Lord Carswell at [12]); if the accused fails to do so, bail should be denied. Lord Brown of Eaton-under-Heywood (at [35]) said that in the vast majority of cases, the court will be able to reach a clear view one way or the other whether the conditions for withholding bail, specified by the BA 1976, sch. 1, are satisfied. However, the court may occasionally be left unsure as to whether the defendant should be released on bail. This is the only situation in which the burden of proof assumes any relevance, and in such a case bail would have to be granted. That must be, said his lordship, the 'default position', and s. 25 should be read down to make that plain. Dealing with the relationship between s. 25 and the custody time-limit provisions, it was held that s. 25 operates to dis-apply the ordinary requirement under the Prosecution of Offences (Custody Time Limits) Regulations 1987, reg. 6(6), that bail should be granted automatically to anyone whose custody time-limit has expired. Their lordships held that, thus applied, s. 25 is compatible with the ECHR, Article 5(3).

In *O'Dowd v UK* (2012) 54 EHRR 8 (187), D complained that the CJPO 1994, s. 25, unfairly discriminates against those with previous convictions for certain offences. The ECtHR noted (at [81]) that D's previous convictions arose

from an incident which was factually very similar to the alleged offences with which D was subsequently charged and so were 'comparable both in nature and degree of seriousness'. In those circumstances, D could not 'claim to be in an analogous position to a defendant charged with the same offence who does not have a previous similar offence' (at [82]). It followed that D's complaint was 'manifestly ill-founded'. Presumably, the answer would be different if the offences lacked that degree of similarity.

D7.10

Criminal Justice and Public Order Act 1994, s. 25

(1) A person who in any proceedings has been charged with or convicted of an offence to which this section applies in circumstances to which it applies shall be granted bail in those proceedings only if the court or, as the case may be, the constable considering the grant of bail is of the opinion that there are exceptional circumstances which justify it.

(2) This section applies, subject to subsection (3) below, to the following offences, that is to say—

(a) murder;

(b) attempted murder;

(c) manslaughter;

(d) rape under the law of Scotland;

(e) an offence under section 1 of the Sexual Offences Act 1956 (rape);

(f) an offence under section 1 of the Sexual Offences Act 2003 (rape);

(g) an offence under section 2 of that Act (assault by penetration);

(h) an offence under section 4 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;

(i) an offence under section 5 of that Act (rape of a child under 13);

(j) an offence under section 6 of that Act (assault of a child under 13 by penetration);

(k) an offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (2)(a) to (d) of that section was caused;

(l) an offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;

(m) an offence under section 31 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;

(ma) to (mh) [equivalent offences under the law of Northern Ireland]

(n) an attempt to commit an offence within any of paragraphs (d) to (mh).

(3) This section applies in the circumstances described in subsection (3A) or (3B) only.

(3A) This section applies where—

(a) the person has been previously convicted by or before a court in any part of the United Kingdom of any offence within subsection (2) or of culpable homicide, and

(b) if that previous conviction is one of manslaughter or culpable homicide—

(i) the person was then a child or young person, and was sentenced to long-term detention under any of the relevant enactments, or

(ii) the person was not then a child or young person, and was sentenced to imprisonment or detention.

(3B) This section applies where—

(a) the person has been previously convicted by or before a court in another member State of any relevant foreign offence corresponding to an offence within subsection (2) or to culpable homicide, and

(b) if the previous conviction is of a relevant foreign offence corresponding to the offence of manslaughter or culpable homicide—

(i) the person was then a child or young person, and was sentenced to detention for a period in excess of 2 years, or

(ii) the person was not then a child or young person, and was sentenced to detention.

(4) This section applies whether or not an appeal is pending against conviction or sentence.

(5) In this section—

'conviction' includes—

(a) a finding that a person is not guilty by reason of insanity;

(b) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and

(c) a conviction of an offence for which an order is made discharging the offender absolutely or conditionally; and 'convicted' shall be construed accordingly;

'the relevant enactments' means—

(a) as respects England and Wales, section 250 of the Sentencing Code;

(b) as respects Scotland, sections 205(1) to (3) and 208 of the Criminal Procedure (Scotland) Act 1995;

(c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968; 'relevant foreign offence', in relation to a member State other than the United Kingdom, means an offence under the law in force in that member State.

(5A) For the purposes of subsection (3B),a relevant foreign offence corresponds to another offence if the relevant foreign offence would have constituted that other offence if it had been done in any part of the United Kingdom at the time when the relevant foreign offence was committed.

D7.11

Murder Under the BA 1976, sch. 1, part I, para. 6ZA, an accused who is charged with murder may not be granted bail unless the court is of the opinion that there is no significant risk that the accused will, if released on bail, commit an offence that would, or would be likely to, cause physical or mental injury to any other person. Again, the presumption in favour of bail is effectively reversed.

REFUSING BAIL TO AN ACCUSED CHARGED WITH AN INDICTABLE OFFENCE

D7.12

Part I of sch. 1 to the 1976 Act sets out the circumstances in which an accused may be refused bail if charged with (or awaiting sentence for) at least one offence that is triable on indictment and punishable with imprisonment (part IA applies where the offences(s) are imprisonable summary offences, and part II applies when none of the offences are imprisonable; see D7.35 ***et seq****).*

An unconvicted accused charged with an offence which is imprisonable and triable on indictment need not be granted bail if one or more of the grounds for a remand in custody (listed in the BA 1976, sch. 1, part I, paras. 2 to 6A) is applicable. The first — and most commonly relied on — ground (para. 2) subdivides into three (see D7.13). As regards offenders convicted but remanded for reports, there is a further ground (para. 7) on which reliance may also be placed. The statutory grounds for refusing bail are as follows.

Risk of Absconding, Further Offences or Interference with Witnesses

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH AN INDICTABLE OFFENCE

D7.13
Bail Act 1976, sch. 1, para. 2

(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

D7.14

Standard of Proof The opening words of para. 2(1) do *not* require the court to be satisfied that the consequences specified in subparagraphs (a) to (c) will in fact occur in the event of bail being granted, or even to be satisfied that they are more likely than not to occur. The court must merely be satisfied that there are 'substantial grounds for believing' that they would occur. Although the question posed by para. 2 is whether substantial grounds exist for believing that a future event will occur and to that extent is a question of fact, it is not a question which can be answered according to the usual rules of evidence. Thus in *Re Moles* [1981] Crim LR 170 it was held that a police officer explaining the objections to bail was entitled to recount what he had been told by a potential witness about the threats the latter had received, with a view to showing that the granting of bail would lead to further interference with witnesses. In *Mansfield Justices, ex parte Sharkey* [1985] QB 613, Lord Lane CJ referred to *Re Moles* and said (at p. 626A), 'there is no requirement for formal evidence to be given [at an application for bail] ... It was for example sufficient for the facts to be related to the justices at second hand by a police officer.' Current practice when presenting objections to bail in a magistrates' court is not even to have a police officer present, but for the CPS representative to argue that bail is inappropriate on the basis of information supplied by the police and included in the case file.

D7.15

In *R (F) v Southampton Crown Court* [2009] EWHC 2206 (Admin), the judge had refused to grant bail because he was 'not sure' D would 'turn up or stay out of trouble'. On appeal, Collins J (at [3]) noted that the correct test under the BA 1976 'requires the judge to have substantial grounds for believing that the defendant before him would fail to surrender, commit offences on bail, or transgress one of the other provisions in schedule 1'. The judge had therefore applied the wrong test. As Collins J said (at [8]): 'It is not a question of him not being sure that the defendant would turn up or stay out of trouble'; rather, 'he was only entitled to refuse bail if there were substantial grounds for believing that he would breach [his bail], he would fail to turn up or would commit further offences'. The case was therefore remitted to the Crown Court for reconsideration applying the correct test.

The importance of applying the correct test was emphasised again in *R (Shehzad) v Newcastle Crown Court* [2012] EWHC 1453 (Admin). In that case, the Crown Court judge had said that D had 'every reason to fail to surrender, there is the possibility of further offences and there is a risk of interference with witnesses, principally of course the principal witness for the prosecution. In those circumstances I refuse his application for bail.' An application for judicial review was made on the basis that the judge's phraseology suggested that he had applied a lower threshold

of satisfaction in relation to the various matters that can operate as a basis for refusing bail than the 'substantial grounds for believing' test. Foskett J (at [10] and [11]) said that the Crown Court judge was extremely experienced, applied the statutory test on an almost daily basis and was therefore 'very unlikely to have misapplied the usual approach to decisions of this nature'. However, it was right for D to have his case 'assessed by the correct statutory formulation', so the refusal of bail was quashed and the matter remitted to the Crown Court to be dealt with by another judge. A similar approach was taken in *Charles* [2012] EWHC 2581 (Admin), where the Divisional Court accepted (at [24]) D's submission that, when the bail ruling was read as a whole, it appeared that 'the learned judge failed to ask himself the right questions'.

No Real Prospect of a Custodial Sentence Paragraph 1A of sch. 1 provides that para. 2 does

D7.16

not apply where the accused has attained the age of 18, and has not been convicted of an offence in those proceedings, and it appears to the court that there is no real prospect that the accused will be sentenced to a custodial sentence in the proceedings. In such a case, bail cannot be withheld on any of the grounds set out in para. 2.

D7.17

Relevant Factors Certain factors to which the court should have regard when taking a decision under para. 2 are listed in para. 9. These factors are:

(a) the nature and seriousness of the offence and the probable method of dealing with the offender for it (see D7.18);

(b) the character, antecedents, associations and community ties of the accused (see D7.19 and D7.20);

(c) the accused's 'record' for having answered bail in the past (see D7.21);

(d) the strength of the evidence against the accused (see D7.22); and

(e) if the court is satisfied that there are substantial grounds for believing that the accused would commit an offence while on bail, the risk that the accused may engage in conduct likely to cause physical or mental injury to anyone else (see D7.23).

D7.18

Nature and seriousness of offence (para. 9(a)). The relevance of the offence alleged being serious is that the accused will know that, if convicted, a severe sentence is likely and it will therefore be tempting to abscond rather than run the risk of such a sentence. The gravity of the charge is not an automatic reason for refusing bail (although, by virtue of the CJPO 1994, s. 25, an accused must normally be refused bail where the charge is, e.g., homicide or rape and the accused has previously been convicted of such an offence (see D7.8)). Indeed, in *Hurnam v State of Mauritius* [2005] UKPC 49, [2006] 1 WLR 857, the Privy Council said that the seriousness of an offence cannot be treated as a conclusive reason for refusing bail to an unconvicted suspect. Lord Bingham said (at [15]):

> The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well ... provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.

The statutory presumption in favour of bail continues to apply after conviction where there is an adjournment for the preparation of a pre-sentence report before sentence is passed. In *R (R) v Snaresbrook Crown Court* [2011] EWHC3569 (Admin), the Divisional Court considered the refusal of bail because of the likelihood of a custodial sentence. Holman J said (at [24]) that, of itself, 'the mere fact that a person has been convicted and a custodial sentence is inevitable, is not sufficient to trigger the exception to bail. It still is necessary that the court is satisfied that there are substantial grounds for believing that one of the statutory exceptions [to the presumption in favour of

bail] applies.' This point is reiterated at [31], where his lordship said that, 'even the inevitability of a custodial sentence is not itself an exception to the right to bail, unless it justifies a court being satisfied that there are substantial grounds for believing that the defendant would fail to surrender to custody'.

D7.19

Character and antecedents (para. 9(b)). This refers primarily to previous convictions. These may make a custodial sentence more likely (especially if the accused, if convicted of the present offence, will be in breach of a suspended sentence of imprisonment). Moreover, a person of previous good character is more likely to be trusted by the courts than one with a criminal record. Previous convictions under the BA 1976, s. 6, for failing to surrender to custody in answer to bail are especially relevant (see subparagraph (c)).

D7.20

Associations and community ties (para. 9(b)). The word 'associations' is generally taken to refer to undesirable friends with criminal records. Examining the 'community ties' of the accused involves looking at how easy it would be to abscond and how much the accused has to lose by absconding. Relevant factors include the following: How long has the accused lived at the present address? Does the accused have a partner? Does the accused have dependent children? Is the accused in employment? If so, for how long? Does the accused have a mortgage or a protected tenancy? An accused of 'no fixed abode' or living in short-term accommodation is not automatically debarred from bail, but the ease of disappearing to another address is a factor to be considered.

D7.21

Bail record (para. 9(c)). Considering the bail record of the accused requires the court to consider whether the accused has absconded in the past. Absconding in earlier proceedings is regarded as evidence of a risk that the accused may do so again.

D7.22

Strength of the prosecution evidence (para. 9(d)). This is relevant to whether an accused would answer bail, in the sense that one who knows there is a good chance of being acquitted is less likely to abscond than one who anticipates almost certain conviction. It can be argued that there is no point in the accused absconding if an acquittal is likely anyway. Conversely, if the prosecution case is strong, so that conviction is likely, the accused may abscond rather than 'face the music' (especially if a custodial sentence is likely). It is also relevant that a remand in custody followed by acquittal creates a manifest, if sometimes unavoidable, injustice. In borderline cases, where the arguments against bail are strong but not overwhelming, the court may prefer to run the risk of the accused absconding etc. rather than run the risk of an acquittal after a long period in custody on remand.

D7.23

Risk of injury to someone else (para. 9(e)). Where the court is satisfied that there are substantial grounds for believing that the accused would commit an offence while on bail, the court considers whether that offence is likely to cause physical or mental injury to any other person.

Paragraph 9 concludes with the words 'as well as to any others [i.e. considerations] which appear to be relevant', thus making it clear that the considerations mentioned in para. 9(a) to (e) are *not* exhaustive. Those 'others' might include the fact that the accused has previously committed offences while on bail, or the suggestion that potential prosecution witnesses have already received threats and/or are known to the accused, who could therefore locate them if at liberty. Also, it should be noted that the BA 1976, s. 4(9), stipulates that 'in taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant'.

Other Grounds for Withholding Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH AN INDICTABLE OFFENCE

D7.24

Part I of sch. 1 to the BA 1976 (see D7.151 ***et seq***.) sets out other grounds for withholding bail: risk of injury to an 'associated person' (para. 2ZA); where the accused is already on bail for another offence (para. 2A); for the accused's own protection (para. 3); where the accused is already serving a custodial sentence for another offence (para. 4); where the court has insufficient information (para. 5); where the accused has absconded in the present proceedings (para. 6). Additionally, where the accused is charged with murder, para. 6ZA restricts the circumstances in which bail can be granted.

D7.25

Domestic Violence: Risk to an 'Associated Person' By virtue of para. 2ZA, the accused need not be granted bail if the court is satisfied that there are substantial grounds for believing that, if released on bail, the accused would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person, or else cause such a person to fear such injury. For this purpose, an 'associated person' is a person who is associated with the accused within the meaning of the Family Law Act 1996, s. 62(3) (the definition includes people who are or have been married to each other, or who are or have been civil partners; cohabitants or former cohabitants; people who live or have lived in the same household, otherwise than as an employee, tenant, lodger or boarder; relatives; people who have or have had an intimate personal relationship with each other which is or was of significant duration; and in relation to any child, a parent or person who has or has had parental responsibility for the child).

D7.26

Accused Already on Bail Under para. 2A, the accused need not be granted bail if it appears to the court that the accused was on bail in respect of another offence on the date of the current offence. However, by virtue of para. 1A, para. 2A does not apply where the accused has attained the age of 18, and has not been convicted of an offence in the current proceedings, and it appears to the court that there is no real prospect that the accused will be sentenced to a custodial sentence in the proceedings.

D7.27

Own Protection Under para. 3, the accused need not be granted bail if the court is satisfied that remaining in custody would be for the accused's own protection. This will (for example) cover cases where the offence alleged has caused anger in the area where it was committed and there is a risk of members of the public exacting retribution on the person believed to be responsible. Where the accused is a child or young person, bail may be refused under para. 3 if the accused should be kept in custody 'for his own welfare'.

D7.28

Already in Custody Under para. 4, the accused need not be granted bail if already serving a custodial sentence. Paragraph 4 applies only if the accused is in custody pursuant to a *sentence,* not when in custody as a result of a remand in other proceedings that are currently outstanding. Where an accused is certain to be in custody for the foreseeable future, the court may find it more convenient to grant what may be regarded as technical bail; this

avoids the restrictions on the periods for which remands in custody may be ordered and the consequent need to bring the accused back to court for further remand hearings.

D7.29

Insufficient Time Under para. 5, the accused need not be granted bail if the court is satisfied that, owing to lack of time since the commencement of the proceedings, it has not been practicable to obtain sufficient information for the purposes of taking the decision on bail. In such cases, the court might remand in custody (possibly for a shorter than usual period) to enable the necessary information to be discovered. Paragraph 5 might apply, for example, where the police are not satisfied that the accused has given them correct particulars and think the accused may have previous convictions under another name, or if time is needed to check an address, or if inquiries are still in hand which may reveal the offence to be more serious than originally supposed and/or that the accused has committed additional offences. It is submitted that para. 5 should be relied on sparingly, and should not be used to justify dilatoriness on the part of the police or the prosecution in marshalling their objections to bail.

A remand in custody under para. 5 does not amount to a decision to withhold bail for the purposes of para. 2 of part IIA, and so does not restrict further applications for bail (see D7.70).

D7.30

Absconded in the Present Proceedings Under para. 6, the accused need not be granted bail if arrested under the BA 1976, s. 7, having previously been released on bail in connection with the current proceedings (see D7.147). However, by virtue of para. 1A, para. 6 does not apply where the accused has attained the age of 18, and has not been convicted of an offence in the current proceedings, and it appears to the court that there is no real prospect that the accused will be sentenced to a custodial sentence in the proceedings.

D7.31

Bail in Cases Involving Abuse of Drugs Paragraphs 6A to 6C of the BA 1976, sch. 1,partI, provide that an accused aged 18 or over may not be granted bail, unless the court is of the opinion that there is no significant risk of the accused committing an offence while on bail, where the three conditions set out in para. 6B apply, namely:

(1) there is drug test evidence (by way of a lawful test obtained under the PACE 1984, s. 63B, or the SA 2020, sch. 22, para. 1) that there is a specified Class A drug in the person's body;

(2) either the accused is charged with an offence under the Misuse of Drugs Act 1971, s. 5(2) or (3), and the offence relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing that the misuse of a specified Class A drug caused or contributed to the offence with which the accused is charged or that offence was motivated wholly or partly by intended misuse of a specified Class A drug; and

(3) the person does not agree to undergo an assessment (carried out by a suitably qualified person) of dependency upon or a propensity to misuse any specified Class A drugs, or has undergone such an assessment but does not agree to participate in any relevant follow-up which has been offered.

If an assessment or follow-up is proposed and agreed to, it will be a condition of bail that it is undertaken (BA 1976, s. 3(6D)).

The phrase 'may not' is a prohibitive one and makes it plain that the court should not grant bail unless satisfied that there was no significant risk of the accused committing offences while on bail. In essence, the presumption created by the BA 1976, s. 4, is reversed and it becomes necessary for the court to be persuaded that there is no significant risk of the accused committing an offence if released on bail (cf. *R (Wiggins) v Harrow Crown Court* [2005] EWHC 882 (Admin), per Collins J, at [24]).

Under sch. 1, para. 2(2), where the accused falls within these drugs provisions, para. 2 (refusal of bail where there are substantial grounds for believing that the accused will fail to surrender to custody etc.: see D7.13) does not

apply unless the court is of the opinion that there is no significant risk of the accused committing an offence while on bail.

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Convicted Offenders: Adjourning for Reports

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH AN INDICTABLE OFFENCE

D7.32

Under the BA 1976, sch. 1, part I, para. 7, if the case of a convicted offender is adjourned for inquiries or reports, bail need not be granted if it appears to the court that it would be impracticable to complete the inquiries or make the report without the accused being kept in custody (e.g., because the accused would not voluntarily attend for purposes such as seeing a probation officer or being medically examined). It is submitted that, where a court needs a pre-sentence report before it will be in a position to decide the appropriate sentence, the normal practice should be to grant bail unless there are exceptional reasons for keeping the offender in custody. It should be borne in mind that a remand in custody might appear to be prejudging the question of whether the ultimate sentence should be custodial.

Children and Young People

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH AN INDICTABLE OFFENCE

D7.33

The BA 1976, sch. 1 (see D7.151 ***et seq****.),* contains some additional provisions that are specific to cases where the accused is under the age of 18. Paragraph 9AA provides that, if the accused is under the age of 18 and it appears to the court that the accused was on bail (in respect of other proceedings) at the date of the current alleged offence, the court must (when deciding whether it is satisfied that there are substantial grounds for believing that the accused will, if released on bail, commit an offence) give 'particular weight' to the fact that the accused was on bail in respect of another alleged offence on the date of the current alleged offence.

Paragraph 9AB(3) applies where the accused is under the age of 18 and it appears to the court that, having been released on bail in connection with the proceedings for the present offence, the accused has failed to surrender to custody. In such a case, the court must (when deciding whether it is satisfied that there are substantial grounds for believing that the accused will, if released on bail, fail to surrender to custody) give 'particular weight' to certain matters: where the accused did not have reasonable cause for the failure to surrender to custody, the fact of the failure to surrender to custody; and where the accused did have reasonable cause for the failure to surrender to custody, the fact of the failure to surrender to custody as soon as reasonably practicable after the appointed time for surrender.

D7.34

Criminal Damage The BA 1976, s. 9A (see D7.150), provides that, where an accused under the age of 18 is charged with an offence to which the MCA 1980, s. 22, applies (i.e. criminal damage where the value involved does not exceed £5,000), and the trial of that offence has not begun, a magistrates' court (this includes a youth court) considering whether to withhold or grant bail must consider, having regard to any representations from the prosecution and the accused person, whether the value exceeds £5,000. If the value involved does not exceed £5,000, the BA 1976, sch. 1, part IA (see D7.35) will apply.

REFUSING BAIL TO AN ACCUSED CHARGED WITH SUMMARY AND NON-IMPRISONABLE OFFENCES

Imprisonable Summary Offences

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH SUMMARY AND NON-IMPRISONABLE OFFENCES

D7.35

Under the BA 1976, sch. 1, part I, para. 1(2) (see D7.151), where the offence is a summary offence punishable with imprisonment, or an offence to which the MCA 1980, s. 22, applies (criminal damage where the value involved does not exceed £5,000), part I of sch. 1 does not apply. In such cases, the BA 1976, sch. 1, part IA, applies instead (see D7.158 ***et seq.***). Under part IA, the exceptions to the presumption in favour of bail are as follows:

(a) where the accused has previously been granted bail and has failed to surrender to custody in those proceedings, and the court believes, in view of that failure, that the accused would, if released on bail, fail to surrender to custody (para. 2);

(b) where the accused was on bail on the date of the current alleged offence and the court is satisfied that there are substantial grounds for believing that, if released on bail, the accused would commit an offence while on bail (para. 3);

(c) where the court is satisfied that there are substantial grounds for believing that, if released on bail, the accused would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (as defined by the Family Law Act 1996, s. 62, see D7.25), or cause such a person to fear physical or mental injury, i.e. domestic violence (para. 4);

(d) where the court is satisfied that the accused should be kept in custody for the accused's own protection (or welfare, if a child or young person) (para. 5);

(e) where the accused is already serving a custodial sentence (para. 6);

(f) where the accused has been arrested under the BA 1976, s. 7, and the court is satisfied that there are substantial grounds for believing that, if released on bail, the accused would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to the accused or any other person) (para. 7);

(g) where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decision on whether to grant bail for want of time since the institution of the proceedings (para. 8); and

(h) where part I, paras. 6A to 6C (see D7.31), would otherwise be applicable were the current offence an indictable one (para. 9).

D7.36

No Real Prospect of a Custodial Sentence The BA 1976, sch. 1, part IA, para. 1A, provides that para. 2 (failure to surrender to custody), para. 3 (committing offences while on bail) and para. 7 (accused arrested under s. 7) do not apply where the accused has attained the age of 18, and has not been convicted of an offence in the proceedings, and it appears to the court that there is 'no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings'.

Non-imprisonable Offences

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > REFUSING BAIL TO AN ACCUSED CHARGED WITH SUMMARY AND NON-IMPRISONABLE OFFENCES

D7.37

Part II of sch. 1 to the BA 1976 (see D7.161 ***et seq**.)* sets out the reasons which permit the refusal of bail to an accused charged solely with one or more offences that are not punishable with imprisonment. The grounds for withholding bail in such cases are as follows:

(a) where the accused is under the age of 18 or has been convicted of an offence in those proceedings and (in either case), having been previously granted bail in criminal proceedings, has failed to surrender to custody and the court believes, in view of that failure, that the accused would fail to surrender to custody (para. 2);

(b) where the court is satisfied that the accused should be kept in custody for his or her own protection (or welfare, if a child or young person) (para. 3);

(c) where the accused is already serving a custodial sentence (para. 4);

(d) where the accused is under the age of 18 or has been convicted of an offence in those proceedings, and (in either case) has been arrested under the BA 1976, s. 7, and the court is satisfied that there are substantial grounds to believe that the accused would fail to surrender to custody, commit an offence on bail, or interfere with witnesses or otherwise obstruct the course of justice (para. 5);

(e) where the accused has been arrested under s. 7 and the court is satisfied that there are substantial grounds for believing that, if released on bail, the accused would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (as defined by the Family Law Act 1996, s. 62, see D7.25), or to cause such a person to fear such injury, i.e. domestic violence (para. 6).

It should be noted that the grounds of 'risk of absconding etc.' and 'insufficient time' for refusing bail to someone charged with imprisonable offences do *not* apply where the offences are non-imprisonable.

BAIL AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

D7.38

Article 5 of the ECHR (see A7.48), which provides that 'everyone has the right to liberty', has clear relevance to bail. It lays down that no one shall be deprived of their liberty save in the six sets of circumstances specified in Article 5(1)(a) to (f). The list of exceptions is exhaustive, and has been described in Strasbourg as ensuring that no one is deprived of liberty in an 'arbitrary fashion' *(Engel v Netherlands* (1979—80) 1 EHRR647).

The Law Commission (Law Com No. 269) considered the impact of the HRA 1998 on the law governing decisions taken by the police and the courts to grant or refuse bail in criminal proceedings. The Commission noted that Article 5 of the ECHR states that, although reasonable suspicion that the detained person has committed an offence can be sufficient to justify pre-trial detention for a short time, the national authorities must thereafter show additional grounds for detention. They summarised the five additional grounds recognised under the ECHR as follows, namely where the purpose of detention is to avoid a real risk of:

(1) failure to attend trial;

(2) interference with evidence or witnesses, or obstruction of the course of justice;

(3) commission of an offence while on bail;

(4) harm to the accused against which the accused would be inadequately protected; or

(5) a disturbance to public order.

The Law Commission concluded that there are no provisions in the BA 1976 which are incompatible with Convention rights. However, the Commission did produce a guide to assist decision-makers to apply the Act in a way that is compatible with the ECHR. This emphasises that an accused should be refused bail only where detention is necessary for a purpose which Strasbourg jurisprudence has recognised as legitimate, in the sense that detention may be compatible with the accused's right to release under Article 5(3). Thus, a domestic court exercising its powers in a way which is compatible with the Convention rights should refuse bail only where it can be justified under both the ECHR, as interpreted in Strasbourg jurisprudence, and domestic legislation. The guidance also points out that detention will be necessary only if the risk relied upon as the ground for withholding bail could not be adequately addressed by the imposition of appropriate bail conditions. Thus, the Commission concluded that conditional bail should be used in preference to a remand in custody where a bail condition could adequately address the risk that would otherwise justify detention. Furthermore, the court refusing bail should give reasons for finding that a remand in custody is necessary. Those reasons should be closely related to the individual circumstances pertaining to the accused, and be capable of supporting the conclusion of the court.

D7.39

In *R (Thompson) v Central Criminal Court* [2005] EWHC 2345 (Admin), Collins J (at [10]) said:

> The approach under the Bail Act is entirely consistent with the approach which the European Court has regarded as proper under Article 5, namely there must be a grant of bail unless there are good reasons to refuse. The approach therefore really is not should there be bail granted but should custody be opposed, that is, is it necessary for the defendant to be in custody. That is the approach that the court should take. Only if persuaded that it is necessary should a remand in custody take place. It would be necessary if the court decides that whatever conditions can be reasonably imposed in relation to bail there are nevertheless

substantial grounds for believing that the defendant will either fail to surrender to custody, commit an offence, interfere with witnesses or otherwise obstruct justice.

In *R (Fergus) v Southampton Crown Court* [2008] EWHC 3273 (Admin), Silber J (at [20]) said that there was a 'high threshold' before bail can be withheld, namely that an accused should be remanded in custody only if that is 'necessary'.

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Strasbourg Case Law

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > BAIL AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

D7.40

Under Article 5, a person charged with an offence must be released pending trial unless there are 'relevant and sufficient' reasons to justify continued detention *(Wemhoffv Germany* (1979—80) 1 EHRR 55, at [12]). The case law of the ECtHR shows that this is interpreted in a way that is very similar to the UK's BA 1976. The grounds accepted by the ECtHR for withholding bail include:

(1) *The risk that the accused will fail to appear at the trial.* This has been defined as requiring 'a whole set of circumstances ... which give reason to suppose that the consequences and hazards of flight will seem to him to be a lesser evil than continued imprisonment' *(Stogmuller v Austria* (1979—80) 1 EHRR 155, at [15]). The court can take account of 'the character of the person involved, his morals, his home, his occupation, his assets, his family ties, and all kinds of links with the country in which he is being prosecuted' *(Neumeister v Austria* (1979—80) 1 EHRR 91, at [10]). The likely sentence is relevant but cannot of itself justify the refusal of bail *(Letellier v France* (1992) 14 EHRR 83, at [43]).

(2) *The risk that the accused will interfere with the course of justice* (e.g., interfering with witnesses, warning other suspects, destroying relevant evidence). There must be an identifiable risk and there must be plausible evidence in support (cf. *Clooth v Belgium* (1992) 14 EHRR 717).

(3) *Preventing the commission of further offences.* There must be good reason to believe that the accused will commit offences while on bail (cf. *Toth v Austria* (1992) 14 EHRR 551).

(4) *The preservation of public order*. Bail may be withheld where the nature of the alleged crime and the likely public reaction to it are such that the release of the accused may give rise to public disorder (*Letellier v France*, at [51]).

Article 5 of the Convention also allows the imposition of conditions on the grant of bail.

D7.41

In *O'Dowd v UK*(2012) 54 EHRR 8 (187), the ECtHR observed (at [68]) that:

> Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention ...

It follows, said the Court (at [69]), that it falls to the 'national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time'. The Court went on to say (at [70]) that the 'persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices'. At that point, there must not only be 'sufficient' grounds to justify the deprivation of liberty, but the 'national authorities' (i.e. the prosecution) must display 'special diligence' in the conduct of the proceedings. In assessing whether the 'special diligence' requirement has been met, regard must be had 'to periods of unjustified delay, to the overall complexity of the proceedings and to any steps taken by the authorities to speed up proceedings to ensure that the overall length of detention remains “reasonable” '.

The Court ruled (at [73]) that the 'due diligence' required by the Prosecution of Offences Act 1985, s. 22(3) (extension of custody time-limits: see D7.43), cannot be equated to the 'special diligence' required by Article 5(3). The Court went on to explain that:

> ... unlike the approach of the domestic courts to compliance with the 1985 Act, in assessing compliance with Article 5(3), this Court will examine the proceedings as a whole and assess any particular periods of inactivity or delay by the authorities within the context of the overall period of pre-trial detention, with particular regard to any recognition by the authorities of the length of time already spent in detention and the need to take additional steps to bring about a more speedy trial.

The Court found no breach of Article 5(3) on the facts in *O'Dowd.* This was largely because D had contributed substantially to the overall length of his pre-trial detention (e.g., by dismissing his legal advisers shortly before hearings, which resulted in the hearings being postponed).

'Equality of Arms' in Context of Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > BAIL AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

D7.42

It should be noted that the 'equality of arms' principle applies to bail applications *(Woukam Moudefo v France* (1991) 13 EHRR 549). This includes:

(a) the right to disclosure of prosecution evidence for purposes of making a bail application: *Lamy v Belgium* (1989) 11 EHRR 529, at [29] (the decision of the Divisional Court, *DPP, ex parte Lee* [1999] 2 Cr App R 304, largely accords with this);

(b) the requirement that the court should give reasons for the refusal of bail *(Tomasi v France* (1993) 15 EHRR 1, at [84]) and should permit renewed applications for bail at reasonable intervals *(Bezicheri vItaly* (1990) 12 EHRR 210, at [21]).

BAIL AND CUSTODY TIME-LIMITS

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail

D7.43

Grafted on to the general system of a presumption in favour of bail which is lost if one or more of the exceptions described above applies are special rules applying where the prosecution fail to comply with the custody time-limits contained in the Prosecution of Offences (Custody Time Limits) Regulations 1987 (SI 1987 No. 299) (see D15.7 ***et seq***.). For either-way offences, the maximum period of custody between the accused's first appearance and the start of summary trial, or the time when the court decides whether to send the accused to the Crown Court for trial, is 70 days (reg. 4(2)). However, if, before the expiry of 56 days following the day of the accused's first appearance, the court decides to proceed to summary trial, the maximum period of custody between the accused's first appearance and the start of the summary trial is 56 days (reg. 4(3)). For indictable-only offences, the maximum period of custody between the accused's first appearance and the time when the court decides to send the accused to the Crown Court for trial is 70 days (reg. 4(4)). For summary offences, the maximum period of custody beginning with the date of the accused's first appearance and ending with the date of the start of the summary trial is 56 days (reg. 4(4A)). Where a case is sent for trial in the Crown Court, the maximum period of custody between the time when the accused is sent for trial and the start of the trial is 182 days (reg. 5(6B)).

Under reg. 6(6), where the Crown Court is notified that the custody time-limit applicable to an accused in custody pending trial on indictment is about to expire, it must grant bail as from the expiry of the time-limit. By reg. 6(1) to (5), the prosecution must notify the Crown Court, at least five days before expiry of the time-limit, whether they intend to ask the Crown Court to impose conditions on the grant of bail. They must also arrange for the accused to be brought before the court within the two days preceding expiry. This is without prejudice to the prosecution's right to apply for an extension of the time-limit under the Prosecution of Offences Act 1985, s. 22(3).

The 1987 Regulations make no express provision as to the procedure to be adopted in a magistrates' court when a custody time-limit is about to expire. The fact that an accused who has not been granted bail must appear before the magistrates at regular intervals (because of the restrictions on the period for a remand in custody) perhaps makes it unnecessary to provide expressly for bringing the accused before the court in anticipation of the expiry of a custody time-limit.

D7.44

Regulation 8 modifies the BA 1976 in that, where a custody time-limit has expired, the words 'except as provided in Schedule 1 to this Act' are treated as omitted from s. 4(1) of the Act. The effect is to give the accused an absolute right to bail. Moreover, s. 3 of the 1976 Act (which deals with the conditions which may be imposed when granting bail, considered at D7.45 ***et seq***.) is also modified so as to prevent a court, when bailing an accused entitled to bail by reason of the expiry of a custody time-limit, from imposing requirements of a surety or deposit of security or any other condition which has to be complied with *before* release on bail (although it can impose conditions such as residence, curfew or reporting to a police station which have to be complied with *after* release). Moreover, following the grant of bail, the accused may not be arrested without warrant (under s. 7 of the BA 1976) on the ground that a police officer believes the accused is unlikely to surrender to custody or has, or is likely, to break a condition of bail.

If the accused is granted bail because the custody time-limit has expired, the right to bail continues only until a plea has been entered. Thereafter, the court can withhold bail if any of the reasons for doing so under the BA 1976 apply *(Croydon Crown Court, ex parte Lewis* (1994) 158 JP 886).

These provisions apply to proceedings in the youth court even though the usual distinction between summary and indictable offences does not apply there *(Stratford Youth Court, ex parte S* [1998] 1 WLR 1758).

For a full discussion of custody time-limits, see D15.7 ***et seq***.

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CONDITIONS OF BAIL

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail

D7.45

The BA 1976, s. 3, governs the duties resting on a person granted bail in criminal proceedings and the various requirements which may be attached to a grant of bail. Where the court grants 'unconditional' bail, the accused has simply to surrender to custody (i.e. attend court) at the date and time specified (s. 3(1)). However, the court may impose a wide range of additional requirements by granting bail subject to specific conditions, known as 'conditional bail' (s. 3(6)).

CrimPR 14.16 (see Supplement, R14.16) applies where the court may impose a bail condition requirement with which the accused must comply while in another EU Member State (to be monitored and enforced by that Member State); r. 14.17 applies where another EU Member State requests the monitoring and enforcement of an accused's compliance with a supervision measure imposed by an authority in that other State.

Duty to Surrender to Custody

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.46

A person granted bail in criminal proceedings is under a duty to surrender to custody (BA 1976, s. 3(1)). 'Surrender to custody' is defined in s. 2(2) as surrendering into the custody of the court the accused has been bailed to attend. For discussion of what precisely is meant by surrendering to the custody of a court, see D7.101. The date fixed for surrender to custody maybe varied to a later date (see the MCA 1980, ss. 43 and 129, for a magistrates' court's powers in this respect). Failure without reasonable cause to surrender to custody is an offence under the BA 1976, s. 6 (see D7.110).

By s. 3(2) of the 1976 Act, an accused granted bail in criminal proceedings may not be bailed on his or her own recognizance (in other words, an accused may not act as his or her own surety). The accused may, however, be required to provide other people to stand surety, under s. 3(4) (see D7.55), or may be required to give security for his or her surrender to custody, under s. 3(5) (see D7.60).

Conditions that May be Imposed by the Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.47

By virtue of the BA 1976, s. 3(6) (see D7.136), a person who is granted bail may be required by the court to comply with such requirements as appear to the court necessary to secure that the person:

(a) surrenders to custody;

(b) does not commit an offence on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice;

(d) is available for the making of inquiries or a report to assist in sentencing (this condition may be imposed only it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made: sch. 1, part I, para. 8(1A)); and

(e) attends an interview with a legal representative (this will nearly always be a solicitor).

Conditions may also be imposed for the protection of the accused (or, if a child or young person, for the accused's own welfare or interests).

D7.48

The BA 1976, sch. 1, part I, para. 8(1), provides that no conditions may be imposed unless it appears to the court that it is 'necessary' to do so either (a) for the purpose of preventing the occurrence of any of the events mentioned in sch. 1, para. 2(1), or for the accused's own protection or, if a child or young person, for the accused's own welfare or interests. The events mentioned in sch. 1, part I, para. 2, are precisely the same as those mentioned in paras. (a) to (c) of s. 3(6): failure to surrender to custody, commission of further offences and interference with witnesses. There is thus an almost complete overlap between s. 3(6) and sch. 1, part I, para. 8. This was attributed by Lord Lane CJ in *Mansfield Justices, ex parte Sharkey* [1985] QB 613 to 'indifferent drafting' (at p. 625C). Counsel for the applicants argued that para. 8 impliedly restricted the imposition of requirements to cases where the court was satisfied that there were substantial grounds for believing that one of the adverse consequences would occur unless bail was made conditional. However, this argument was rejected by the Divisional Court. Having quoted s. 3(6) and para. 8, Lord Lane explained their effect in the context of a condition imposed to prevent further offences. His lordship said (at p. 625E):

> In the present circumstances the question the justices should ask themselves is a simple one: 'Is this condition *necessary* for the prevention of the commission of an offence when on bail?' They are not obliged to have substantial grounds. It is enough if they perceive a *real and not a fanciful risk* of the offence being committed. Thus, section 3(6) and paragraph 8 give the court a wide discretion to inquire whether the condition is necessary [emphasis added].

It followed that the justices were *not* obliged to have substantial grounds for believing that a repetition of the accused's conduct would occur. It was enough that they perceived a 'real risk' of that happening. Although set out in the context of determining the legality of conditions imposed to prevent offences while on bail, the Lord Chief Justice's reasoning is equally applicable to conditions designed to prevent the accused absconding or interfering with witnesses.

A similar approach was adopted in *R (CPS) v Chorley Justices* [2002] EWHC 2162 (Admin), where the Divisional Court noted that the only prerequisite for imposing conditions on bail is that, in the circumstances of the particular case, imposition of the condition is necessary to achieve the aims specified in that section (e.g., preventing the accused from absconding, or committing offences while on bail, or interfering with witnesses or otherwise obstructing the course of justice).

D7.49

The BA 1976 refers to some specific conditions (such as sureties and security) but it does not contain a definitive list of conditions that may be imposed. The court may impose *any* condition so long as it is necessary to prevent the accused from absconding, committing offences etc. Under CrimPR 14.5(4) (see Supplement, R14.5) a prosecutor who wants the court to impose a condition must specify the condition and explain what purpose it would serve.

Commonly imposed conditions include:

(a) a condition of residence, often expressed as a condition that the accused is to live and sleep at a specified address;

(b) a condition that the accused is to notify any changes of address to the police;

(c) a condition of reporting (whether daily, weekly or at other intervals) to a local police station;

(d) a curfew (i.e. the accused must be at a specified address between certain hours);

(e) a condition that the accused is not to enter a certain area or building or go within a specified distance of a certain address;

(f) a condition that the accused is not to contact (whether directly or indirectly) the victim of the alleged offence and/or any other probable prosecution witness; and

(g) a condition that the accused's passport must be surrendered to the police (sometimes with an additional restriction to prevent the accused from applying for travel documents).

Conditions (a), (b), (c) and (g) are particularly relevant to reducing the risk of absconding. A special form of residential condition is that the accused is to reside at a bail hostel or probation hostel. When imposing such a condition the court may, and normally will, impose an additional requirement that the accused must comply with the rules of the hostel (s. 3(6ZA)). In the case of a convicted offender being remanded for reports, a requirement of residence at a hostel may be imposed not simply to reduce the risk of absconding but, additionally or alternatively, to assess the offender's suitability for being dealt with by means of a community order. Conditions (d) and (e) are designed to prevent the commission of offences when on bail. A curfew may be appropriate where the offence with which the accused is charged was allegedly committed at night; a geographical restriction is useful if the offence was one of violence committed at a certain address (in effect, the accused is ordered to stay away from the address). Conditions (e) and (f) may be imposed to minimise the risk of interference with witnesses.

D7.50

Under CrimPR 14.11 (see Supplement, R14.11) the accused must, as soon as practicable, notify the prosecutor of the address at which the accused will live and sleep if released on bail with a condition of residence. The prosecutor must help the court to assess the suitability of an address proposed as a condition of residence.

In *R (CPS) v Chorley Justices* [2002] EWHC 2162 (Admin), D was granted bail subject to a curfew condition. The magistrates' court ruled that there was no jurisdiction to impose an additional condition requested by the prosecution, that D should 'be required during the hours of the curfew to present himself at the door of his home if requested to do so by a police officer'. The CPS sought judicial review of this refusal. The Divisional Court held that there is power under s. 3(6) to impose such 'door-step' conditions, but it is a question of fact in each case whether such a condition is necessary.

Electronic Monitoring

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.51

Electronic monitoring (colloquially known as 'tagging') is available as a condition of bail under the BA 1976, s. 3(6ZAA). This condition is often combined with a curfew condition.

D7.52

Adults Section 3AB of the 1976 Act governs the imposition of electronic monitoring requirements where the accused has attained the age of 18. Such a requirement may be imposed only if the court is satisfied that, without the electronic monitoring requirement, the accused would not be granted bail (s. 3AB(2)).

D7.53

Children and Young People Section 3AA applies where the accused is under the age of 18. It stipulates that an electronic monitoring requirement cannot be imposed unless the accused is at least 12 years old. Moreover, the child or young person must have been charged with, or convicted of, either (a) a violent or sexual offence, or an offence punishable in the case of an adult with at least 14 years' imprisonment, or (b) one or more imprisonable offences which amount (or would amount if convicted of the present charge) to a recent history of repeatedly committing imprisonable offences while remanded on bail or subject to a custodial remand (s. 3AA(3)). Moreover, a youth offending team must have confirmed the suitability of the requirement for the accused (s. 3AA(5)).

Non-imprisonable Offences

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.54

In *Bournemouth Magistrates' Court, exparte Cross* (1989) 89 Cr App R 90, the Divisional Court confirmed that conditions can be imposed on bail under the BA 1976, s. 3(6), where the offence in question is non-imprisonable.

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Sureties

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.55

A person granted bail in criminal proceedings maybe required, before release on bail, to provide one or more sureties to secure the person's surrender to custody (BA 1976, s. 3(4), see D7.136). Section 3(4) does not place any fetter on the discretion to demand a surety (cf. s. 3(6)). However, sch. 1, part I, para. 8, provides that no conditions shall be imposed under, *inter alia,* s. 3(4) unless they appear to the court necessary to prevent the occurrence of any of the events mentioned in sch. 1, part I, para. 2(1) (i.e. failure to surrender to custody, the commission of one or more offences while on bail, or interference with witnesses or obstruction of the course of justice). In *R (Shea) v Winchester Crown Court* [2013] EWHC 1050 (Admin), the Divisional Court ruled that there is no power (under the BA 1976 or otherwise) to require a surety to ensure no further offending: a surety can be sought only for the purpose of securing surrender to custody, and not for any other purpose. It follows that one or more sureties should be required only in cases where there appears to be a risk of absconding.

The position is different where the accused is under the age of 17 (see D7.59).

D7.56

Who Can be a Surety? The BA 1976, s. 8 (see D7.148), contains detailed provisions about the taking of sureties. In considering whether a proposed surety is suitable, regard may be had, *inter alia,* to the factors set out in s. 8(2).

(a) The financial resources of the proposed surety: could the surety pay the sum which is promised? In *Birmingham Crown Court, ex parte Rashid Ali* (1999) 163 JP 145, Kennedy LJ (at p. 147) said that 'it is irresponsible (and possibly a matter for consideration by a professional disciplinary body) for a qualified lawyer or legal executive to tender anyone as a surety unless he or she has reasonable grounds for believing that the surety will, if necessary, be able to meet his or her financial undertaking'.

(b) The character of the proposed surety and any previous convictions: is the surety a trustworthy person?

(c) The proximity (whether kinship, place of residence or otherwise) of the proposed surety to the accused: for example, is the proposed surety a friend, relative or employer? The most important consideration under this heading is the relationship of the proposed surety to the accused: will the surety have the ability to influence the accused so as to ensure attendance at court at the appointed time? Put another way, would the fact that the surety stands to lose money if the accused absconds operate on the mind of the accused so as to act as a deterrent against absconding?

D7.57

Taking the Surety The normal consequence for a surety if an accused fails to answer to bail is that the surety is ordered to forfeit the entire sum which was promised (the 'recognizance'). As the surety is promising to pay money rather than handing over any money at the outset, it is therefore important for the court to be assured that the surety has sufficient funds with which to honour the undertaking given to the court. A proposed surety who is present in court is asked how the sum promised would be paid if the accused were to abscond. It is also standard practice for the police to check whether the proposed surety has previous convictions; if so, and depending on their age and nature, objection may be made to that person acting as a surety. If no satisfactory surety is forthcoming at court, but the court is willing to grant bail subject to the provision of a satisfactory surety, the court simply fixes the amount in which the surety is to be bound and the accused remains in custody unless and until the court's requirement can be

fulfilled (BA 1976, s. 8(3)). To facilitate early release where the sureties are not at court, they may enter into their recognizances outside court (s. 8(4)). Paragraphs (a) to (d) of s. 8(4), in conjunction with CrimPR 14.14(3)(b) (see Supplement, R14.14), list the persons who may accept a surety's recognizance: a justice of the peace; a justices' clerk; apolice officer who is either of the rank of inspector or above or who is in charge of a police station; or the 'defendant's custodian' (i.e. the governor of the prison or remand centre where the accused is being held); or, if bail has been granted by the Crown Court, an officer of that court. The court granting bail may, however, specify the person (or class of person) before whom the surety is to be taken or require that the surety be taken in court (see the opening words of s. 8(4)). If a person asked to accept a surety outside court refuses to do so due to lack of satisfaction about the surety's suitability, the surety may apply either to the court which fixed the amount of the recognizance in which the surety was to be bound, or to any magistrates' court, for that court to take the recognizance; that court must, if satisfied of the surety's suitability, take the recognizance (s. 8(5)).

It is quite common to have two or more sureties. If the court will grant bail only subject to a recognizance of a certain amount and that amount is beyond the means of one of the proposed sureties, then one or more additional sureties will have to be found.

For discussion of the consequences for the surety if the accused absconds, see D7.121.

D7.58

Making Sureties Continuous Where bail is granted subject to a requirement for sureties, the surety's recognizance may be conditioned to secure that the accused 'appears at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned' and also before the Crown Court in the event of the accused being sent there for trial (MCA 1980, s. 128(4)). Making the sureties continuous in this way is a useful device to avoid the sureties having to come to court for each remand hearing. If they have not been made continuous and are not at court, the accused, even if granted bail on precisely the same terms as previously, cannot be released until the undertakings have been renewed (e.g., by going to a local police station). Section 128(4)(c) even empowers magistrates to make the sureties' recognizances extend beyond the date when the case is sent to the Crown Court for trial (i.e. at a remand hearing they undertake to secure the accused's attendance before the Crown Court if the accused is sent there for trial). Where the accused's bail is conditional both on sureties and other conditions, there is no obligation to inform the sureties should the other conditions be relaxed or varied *(Wells Street Magistrates' Court, ex parte Albanese* [1982] QB 333).

In *Evans* [2011] EWCA Crim 2842, [2012] 1 WLR 1192, Hughes LJ (at [33]) said that, where a magistrates' court has sent the accused to Crown Court, bail and any recognizance will lapse on the first appearance in the Crown Court and cannot carry through to subsequent adjournments in the Crown Court. However, if the Crown Court renews bail, it does have the power to make the recognizance continuous for all future appearances. This, said his lordship:

> ... underlines the importance of attention being paid to the terms of a defendant's bail, particularly at the conclusion of the first hearing in the Crown Court. At that point conditions of bail should always be considered. Of course it is sufficient to do so briefly by simply reimposing conditions previously placed there by the magistrates, if that is appropriate and especially if there is no objection. But in both surety cases and non-surety cases an assessment of bail is required at the end of the first hearing in each Crown Court.

D7.59

Parent Standing Surety for a Child or Young Person The general rule is that the obligations of a surety extend only to securing the accused's attendance at court, and so a surety is *not* responsible for preventing any other possible defaults of the accused while on bail (e.g., intimidation of witnesses or breach of a condition of bail). However, the BA 1976, s. 3(7), provides that, where the accused is under the age of 17, and a parent or guardian stands surety, the court may require the parent or guardian to secure that the accused complies with any condition of bail imposed by virtue of s. 3(6), (6ZAA), or (6A). A requirement under s. 3(7) can be imposed only with the consent of the parent or guardian, and the sum promised may not exceed £50.

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Deposit of Security

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.60

Under the BA 1976, s. 3(2) (see D7.136), a person cannot stand as surety for him or herself. However, persons granted bail may be required to give 'security' for their surrender to custody, i.e. deposit with the court money or some other valuable item which will be liable to forfeiture in the event of non-attendance in answer to bail (BA 1976, s. 3(5)). As with sureties, security may be required as a condition of bail only if it is considered necessary to prevent absconding. Where security has been given in pursuance of s. 3(5) and the person bailed absconds, the court may, unless there appears to have been reasonable cause for the failure to surrender to custody, order forfeiture of the security (s. 5(7) to (9)).

In *R (Stevens) v Truro Magistrates' Court* [2001] EWHC Admin 558, [2002] 1 WLR 144, it was held that it is permissible for a third party to make available an asset to an accused for use as security, and that the court can accept such an asset. However, as it is the accused who gives the security, the arrangements the accused might make with those who assist with the provision of the requisite security are not a matter for the court. There is no obligation for the third party to be notified before the security is forfeited on the accused's non-attendance.

Other Statutory Bail Conditions

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.61

There are a number of other conditions which may be imposed on the grant of bail pursuant to various provisions of the BA 1976.

D7.62

Drug Assessments Section 3(6C) to (6E) of the BA 1976 (see D7.136) provide that where:

(a) the conditions set out in para. 6B of part I of sch. 1 are satisfied (namely, the accused is aged 18 or over, there is drug test evidence that there is a specified Class A drug in the accused's body, and either the offence is a drugs offence associated with a specified Class A drug or the court is satisfied that there are substantial grounds for believing that the misuse of a specified Class A drug caused or contributed to that offence or provided its motivation), and

(b) the accused has been offered an assessment of dependency upon or propensity to misuse any specified Class A drugs (or such an assessment has been carried out and follow-up has been offered), and

(c) the accused has agreed to undergo that assessment or participate in any follow-up,

then the court, if it grants bail, is required to impose as a condition that the accused must both undergo the relevant assessment and participate in any relevant follow-up that is proposed or, if a relevant assessment has been carried out, that the accused must participate in the relevant follow-up (s. 3(6D)).

D7.63

Co-operation in the Making of Reports One of the purposes for which the court may impose a requirement under the BA 1976, s. 3(6), is to ensure that the accused will be 'available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence' (s. 3(6)(d)). For obvious reasons, such a requirement will not generally be considered until the stage of an adjournment between conviction and sentence. However, there are two situations in which the court is obliged—not merely empowered—to make a requirement under s. 3(6)(d), and both can arise even before conviction. Those situations are:

(a) Where a magistrates' court is dealing with an imprisonable offence, it may adjourn the case under the PCC(S)A 2000, s. 11(1), for a medical examination, provided that the court is satisfied that the accused did the act or made the omission charged, and is of the opinion that an inquiry ought to be made into the physical or mental condition of the accused before the method of proceeding is determined. Although such an adjournment is conditional on the court being satisfied that the accused committed the *actus reus* of the offence, there is no need for a conviction to have been recorded. The purpose of ordering the examination is usually to discover whether the accused's mental condition is such that the accused might be dealt with by means such as a hospital order (whether with or without a prior conviction for the offence charged) or a community order with a condition for medical treatment. Under s. 11(3), where there is an adjournment under s. 11(1) and the magistrates remand the accused on bail, the court *shall* impose conditions under the BA 1976, s. 3(6). Those conditions must include requirements that the accused: (i) submits to examination by a duly qualified medical practitioner (or, if the inquiry is into the accused's mental condition

and the court so directs, by two practitioners); and (ii) for the purpose of the examination, attends at such place as the court directs and complies with any directions given for that purpose.

(b) Where a court grants bail to an accused charged with murder, it must, unless satisfied that satisfactory reports on the accused's mental condition have already been obtained, impose as conditions of bail requirements that the accused must undergo examination by two medical practitioners (including a psychiatrist approved under the Mental Health Act 1983) and attend such place as directed for the purpose of the examination (BA 1976, s. 3(6A) and (6B)). The importance in such cases of obtaining full medical and, in particular, psychiatric reports on the accused while still on remand prior to trial is that the reports may lay the foundation for a defence of diminished responsibility or, alternatively, assist the prosecution in rebutting such a defence. In *Central Criminal Court, ex parte Porter* [1992] Crim LR 121, the Divisional Court said that if no such condition was imposed, then the decision to grant bail would be a nullity.

D7.64

Taking Legal Advice The court also has power to require an accused, as a condition of bail, to attend an interview with a legal adviser before the next appearance in court (BA 1976, s. 3(6)(e)). The aim is to save the time of the court by ensuring that the accused receives legal advice, in advance of the hearing, to decide on how to respond to the charge. Clearly, if the accused indicates a wish not to be legally represented, such a condition should not be imposed. If the condition is attached, then the accused should be told of the consequences of failing to comply.

Applications to Vary the Conditions of Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.65

Where bail has been granted subject to conditions, the accused may apply for the conditions to be varied (BA 1976, s. 3(8)(a)). The application should be made to the court which granted bail or, where the accused has been sent to the Crown Court for trial, or committed to the Crown Court for sentence, to the Crown Court. Furthermore, the prosecution may make a similar application either for existing conditions to be varied or, in a case where the court originally granted unconditional bail, for conditions to be imposed (s. 3(8)(b)). A party who intends to apply for a variation of bail conditions must give advance notice to the court and to the other party, explaining what is sought and why. CrimPR 14.7 applies to such applications (see D7.67). Under r. 14.7(2)(c), the application must be served not less than two business days before any hearing in the case at which the applicant wants the court to consider it, if such a hearing is already due. The court may determine an application to vary a condition without a hearing if the variation has been agreed by the parties (r. 14.7(7)(c)); if there is to be a hearing, it should take place no later than the fifth business day after the application was served (r. 14.7(6)(b)).

Breach of Bail Conditions

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > CONDITIONS OF BAIL

D7.66

Breach of any condition which has been imposed may result in the accused being arrested without warrant under the BA 1976, s. 7(3), and bail being withdrawn. See D7.102.

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PROCEDURE FOR BAIL APPLICATIONS IN MAGISTRATES' COURTS

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Application Procedure

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN MAGISTRATES' COURTS

D7.67

The Coronavirus Act 2020, s. 54 and sch. 24, have made temporary modifications to the CDA 1998, ss. 57A to 57B and sch. 3A, to give the court power to direct 'live link' attendance at 'preliminary hearings'. Under the CDA 1998, s. 57B(8) and sch. 3A, para. 3, specific prohibitions and limitations on the power to direct attendance by live link apply to disputed bail hearings.

Guidance on the procedure to be followed for bail applications is contained in CrimPR Part 14 (see Supplement, R14.1 ***et seq***). Rule 14.2(1)(a) states that a decision on bail cannot be made unless each party (and any surety directly affected by the decision) is present (in person or via live link) or has had an opportunity to make representations. However, where the accused is in custody, bail may be considered in the absence of an accused who has waived the right to attend, or who was present when bail was refused on a previous occasion and who has been in custody continuously since then (r. 14.2(1)(b)). Rule 14.2(2) states that a bail hearing may take place in public or in private.

Assuming the presumption in favour of bail applies by virtue of the BA 1976, s. 4(1), the onus is on the court to justify any refusal of bail in accordance with sch. 1 to the Act. This applies both when the accused first appears and at all subsequent appearances while remaining within the scope of s. 4(1) (sch. 1, part IIA, para. 1).

D7.68

The question of bail is always a matter for the court. However, when adjourning the case of an unconvicted accused to whom s. 4(1) applies and who is entitled to make an argued bail application under sch. 1, part IIA (see D7.70), normal practice is to ask the prosecution if they have any objections to bail. The prosecution representative then summarises the objections (or, as the case may be, states that there are no objections). The CPS case file will contain information, supplied by the police, which sets out the objections to bail, if any, and the basis of those objections. The prosecution advocate usually has little alternative but to base the objections on this information unless a police officer connected with the case is present in court and able to provide additional information. The justices will normally be told of the accused's previous convictions (including any convictions for failure to surrender to custody) when the prosecution give their objections to bail. Following the prosecution objections, the defence representative (or the accused in person if unrepresented) may present the arguments for bail (whether conditional or unconditional). Even where the defence choose not to make a bail application, it is submitted that the prosecution should present at least cursory objections to bail so that the court will be able to base a refusal on one or more of the reasons contained in sch. 1.

The question of bail is normally dealt with on the basis of submissions from the prosecution and defence. Rule 14.5(2) requires the prosecutor to provide the court with all information in the prosecutor's possession that is relevant to the question of bail. Where the prosecution oppose bail, the prosecutor is required to specify each statutory exception to the presumption in favour of bail on which the prosecution rely, and each consideration the prosecution argue to be relevant (r. 14.5(3)).

There is no requirement for formal evidence to be given *(Re Moles* [1981] Crim LR 170; *Mansfield JJ, ex parte Sharkey* [1985] QB 613 at p. 626, per Lord Lane CJ). Either party may, however, adduce evidence in support of their respective arguments, e.g., a police officer to substantiate the objections to bail, or proposed sureties to further

the application for bail. Such witnesses give their evidence on the *voir dire* form of oath, to answer truthfully all such questions as the court may ask.

The prosecution will not normally reply to the application for bail by the defence. However, the prosecutor does have a right to reply to the defence submissions if this is necessary to correct alleged misstatements of fact in what the defence have said *(Isleworth Crown Court, ex parte Commissioner of Customs and Excise* [1990] Crim LR 859).

Having heard the prosecution objections to bail, and the answer of the defence to those objections, the court announces its decision on the grant or withholding of bail.

D7.69

Effect on Procedure of the Human Rights Act 1998 The compatibility of the procedure adopted in the case of contested bail hearings with the safeguards in the ECHR, Articles 5 and 6, was examined (in the context of a hearing involving an accused arrested for breach of a bail condition) in *R (DPP) v Havering Magistrates' Court* [2001] 1 WLR 805 (see D7.106). In that case the need for formal evidence and procedures was rejected in favour of proper account being taken of the quality of the material upon which the court is asked to adjudicate, with D being given a full and fair opportunity to comment on, and answer, that material (per Latham LJ, at [41]).

Right to Make Repeated Argued Bail Applications

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN MAGISTRATES' COURTS

D7.70

An accused who has been remanded in custody may make a fully argued application at the next hearing, regardless of whether that application repeats arguments that were placed before the previous bench (BA 1976, sch. 1, part IIA, para. 2; see D7.163). Unless the accused consents to being remanded while absent, the next hearing will take place within eight clear days (MCA 1980, s. 128(6)). (Section 128A of the MCA 1980, which permits remands in custody of up to 28 days, applies only if the accused has already been remanded in custody for the offence on at least one previous occasion.) Therefore, the wait between being refused bail on a first appearance and being able to argue again for bail on a second appearance is relatively short. However, should that second argued application fail, the BA 1976, sch. 1, part IIA, para. 3, is applicable. This provides that, at subsequent hearings, the court 'need not hear arguments as to fact or law which it has heard previously'. This is so even though at each hearing the court should nominally consider whether the accused ought to remain in custody (sch. 1, part IIA, para. 1). Paragraph 3 effectively entitles the magistrates to treat the finding of the previous bench (that there were grounds for refusing bail) as a form of *res iudicata.* They may therefore refuse to hear argument in favour of bail, and need consider the question only to the limited extent of satisfying themselves that the accused has exhausted the argued bail applications to which the accused is entitled as of right and that there has been no material change of circumstances since the last argued application to enable the matter to be reopened.

The Law Commission Paper, *Bail and the Human Rights Act 1998* (Law Com No. 269), contains guidance aiming to ensure that the provisions relating to a change in circumstances are applied in away that is compatible with the ECHR. This guidance states (at paras. 12.23 and 13.33) that courts should be willing, at regular intervals of 28 days, to consider arguments that the passage of time constitutes, in the particular case before the court, a change in circumstances so as to require full argument. If the court finds that the passage of time does amount to a relevant changed circumstance, or that there are other circumstances which may be relevant to the need to detain the accused that have changed or come to notice since the last fully argued bail hearing, then a full bail application should follow in which all the arguments, old and new, could be put forward and taken into account.

D7.71

Part IIA of sch. 1 to the BA 1976 was intended to give statutory effect to the decision of the Divisional Court in *Nottingham Justices, ex parte Davies* [1981] QB 38. That decision may therefore be regarded as a useful aid to the interpretation of part IIA. Donaldson LJ said (at pp. 43-4):

> ... I accept that the fact that a bench of the same or a different constitution has decided on a previous occasion or occasions that one or more of the schedule 1 exceptions applies and has
>
> accordingly remanded the accused in custody, does not absolve the bench on each subsequent occasion from considering whether the accused is entitled to bail, whether or not an application is made.
>
> However, this does not mean that the justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a schedule 1 exception was made out. If it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This ... is a finding by the court that schedule 1 circumstances then existed and it is to be treated like every other finding of the court. It is *res iudicata* or

> analogous thereto. It stands as a finding unless and until it is overturned on appeal. ... It follows that on the next occasion when bail is considered [by the magistrates] the court should treat, as an essential fact, that at the time when the matter of bail was last considered, schedule 1 circumstances did indeed exist. Strictly speaking, they can and should only investigate whether that situation has changed since then ...
>
> I would inject only one qualification to the general rule that justices can and should only investigate whether the situation has changed since the last remand in custody. The finding on that occasion that schedule 1 circumstances existed will have been based upon matters known to the court at that time. The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since that last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. ... The question is a little wider than 'Has there been a change?' It is 'Are there any new considerations which were not before the court when the accused was last remanded in custody?'

D7.72

Interpretation of Part IIA The BA 1976, sch. 1, part IIA, paras. 2 and 3 (see D7.163), oblige the court to consider any relevant arguments, whether of fact or of law, which were not before the court when bail was refused. This is so whether the argument arises out of a change in circumstances since the last unsuccessful application, or is an argument that could have been put on the previous occasion but, for whatever reason, was not. In *R (B) v Brent Youth Court* [2010] EWHC 1893 (Admin), there had been two bail applications to the magistrates' court and one at the Crown Court; the defence sought to make a further application to the magistrates on the basis, *inter alia*, of a new set of possible conditions. The magistrates ruled that the possibility of new conditions did not amount to a change of circumstances and that the revised conditions could have been put before the court on a previous occasion; accordingly, they refused to hear the application. This refusal was quashed by the Divisional Court. Wilkie J referred to part IIA and said (at [9]) that the:

> ... effect of this is that the court is obliged to entertain two bail applications regardless of whether the arguments put forward in the second are arguments which have been advanced previously. But if those arguments are sought to be put forward a third time the court is not obliged to entertain them, though it may do so. But this only applies to the extent that arguments put forward as to fact or law are arguments which the court has heard previously.

He went on to say that this is almost invariably referred to as the 'change of circumstance' condition but that this phrase 'does not accurately reflect the statutory provisions'. Thus, the key question is whether the argument (of fact or law) was one which was put before the court on an earlier occasion, not whether it could have been put to the court previously.

Paragraph 2 does not state, as it might have done, that the accused is entitled to two fully argued bail applications. It merely provides that, *at the first hearing* after the accused was refused bail, an application for bail may be supported with any argument of fact or law, regardless of whether it was previously advanced. Thus, on a literal interpretation of para. 2, if an accused chooses not to make a bail application on the occasion of the first appearance and is accordingly remanded in custody, a fully-argued application may be made at the next appearance but, if that application fails, no further argued application may be made unless it includes matters which have not previously been placed before the court. It follows that an accused seeking bail who wants two opportunities to do so in the magistrates' court should make applications on both the first and second remand appearances.

In *Calder Justices, ex parte Kennedy* (1992) 156 JP 716, the Divisional Court held that a decision under sch. 1, part I, para. 5 (that it has not been practicable to obtain sufficient information whether to grant bail) is not a decision not to grant bail, since the justices are merely saying that they are not in a position to decide the question of bail. It does not therefore count for the purposes of para. 2 of part IIA of sch. 1.

In *Dover and East Kent Justices, ex parte Dean* (1992) 156 JP 357, D made no bail application on his first appearance and consented to be remanded in his absence for three weeks under the MCA 1980, s. 128 (see D5.37). D appeared before the justices at the end of that period and wished to make a bail application, but the magistrates ruled that he was not entitled to make an application . The Divisional Court held that the occasions when he had been remanded in his absence were not 'hearings' for the purpose of para. 2, and so he had a right to make a bail application when he came before the justices at the end of the period of remand by consent.

Where the accused has exhausted the automatic entitlement of fully-argued applications but claims that a new consideration has arisen which was not placed before the court on the earlier occasions, para. 3 could be construed merely as obliging the court to hear the argument of fact or law not previously advanced, rather than obliging it to reopen the entire question of bail. It is submitted, however, that to consider only the new matter(s) in isolation from the other arguments for bail would be an artificial exercise, and that the identifying of a new consideration relevant to bail should entitle the accused to make a further full bail application in which both the fresh and the old arguments may be relied on.

It must also be borne in mind that para. 3 merely states that, at the third and subsequent remand hearings, the court 'need not' hear arguments which it has heard previously. It therefore does not debar the court from entertaining yet another fully-argued application, but gives it a discretion to hear a further bail application even in the absence of fresh information.

Care must be taken by the court in expressing the reason for the refusal of bail where para. 3 is applicable. Since in theory the court is obliged to consider bail each time an accused who is entitled to the benefit of the BA 1976, s. 4(1), appears before it in custody, it is unwise for the magistrates simply to say that they were not prepared to consider the matter of bail. It is more appropriate to say: 'As there is no new material before us relevant to the question of bail, bail will be refused'. This avoids giving the impression that they have simply refused to consider the question (per Ormrod LJ in *Slough Justices, ex parte Duncan* (1982) 75 Cr App R 384 at p. 389).

Extending Bail in the Absence of the Accused

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN MAGISTRATES' COURTS

D7.73

The MCA 1980, s. 129(1), applies if the court is satisfied that, on the day to which the accused was remanded, he or she is unable to attend 'by reason of illness or accident'. It may then remand the accused again in his or her absence. Notwithstanding s. 128(6), a remand in custody under s. 129(1) may exceed eight clear days. Section 129(1) applies regardless of whether the remand is in custody or on bail. Thus, if an accused remanded in custody on an earlier occasion is ill in prison and will not be well enough to attend court for several weeks, the magistrates may extend the period of the remand until such time as a recovery is likely.

By contrast with s. 129(1),s. 129(3) applies only if the accused has been remanded on bail. The subsection permits the court to appoint, in the absence of the accused, a later time as the time at which the accused is to appear. The appointment of the new time is deemed to be a further remand (s. 129(3)). This power is useful when unforeseen developments mean that the case will not be able to proceed on the date to which it was originally adjourned. By agreement between the court and the parties, a new date can be fixed without the necessity for the accused appearing. The power is also useful when the accused fails to appear on the date to which the accused was bailed but an acceptable explanation for this non-appearance is put before the court. Instead of issuing an arrest warrant, the magistrates may simply adjourn and enlarge bail in the absence of the accused.

Whenever bail is extended under either s. 129(1) or (3), the recognizances of the sureties may be correspondingly 'enlarged' to secure the accused's appearance on the new date (s. 129(2)(a) and (3)(a)).

The powers conferred by the MCA 1980, s. 129, should be distinguished from the power under s. 128(3A) to remand an accused in custody on up to three consecutive occasions without being brought before the court if the accused has consented not to be produced (see D5.33).

STATING AND RECORDING DECISIONS ABOUT BAIL

D7.74

Section 5 of the BA 1976 imposes a number of requirements about the giving and recording of decisions about bail and the reasons for those decisions.

Duty to Make a Record of the Decision

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > STATING AND RECORDING DECISIONS ABOUT BAIL

D7.75

Where a court grants bail, or withholds bail from someone to whom the BA 1976, s. 4, applies, or appoints a different time or place for a person granted bail to surrender to custody, or varies any conditions of bail or imposes conditions in respect of bail, it must make a record of the decision. The accused is entitled to a copy of the record on request (s. 5(1)).

Reasons for Decisions relating to Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > STATING AND RECORDING DECISIONS ABOUT BAIL

D7.76

Where a magistrates' court or the Crown Court: (a) withholds bail from an accused prima facie entitled to bail under the BA 1976, s. 4, or (b) imposes conditions on the grant of bail to such a person, or varies conditions that have previously been imposed, it must give reasons for withholding bail or, as the case may be, imposing or varying conditions of bail (s. 5(3)). The purpose of the giving of reasons is to enable the accused to consider making an application for bail (or for the variation or removal of conditions of bail) to another court. A note of the reasons must be included in the record of the court's decision (s. 5(4)). The accused must be given a copy of the note (s. 5(4)), unless the decision was taken by the Crown Court and the accused is legally represented, in which case a copy need be provided only if the legal representative so requests (s. 5(5)). It should be noted that the obligation to give reasons under s. 5(4) arises only if the accused has the benefit of the presumption of bail conferred by s. 4. If, for example, bail pending appeal is refused to a person summarily convicted and given a custodial sentence, the court is not required by the BA 1976 to explain the refusal, since the case falls outside s. 4.

In *R (Rojas) v Snaresbrook Crown Court* [2011] EWHC 3569 (Admin), the Divisional Court considered the duty under s. 5(3) to give reasons for withholding bail. Holman J said (at [21]) that such reasons had to 'extend to a minimum reasonable level of adequacy, and had to identify the ground or grounds upon which the court was satisfied that bail should now be refused, and with a minimum level of adequacy identify the case specific reasons for being so satisfied'. In *R (Fergus) v Southampton Crown Court* [2008] EWHC 3273 (Admin), Silber J (at [21]) said that the reason for withholding bail 'must relate to the facts. Such a reason must be more than merely reciting that one of the statutory grounds has been made out. The underlying facts have to be put forward.' In other words, the factual basis for holding that one or more of the statutory grounds for withholding bail has been substantiated must be articulated clearly.

Reasons for Granting Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > STATING AND RECORDING DECISIONS ABOUT BAIL

D7.77

Where a magistrates' court or the Crown Court grants bail to a person to whom the BA 1976, s. 4, applies after hearing representations from the prosecutor in favour of withholding bail, it must give reasons for its decision (s. 5(2A)), and those reasons must be included in the record of the court's decision, a copy of which must be given to the prosecutor if requested (s. 5(2B)).

Certificates of Full Argument

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > STATING AND RECORDING DECISIONS ABOUT BAIL

D7.78

Section 5(6A) to (6C) of the BA 1976 deal with certificates of full argument. Section 5(6A) applies where a magistrates' court adjourns a case under the PCC(S)A 2000, s. 11, or the CDA 1998, s. 52(5), or the MCA 1980, s. 10, 17C, 18 or 24C, and remands the accused in custody after hearing a fully-argued bail application (s. 5(6A)(a)). In such a case, the court must issue a certificate confirming that full argument was heard if either the court has not previously heard full argument on a bail application made by the accused in the proceedings in question, or it has previously heard such argument but is satisfied that there has been a change in circumstances or that new considerations have been placed before it (s. 5(6A)(b)). In a case where the court has heard a second or subsequent fully argued application on the basis of a change in circumstances or new considerations, the certificate must state what the change was (s. 5(6B)). The accused must be given a copy of the certificate (s. 5(6C)). The significance of the issue of a certificate of full argument is that the right to apply to the Crown Court for bail is dependent on it (Senior Courts Act 1981, s. 81(1)(g) and (1J)).

It should be noted that an adjournment during a summary trial (under the MCA 1980, s. 10) includes an adjournment for reports after conviction, so the obligation to issue a certificate may arise if the accused is remanded in custody at that stage. Moreover, the obligation to issue a certificate also applies where bail is refused on an adjournment under the PCC(S)A 2000, s. 11, for medical reports.

Informing Unrepresented Accused of Right to Apply to Crown Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > STATING AND RECORDING DECISIONS ABOUT BAIL

D7.79

Where a magistrates' court withholds bail and sends an unrepresented accused for trial to the Crown Court or issues a certificate under s. 5(6A), the accused must be informed of the right to apply to the Crown Court for bail (BA 1976, s. 5(6)).

OPTIONS OPEN TO AN ACCUSED REMANDED IN CUSTODY OR ON CONDITIONAL BAIL BY MAGISTRATES

D7.80

An accused who has been refused bail by a magistrates' court may apply for bail to the Crown Court. An appeal can also be made against a decision of a magistrates' court to impose conditions on bail.

Appeal to the Crown Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > OPTIONS OPEN TO AN ACCUSED REMANDED IN CUSTODY OR ON CONDITIONAL BAIL BY MAGISTRATES

D7.81

The right to apply to the Crown Court for bail is contained in the Senior Courts Act 1981, s. 81(1) (see D27.17). Section 81(1)(g) provides that the Crown Court may grant bail to any person who has been remanded in custody by a magistrates' court on adjourning a case under the PCC(S)A 2000, s. 11, or the CDA 1998, s. 52(5), or the MCA 1980, s. 10, 17C, 18 or 24C. However, s. 81(1J) provides that the Crown Court may grant bail under s. 81(1)(g) only if the magistrates' court which remanded the accused in custody has certified (under the BA 1976, s. 5(6A)) that it 'heard full argument on his application for bail before it refused the application'. The right to apply to the Crown Court is thus dependent on a fully-argued application having been made before the magistrates. Where a fully-argued bail application is refused by magistrates, the defence should therefore obtain a certificate of full argument from the court which may then be used to permit a further application to the Crown Court.

If the Crown Court confirms the refusal of bail, it may be possible (in exceptional cases) for the accused to seek judicial review of that decision (see D7.89).

An accused who has been sent for trial under the CDA 1998, s. 51 or 51A, may apply to the Crown Court for bail by virtue of s. 81(1)(a) of the 1981 Act, which empowers the Crown Court to grant bail to any person who has been sent in custody to appear before it. At this stage, there is no need to rely on a certificate of full argument.

Appeal against Imposition of Conditions

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > OPTIONS OPEN TO AN ACCUSED REMANDED IN CUSTODY OR ON CONDITIONAL BAIL BY MAGISTRATES

D7.82

The CJA 2003, s. 16(1), enables an accused to appeal to the Crown Court against the imposition of certain bail conditions, namely those set out in s. 16(3), that the person concerned:

(a) resides away from a particular place or area,

(b) resides at a particular place other than a bail hostel,

(c) has to provide a surety or sureties, or security,

(d) remains indoors between certain hours,

(e) is to be subject to an electronic monitoring requirement under the BA 1976, s. 3(6ZAA), or

(f) makes no contact with another person.

The right of appeal under s. 16 can be exercised only if the accused has previously made an application to the magistrates (under the BA 1976, s. 3(8)(a): see D7.136) for the conditions to be varied or if the conditions were imposed following an application by the prosecution under the BA 1976, s. 3(8)(b) or s. 5B(1) (s. 16(4), (5) and (6)). Once the Crown Court has disposed of the appeal, no further appeal can be brought under s. 16 unless an application or further application under the BA 1976, s. 3(8)(a), is made to the magistrates' court after the appeal (s. 16(8)).

PROCEDURE FOR BAIL APPLICATIONS IN THE CROWN COURT

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Notice of Appeal

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN THE CROWN COURT

D7.83

CrimPR 14.8 (see Supplement, R14.8) applies when the accused wants to apply to the Crown Court for bail after bail has been withheld by a magistrates' court or to appeal to the Crown Court after a magistrates' court has refused an application by the accused (under the BA 1976, s. 3(8)(a)) to vary a condition of bail (r. 14.8(1)). Written notice of the intention to make the application must be given to the magistrates' court, the Crown Court and the prosecutor (and any surety affected or proposed) as soon as reasonably practicable after the decision of the magistrates' court (r. 14.8(2)). The notice must explain why bail should not be withheld, or why the condition of bail under appeal should be varied (as the case may be), should identify any further information or legal argument that has become available since the decision of the magistrates' court and, where it is an application for bail, should attach a copy of the certificate that the magistrates heard full argument as to bail (r. 14.8(3)).

If the prosecution oppose the application, they must notify the Crown Court and the accused at once, and must serve notice of the reasons for opposing the application (r. 14.8(5)).

Unless the Crown Court directs otherwise, the application or appeal should be heard no later than the business day after notice of the application or appeal was served (r. 14.8(6)).

The Hearing

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN THE CROWN COURT

D7.84

The application may be heard in public or in private (CrimPR 14.2(2): see Supplement, R14.2); however, such applications are often heard in private. The application will be heard by a circuit judge or recorder. The hearing follows the pattern of a bail application in the magistrates' court, with counsel for the prosecution summarising the objections to bail and counsel for the applicant responding to those objections.

If bail is granted to an accused who was refused it by magistrates at a remand hearing, the Crown Court may direct the accused to appear 'at a time and place which the magistrates' court could have directed' and the recognizance of any surety shall be conditioned accordingly (Senior Courts Act 1981, s. 81(1H)). Any sureties required by the Crown Court may enter into their recognizances before, *inter alia,* an officer of the Crown Court, a police officer who is either in charge of a police station or of the rank of inspector or above, or the governor of the prison where the accused is presently detained (BA 1976, s. 8(4); CrimPR 14.14(3)(b): see Supplement, R14.14).

D7.85

When considering whether a bail application should be heard in public, the Crown Court should apply the principles laid down in *R (Malik) v Central Criminal Court* [2006] EWHC 1539 (Admin), [2007] 1 WLR2455. The court must start from the 'fundamental presumption in favour of open justice' (per Gray J at [40]). The court must therefore consider whether it is necessary, in the interests of justice, to depart from the ordinary rule of open justice. The judgment makes it clear that this is not an exercise of discretion (which implies a judicial choice between two or more equally proper courses), but of judgement as to whether a departure from the norm is justified (at [30]). It may, for example, be appropriate for the court to sit in private if the delay involved in arranging a public hearing would defeat the purpose of the application (at [31]). It may be in the interests of the accused for the bail application to be heard in private, e.g., (a) where the prosecution need to rehearse a damaging case against the accused; (b) where the prosecution intend to give detailed reasons for fearing that the accused will not surrender if given bail; (c) where the accused's previous convictions will be referred to; (d) where it will or may be necessary to reveal personal and confidential information about the accused or about prosecution witnesses or others; and (e) where the court may need to be told about information which has been provided to the prosecuting authorities by the accused or by someone else connected with the case (at [33]). Gray J added that it does not follow that bail applications must be listed and called on in open court and then adjourned to the judge's chambers only if a case is made for doing so. He said that there is nothing objectionable in listing bail applications on the provisional assumption that the interests of justice call for a closed hearing, so long as any application to sit in public is acceded to unless there is a sound reason for excluding the public. Such an application will ordinarily come from one or both of the parties, but it may also legitimately come from the media or some other third party (at [35]). Another point which emerges from *Malik* is that, where the accused has legal representation, there is no right to be produced from prison for the purposes of a bail application. Gray J pointed out that the increasing use of video links between the court and the prison where the accused is detained effectively removes any disadvantage to the accused by reason of not being physically present when the application for bail is heard (at [38]). It is submitted that it follows from this that where no video link is available, a request for an accused to be produced should be looked on more favourably by the court.

The Coronavirus Act 2020, s. 54 and sch. 24, have made temporary modifications to the CDA 1998, ss. 57A to 57B and sch. 3A, to give the court power to direct 'live link' attendance at 'preliminary hearings'. Under the CDA 1998, s.

57B(8) and sch. 3A, para. 3, specific prohibitions and limitations on the power to direct attendance by live link apply to disputed bail hearings.

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Repeated Bail Applications in the Crown Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN THE CROWN COURT

D7.86

Part IIA of sch. 1 to the BA 1976 (see D7.70) applies to bail applications in the Crown Court just as it applies to applications before the magistrates. Therefore, if one application for bail has already been made to the Crown Court, a further argued application may not be presented unless there are fresh arguments or considerations to put before the court.

Application for Bail during the Crown Court Proceedings

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROCEDURE FOR BAIL APPLICATIONS IN THE CROWN COURT

D7.87

CrimPD III, para. 14G.2 (see Supplement, CPD.14G), makes the point that, once the trial has begun, the grant of bail during adjournments (such as lunch-time or overnight) is a matter for the discretion of the trial judge (or magistrates, as the case maybe). Paragraph 14G.3 states that an accused who was on bail before the trial should not be refused bail during the trial unless, in the opinion of the court, there are 'positive reasons' to justify such refusal. Two examples are given: (a) a point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for the defence, or for any other reason, or (b) there is a real danger that the accused may interfere with witnesses, jurors or a co-accused. Paragraph 14G.4 states that, where the accused has been found guilty, the question of bail should be decided in the light of the gravity of the offence, any friction between co-accused, and the likely sentence.

BAIL BY THE HIGH COURT

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Statutory Bail Jurisdiction of the High Court

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > BAIL BY THE HIGH COURT

D7.88

There are a number of instances where the High Court has a statutory jurisdiction to grant bail:

(1) Under the CJA 1967, s. 22(1), the High Court may entertain an application for bail (or to vary bail conditions) if the accused is appealing by way of case stated against conviction (or sentence, although such appeals are rarely appropriate) and the magistrates have withheld bail or granted only conditional bail (see D29.23).

(2) Under the CJA 1948, s. 37, the High Court may also grant bail where the applicant:

(a) is appealing to the High Court by way of case stated from a decision of the Crown Court (s. 37(1)(b)(i)) — in practice, this will be where an accused appeals from the magistrates' court to the Crown Court and then seeks to appeal to the High Court from the decision of the Crown Court (see D29.37);

(b) is appealing from the Crown Court to the High Court by way of judicial review, seeking an order quashing the decision of the Crown Court (s. 37(1)(b)(ii)) — again this will be the case where the accused is challenging a decision of the Crown Court in its appellate capacity (see D29.25); and

(c) has been convicted or sentenced by a magistrates' court and is appealing to the High Court by way of judicial review, seeking an order quashing the decision of the magistrates (s. 37(1)(d)).

Challenging Refusal of Bail by the Crown Court by Way of Judicial Review

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > BAIL BY THE HIGH COURT

D7.89

The Senior Courts Act 1981, s. 29(3), excludes judicial review of the Crown Court 'in matters relating to trial on indictment'. However, in *R (M) v Isleworth Crown Court* [2005] EWHC 363 (Admin), Maurice Kay LJ (at [7]) said that 'a decision as to *bail at an early stage of criminal proceedings* [emphasis added] does not relate to trial on indictment as that expression has been interpreted in cases such as *R v Manchester Crown Court, ex parte DPP* (1994) 98 Cr App R 461', in that such a decision does not arise in the issue between the Crown and the accused formulated by the indictment (the test propounded in that case by Lord Browne-Wilkinson). It followed that the Divisional Court had jurisdiction to review a bail decision by the Crown Court. Having ruled that judicial review was available in such cases, Maurice Kay LJ went on to say (at [11]—[12]):

> ... I am in no doubt that it is a jurisdiction which we should exercise very sparingly indeed. ... The test must be on *Wednesbury* principles, but robustly applied and with this court always keeping in mind that Parliament has understandably vested the decision in judges in the Crown Court who have everyday experience of, and feel for, bail applications. Of course if bail were to be refused on a basis such as 'I always refuse in this type of case', or some other unjudicial basis, then this court would and should interfere.

Put another way, nothing short of 'irrationality' entitles the High Court to interfere *(R (Galliano) v Crown Court at Manchester* [2005] EWHC 1125 (Admin), per Collins J, at [11]). As Collins J said in *R(on the application of Wiggins) v Harrow Crown Court* [2005] EWHC 882 (Admin) (at [35]):

> What this Court [i.e. the Divisional Court] has to do is to decide whether in all the circumstances the decision made by the Crown Court judge was one which fell within ... the 'bounds of reasonableness' ... What matters is that the Court has to be persuaded that the decision was not one which the judge below was entitled to reach. That will very rarely be the position ...

The point was reiterated by Hooper LJ in *R (N) v Leeds Crown Court* [2005] EWHC 3352 (Admin), where his lordship said (at [16]) that:

> On review [of a decision to withhold bail] the Divisional Court's role is narrow. It is not for this court to decide for itself the matter afresh. This court will not interfere unless in all the circumstances the decision made by the Crown Court Judge was one which fell outside the bounds of reasonableness. The court has to be persuaded that the decision was not one which the judge below was entitled to reach. This will very rarely be the position.

In *R (Iqbal) v Canterbury Crown Court* [2020] EWHC 452 (Admin), [2020] 2 Cr App R 1 (1), the Divisional Court again made the point that what is required in such cases 'is the robust application of *Wednesbury* principles' (at [38]).

It should be noted that s. 29(3) of the 1981 Act does prevent a challenge by way of judicial review to a decision by a trial judge *during* a Crown Court trial to revoke the bail of the accused (*R (Uddin) v Leeds Crown Court* [2013] EWHC 2752 (Admin), [2014] 1 WLR 1742). Similarly, *AF v Crown Court at Kingston* [2017] EWHC 2706 (Admin), [2018] 1 Cr App R 32 (521) concerned an application for judicial review of the refusal of bail to a defendant who had been convicted in the Crown Court and had then been remanded in custody prior to being sentenced. The Divisional Court ruled that, because the decision to withhold bail was clearly related to trial on indictment, it had no

jurisdiction. Holroyde LJ (at [26]) said that 'there can in my judgment be no doubt that a decision refusing bail between the jury's verdict and sentence in the Crown Court is a matter relating to trial on indictment'; judicial review was therefore precluded by the SCA 1981, s. 29(3).

However, there may be cases where judicial review can be granted despite s. 29(3). In *R (DPP) v Aylesbury Crown Court* [2017] EWHC 2987 (Admin), [2018] 1 Cr App R 22 (325), the Divisional Court was invited to consider an application for judicial review of a decision on a costs order in the context of proceedings on indictment. The court held that judicial review was possible, despite s. 29(3), if 'there is a jurisdictional error of sufficient gravity to take the case out of the jurisdiction of the Crown Court' (per Sharp LJ, at [7]). It is submitted that the same principle could apply where the challenge relates to bail.

D7.90

In *R (Shergill) v Harrow Crown Court* [2005] EWHC 648 (Admin), the Divisional Court said that a claim for judicial review of the decision of a Crown Court judge to refuse bail should be put before a judge of the Administrative Court or, in the vacation, the vacation judge. The judge may indicate that there is absolutely no chance that the decision would be overturned and reject it out of hand. Otherwise, the matter should then be heard orally as soon as possible, normally within 48 hours (with notice being given to the Crown Court and the prosecution). Secondly, it is essential that reasons given by a Crown Court judge for refusing bail are recorded so that, if any application for judicial review is made, the Administrative Court has a record of the reasons for refusal. Further guidance on procedure was given in *R (Allwin) v Snaresbrook Crown Court* [2005] EWHC 742 (Admin), where it was said that it will not generally be appropriate to grant bail on an interim application on the papers. The Administrative Court judge should direct an oral hearing within a day or two to determine the issue. If, at that hearing, the court is minded to review the Crown Court's decision, permission will be granted, all procedural requirements will be abridged, and the matter will be remitted to the Crown Court to formally grant bail. Such hearings will normally be dealt with by a single judge.

D7.91

Where the High Court does quash a refusal of bail, it will normally remit the matter to the court below for the question of bail to be reconsidered. It will be rare for the High Court to substitute its own decision. In *R (R) v Snaresbrook Crown Court* [2011] EWHC 3569 (Admin), Holman J said (at [29]):

> If this court considers ... that there has been significant procedural error, it should remit the substantive issue of bail for reconsideration by the judge, who is currently conducting this case in the Crown Court, unless this court can properly conclude that no reasonable judge, properly directing himself, could have withdrawn or could now withdraw bail (subject to any appropriate conditions or varied conditions). If I am satisfied that not only this judge, but no judge acting reasonably and lawfully, could fail to grant bail (subject to any appropriate conditions), then it is no more than a waste of time and expense to remit the matter to the Crown Court. If, however, there is still room for a discretionary decision to withdraw bail, then that is a decision which should be made by the Crown Court judge, but after hearing submissions on behalf of the claimant and possibly the prosecution.

PROSECUTION APPLICATIONS RELATING TO BAIL

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Prosecution Right of Appeal against Decision to Grant Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROSECUTION APPLICATIONS RELATING TO BAIL

D7.92

The Bail (Amendment) Act 1993 (see D7.165) confers upon the prosecution the right to appeal (i) to the Crown Court against a decision by a magistrates' court to grant bail (s. 1(1)), and (ii) to appeal to the High Court when the Crown Court grants bail other than in the context of an appeal against the grant of bail by a magistrates' court under s. 1(1) (s. 1(1B) and (1C)).

Under s. 1(1) to (3), this right is limited to cases where:

(a) the accused is charged with, or convicted of, an offence which is (or would be in the case of an adult) punishable by imprisonment; and

(b) the prosecution is conducted by or on behalf of the DPP (this includes prosecutions conducted by the CPS), or by a prosecutor specified in the schedule to the Bail (Amendment) Act 1993 (Prescription of Prosecuting Authorities) Order 1994 (SI 1994 No. 1438), which includes the SFO; the Department of Business, Energy and Industrial Strategy; and the Department for Work and Pensions; and a universal service provider within the meaning of the Postal Services Act 2011; and

(c) before bail was granted, the prosecution made representations that bail should not be granted.

D7.93

The Bail (Amendment) Act 1993 (see D7.165) and CrimPR 14.9 (see Supplement, R14.9) lay down the procedural requirements with which the prosecution must comply in order to exercise its right. First, they must give oral notice of appeal at the conclusion of the proceedings in which bail was granted, and before the accused is released from custody (s. 1(4) of the 1993 Act). In *Isleworth Crown Court, ex parte Clarke* [1998] 1 Cr App R 257, this requirement was held to be satisfied where notice was given to the court officer about five minutes after the court rose but before the accused had been released from custody. The Divisional Court held that a delay of five minutes or so, especially where an accused had not yet been released from custody, did not bring the case into a category in which it could be said that oral notice was not given at the conclusion of the proceedings. Moreover, since notice can properly be given to the court officer, it is not necessary that the justices should themselves be in court.

Following the oral notice of appeal, the accused must be remanded in custody until the appeal is determined or otherwise disposed of (s. 1(6)). The oral notice given under s. 1(4) must be confirmed in writing, served on the court and the accused within two hours after the conclusion of the proceedings (s. 1(5)); otherwise the appeal is deemed to be disposed of (s. 1(7)) and the accused will be released on bail on the terms on which it was granted by the court when it granted bail.

In *R (Jeffrey) v Warwick Crown Court* [2002] EWHC 2469 (Admin), the prosecutor served the written notice of appeal three minutes late. The Divisional Court held that Parliament did not intend that the time-limit for serving notice of appeal should defeat an appeal if the prosecution had given itself ample time to serve the notice within the two-hour period, had used due diligence to serve the notice within that period, and the failure to do so was not the fault of the prosecution but was due to circumstances outside its control (per Hooper J at [11]). Furthermore, the Court said that the delay of three minutes had not caused D any prejudice, since he knew at the conclusion of the proceedings before the magistrates that the prosecution was exercising its right of appeal and he knew that he was being detained in custody as a result of the oral application for him to be remanded in custody until the appeal was disposed of (at [9]).

Jeffrey was followed in *R (Cardin) v Birmingham Crown Court* [2017] EWHC 2101 (Admin), [2018] 1 Cr App R 3 (50). D had been granted bail despite opposition from the prosecution; the prosecutor gave oral notice of an intention to appeal the granting of bail, and written notice of the intention to appeal the granting of bail was given to the court officer at the magistrates' court approximately an hour later. However, the written notice was not served on D because he had (in error) already been sent to the prison where he was to be held pending the disposal of the prosecution appeal against the grant of bail; attempts by the court to secure service of the notice on D at the prison were unsuccessful. The question to be decided was whether the Crown Court had jurisdiction to hear the appeal against the grant of bail to D, given that the notice of appeal had not been served on him. Andrews J (at [40]) described the question to be decided as 'whether s. 1(7) should be construed so as to deprive the appellate court of jurisdiction to reverse a decision by the magistrates to grant bail if the prosecution could not have served the defendant within the two hours, however hard it tried'. The Court ruled (at [46]) that:

> ... it cannot have been Parliament's intention that the Crown should lose the opportunity to reverse a decision that was wrong in principle, with the result that a defendant who might abscond or commit further offences or interfere with prosecution witnesses was released on bail, if the reason why the notice of appeal was not served in time (or indeed at all) was outside the prosecution's control.

The Court (at [47]) based its conclusion in part on the use of the word 'fails' in s. 1(7):

> The word 'fails' in this context carries with it an implication of fault, and would not generally be used to describe the situation in which a person is unable to do something. One dictionary definition of 'fails' is 'to neglect to do something', and in our judgment that is the sense, rather than the wider sense of 'being unsuccessful in achieving one's goals', in which the word should be understood in this specific context.

The appeal must be heard (by the Crown Court or the High Court, as the case may be) within 48 hours, excluding weekends and public holidays (s. 1(8)). In *Middlesex Guildhall Crown Court, ex parte Okoli* [2001] 1 Cr App R 1 (1), the Divisional Court construed this as meaning that the appeal hearing must commence within two working days of the date of the decision to grant bail. The Court rejected the contention that the appeal had to commence literally within 48 hours of the moment upon which oral notice had been given.

D7.94

The appeal takes the form of a rehearing. The judge may remand the accused in custody or grant bail with or without conditions (s. 1(9)). The hearing may be in held in public or in private (CrimPR 14.2(2): see Supplement, R14.2). Under r. 14.2(1)(c), the accused is entitled to be present at the hearing of the appeal unless the court is satisfied that the accused has waived the right to attend or that it would be just to proceed in the absence of the accused. It is submitted that it will rarely be 'just' to proceed in the absence of an accused who wishes to be present. In *Allen v UK* (2010) 51 EHRR 22 (555), it was held that a refusal to allow the applicant to attend the hearing of the prosecution's appeal against bail being granted amounted to a breach of Article 5(4), mainly because the prosecution appeal against bail is regarded as a re-hearing of the application for bail; it followed that 'the applicant should have been afforded the same guarantees at the prosecution's appeal as at first instance'. It should be noted, however, that a person is to be treated as present in court when, by virtue of a live link direction, the person attends the hearing through alive link (see the CDA 1998, ss. 57A and 57B, at D5.38).

Although the MCA 1980, ss. 128, 128A and 129 (see D5.31 ***et seq**.),* do not directly bind the Crown Court, where the accused has not yet been sent to the Crown Court for trial, and the judge decides to remand the accused in custody, the judge must stipulate a date which is in accordance with the powers of the justices under those sections *(Re Szakal* [2000] 1 Cr App R 248, followed in *Remice v HMP Belmarsh* [2007] EWCA Crim 936, [2008] 1 Cr App R (S) 5 (23)).

D7.95

Guidance on the Use of the Power of Prosecution Appeal Guidance issued by the CPS in their Legal Guidance Manual (www.cps.gov.uk/legal-guidance/bail) states that, in considering whether an appeal is appropriate, 'the key factor to consider is the level of risk posed to a victim, group of victims or the public at large'.

Prosecution Application for Reconsideration of Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > PROSECUTION APPLICATIONS RELATING TO BAIL

D7.96

Under the BA 1976, s. 5B, the prosecution can, in certain circumstances, apply for the grant of bail by a magistrates' court (or by a police officer) to be reconsidered (s. 5B(A1)). The power to make such an application is limited to indictable offences, including those that are triable either way (s. 5B(2)). Any application must be based on information which was not available to the court (or police officer) granting bail when the decision was taken (s. 5B(3)).

CrimPR 14.7 (see Supplement, R14.7) applies, *inter alia,* to an application by the prosecution to withdraw bail granted by a court, or to impose or vary a bail condition. The application must be in writing and must explain the reason for the application and identify the material information that has come to light since the most recent bail decision was made (r. 14.7(2)(a) and (3)(c)). The notice must be served on the accused and the court (and on any surety affected) not less than two business days before the hearing of the application (r. 14.7(2)(b) and (c)). Unless the court directs otherwise, an application to withdraw bail should be heard no later than the second business day after service of the notice, and an application to impose or vary a bail condition should be heard no later than the fifth business day after service of the notice (r. 14.7(6)). Where the application is for reconsideration of the grant of police bail, r. 14.6, which is in similar terms to r. 14.7, applies.

When an application is made by the prosecutor under the BA 1976, s. 5B, the court may vary the bail conditions, or impose conditions if the original grant of bail was unconditional, or withhold bail altogether (s. 5B(1)). In deciding what order to make, the court must act in accordance with the presumption in favour of bail contained in s. 4 and sch. 1 (s. 5B(4)). If the decision is to withhold bail and the accused is before the court, the accused will be remanded in custody. If not before the court, the accused must be ordered to surrender to custody (s. 5B(5)(b)) and is liable to arrest without warrant upon failure without reasonable cause to surrender to custody in accordance with the order (s. 5B(7)). A person who is arrested pursuant to s. 5B(7) must be taken before a magistrate within 24 hours (excluding Sundays), and the magistrate must remand the person in custody (s. 5B(8)).

Section 5B(8A) stipulates that, where the court refuses to withhold bail from the accused after hearing representations from the prosecutor in favour of withholding bail, the court must give reasons for refusing to withhold bail. Those reasons must be set out in the record of the court's decision, a copy of which must be given to the prosecutor if so requested (s. 5B(8C)).

FAILURE TO COMPLY WITH BAIL

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail

D7.97

Where an accused who has been granted bail in criminal proceedings fails to comply with the obligations imposed thereby, two main questions arise. The first is how the court should ensure that the accused will attend court for the remaining stages of the proceedings; the second is how the accused (and any sureties) will be dealt with in consequence of the breach of bail.

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Powers of the Court when a Bailed Accused Fails to Appear

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.98

When a person who is on bail fails to surrender to custody in answer to bail, the court has a number of options.

(1) The court may issue an arrest warrant (often called a 'bench warrant'), under the BA 1976, s. 7(1). This applies whatever court the accused was bailed to attend and regardless of whether bail was granted by the custody officer at the police station or by the court itself at an earlier hearing. The usual form of warrant simply orders that the accused be arrested and brought to court. However, at the court's discretion, the warrant may be 'backed for bail' (see D7.99), either with or without a requirement for sureties. Where the accused fails to appear, a bench warrant will normally be issued. It should be noted that the Justices' Clerks Rules 2005 (SI 2005 No. 545), sch. 1, para. 3, empowers a clerk to issue a warrant of arrest, whether or not endorsed for bail, for failure to surrender to court, where there is no objection on behalf of the accused.

(2) Instead of issuing a warrant, a magistrates' court may adjourn and extend the accused's bail under the MCA 1980, s. 129 (see D7.73). Similarly, the Crown Court, in appropriate cases, may simply order that the case be stood out of the list and take no further action in respect of the accused (who will remain under an obligation to attend whenever the case is next listed). Such a course of action is appropriate only where the court is satisfied that there is a good reason for the accused's non-attendance (e.g., a doctor's certificate has been sent to the court indicating that the accused is unfit to attend).

(3) It may be possible to proceed in the absence of the accused (though it should be borne in mind that if the offence is triable either way, a magistrates' court may try the case only with the consent of the accused, and that consent must be given at a hearing at which the accused is present unless the court is satisfied that there is a good reason for absence and the accused is represented by a lawyer who consents to summary trial on behalf of the accused: see D6.9).

D7.99

Warrants Backed for Bail Where the court decides to issue an arrest warrant, the warrant may be endorsed with a direction that the person named in it, having been arrested, shall then be released on bail (see the MCA 1980, s. 117, and the SCA 1981, s. 81(4), respectively, for the power of magistrates and the Crown Court). This is generally known as 'backing the warrant for bail'. Such warrants are, however, sometimes viewed as consuming a disproportionate amount of police time and effort in return for little or no advantage. A possible alternative to the issue of a warrant backed for bail where the accused fails to attend is to send a warning letter, directing the accused to attend on the date of the next hearing and warning of the consequences of non-attendance, namely that failure to attend the next hearing is likely to result in the court proceeding in the accused's absence or issuing a bench warrant that is not backed for bail.

D7.100

Proof of Inability to Attend Court CrimPD III, para. 14B.2 (see Supplement, CPD.14B), states that an accused who will be unable to attend court for medical reasons must supply the court with a certificate from a GP (or another appropriate medical practitioner, such as a hospital doctor) in advance of the hearing. Without a medical certificate, or if an unsatisfactory certificate is provided, the court is likely to consider that the accused has failed to surrender (para. 19B.3).

It should be noted that a medical certificate, in order to justify non-attendance at court, should make it clear that the accused is unfit to attend court. A certificate that the accused is unfit for work may not necessarily be accepted as evidence of unfitness to attend court (CrimPD I, para. 5C.4; see Supplement, CPD.5C).

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Surrender to Custody

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.101

The power to issue a warrant under the BA 1976, s. 7(1), arises only if the accused fails to surrender to custody at the time appointed. In this context, 'surrendering to custody' merely connotes complying with whatever procedure is prescribed by the court for those answering to their bail: 'if a court provides a procedure which, by some form of direction, by notice or orally, instructs a person surrendering to bail to report to a particular office or to a particular official, when he complies with that direction he surrenders to his bail' *(DPP v Richards* [1988] QB 701, per Glidewell LJ at p. 711). Thus, if a court operates a system whereby persons on bail are required to report to an usher and are then allowed to wait in the court precincts until their case is called, a person who so reports has surrendered to custody. It follows that, if the accused subsequently goes away before the court is ready to deal with the case, the accused has not absconded within the meaning of s. 6, and so a warrant may *not* be issued under s. 7(1). However, this situation is covered by s. 7(2), which provides that, where a person who has been released on bail in criminal proceedings is absent from the court (without permission from the court) at any time after surrendering to custody but before the court is ready to begin or resume the hearing of the proceedings, the court may issue an arrest warrant.

In *Central Criminal Court, ex parte Guney* [1996] AC 616, the House of Lords held that, where an accused is formally arraigned in the Crown Court, the arraignment amounts to surrender to the custody of the court. The accused's further detention is therefore within the discretion and power of the judge and, unless the judge grants bail, the accused will remain in custody pending and during the trial. It also followed that the obligations of any surety are also extinguished at that point. In *Kent Crown Court, ex parte Jodka* (1997) 161 JP 638, the Divisional Court held that bail granted by magistrates ceases when the defendant surrenders to the custody of the Crown Court, whether or not the defendant is arraigned (i.e. enters a plea) at that hearing. It follows that the jurisdiction of the magistrates to grant bail does not extend beyond the first occasion on which a defendant surrenders to the Crown Court (*Choudhry v Birmingham Crown Court* [2007] EWHC 2764 (Admin), per Gibbs J at [33]).

In *Evans* [2011] EWCA Crim 2842, [2012] 1 WLR 1192, the Court of Appeal had to consider what amounts to surrender to custody in the Crown Court. Hughes LJ noted (at [15]) that 'what constitutes surrender has necessarily to vary to some extent according to the arrangements which are made for accepting surrender at any particular court'. His lordship (at [20]) summarised the practical effect of the decision of the House of Lords in *Guney* thus: 'once arraignment has taken place, however informal its particular circumstances may be, the court must review the question of bail and if a surety is involved direct a fresh taking of a recognizance ... [W]henever else it may happen surrender is deemed to have taken place on arraignment.' His lordship went on to say (at [27]) that surrender is normally accomplished by way of entry into the dock. However, in the Crown Court, 'surrender may also be accomplished by the commencement of any hearing before the judge where the defendant is formally identified and whether he enters the dock or not'. Consequently, the Court rejected (at [28]) the suggestion that reporting to the usher amounts to surrender. The Court reasoned (at [29], [32] and [36]):

> ... in the absence of either stepping into the dock in a Crown Court or in such a court being formally identified for the purposes of hearing, the defendant has not put himself into anything which can properly be called 'custody'. Nor ... has he overtly subjected himself to the directions of the court.
>
> ... once a defendant arrives at the Crown Court building he is in one sense not entirely at liberty to come and go as he wishes. That, however, does not ... mean that he has thereby surrendered ... [M]ere arrival at the

Crown Court building does not constitute surrender and could not do so. The correct analysis seems to us to be not that he has surrendered but that he knows that he may be required at any moment to do so and in consequence he would be very unwise to wander away.

... in the absence of special arrangements either particular to the court or particular to the individual case, surrender to the Crown Court is accomplished when the defendant presents himself to the custody officers by entering the dock or where a hearing before the judge commences at which he is formally identified as present ... [I]f there has been no previous surrender, as ordinarily there will have been, it is also accomplished by arraignment ... [T]he position in the Magistrates' Court may be the same, but may easily differ ...

Breach of Bail Conditions

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.102

Under s. 7(3) of the BA 1976, where an accused has been bailed to attend a court, a police officer may arrest the accused without warrant prior to the surrender date if:

(a) the officer has reasonable grounds for believing that the accused is not likely to surrender to custody; or

(b) the officer has reasonable grounds for believing that the accused has broken, or is likely to break, any condition of bail; or

(c) a surety has given written notice to the police that the person bailed is unlikely to surrender to custody and for that reason the surety wishes to be relieved of any obligations.

Following arrest under s. 7(3), s. 7(4) stipulates that the person arrested must be brought before a magistrate as soon as practicable and, in any event, within 24 hours (excluding Sundays (s. 7(7)), and so a person arrested on a Saturday under s. 7(3) need not be brought before a magistrate until the following Monday). The wording of s. 7(4) makes it clear that the person arrested must be brought before a single justice (s. 7(4)(a)); the justice need not be sitting in a courtroom. Where, however, the accused is arrested under s. 7(3) within 24 hours of the time appointed for surrender to custody, the accused must be brought before the court at which surrender to custody should have taken place (s. 7(4)(b)).

In *Governor of Glen Parva Young Offender Institution, ex parte G* [1998] QB 877, D was arrested for breach of bail conditions. He was taken to the cells of a magistrates' court within 24 hours of arrest but was not brought before a magistrate until two hours after the expiry of the 24-hour time-limit. The Divisional Court held that the detention after 24 hours was unlawful, as s. 7(4) requires the defendant to be brought before a justice of the peace (not merely brought within the court precincts or to the court cells) within 24 hours of arrest. The importance of dealing with the accused within 24 hours was again emphasised in *R (Culley) v Crown Court sitting at Dorchester* [2007] EWHC 109 (Admin), where it was held that the time-limit under s. 7 is a strict one. It follows that the justice is required to complete the required investigation and decision-making in relation to the matter within the 24-hour period. If the justice fails to do so, the continued custody of the accused becomes unlawful from the moment the 24-hour period has expired. If the justice purports to remand the accused in custody after that time, the order is *ultra vires* and unlawful (per Forbes J at [20]).

D7.103

Arrest Following Grant of Conditional Bail by the Crown Court In *R (Ellison) v Teesside Magistrates' Court* [2001] EWHC Admin 11, the Divisional Court held that, where an accused has been sent for trial to the Crown Court, and is subsequently arrested for breach of a bail condition, the jurisdiction to deal with the accused under s. 7 of the BA 1976 must be exercised by a magistrate. Thus, the magistrate must deal with the matter; there is no power to commit the accused to the Crown Court to be dealt with. Lord Woolf CJ (at [9]) said that:

> The idea of remanding in custody to the Crown Court a defendant who breaches a condition of his bail so that the Crown Court can then deal with bail thereafter is misconceived. The appropriate course for the magistrates to take is to remand or commit the defendant to the Crown Court until his trial or further order. If the superior court wishes to grant bail, that can be done. Any order made by the superior court would then override the

decision of the magistrates. But the making of an order to a fixed date (as was done in this case) was inappropriate.

It follows from this that, even after the accused has been sent to the Crown Court for trial, an alleged breach of a bail condition must be dealt with by a magistrate (since that is what is required under the BA 1976, s. 7(4)). If the magistrate finds that there has been no breach of a bail condition, the accused will remain on bail as before. If the magistrate finds that there has been a breach of bail, bail may be allowed to continue as before, or more stringent conditions may be imposed. If the magistrate finds that the accused has indeed breached a bail condition, and decides that the withholding of bail (as opposed to granting bail but on more onerous conditions) would be appropriate, the magistrate should revoke bail and remand the accused in custody until the date fixed for the trial or further order of the Crown Court. It is then open to the Crown Court to grant bail should the accused then apply for bail to the Crown Court.

D7.104

Procedure where the Accused is Brought before the Court under s. 7 The question for a magistrate before whom a person is brought under the BA 1976, s. 7, is whether that person is likely to fail to surrender to custody, or else has broken or is likely to break any condition of bail (as the case may be). If of the opinion that any of those matters is established, the magistrate may remand the accused in custody (s. 7(5)). Alternatively, the magistrate may grant bail subject to different conditions. In most cases, where bail is granted under s. 7(5), more onerous conditions will be imposed.

The power to remand in custody under s. 7(5) is subject to the proviso contained in s. 7(5A). This applies where an accused who has attained the age of 18 was released on bail, and has not yet been convicted in the current proceedings. In such a case, a magistrate cannot withhold bail under s. 7 if it appears that there is 'no real prospect that the person will be sentenced to a custodial sentence in the proceedings'.

Where the magistrate is *not* of the opinion that the accused is likely to fail to surrender to custody or has broken, or is likely to break, a condition of bail, bail *must* be granted on the same conditions (if any) as were originally imposed.

D7.105

Nature of a s. 7 Inquiry In *R (Hussain) v Derby Magistrates' Court* [2001] EWHC Admin 507, [2001] 1 WLR2454, it was confirmed that there is no need for the court to hear evidence; instead it can base its decision on representations from the prosecution and the defence. Likewise, in *R (Thomas) v Greenwich Magistrates' Court* [2009] EWHC 1180 (Admin), Hickinbottom J ruled that, in considering whether the accused has broken any condition of bail, a justice is entitled to rely upon hearsay material, so long as the material is properly evaluated.

In *R (Vickers) v West London Magistrates' Court* [2003] EWHC 1809 (Admin), D was arrested and brought before the justices for failing to comply with the bail conditions. He sought to raise a defence of reasonable excuse; however, the justices ruled that no such defence exists under the BA 1976, s. 7. Gage J (at [16]—[18]) held that s. 7(5) requires a two-stage approach. First, the justice must determine whether there has been a breach of a bail condition (if there has been no breach of a condition, then the accused is entitled to be granted bail on precisely the same conditions as before); secondly, if there has been a breach, the justice is obliged to consider whether or not the bailed person should be granted bail again. In carrying out the first stage of that process, the justice must act fairly and give the accused a chance to answer the allegation of breach. That does not, however, include an inquiry as to whether the arrested person had any reasonable excuse for breaching bail (since s. 7 makes no mention of such a defence and, indeed, s. 7 does not create a criminal offence). The second stage (assuming that the justice is satisfied that there has been a breach) is the point at which the reasons for the breach of bail become relevant. At that stage, the justice must consider all the issues relating to 'reasonable excuse' when deciding whether or not to grant bail. The breach of bail will be a factor, but only one factor, as to whether the bailed person is granted bail again.

D7.106

Human Rights Issues and the Summary Procedure under s. 7 In *R (DPP) v Havering Magistrates' Court* [2001] 1 WLR805, the Divisional Court considered s. 7 in the context of the ECHR, Articles 5 and 6. It held that Article 6 (the right to a fair trial) has no direct relevance where magistrates are exercising their judgement whether to remand a person in custody following breach of bail conditions, since s. 7 does not create any criminal offence. However, the Court went on to hold that Article 5 is directly relevant. Latham LJ summarised (at [35]) the effect of Article 5 and the relevant Strasbourg case law thus: 'where a decision is taken to deprive somebody of his liberty, that should only be done after he has been given a fair opportunity to answer the basis upon which such an order is sought'. His lordship went on to hold that the procedure adopted under s. 7 is entirely compatible with the requirements of Article 5. These proceedings are, by their nature, emergency proceedings to determine whether or not a person, who had not been considered to present risks which would have justified a remand in custody in the first instance, did subsequently present such risks. When exercising the power to detain, the magistrate is not entitled to order detention by reason simply of the finding of a breach. The fact of a breach is evidence of a relevant risk arising, but it is no more than one of the factors which the magistrate must consider in exercising discretion. The magistrate is required to come to an honest and rational opinion on the material presented, that material not being restricted to admissible evidence in the strict sense. In doing so, the magistrate must bear in mind the consequences for the person arrested, namely the risk of loss of liberty, in the context of the presumption of innocence. The procedural task of the magistrate is to ensure that the person arrested has a full and fair opportunity to comment on, and answer, the material before the court; if that material includes evidence from a witness who gives oral testimony, there must be an opportunity to cross-examine. Likewise, if the person arrested wishes to give oral evidence, the person is entitled to do so (*R (DPP) v Havering Magistrates' Court* at [38]—[41]).

D7.107

No Power to Adjourn Proceedings under s. 7 In *R (DPP) v Havering Magistrates' Court* [2001] 1 WLR 805, the Divisional Court confirmed that there is no power for magistrates to adjourn the hearing once a person has been brought before them under s. 7 of the BA 1976. Parliament has to be taken to have determined that there should be a swift and relatively informal resolution of the issues raised, and so the court must do its best to come to a fair conclusion on the relevant day; if it cannot do so, it will not be of the opinion that the relevant matters have been made out which could justify detention (per Latham LJ at [44]).

D7.108

No Separate Offence under s. 7 It should be emphasised that the BA 1976, s. 7, merely confers a power of arrest. It does not create a separate offence (per Hobhouse J in *Rowland* (14 February 1991 unreported, CA), cited by Dyson LJ in *Gangar* [2008] EWCA Crim 2987 at [12]).

D7.109

Breach of Bail Conditions as Contempt of Court Failure to comply with conditions of bail can also amount to contempt of court, but that fact is of limited practical relevance. In *Ashley* [2003] EWCA Crim2571, [2004] 1 WLR 2057, D was convicted of contempt of court, arising out of breaches of bail conditions. He had been released on bail subject to conditions that required him to surrender his passport and not to leave the country. He broke both conditions but returned to face trial on the appointed day. The Court of Appeal held that the purpose of placing restrictions on an individual's movement under the BA 1976 is to ensure attendance at trial. If the conduct breaching bail is known about at the time, that bail could be revoked. Furthermore, even though s. 7 does not itself create any offence, there may be cases where breach of a bail condition gives rise to a further offence (e.g., where witnesses are intimidated). In the present case, although D had breached bail conditions by leaving the country, he did return for his trial. It followed that the judge did not have power to deal with him by way of contempt of court.

Failure to Surrender

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.110

The BA 1976, s. 6, creates the offence of absconding. Under s. 6(1), a person who has been released on bail and who fails, without reasonable cause, to surrender to custody, is guilty of an offence. The burden of showing reasonable cause is on the accused (s. 6(3)). Moreover, a person who had reasonable cause for failing to surrender on the appointed day nevertheless commits an offence by failing to surrender as soon after the appointed time as is reasonably practicable (s. 6(2)). It follows that an accused who has a reasonable excuse for failing to attend court must surrender to custody as soon as reasonably practicable after that excuse ceases to apply (and commits an offence under s. 6 if not). The meaning of 'surrendering to custody' in s. 6(1) and (2) is considered at D7.101).

D7.111

An offence under s. 6(1) or (2) is 'punishable either on summary conviction or as if it were a criminal contempt of court' (s. 6(5)). An offender summarily convicted of an offence under s. 6 is liable to imprisonment for up to three months and/or a fine of any amount (s. 6(7)). A magistrates' court which has convicted the offender of a s. 6 offence may commit the offender to the Crown Court for sentence if either it considers that the offence merits greater punishment than it has power to inflict, or it is sending the offender for trial to the Crown Court for another offence and it considers that the Crown Court should deal with the absconding as well (s. 6(6)). An offender who is committed to the Crown Court for sentence, or who is dealt with in the Crown Court as if guilty of a criminal contempt, is liable to imprisonment for up to 12 months and/or an unlimited fine (s. 6(7)).

D7.112

In *Scott* [2007] EWCA Crim 2757 D arrived at court over half an hour late, because he had overslept. The defence argued that this was *de minimis,* and that no Bail Act offence should have been put to him. The Court of Appeal rejected this argument, holding that 'the mere fact that a defendant is only slightly late cannot afford him a defence' (per Toulson LJ at [14]). His lordship added (at [15]) that, even accepting, for the sake of argument, the possibility that there could be circumstances where an accused's late arrival at court was so truly marginal that it would be *'Wednesbury* unreasonable' to pursue it, that would be a rare case. His lordship explained this approach (at [16]—[17]):

> Even if a delay is small it can still cause inconvenience and waste of time. If a culture of lateness is tolerated the results can be cumulative and bad for the administration of justice. If the message given to this appellant had been that being half-an-hour late did not really matter, it would have been the wrong message to him and to other people ... It was submitted that it was disproportionate and draconian that it should now be on his record that he failed to surrender at the appointed time. Why so? It is a matter of fact he did fail to attend at the appointed time. It was submitted that this could have an unduly harsh effect in the future because another court might refuse him bail. If the message received by defendants is that a failure to answer to their bail on time may have an adverse effect on obtaining bail in future, we cannot see this as a cause for complaint.

D7.113

Procedure for Prosecuting Offences under the Bail Act 1976, s. 6 The BA 1976, s. 6(5), provides that an offence under s. 6(1) or (2) is punishable either on summary conviction or as if it were a criminal contempt of court.

However, in *Lubega* (1999) 163 JP 221, the Court of Appeal confirmed that s. 6(5) did not have the effect of converting an offence under the Act to a contempt of court. It followed that the judge was not entitled to deal with the matter in the same way as an ordinary contempt of court.

The procedure to be followed under the BA 1976, s. 6, is set out in CrimPD III, paras. 14C.1 to 14C.8 (see Supplement, CPD.14C). An accused who has absconded after being granted bail by a court should normally be brought, as soon as appropriate after arrest, before the court at which the proceedings in respect of which bail was granted are to be heard (para. 14C.3). There is no requirement to apply for a summons or to issue a written charge and requisition. It is regarded as more appropriate that the court itself should initiate the proceedings by its own motion, although the prosecutor may invite the court to take proceedings (para. 14C.4). Where the court initiates proceedings (with or without an invitation from the prosecutor), the prosecutor is expected to assist the court, for example by cross-examining the accused (para. 14C.7). In practice, many magistrates' courts informally ask absconders or their legal representative the reason for the non-appearance. If the explanation seems prima facie satisfactory, the bench indicates that no further action is necessary; otherwise the charge is put to the accused. Where a bench, on the occasion of an absconder's first appearance after absconding, indicates, albeit informally, that no charge need be preferred, that decision is binding on subsequent benches *(France v Dewsbury Magistrates' Court* (1988) 152 JP 301).

D7.114

Where bail was granted by a magistrates' court on sending the accused to the Crown Court for trial or sentence, the trial for the Bail Act offence should take place in the Crown Court. The Crown Court judge will sit alone, without a jury *(Schiavo v Anderton* [1987] QB 20, at p. 34A).

CrimPD III, para. 14C.5, states that the court should not, without good reason, adjourn proceedings under s. 6 until the conclusion of the proceedings in respect of which bail was granted; rather, the court should deal with the bail matter 'as soon as is practicable' (taking into account when the proceedings in respect of which bail was granted are expected to conclude, the seriousness of the offence for which the defendant is already being prosecuted, the type of penalty that might be imposed for the Bail Act offence and the original offence, and any other relevant circumstances).

A certified copy of the record made under the BA 1976, s. 5(1), of the granting of bail is evidence of the time and place at which the accused should have surrendered. The court file will show whether the accused did in fact surrender. Thus, although it is in theory possible for the prosecution to call the evidence of absconding, the basic facts will usually be established from court documents. The prosecution's role is therefore essentially one of testing in cross examination any reason put forward by the accused to explain the non-appearance.

D7.115

Failure to Answer Police Bail When the accused has absconded after being granted police bail, the decision whether to initiate proceedings under the BA 1976, s. 6, will be taken by the police and/or the CPS (CrimPD III, para. 14C.1: see Supplement, CPD.14C); the offence should be dealt with on the first appearance after arrest, unless an adjournment is necessary (para. 14C.2). The prosecutor will conduct the proceedings and, if the accused denies absconding, will call the evidence to prove the case (para. 14C.7). Failure to answer police bail is dealt with by commencement of proceedings in the usual way, using the written charge and requisition procedure, under s. 6(11). Section 6(10) disapplies the MCA 1980, s. 127 (which prevents summary proceedings from being instituted more than six months after the commission of an offence), in respect of offences under the BA 1976, s. 6: instead s. 6(12) to (14) provide that such an offence may not be tried unless proceedings are commenced either within six months of the commission of the offence, or within three months of the date when the defendant surrenders to custody, or is arrested in connection with the offence for which bail was granted, or appears in court in respect of that offence. This ensures that a defendant cannot escape prosecution under s. 6 merely by absconding for more than six months.

D7.116

Reasonable Excuse The offence under the BA 1976, s. 6, is made out only if the court finds that the accused did not have a 'reasonable cause' for failing to surrender to custody. It follows that it is imperative that the accused be given the opportunity to put forward an explanation for the non-attendance. In *Davis* (1986) 8 Cr App R (S) 64, it was said that the court should give the accused an opportunity to explain, and invite submissions from counsel; an unrepresented accused should be given the chance to apply for legal representation or, at the very least, be given the fullest possible opportunity of offering some excuse (if any) for the non-attendance. In *Boyle* [1993] Crim LR 40, Steyn LJ said that it is necessary to invite counsel to call evidence on the s. 6 charge; if counsel does not wish to call evidence, he or she should be invited to address the judge on the question of guilt or otherwise. The judge should then announce the finding and, if it be a finding of guilt, should give reasons at that stage. If there is a finding of guilt, the judge should then invite counsel to address the question of mitigation and only then should the judge impose a sentence.

Being mistaken about the day on which one should have appeared was held *in Laidlaw v Atkinson* (1986) The Times, 2 August 1986 not to amount to a reasonable cause.

A medical certificate will usually provide the accused with sufficient evidence to defend a charge of failure to surrender, but it should be noted that the court is not absolutely bound by a medical certificate and may require the medical practitioner who issued it to give evidence or the court may exercise its discretion to disregard a certificate it finds to be unsatisfactory (CrimPD I, para. 5C.3: see Supplement, CPD.5C).

D7.117

Sentencing Council Guidelines Definitive guidelines for failure to surrender to bail are to be found in the Sentencing Council's guideline, *Breach Offences* (see Supplement, SG15-1). Failure to surrender which represents a 'deliberate attempt to evade or delay justice' is the most serious category of culpability; the lowest category of culpability is where the reason for the failure to surrender is just short of amounting to reasonable cause. Failure to attend a Crown Court hearing resulting in substantial delay and/or interference with the administration of justice is the most serious category of harm; failure to attend a magistrates' court hearing with that result is the middle category of harm; cases where the non-attendance does not result in substantial delay and/or interference with the administration of justice are in the lowest category of harm. The aggravating features identified in the guideline include a history of breaches of court orders or police bail and distress caused to victims and/or witnesses. The mitigating factors specifically identified are: genuine misunderstanding of bail or its requirements, prompt voluntary surrender, and the accused being sole or primary carer for a dependent relative.

D7.118

CrimPD III, para. 14C.9 (see Supplement, CPD.14C) says that the offence under s. 6 'stands apart from the proceedings in respect of which bail was granted. The seriousness of the offence can be reflected by an appropriate and generally separate penalty being imposed for the Bail Act offence.' CrimPD III, para. 14C.10, goes on to state that, where the appropriate penalty is a custodial sentence, consecutive sentences should be imposed unless there are circumstances that make this inappropriate.

Moreover, the Court of Appeal in *White* [2002] EWCA Crim 2952, [2003] 2 Cr App R(S) 29 (133) held that there is no principle of law that the sentence for failing to surrender to custody should be proportionate to the sentence for the substantive offence of which the accused stands convicted. Indeed, it pointed out that in *Neve* (1986) 8 Cr App R (S) 270, a sentence of six months' imprisonment for failing to surrender to custody was upheld, even though the accused had been acquitted of the substantive offence.

D7.119

In *Hourigan* [2003] EWCA Crim 2306, the Court of Appeal made the point that it is inappropriate for a judge in the Crown Court to impose a sentence of less than five days' imprisonment for an offence under s. 6, having regard to the fact that the MCA 1980, s. 132, prohibits magistrates from imposing sentences of less than five days' imprisonment.

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Relationship between the Bail Act 1976, ss. 6 and 7

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.120

In *Evans* [2011] EWCA Crim 2842, [2012] 1 WLR 1192, D's advocate in the Crown Court went into the courtroom where the case was likely to be heard and told the usher that D was in the building. D later walked out of the building and did not return. When his case was called on, he was not there, and a bench warrant for his arrest was issued. He was subsequently dealt with for the offence of failing to surrender to bail, contrary to the BA 1976, s. 6(1). Hughes LJ (at [9]—[11]) noted that the Act distinguishes between two situations: first, where an accused is on bail but fails without reasonable excuse to surrender to custody (defined in s. 2(2) as 'surrendering himself into the custody of the court ... at the time and place for the time being appointed for him to do so'); secondly, where an accused has surrendered to bail but then is absent from the court before the hearing either begins or resumes, as the case may be. The first situation constitutes an offence under s. 6(1); the second situation, however, does not, but the court may issue a warrant for the accused's arrest under s. 7(2). His lordship observed that the second situation would fall within the common-law offence of escape *(Rumble* [2003] EWCA Crim 770).

Consequences for Sureties when Accused Absconds

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.121

If an accused who has been granted bail subject to the provision of one or more sureties fails to surrender at the appointed time, there is a presumption that the court will order forfeiture of the recognizance(s) (i.e. order the sureties to pay the amounts which they had promised to pay). The court does, however, have a discretion, in exceptional circumstances, to order that the surety pay less than the full sum or even to order that none of the sum promised should in fact be forfeited.

The power to forfeit recognizances which relate to the accused appearing in a magistrates' court is contained in the MCA 1980, s. 120(1) and (1A). Section 120(1A)(a) provides that if the accused fails to appear in court, the court 'shall ... declare the recognizance to be forfeited'. The word 'shall' connotes a duty rather than mere power. However, having declared the automatic forfeiture of any recognizance entered into by a surety, the court is required to issue a summons to the surety to appear before it (unless, of course, already present) to explain why the sum should not be paid (s. 120(1A)(b)). If the surety fails to answer the summons, the court has the discretion to proceed in the surety's absence, provided it is satisfied that the summons has been correctly served (s. 120(1A)). The MCA 1980, s. 120(3), provides that the court may, instead of requiring the surety to pay the whole sum that was promised, require payment of only part of that sum or may remit the sum altogether.

There is no express provision for forfeiture of recognizances which relate to the accused appearing in the Crown Court. It is clear from case law, however, that the Crown Court is to be regarded as having the power to order the forfeiture of a recognizance.

Forfeiture of a recognizance given by a surety, whether in respect of appearance by the accused in a magistrates' court or the Crown Court, is dealt with by CrimPR 14.15 (see Supplement, R14.15), which requires the court to serve notice on the surety (and on the accused and the prosecution) of the hearing at which the court will consider forfeiture of the recognizance, and stipulates that forfeiture must not be ordered within five business days of the service of the notice.

Principles Governing Forfeiture of Surety

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.122

The principles governing forfeiture of a surety's recognizance have been set out in a number of cases, including *Southampton Justices, ex parte Green* [1976] QB 11, *Horseferry Road Stipendiary Magistrate, ex parte Pearson* [1976] 2 All ER 264 and *Crown Court at Wood Green, ex parte Howe* [1992] 1 WLR702. Before making an order, the court should consider both the surety's means and the extent of the surety's responsibility for the accused's non-appearance, including any steps taken to ensure that the accused would surrender. However, there is a strong presumption that the surety should forfeit the full amount that was promised. As it was put in *Ex parte Pearson* at p. 514C:

> ... the surety has seriously entered into a serious obligation and ought to pay the amount which he or she has promised unless there are circumstances in the case, either relating to ... means or ... culpability, which make it fair and just to pay a smaller sum.

The authorities were reviewed extensively by McCullough J in *Uxbridge Justices, ex parte Heward-Mills* [1983] 1 All ER 530. His lordship then summarised their effect thus (at p. 62A-B):

> ... the more important principles to be derived from the authorities [are] as follows. (1) When a defendant for whose attendance a person has stood surety fails to appear, the full recognisance should be forfeited, unless it appears fair and just that a lesser sum should be forfeited or none at all. (2) The burden of satisfying the court that the full sum should not be forfeited rests on the surety and is a heavy one. It is for him to lay before the court the evidence of want of culpability and of means on which he relies. (3) Where a surety is unrepresented the court should assist him by explaining these principles in ordinary language, and giving him the opportunity to call evidence and advance argument in relation to them.

D7.123

Want of Means In both *Southampton Justices, ex parte Green* [1976] QB 11 and *Uxbridge Justices, ex parte Heward-Mills* [1983] 1 All ER 530, the orders for forfeiture were quashed because the magistrates had failed properly to take into account the surety's want of means. Nevertheless, the cases emphasise that the burden is on the surety to show impecuniosity. If a surety wishes to put forward evidence on the matter, the court is under a duty to consider it even if, when being accepted as surety, the surety had claimed to have the necessary funds (*Ex parte Heward-Mills,* at p. 63). However, there is no obligation on the court to initiate the inquiry *(Ex parte Heward-Mills,* at p. 63). Moreover, it is submitted that if a proper inquiry was conducted into the surety's means at the time the undertaking was accepted, the surety should be relieved from that obligation on financial grounds only if something unforeseen has arisen between then and the consideration of forfeiture which prevents that obligation being met. Otherwise the surety benefits from having misled the court which accepted the undertaking.

In *Leicestershire Stipendiary Magistrate, ex parte Kaur* (2000) 164 JP 127, the appellant had stood surety in the sum of £150,000. To pay that sum she would have had to sell the matrimonial home. Rose LJ, having reviewed the authorities, summarised the guiding principles thus:

1. Justices have a wide discretion under s. 120 whether to remit in whole or in part;
2. In exercising that discretion, they must plainly have regard only to the surety's assets. The assets of other persons are not assets which can properly be called upon to satisfy a surety's liability;

3. Want of culpability by a surety in the accused's failure to appear is not in itself a reason for not forfeiting or for remitting a recognisance. But there may be circumstances ... where the amount forfeited may be reduced because a culpable surety has made very considerable efforts to carry out his or her undertaking;

4. Regard may properly be had to a surety's share in the equity of a matrimonial home when a recognisance is being entered into;

5. When enforcement of a recognisance is being considered under s. 120, the means of the surety at that time is one of the factors to be considered and, at that stage, the impact on both the surety and on others, if the matrimonial home has to be sold to satisfy the recognisance, is a relevant factor when deciding whether to remit a recognisance in whole or in part.

D7.124

Culpability According to *Warwick Crown Court, ex parte Smalley* [1987] 1 WLR237, there is no requirement of proof that any blame attached to the surety for the accused's failure to surrender. The Divisional Court rejected the suggestion that there had to be some fault on the part of the surety for the recognizance to be forfeited. The authorities on this point were reviewed in *Reading Crown Court, exparte Bello* [1992] 3 All ER 353. Parker LJ (at p. 363C-D) summarised the position as follows:

> The failure of the accused to surrender when required triggers the power to forfeit but the court, before deciding what should be done, must enquire into the question of fault. If it is satisfied that the surety was blameless throughout it would then be proper to remit the whole of the amount of the recognisance and in exceptional circumstances this would ... be the only proper course.

D7.125

In *Maidstone Crown Court, ex parte Lever* [1995] 2 All ER 35, the Court of Appeal signalled a robust approach to the question of culpability. One of two sureties discovered that D had not been home for two nights. That surety telephoned the other surety and the police. Attempts by the police to apprehend D were unsuccessful. The judge ordered the first surety to forfeit £35,000 (out of a recognizance of £40,000) and the other £16,000 (out of a recognizance of £19,000). The Court of Appeal upheld this decision. Butler-Sloss LJ said (at p. 930) that 'the presence or absence of culpability is a factor but the absence of culpability ... is not in itself a reason to reduce or set aside the obligations entered into by the surety to pay in the event of a failure to bring the defendant to court'. The reason for the adoption of a fairly strict approach to the forfeiture of recognizances was set out by Butler-Sloss LJ at p. 931, where her ladyship quotes from Lord Widgery CJ in *Southampton Justices, ex parte Corker* (1976) 120 SJ 214:

> The real pull of bail, the real effective force that it exerts, is that it may cause the offender to attend his trial rather than subject his nearest and dearest who has gone surety for him to undue pain and discomfort.

Nonetheless, it is clear that there may be circumstances where the amount forfeited might be reduced because the surety has made considerable efforts to carry out the responsibilities undertaken.

D7.126

In *Choudhry v Birmingham Crown Court* [2007] EWHC 2764 (Admin), Gibbs J helpfully summarised (at [15]) the principles to be derived from *Ex parte Lever.*

(a) The purpose of a recognizance is to bring the defendant to court for trial.

(b) The forfeiture of recognizance is not a penalty imposed on the surety for misconduct.

(c) It is for the surety to establish to the satisfaction of the court that there are grounds upon which the court may remit from forfeiture part or, wholly exceptionally, the whole recognizance.

(d) The absence of culpability on the part of the surety is not of itself a reason to set aside or reduce the obligation entered into.

(e) Absence of culpability is a factor to be considered. The court may, in the exercise of a wide discretion, decide it would be fair and just to estreat some or all of the recognizance.

His lordship added (on the basis of *Uxbridge Justices, ex parte Heward-Mills* [1983] 1 All ER 530) that 'the burden of satisfying the court that the full sum should not be forfeited rests upon the surety and is a heavy one'.

In *Harrow Crown Court, ex parte Lingard* [1998] EWHC 233 (Admin), DysonJ (at [20]), with whom Lord Bingham CJ agreed, said that it was clear that in an exceptional case, where the surety is 'entirely blameless and the failure of the defendant to surrender to bail is wholly outside the control of, and unforeseeable by, the surety', the court may 'in the exercise of its discretion remit the whole or a substantial part of the amount of the recognizance'. In *Choudhry v Birmingham Crown Court,* however, Gibbs J (at [43]) emphasised that, although the court may so remit, there is no principle of law which requires it to do so. It is thus a matter entirely within the discretion of the court.

The position regarding forfeiture of recognizances is summarised in CrimPD III, para. 14F.5 (see Supplement, CPD.14F), which states that, even if a surety makes best efforts to ensure the attendance of the accused at court, the surety remains liable for the full amount, except at the discretion of the court. However, the court should take into account the presence or absence of culpability on the part of the surety (though this 'is not in itself a reason to reduce or set aside the obligations entered into by the surety'), and the means of a surety (particularly if those means have changed since the obligation was taken on). Moreover, the court should order forfeiture of 'no more than is necessary, in public policy, to maintain the integrity and confidence of the system of taking sureties'.

D7.127

In *Wells Street Magistrates' Court, ex parte Albanese* [1982] QB 333, the Divisional Court considered the position where the conditions of bail have been varied. Ralph Gibson J, giving the judgment of the court, declined to hold that a court, if it varies the conditions of bail in a case in which there is a surety, is under a duty to give notice of the change to the surety. However, an unnotified variation in bail conditions may be relevant to the question of forfeiture of the recognizance. In *Choudhry v Birmingham Crown Court,* Gibbs J (at [35]), ruled that it is both possible and lawful for a recognizance in Crown Court proceedings to be expressed as continuous until the conclusion of proceedings in the Crown Court. If an order is subsequently made varying the conditions of bail, unconnected with the sureties, this does not give rise to the need for sureties to be taken afresh. His lordship went on to say (at [36]) that if, at the commencement of the trial (when bail falls to be reconsidered), the accused is allowed to continue on bail (whether on the same or varied terms), that amounts to a fresh grant of bail. However, that does not necessarily mean that sureties must be taken again. Provided that the recognizances were in terms which made it clear that they continued to bind the surety until the end of the trial, they would remain in force so long as bail was granted in terms which required that they did so (at [37]).

Forfeiture of Security

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > FAILURE TO COMPLY WITH BAIL

D7.128

Where the accused (or somebody on behalf of the accused) has given security for the accused's surrender to custody in pursuance of a requirement imposed under the BA 1976, s. 3(5), and the court is satisfied that the accused has absconded, then the court may, unless satisfied that the accused had reasonable cause for the failure to surrender, order forfeiture of part or all of the security (s. 5(7) and (8)). Section 5(8A) to (8C) set out a procedure by which the accused may apply to have an order under s. 5(7) remitted on the grounds that there was in fact reasonable cause for not surrendering to custody. The principles to be applied in deciding whether or not to order forfeiture of a security are no doubt analogous to those which apply when forfeiture of a surety's recognizance is under consideration.

DETENTION WHEN BAIL IS REFUSED

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Detention of Adults

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > DETENTION WHEN BAIL IS REFUSED

D7.129

Where a court refuses bail to an accused aged 21 or over, the accused is detained in a prison until the next hearing (MCA 1980, ss. 128(1) and 150(1)). An accused aged 18 to 20 inclusive who is remanded in custody must be committed to a remand centre if one is available (CJA 1948, s. 27(1)); otherwise the accused is committed to a prison.

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Remands to Police Custody

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > DETENTION WHEN BAIL IS REFUSED

D7.130

A magistrates' court may, instead of remanding the accused in custody, commit the accused to detention at a police station for a period not exceeding three clear days (MCA 1980, s. 128(7)). This may be done only if it is necessary for the purposes of inquiries into offences other than the one(s) for which the accused is appearing before the court (s. 128(8)(a)). The accused must be brought back before the magistrates' court as soon as that need ceases (s. 128(8)(b)). While detained at the police station, the accused is entitled to the same protection as regards conditions of detention, and periodic review of the continuing need for detention, as would have been the case had the arrest taken place without warrant on suspicion of having committed an offence (s. 128(8)(c) and (d)).

Children and Young People Refused Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > DETENTION WHEN BAIL IS REFUSED

D7.131

As regards a court's decision whether to grant bail to a child or young person (defined in the BA 1976, s. 2(2), as someone under the age of 18), the only special rules applying are that (a) bail can be refused if that is necessary for the accused's own welfare (sch. 1, para. 3), and (b) a parent or guardian may be asked to stand surety for the accused's compliance with any conditions of bail that may be imposed, as well as standing surety for the accused's appearance at court (s. 3(7)). However, where bail is *refused* in the case of a person aged under 18, the consequences are significantly different.

The LASPO 2012, ss. 91 to 107, set out the options open to the court where a child or young person is refused bail. Section 91 applies where a person under 18 is charged with, or convicted of, one or more offences: it provides that, if the child or young person is not released on bail, the court must remand the child or young person to local authority accommodation, in accordance with s. 92, or to youth detention accommodation, in accordance with s. 102.

Remands to Local Authority Accommodation

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > DETENTION WHEN BAIL IS REFUSED

D7.132

Under the LASPO 2012, s. 92, a remand to local authority accommodation is defined as a remand to accommodation provided by or on behalf of the local authority designated by the court; that authority must provide or arrange for the provision of accommodation for the accused. Section 93 enables the court to impose conditions when remanding to local authority accommodation: s. 93(1) provides that the accused can be required to comply with any conditions that could be imposed under the BA 1976, s. 3(6). Also, under s. 93(2), compliance with those conditions may be secured through the imposition of electronic monitoring, provided that the requirements set out in s. 94 are met. Those requirements are as follows:

(i) the accused must have attained the age of 12;

(ii) one or more of the offences must be imprisonable;

(iii) one or more of the offences must be a violent or sexual offence (as specified in the SA 2020, sch. 18) or an offence punishable (in the case of an adult) with at least 14 years' imprisonment, or else the offence(s) must amount, or (assuming the accused is convicted) would amount, to a recent history of committing imprisonable offences while on bail or subject to a custodial remand;

(iv) the court must be satisfied that electronic monitoring is available; and

(v) a youth offending team must have informed the court that the imposition of an electronic monitoring condition would be suitable for that person.

Under s. 93(3), a court remanding a child or young person to local authority accommodation may also impose requirements on the designated authority to secure compliance with the conditions imposed on the accused; the court can also stipulate that the accused must not be placed with a named person. The court must first consult with the designated authority (s. 93(4)). Under s. 93(5), where a child or young person has been remanded to local authority accommodation, the court may, on the application of the designated authority, impose any conditions that could be imposed under s. 93(1) or (2) when a court is remanding a child or young person to local authority accommodation. Under s. 93(6), the local authority or the accused can apply for the variation or revocation of any of the conditions which have been imposed.

Under s. 97, a police officer may arrest a child or young person without warrant if the person has been remanded to local authority accommodation, conditions were imposed under s. 93, and the officer has reasonable grounds for suspecting that any of those conditions has been broken (s. 97(1)). A person arrested under s. 97(1) must be brought before a magistrate within 24 hours of arrest (excluding Sundays). Under s. 97(5), if the magistrate is of the opinion that the person has broken any condition imposed under s. 93, the person must be remanded under s. 91 (i.e. either to local authority accommodation or to youth detention accommodation). If the magistrate is not of that opinion, the child or young person must be remanded to the place of remand at the time of the arrest, subject to the same conditions as before.

Remands to Youth Detention Accommodation

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D7 Bail > DETENTION WHEN BAIL IS REFUSED

D7.133

Remand to 'youth detention accommodation' means remand to a secure children's home, a secure training centre, a young offender institution, or detention accommodation for detention and training orders (s. 102). Remand to youth detention accommodation is possible only where either of two sets of conditions (set out in ss. 98 and 99) is satisfied (s. 91(4)).

The conditions in s. 98 are as follows:

(i) the accused must have attained the age of 12;

(ii) one or more of the offences must be a violent or sexual offence (as specified in the SA 2020, sch. 18), or an offence punishable (in the case of an adult) with at least 14 years' imprisonment;

(iii) the court must be of the opinion, after considering all the options for remand, that only a remand to youth detention accommodation would be adequate to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the accused, or to prevent the accused committing imprisonable offences;

(iv) either the accused is legally represented at court, or else one of the following applies: representation was provided but has been withdrawn because of the accused's conduct or because it appeared that the accused's financial resources were such that the accused was not eligible for such representation, or representation was refused because it appeared that the accused's financial resources were such that the accused was ineligible for such representation, or the accused has refused or failed to apply for representation.

The conditions in s. 99 are:

(i) the accused must have attained the age of 12;

(ii) there must be a real prospect that the accused (if convicted) will be sentenced to a custodial sentence;

(iii) one or more of the offences is imprisonable;

(iv) either the accused has a recent history of absconding while subject to a custodial remand and one or more of the present offences is alleged (or found) to have been committed while remanded to local authority accommodation or youth detention accommodation, or the offence(s) amount, or (if the accused is convicted) would amount, to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

Additional conditions (the necessity condition and the legal representation conditions) apply — they are the same as those set out at (iii) and (iv) under s. 98.

TEXT OF THE BAIL ACT 1976

D7.134
Bail Act 1976

PRELIMINARY

Meaning of 'bail in criminal proceedings'

1.—(1) In this Act 'bail in criminal proceedings' means—

(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or

(b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued, or

(c) bail grantable in connection with extradition proceedings in respect of an offence.

(2) In this Act 'bail' means bail grantable under the law (including common law) for the time being in force.

(3) Except as provided by section 13(3) of this Act, this section does not apply to bail in or in connection with proceedings outside England and Wales.

(5) This section applies—

(a) whether the offence was committed in England or Wales or elsewhere, and

(b) whether it is an offence under the law of England and Wales, or of any other country or territory.

(6) Bail in criminal proceedings shall be granted (and in particular shall be granted unconditionally or conditionally), in accordance with this Act.

D7.135

Other definitions

2.—(1) In this Act, unless the context otherwise requires, 'conviction' includes—

(a) a finding of guilt,

(b) a finding that a person is not guilty by reason of insanity,

(c) a finding under section 11(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination) that the person in question did the act or made the omission charged, and

(d) a conviction of an offence for which an order is made discharging the offender absolutely or conditionally, and 'convicted' shall be construed accordingly.

(2) In this Act, unless the context otherwise requires—

'bail hostel' means premises for the accommodation of persons remanded on bail,

'bail in non-extradition proceedings' means bail in criminal proceedings of the kind mentioned in section 1(1)(a),

'child' means a person under the age of fourteen,

'court' includes a judge of a court or a justice of the peace and, in the case of a specified court, includes a judge or (as the case may be) justice having powers to act in connection with proceedings before that court,

'Courts Martial Appeal rules' means rules made under section 49 of the Courts Martial Appeals Act 1968,

'custodial sentence' means a sentence or order mentioned in section 222(1) of the Sentencing Code or any corresponding sentence or order imposed or made under any earlier enactment,

'extradition proceedings' means proceedings under the Extradition Act 2003, 'imprisonable offence' means an offence punishable in the case of an adult with imprisonment,

'offence' includes an alleged offence,

'probation hostel' means premises for the accommodation of persons who may be required to reside there by a community order under Chapter 2 of Part 9 of the Sentencing Code,

'prosecutor', in relation to extradition proceedings, means the person acting on behalf of the territory to which extradition is sought,

'sexual offence' means an offence specified in Part 2 of Schedule 18 to the Sentencing Code, 'surrender to custody' means, in relation to a person released on bail, surrendering himself into the custody of the court or of the constable (according to the requirements of the grant of bail) at the time and place for the time being appointed for him to do so,

'terrorism offence' means an offence specified in Part 3 of Schedule 18 to the Sentencing Code, 'vary', in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions,

'violent offence' means murder or an offence specified in Part 1 of Schedule 18 to the Sentencing Code,

'young person' means a person who has attained the age of 14 and is under the age of 18.

(3) Where an enactment (whenever passed) which relates to bail in criminal proceedings refers to the person bailed appearing before a court it is to be construed unless the context otherwise requires as referring to his surrendering himself into the custody of the court.

(4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

D7.136

INCIDENTS OF BAIL IN CRIMINAL PROCEEDINGS

General provisions

3.—(1) A person granted bail in criminal proceedings shall be under a duty to surrender to custody, and that duty is enforceable in accordance with section 6 of this Act.

(2) No recognizance for his surrender to custody shall be taken from him.

(3) Except as provided by this section—

(a) no security for his surrender to custody shall be taken from him,

(b) he shall not be required to provide a surety or sureties for his surrender to custody, and

(c) no other requirement shall be imposed on him as a condition of bail.

(4) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(5) He may be required, before release on bail, to give security for his surrender to custody. The security may be given by him or on his behalf.

(6) He may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary—

(a) to secure that he surrenders to custody,

(b) to secure that he does not commit an offence while on bail,

(c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,

(ca) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,

(d) to secure that he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence,

(e) to secure that before the time appointed for him to surrender to custody, he attends an interview with an authorised advocate or authorised litigator, as defined by section 119(1) of the Courts and Legal Services Act 1990;

and, in any Act, 'the normal powers to impose conditions of bail' means the powers to impose conditions under paragraph (a), (b), (c) or (ca) above.

(6ZAA) The requirements which may be imposed under subsection (6) include electronic monitoring requirements.

The imposition of electronic monitoring requirements is subject to section 3AA (in the case of a child or young person granted bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b)), section 3AAA (in the case of a child or young person granted bail in connection with extradition proceedings), section 3AB (in the case of other persons) and section 3AC (in all cases).

(6ZAB) In this section and sections 3AA to 3AC 'electronic monitoring requirements' means requirements imposed for the purpose of securing the electronic monitoring of a person's compliance with any other requirement imposed on him as a condition of bail.

(6ZA) Where he is required under subsection (6) above to reside in a bail hostel or probation hostel, he may also be required to comply with the rules of the hostel.

(6A) In the case of a person accused of murder the court granting bail shall, unless it considers that satisfactory reports on his mental condition have already been obtained, impose as conditions of bail—

(a) a requirement that the accused shall undergo examination by two medical practitioners for the purpose of enabling such reports to be prepared; and

(b) a requirement that he shall for that purpose attend such an institution or place as the court directs and comply with any other directions which may be given to him for that purpose by either of those practitioners.

(6B) Of the medical practitioners referred to in subsection (6A) above at least one shall be a practitioner approved for the purposes of section 12 of the Mental Health Act 1983.

(6C) Subsection (6D) below applies where—

(a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the local justice area

in which it appears to the court that the person referred to in subsection (6D) would reside if granted bail; and

(b) the notice has not been withdrawn.

(6D) In the case of a person ('P')—

(a) in relation to whom paragraphs (a) to (c) of paragraph 6B(1) of Part 1 of Schedule 1 to this Act apply (including where P is a person to whom the provisions of Part 1A of Schedule 1 apply);

(b) who, after analysis of the sample referred to in paragraph (b) of that paragraph, has been offered a relevant assessment or, if a relevant assessment has been carried out, has had relevant follow-up proposed to him; and

(c) who has agreed to undergo the relevant assessment or, as the case may be, to participate in the relevant follow-up, the court, if it grants bail, shall impose as a condition of bail that P both undergo the relevant assessment and participate in any relevant follow-up proposed to him or, if a relevant assessment has been carried out, that P participate in the relevant follow-up.

(6E) In subsections (6C) and (6D) above—

(a) 'relevant assessment' means an assessment conducted by a suitably qualified person of whether P is dependent upon or has a propensity to misuse any specified Class A drugs;

(b) 'relevant follow-up' means, in a case where the person who conducted the relevant assessment believes P to have such a dependency or propensity, such further assessment, and such assistance or treatment (or both) in connection with the dependency or propensity, as the person who conducted the relevant assessment (or conducts any later assessment) considers to be appropriate in P's case, and in paragraph (a) above 'Class A drug' and 'misuse' have the same meaning as in the Misuse of Drugs Act 1971, and 'specified' (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

(6F) In subsection (6E)(a) above, 'suitably qualified person' means a person who has such qualifications or experience as are from time to time specified by the Secretary of State for the purposes of this subsection.

(7) If a parent or guardian of a person under the age of seventeen consents to be surety for the person for the purposes of this subsection, the parent or guardian may be required to secure that the person complies with any requirement imposed on him by virtue of subsection (6), (6ZAA) or (6A) above but—

(a) no requirement shall be imposed on the parent or the guardian by virtue of this subsection where it appears that the person will attain the age of 17 before the time to be appointed for him to surrender to custody; and

(b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than £50.

(8) Where a court has granted bail in criminal proceedings that court or, where that court has sent a person on bail to the Crown Court for trial or committed him on bail to the Crown Court to be sentenced or otherwise dealt with, that court or the Crown Court may on application—

(a) by or on behalf of the person to whom bail was granted, or

(b) by the prosecutor or a constable, vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

(9) This section is subject to subsection (3) of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (conditions of bail on remand for medical examination).

(10) This section is subject, in its application to bail granted by a constable, to section 3A of this Act.

D7.137

3AA.—(1) A court may not impose electronic monitoring requirements on a child or young person released on bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b) unless each of the following conditions is met.

(2) The first condition is that the child or young person has attained the age of twelve years.

(3) The second condition is that—

(a) the child or young person is charged with or has been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or

(b) he is charged with or has been convicted of one or more imprisonable offences which, together with any other imprisonable offences of which he has been convicted in any proceedings—

(i) amount, or

(ii) would, if he were convicted of the offences with which he is charged, amount, to a recent history of repeatedly committing imprisonable offences while remanded on bail or subject to a custodial remand.

(4) The third condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.

(5) The fourth condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in the case of the child or young person.

(6) to (10) [Repealed.]

(11) The references in subsection (3)(b) to an imprisonable offence include a reference to an offence—

(a) of which the child or young person has been convicted outside England and Wales, and

(b) which is equivalent to an offence that is punishable with imprisonment in England and Wales.

(12) The reference in subsection (3)(b) to a child or young person being subject to a custodial remand is to the child or young person being—

(a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,

(b) remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 or to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948, or

(c) subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory or during a trial in that country or territory.

3AAA.—(1) A court may not impose electronic monitoring requirements on a child or young person released on bail in connection with extradition proceedings unless each of the following conditions is met.

D7.138

(2) The first condition is that the child or young person has attained the age of twelve years.

(3) The second condition is that—

(a) the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more, or

(b) the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child or young person has been convicted in any proceedings—

(i) amount, or

(ii) would, if the child or young person were convicted of that offence or those offences, amount, to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

(4) The third condition is that the court is satisfied that the necessary provision for dealing with the child or young person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.

(5) The fourth condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in the case of the child or young person.

(6) The references in subsection (3)(b) to an imprisonable offence include a reference to an offence—

(a) of which the child or young person has been accused or convicted outside England and Wales, and

(b) which is equivalent to an offence that is punishable with imprisonment in England and Wales.

(7) The reference in subsection (3)(b) to a child or young person being subject to a custodial remand is to the child or young person being—

(a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,

(b) remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 or to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948, or

(c) subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory orduringa trial in that country or territory.

D7.139

3AB.—(1) A court may not impose electronic monitoring requirements on a person who has attained the age of eighteen unless each of the following conditions is met.

(2) The first condition is that the court is satisfied that without the electronic monitoring requirements the person would not be granted bail.

(3) The second condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.

D7.140

3AC.—(1) Where a court imposes electronic monitoring requirements as a condition of bail, the requirements must include provision for making a person responsible for the monitoring.

(2) A person may not be made responsible for the electronic monitoring of a person on bail unless he is of a description specified in an order made by the Secretary of State.

(3) to (6) [Rule-making powers.]

(7) For the purposes of section 3AA, 3AAA or 3AB a local justice area is a relevant area in relation to a proposed electronic monitoring requirement if the court considers that it will not be practicable to secure the electronic monitoring in question unless electronic monitoring arrangements are available in that area.

(8) Nothing in sections 3, 3AA, 3AAA or 3AB is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of persons released on bail.

D7.141

Conditions of bail in case of police bail

3A.—(1) Section 3 of this Act applies, in relation to bail granted by a custody officer under Part IV of the Police and Criminal Evidence Act 1984 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.

(2) Subsection (6) does not authorise the imposition of a requirement to reside in a bail hostel or any requirement under paragraph (d) or (e).

(3) Subsections (6ZAA), (6ZA), (6A) to (6F) shall be omitted.

(4) For subsection (8), substitute the following—

'(8) Where a custody officer has granted bail in criminal proceedings he or another custody officer serving at the same police station may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so he may impose conditions or more onerous conditions.'

(5) Where a constable grants bail to a person no conditions shall be imposed under subsections (4), (5), (6) or (7) of section 3 of this Act unless it appears to the constable that it is necessary to do so—

(a) for the purpose of preventing that person from failing to surrender to custody, or

(b) for the purpose of preventing that person from committing an offence while on bail, or

(c) for the purpose of preventing that person from interfering with witnesses or other-wise obstructing the course of justice, whether in relation to himself or any other person, or

(d) for that person's own protection or, if he is a child or young person, for his own welfare or in his own interests.

(6) Subsection (5) above also applies on any request to a custody officer under subsection (8) of section 3 of this Act to vary the conditions of bail.

D7.142

BAIL FOR ACCUSED PERSONS AND OTHERS

General right to bail of accused persons and others

4.—(1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.

(2) This section applies to a person who is accused of an offence when—

(a) he appears or is brought before a magistrates' court or the Crown Court in the course of or in connection with proceedings for the offence, or

(b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

This subsection does not apply as respects proceedings on or after a person's conviction of the offence.

(2A) This section also applies to a person whose extradition is sought in respect of an offence, when—

(a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or

(b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

(2B) But subsection (2A) above does not apply if the person is alleged to have been convicted of the offence.

(3) This section also applies to a person who, having been convicted of an offence, appears or is brought before a magistrates' court or the Crown Court to be dealt with under—

(za) Schedule 4 to the Sentencing Code (referral orders: referral back to appropriate court),

(zb) Schedule 5 to that Code (breach of reparation order),

(a) Schedule 7 to that Code (breach, revocation or amendment of youth rehabilitation orders),

(b) Part 2 of Schedule 10 to that Code (breach of requirement of community order), or

(c) the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act).

(4) This section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(5) Schedule 1 to this Act also has effect as respects conditions of bail for a person to whom this section applies.

(6) In Schedule 1 to this Act 'the defendant' means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4) above.

(7) This section is subject to section 41 of the Magistrates' Courts Act 1980 (restriction of bail by magistrates' court in cases of treason).

(8) This section is subject to section 25 of the Criminal Justice and Public Order Act 1994 (exclusion of bail in cases of homicide and rape).

(9) In taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant ('controlled drugs' and 'misuse' having the same meanings as in the Misuse of Drugs Act 1971).

D7.143

SUPPLEMENTARY

Supplementary provisions about decisions on bail

5.—(1) Subject to subsection (2) below, where—

(a) a court or constable grants bail in criminal proceedings, or

(b) a court withholds bail in criminal proceedings from a person to whom section 4 of this Act applies, or

(c) a court, or officer of a court or constable appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody, or

(d) a court or constable varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings, that court, officer or constable shall make a record of the decision in the prescribed manner and containing the prescribed particulars and, if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

(2) Where bail in criminal proceedings is granted by endorsing a warrant of arrest for bail the constable who releases on bail the person arrested shall make the record required by subsection (1) above instead of the judge or justice who issued the warrant.

(2A) Where a magistrates' court or the Crown Court grants bail in criminal proceedings to a person to whom section 4 of this Act applies after hearing representations from the prosecutor in favour of withholding bail, then the court shall give reasons for granting bail.

(2B) A court which is by virtue of subsection (2A) above required to give reasons for its decision shall include a note of those reasons in the record of its decision and, if requested to do so by the prosecutor, shall cause the prosecutor to be given a copy of the record of the decision as soon as practicable after the record is made.

(3) Where a magistrates' court or the Crown Court—

(a) withholds bail in criminal proceedings, or

(b) imposes conditions in granting bail in criminal proceedings, or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings, and does so in relation to a person to whom section 4 of this Act applies, then the court shall, with a view to enabling him to consider making an application in the matter to another court, give reasons for withholding bail or for imposing or varying the conditions.

(4) A court which is by virtue of subsection (3) above required to give reasons for its decision shall include a note of those reasons in the record of its decision and shall (except in a case where, by virtue of subsection (5) below, this need not be done) give a copy of that note to the person in relation to whom the decision was taken.

(5) The Crown Court need not give a copy of the note of the reasons for its decision to the person in relation to whom the decision was taken where that person is represented by counsel or a solicitor unless his counsel or solicitor requests the court to do so.

(6) Where a magistrates' court withholds bail in criminal proceedings from a person who is not represented by counsel or a solicitor, the court shall—

(a) if it is sending him for trial to the Crown Court, or if it issues a certificate under subsection (6A) below inform him that he may apply to the High Court or to the Crown Court to be granted bail;

(b) [Repealed].

(6A) Where in criminal proceedings—

(a) a magistrates' court remands a person in custody under section 52(5) of the Crime and Disorder Act 1998, section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 or any of the following provisions of the Magistrates' Courts Act 1980—

(i) [Repealed.]

(ii) section 10 (adjournment of trial);

(iia) section 17C (intention as to plea: adjournment);

(iii) section 18 (initial procedure on information against adult for offence triable either way),

(iv) section 24C (intention as to plea by child or young person: adjournment), after hearing full argument on an application for bail from him; and

(b) either—

(i) it has not previously heard such argument on an application for bail from him in those proceedings; or

(ii) it has previously heard full argument from him on such an application but it is satisfied that there has been a change in his circumstances or that new considerations have been placed before it,

it shall be the duty of the court to issue a certificate in the prescribed form that they heard full argument on his application for bail before they refused the application.

(6B) Where the court issues a certificate under subsection (6A) above in a case to which paragraph (b)(ii) of that subsection applies, it shall state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.

(6C) Where a court issues a certificate under subsection (6A) above it shall cause the person to whom it refuses bail to be given a copy of the certificate.

(7) Where a person has given security in pursuance of section 3(5) above, and a court is satisfied that he failed to surrender to custody then, unless it appears that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(8) If a court orders the forfeiture of a security under subsection (7) above, the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(8A) to (9A) [Procedure for taking and forfeiting a security.]

(10) [Meaning of 'prescribed'.]

(11) This section is subject, in its application to bail granted by a constable, to section 5A of this Act.

D7.144

Supplementary provisions in cases of police bail

5A.—(1) Section 5 of this Act applies, in relation to bail granted by a custody officer under Part IV of the Police and Criminal Evidence Act 1984 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.

(1A) Subsections (2A) and (2B) shall be omitted.

(2) For subsection (3) substitute the following—

'(3) Where a custody officer, in relation to any person,—

(a) imposes conditions in granting bail in criminal proceedings, or

(b) varies any conditions of bail or imposes conditions in respect of bail, in criminal proceedings, the custody officer shall, with a view to enabling that person to consider requesting him or another custody officer, or making an application to a magistrates' court, to vary the conditions, give reasons for imposing or varying the conditions.'

(3) For subsection (4) substitute the following—

'(4) A custody officer who is by virtue of subsection (3) above required to give reasons for his decision shall include a note of those reasons in the custody record and shall give a copy of that note to the person in relation to whom the decision was taken.'

(4) Subsections (5) and (6) shall be omitted.

D7.145

Reconsideration of decisions granting bail

5B.—(A1) This section applies in any of these cases—

(a) a magistrates' court has granted bail in criminal proceedings in connection with an offence to which this section applies or proceedings for such an offence;

(b) a constable has granted bail in criminal proceedings in connection with proceedings for such an offence;

(c) a magistrates' court or a constable has granted bail in connection with extradition proceedings.

(1) The court or the appropriate court in relation to the constable may, on application by the prosecutor for the decision to be reconsidered,—

(a) vary the conditions of bail,

(b) impose conditions in respect of bail which has been granted unconditionally, or

(c) withhold bail.

(2) The offences to which this section applies are offences triable on indictment and offences triable either way.

(3) No application for the reconsideration of a decision under this section shall be made unless it is based on information which was not available to the court or constable when the decision was taken.

(4) Whether or not the person to whom the application relates appears before it, the magistrates' court shall take the decision in accordance with section 4(1) (and Schedule 1) of this Act.

(5) Where the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted the court shall—

(a) if that person is before the court, remand him in custody, and

(b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(6) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (5) above, the court shall remand him in custody.

(7) A person who has been ordered to surrender to custody under subsection (5) above may be arrested without warrant by a constable if he fails without reasonable cause to surrender to custody in accordance with the order.

(8) A person arrested in pursuance of subsection (7) above shall be brought as soon as practicable, and in any event within 24 hours after his arrest, before a justice of the peace for the local justice area in which he was arrested and the justice shall remand him in custody.

In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(8A) Where the court, on a reconsideration under this section, refuses to withhold bail from a relevant person after hearing representations from the prosecutor in favour of withholding bail, then the court shall give reasons for refusing to withhold bail.

(8B) In subsection (8A) above, 'relevant person' means a person to whom section 4(1) (and Schedule 1) of this Act is applicable in accordance with subsection (4) above.

(8C) A court which is by virtue of subsection (8A) above required to give reasons for its decision shall include a note of those reasons in any record of its decision and, if requested to do so by the prosecutor, shall cause the prosecutor to be given a copy of any such record as soon as practicable after the record is made.

(9) [Indicates what may be covered by the CrimPR.]

D7.146

Offence of absconding by person released on bail

6.—(1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

(2) If a person who—

(a) has been released on bail in criminal proceedings, and

(b) having reasonable cause therefor, has failed to surrender to custody, fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) An offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(6) Where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or

(b) in a case where it sends that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) above by the court before which he is tried for the other offence, commit him in custody or on bail to the Crown Court for sentence.

(7) A person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the Crown Court for sentence shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.

(8) In any proceedings for an offence under subsection (1) or (2) above a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(9) For the purposes of subsection (8) above—

(a) 'the prescribed record' means the record of the decision of the court, officer or constable made in pursuance of section 5(1) of this Act;

(b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the constable who took the decision or a constable designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;

(c) 'the appropriate officer' of the court is—

(i) in the case of a magistrates' court, the designated officer for the court;

(ii) in the case of the Crown Court, such officer as may be designated for the purpose in accordance with arrangements made by the Lord Chancellor;

(iii) in the case of the High Court, such officer as may be designated for the purpose in accordance with arrangements made by the Lord Chancellor;

(iv) in the case of the Court of Appeal, the registrar of criminal appeals or such other officer as may be authorised by him to act for the purpose;

(v) in the case of the Courts Martial Appeal Court, the registrar or such other officer as may be authorised by him to act for the purpose.

(10) Section 127 of the Magistrates' Courts Act 1980 shall not apply in relation to an offence under subsection (1) or (2) above.

(11) Where a person has been released on bail in criminal proceedings and that bail was granted by a constable, a magistrates' court shall not try that person for an offence under subsection (1) or (2) above in relation to that bail (the 'relevant offence') unless either or both of subsections (12) and (13) below applies.

(12) This subsection applies if an information is laid for the relevant offence within 6 months from the time of the commission of the relevant offence.

(13) This subsection applies if an information is laid for the relevant offence no later than 3 months from the time of the occurrence of the first of the events mentioned in subsection (14) below to occur after the commission of the relevant offence.

(14) Those events are—

(a) the person surrenders to custody at the appointed place;

(b) the person is arrested, or attends at a police station, in connection with the relevant offence or the offence for which he was granted bail;

(c) the person appears or is brought before a court in connection with the relevant offence or the offence for which he was granted bail.

D7.147

Liability to arrest for absconding or breaking conditions of bail

7.—(1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.

(IA) Subsection (1B) applies if—

(a) a person has been released on bail in connection with extradition proceedings,

(b) the person is under a duty to surrender into the custody of a constable, and

(c) the person fails to surrender to custody at the time appointed for him to do so.

(IB) A magistrates' court may issue a warrant for the person's arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a constable—

(a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;

(b) if the constable has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or

(c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a constable in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3) above—

(a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace; and

(b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

(4A) A person who has been released on bail in connection with extradition proceedings and is under a duty to surrender into the custody of a constable may be arrested without warrant by a constable on any of the grounds set out in paragraphs (a) to (c) of subsection (3).

(4B) A person arrested in pursuance of subsection (4A) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.

(5) A justice of the peace before whom a person is brought under subsection (4) above may, subject to subsections (5A) and (6) below, if of the opinion that that person—

(a) is not likely to surrender to custody, or

(b) has broken or is likely to break any condition of his bail, remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

(5A) A justice of the peace may not remand a person in, or commit a person to, custody under subsection (5) if—

(a) the person has attained the age of eighteen,

(b) the person was released on bail in non-extradition proceedings,

(c) the person has not been convicted of an offence in those proceedings, and

(d) it appears to the justice of the peace that there is no real prospect that the person will be sentenced to a custodial sentence in the proceedings.

(6) Where a person brought before a justice under subsection (4) or (4B) is a child or young person and the justice does not grant him bail, subsection (5) above shall have effect subject to the provisions of section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail).

(7) In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(8) In the case of a person charged with murder or with murder and one or more other offences—

(a) subsections (4) and (5) have effect as if for 'justice of the peace' there were substituted 'judge of the Crown Court',

(b) subsection (6) has effect as if for 'justice' (in both places) there were substituted 'judge', and

(c) subsection (7) has effect, for the purposes of subsection (4), as if at the end there were added 'Saturday or bank holiday'.

D7.148

Bail with sureties

8.—(1) This section applies where a person is granted bail in criminal proceedings on condition that he provides one or more surety or sureties for the purpose of securing that he surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to—

(a) the surety's financial resources;

(b) his character and any previous convictions of his; and

(c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.

(3) Where a court grants a person bail in criminal proceedings on such a condition but is unable to release him because no surety or no suitable surety is available, the court shall fix the amount in which the surety is to be found and subsections (4) and (5) below, or in a case where the proposed surety resides in Scotland subsection (6) below, shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.

(4) Where this subsection applies the recognizance of the surety may be entered into before such of the following persons or descriptions of persons as the court may by order specify or, if it makes no such order, before any of the following persons, that is to say—

(a) where the decision is taken by a magistrates' court, before a justice of the peace, a justices' clerk or a police officer who either is of the rank of inspector or above or is in charge of a police station or, if Criminal Procedure Rules so provide, by a person of such other description as is specified in the rules;

(b) where the decision is taken by the Crown Court, before any of the persons specified in paragraph (a) above or, if Criminal Procedure Rules so provide, by a person of such other description as is specified in the rules;

(c) where the decision is taken by the High Court or the Court of Appeal, before any of the persons specified in paragraph (a) above or, if Criminal Procedure Rules so provide, by a person of such other description as is specified in the rules;

(d) where the decision is taken by the Court Martial Appeal Court, before any of the persons specified in paragraph (a) above or, if Court Martial Appeal Rules so provide, by a person of such other description as is specified in the rules; and Civil Procedure Rules, Criminal Procedure Rules or Court Martial Appeal Rules may also prescribe the manner in which a recognizance which is to be entered into before such a person is to be entered into and the persons by whom and the manner in which the recognizance may be enforced.

(5) Where a surety seeks to enter into his recognizance before any person in accordance with subsection (4) above but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to—

(a) the court which fixed the amount of the recognizance in which the surety was to be bound, or

(b) a magistrates' court.

(6) Where this subsection applies, the court, if satisfied of the suitability of the proposed surety, may direct that arrangements be made for the recognizance of the surety to be entered into in Scotland before any constable, within the meaning of the Police (Scotland) Act 1967, having charge at any police office or station in like manner as the recognizance would be entered into in England or Wales.

(7) Where, in pursuance of subsection (4) or (6) above, a recognizance is entered into otherwise than before the court that fixed the amount of the recognizance, the same consequences shall follow as if it had been entered into before that court.

D7.149
Miscellaneous

OFFENCE OF AGREEING TO INDEMNIFY SURETIES IN CRIMINAL PROCEEDINGS

9.—(1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a person accused or convicted of or under arrest for an offence, he and that other person shall be guilty of an offence.

(2) An offence under subsection (1) above is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or in money's worth.

(3) Where a magistrates' court convicts a person of an offence under subsection (1) above the court may, if it thinks—

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or

(b) in a case where it sends that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) above by the court before which he is tried for the other offence, commit him in custody or on bail to the Crown Court for sentence.

(4) A person guilty of an offence under subsection (1) above shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the prescribed sum or to both; or

(b) on conviction on indictment or if sentenced by the Crown Court on committal for sentence under subsection (3) above, to imprisonment for a term not exceeding 12 months or to a fine or to both.

(5) No proceedings for an offence under subsection (1) above shall be instituted except by or with the consent of the Director of Public Prosecutions.

D7.150

Bail decisions relating to persons aged under 18 who are accused of offences mentioned in schedule 2 to the Magistrates' Courts Act 1980

9A.—(1) This section applies whenever—

(a) a magistrates' court is considering whether to withhold or grant bail in relation to a child or young person who is accused of a scheduled offence; and

(b) the trial of that offence has not begun.

(2) The court shall, before deciding whether to withhold or grant bail, consider whether, having regard to any representations made by the prosecutor or the accused child or young person, the value involved does not exceed the relevant sum for the purposes of section 22.

(3) The duty in subsection (2) does not apply in relation to an offence if—

(a) a determination under subsection (4) has already been made in relation to that offence; or

(b) the accused child or young person is, in relation to any other offence of which he is accused which is not a scheduled offence, a person to whom Part 1 of Schedule 1 to this Act applies.

(4) If where the duty in subsection (2) applies it appears to the court clear that, for the offence in question, the amount involved does not exceed the relevant sum, the court shall make a determination to that effect.

(5) In this section—

(a) 'relevant sum' has the same meaning as in section 22(1) of the Magistrates' Courts Act 1980 (certain either way offences to be tried summarily if value involved is less than the relevant sum);

(b) 'scheduled offence' means an offence mentioned in schedule 2 to that Act (offences for which the value involved is relevant to the mode of trial); and

(c) 'the value involved' is to be construed in accordance with section 22(10) to (12) of that Act.

[10. and **11.** Repealed.]

[12. Amendments, repeals and transitional provisions.]

[13. Short title, commencement, application and extent.]

D7.151
Schedule 1 Persons Entitled to Bail: Supplementary Provisions
Part I Defendants Accused or Convicted of Imprisonable Offences

DEFENDANTS TO WHOM PART I APPLIES

1.—(1) Subject to sub-paragraph (2) and paragraph 1A, the following provisions of this Part of this schedule apply to the defendant if—

(a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or

(b) his extradition is sought in respect of an offence.

(2) But those provisions do not apply by virtue of sub-paragraph (1)(a) if the offence, or each of the offences punishable with imprisonment, is—

(a) a summary offence; or

(b) an offence mentioned in schedule 2 to the Magistrates' courts Act 1980 (offences for which the value involved is relevant to the mode of trial) in relation to which—

(i) a determination has been made under section 22(2) of that Act (certain either way offences to be tried summarily if value involved is less than the relevant sum) that it is clear that the value does not exceed the relevant sum for the purposes of that section; or

(ii) a determination has been made under section 9A(4) of this Act to the same effect.

1A.—(1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in non-extradition proceedings where—

(a) the defendant has attained the age of 18,

(b) the defendant has not been convicted of an offence in those proceedings, and

(c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

(2) The paragraphs are—

(a) paragraph 2 (refusal of bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses),

(b) paragraph 2A (refusal of bail where defendant appears to have committed indictable or either way offence while on bail), and

(c) paragraph 6 (refusal of bail where defendant has been arrested under section 7).

D7.152

EXCEPTIONS TO RIGHT TO BAIL

2.—(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(2) Where the defendant falls within paragraph 6B, this paragraph does not apply unless—

(a) the court is of the opinion mentioned in paragraph 6A, or

(b) paragraph 6A does not apply by virtue of paragraph 6c.

2ZA.—(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

(a) physical or mental injury to an associated person; or

(b) an associated person to fear physical or mental injury.

(2) In sub-paragraph (1) 'associated person' means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

2A. The defendant need not be granted bail if—

(a) the offence is an indictable offence or an offence triable either way, and

(b) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence.

2B. The defendant need not be granted bail in connection with extradition proceedings if—

(a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and

(b) it appears to the court that the defendant was on bail on the date of the offence.

3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

4. The defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

5. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

6.—(1) The defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.

6ZA. If the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

EXCEPTION APPLICABLE TO DRUG USERS IN CERTAIN AREAS

6A. Subject to paragraph 6C below, a defendant who falls within paragraph 6B below may not be granted bail unless the court is of the opinion that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

D7.153

6B.—(1) A defendant falls within this paragraph if—

(a) he is aged 18 or over,

(b) a sample taken—

(i) under section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs) in connection with the offence; or

(ii) under section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence), has revealed the presence in his body of a specified Class A drug;

(c) either the offence is one under section 5(2) or (3) of the Misuse of Drugs Act 1971 and relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing—

(i) that misuse by him of any specified Class A drug caused or contributed to the offence; or

(ii) (even if it did not) that the offence was motivated wholly or partly by his intended misuse of such a drug; and

(d) the condition set out in sub-paragraph (2) below is satisfied or (if the court is considering on a second or subsequent occasion whether or not to grant bail) has been, and continues to be, satisfied.

(2) The condition referred to is that after the taking and analysis of the sample—

(a) a relevant assessment has been offered to the defendant but he does not agree to undergo it; or

(b) he has undergone a relevant assessment, and relevant follow-up has been proposed to him, but he does not agree to participate in it.

(3) In this paragraph and paragraph 6C below—

(a) 'Class A drug' and 'misuse' have the same meaning as in the Misuse of Drugs Act 1971;

(b) 'relevant assessment' and 'relevant follow-up' have the meaning given by section 3(6E) of this Act;

(c) 'specified' (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

6C. Paragraph 6A above does not apply unless—

(a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the local justice area in which it appears to the court that the defendant would reside if granted bail; and

(b) the notice has not been withdrawn.

D7.154

EXCEPTION APPLICABLE ONLY TO DEFENDANT WHOSE CASE IS ADJOURNED FOR INQUIRIES OR A REPORT

7. Where his case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

D7.155

RESTRICTION OF CONDITIONS OF BAIL

8.—(1) Subject to subparagraph (3) below, where the defendant is granted bail, no conditions shall be imposed under subsections (4) to (6B) or (7) (except subsection (6)(d) or (e)) of section 3 of this Act unless it appears to the court that it is necessary to do so—

(a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or

(b) for the defendant's own protection or, if he is a child or young person, for his own welfare or in his own interests.

(1A) No condition shall be imposed under section 3(6)(d) of this Act unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.

(2) Subparagraphs (1) and (1A) above also apply on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

(3) The restriction imposed by subparagraph (1A) above shall not apply to the conditions required to be imposed under section 3(6A) of this Act or operate to override the direction in section 11(3) of the Powers of Criminal Courts (Sentencing) Act 2000 to a magistrates' court to impose conditions of bail under section 3(6)(d) of this Act of the description specified in the said section 11(3) in the circumstances so specified.

D7.156

DECISIONS UNDER PARAGRAPH 2

9. In taking the decisions required by paragraph 2(1), or in deciding whether it is satisfied as mentioned in paragraph 2ZA(1), or of the opinion mentioned in paragraph 6ZA or 6A of this Part of this Schedule, the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say—

(a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it),

(b) the character, antecedents, associations and community ties of the defendant,

(c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,

(d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,

(e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant, as well as to any others which appear to be relevant.

9AA.—(1) This paragraph applies if—

(a) the defendant is a child or young person, and

(b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

(2) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the court shall give particular weight to the fact that the defendant was on bail in criminal proceedings on the date of the offence.

9AB.—(1) Subject to sub-paragraph (2) below, this paragraph applies if—

(a) the defendant is a child or young person, and

(b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.

(2) Where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, this paragraph does not apply unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

(3) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would fail to surrender to custody, the court shall give particular weight to—

(a) where the defendant did not have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody, or

(b) where he did have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

(4) For the purposes of this paragraph, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody.

[Note: Paragraphs 9AA and 9AB are in force only in respect of offences which attract a life sentence: see SI 2006 No. 3217.]

D7.157

CASES UNDER SECTION 128A OF MAGISTRATES' COURTS ACT 1980

9B. Where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.

D7.158

Part IA Defendants Accused or Convicted of Imprisonable Offences to which Part I Does Not Apply

DEFENDANTS TO WHOM PART IA APPLIES

1. Subject to paragraph 1A, the following provisions of this Part apply to the defendant if—

(a) the offence or one of the offences of which he is accused or convicted is punishable with imprisonment, but

(b) Part 1 does not apply to him by virtue of paragraph 1(2) of that part.

1A.—(1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in, or in connection with, proceedings where—

(a) the defendant has attained the age of 18,

(b) the defendant has not been convicted of an offence in those proceedings, and

(c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

(2) The paragraphs are—

(a) paragraph 2 (refusal of bail for failure to surrender to custody),

(b) paragraph 3 (refusal of bail where defendant would commit further offences on bail), and

(c) paragraph 7 (refusal of bail in certain circumstances when arrested under section 7).

D7.159

EXCEPTIONS TO RIGHT TO BAIL

2. The defendant need not be granted bail if—

(a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and

(b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

3. The defendant need not be granted bail if—

(a) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would commit an offence while on bail.

4.—(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

(a) physical or mental injury to an associated person; or

(b) an associated person to fear physical or mental injury.

(2) In sub-paragraph (1) 'associated person' means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

5. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

6. The defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006

7. The defendant need not be granted bail if—

(a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

8. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

D7.160

APPLICATION OF PARAGRAPHS 6A TO 6C OF PART 1

9. Paragraphs 6A to 6C of Part 1 (exception applicable to drug users in certain areas and related provisions) apply to a defendant to whom this Part applies as they apply to a defendant to whom that Part applies.

D7.161

Part II Defendants Accused or Convicted of Non-imprisonable Offences

DEFENDANTS TO WHOM PART II APPLIES

1. Where the offence or every offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment the following provisions of this Part of this schedule apply.

D7.162

EXCEPTIONS TO RIGHT TO BAIL

2. The defendant need not be granted bail if—

(za) the defendant—

(i) is a child or young person, or

(ii) has been convicted in the proceedings of an offence;

(a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and

(b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

4. The defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

5. The defendant need not be granted bail if—

(za) the defendant—

(i) is a child or young person, or

(ii) has been convicted in the proceedings of an offence;

(a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

6.—(1) The defendant need not be granted bail if—

(a) having been released on bail in, or in connection with, the proceedings for the offence, the defendant has been arrested in pursuance of section 7, and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

(i) physical or mental injury to an associated person, or

(ii) an associated person to fear physical or mental injury.

(2) In sub-paragraph (1) 'associated person' means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

D7.163
Part IIA Decisions Where Bail Refused on Previous Hearing

1. If the court decides not to grant the defendant bail, it is the court's duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.

2. At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

3. At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.

D7.164
Part III [Interpretation]

1. For the purposes of this schedule the question whether an offence is one which is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

2. References in this schedule to previous grants of bail include—

(a) bail granted before the coming into force of this Act;

(b) as respects the reference in paragraph 2A of Part 1 of this Schedule (as substituted by paragraph 16 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;

(c) as respects the references in paragraph 6 of Part 1 of this Schedule (as substituted by paragraph 17 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;

(d) as respects the references in paragraph 9AA of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;

(e) as respects the references in paragraph 9AB of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;

(f) as respects the reference in paragraph 5ofPart2of this Schedule (as substituted by section 13(4) of the Criminal justice Act 2003), bail granted before the coming into force of that paragraph;

(g) as respects the reference in paragraph 6 of Part 2 of this Schedule, bail granted before the coming into force of that paragraph.

3. References in this Schedule to a defendant's being kept in custody or being in custody include (where the defendant is a child or young person) references to his being kept or being in accommodation pursuant to a remand under section 91(3) or (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands to local authority accommodation or youth detention accommodation).

4. In this Schedule—

'court', in the expression 'sentence of a court' includes a service court as defined in section 12(1) of the Visiting Forces Act 1952 and 'sentence', in that expression, shall be construed in accordance with that definition; 'default', in relation to the defendant, means the default for which he is to be dealt with under Part 2 of Schedule 8 to the Criminal Justice Act 2003 (breach of requirement of order).

TEXT OF THE BAIL (AMENDMENT) ACT 1993

D7.165
Bail (Amendment) Act 1993, s. 1

(1) Where a magistrates' court grants bail to a person who is charged with or convicted of an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.

(IA) Where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the High Court against the granting of bail.

(IB) Where a judge of the Crown Court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.

(IC) An appeal under subsection (1B) may not be made where a judge of the Crown Court has granted bail on an appeal under subsection (1).

(2) Subsections (1) and (1B) above apply only where the prosecution is conducted—

(a) by or on behalf of the Director of Public Prosecutions; or

(b) by a person who falls within such class or description of person as may be prescribed for the purposes of this section by order made by the Secretary of State.

(3) An appeal under subsection (1), (1A) or (1B) may be made only if—

(a) the prosecution made representations that bail should not be granted; and

(b) the representations were made before it was granted.

(4) In the event of the prosecution wishing to exercise the right of appeal set out in subsection (1), (1A) or (1B) above, oral notice of appeal shall be given to the court which has granted bail at the conclusion of the proceedings in which bail has been granted and before the release from custody of the person concerned.

(5) Written notice of appeal shall thereafter be served on the court which has granted bail and the person concerned within two hours of the conclusion of such proceedings.

(6) Upon receipt from the prosecution of oral notice of appeal from its decision to grant bail the court which has granted bail shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.

(7) Where the prosecution fails, within the period of two hours mentioned in subsection (5) above, to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.

(8) The hearing of an appeal under subsection (1), (1A) or (1B) above against a decision of the court to grant bail shall be commenced within forty-eight hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal is given.

(9) At the hearing of any appeal by the prosecution under this section, such appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as he thinks fit.

(10) In relation to a person under the age of 18—

(a) the references in subsections (1) and (1B) above to an offence punishable by imprisonment are to be read as references to an offence which would be so punishable in the case of an adult; and

(b) the references in subsections (6) and (9) above to remand in custody are to be read subject to the provisions of Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail).

(11) [Rule-making power.]

(12) In this section—

'extradition proceedings' means proceedings under the Extradition Act 2003;

'magistrates' court' and 'court' in relation to extradition proceedings means a District Judge (Magistrates' Courts) designated in accordance with section 67 or section 139 of the Extradition Act 2003;

'prosecution' in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.
