

Bail in criminal proceedings

Latest Update

4 July 2013

Article updated to reflect recent developments.

Author(s)

Polly Dyer - QEB Hollis Whiteman

Bail, in criminal proceedings, is governed by the [Bail Act 1976](#) ("BA"). Bail is defined in [s.1\(1\)](#) of that Act. This article outlines the courts' powers to grant bail, as opposed to police bail.

Overview of Topic

1. Magistrates' Courts, Crown Courts, the Court of Appeal and the High Court have the power to grant bail:
 - a. a Magistrates' Court, on adjourning proceedings (under [s.10\(1\)](#), [s.17C](#), [s.18\(4\)](#) or [s.24C of the Magistrates' Courts Act 1980](#) ("MCA")), may remand a defendant on bail or in custody ([s.128\(1\) of the MCA](#)). Magistrates have the power to grant bail or remand in custody a defendant who is sent to the Crown Court for trial or committal for sentence. A Magistrates' Court can also grant bail for the period of any remand for obtaining a pre-sentence report after summary conviction (see the [MCA 1980, s.10\(3\)](#), and also the [Powers of Criminal Courts \(Sentencing\) Act 2000, s.11](#), for remands on bail for medical examination). Furthermore, it may grant bail pending the determination of an appeal to the Crown Court or by way of case stated to the Divisional Court ([s.113 of the MCA](#));
 - b. The [Senior Courts Act 1981 s.81\(1\)](#) specifies the persons to whom the Crown Court may grant bail (subject to [s.25 of the Criminal Justice and Public Order Act 1994](#) ("CJPO")). Furthermore, [s.115 of the Coroners and Justice Act 2009](#) stipulates that a defendant charged with murder may not be granted bail except by a Crown Court Judge;
 - c. the Court of Appeal may grant bail to a defendant who has served notice of appeal/application for leave to appeal against his conviction/sentence in the Crown Court and to a defendant who is appealing from the Court of Appeal to the Supreme Court ([s.19](#) and [s.36 of the Criminal Appeal Act 1968](#)), again subject to the [CJPO 1994 s.25](#);
 - d. the limited circumstances in which the High Court may grant bail are specified in [s.22\(1\) of the Criminal Justice Act 1967](#) and [s.37 of the CJA 1948](#).
2. This article outlines the general principles governing, and procedures relating, to bail in criminal proceedings.

Key Acts

[Bail Act 1976](#)

[Bail \(Amendment\) Act 1993](#)

[Magistrates' Courts Act 1980](#)

[Senior Courts Act 1981](#)

[Criminal Justice Act 2003](#)

[Criminal Justice Act 1967](#)

[Criminal Justice Act 1948](#)

[Prosecution of Offences Act 1985](#)

[Criminal Justice and Public Order Act 1994](#)

[Coroners and Justice Act 2009](#)

[Criminal Appeal Act 1968](#)

Key Subordinate Legislation

[Prosecution of Offences \(Custody Time Limits\) Regulations 1987/299](#)

[Criminal Procedure Rules 2012/1726](#)

Key Quasi-legislation

[The Consolidated Criminal Practice Direction Pt III Further Directions Applying in the Crown Court and Magistrates' Courts](#)

Key European Union Legislation

None.

Key Cases

[Hurnam v Mauritius \[2005\] UKPC 49; \[2006\] 1 W.L.R. 857](#)

[R. \(on the application of F\) v Southampton Crown Court \[2009\] EWHC 2206 \(Admin\)](#)

[R. v Mansfield Justices Ex p. Sharkey \[1985\] Q.B. 613](#)

[Mangouras v Spain \(12050/04\) \(2012\) 54 E.H.R.R. 25](#)

[R. \(on the application of McAuley\) v Coventry Crown Court \[2012\] EWHC 680 \(Admin\); \[2012\] 1 W.L.R. 2766](#)

[R. \(on the application of O\) v Harrow Crown Court \[2006\] UKHL 42; \[2007\] 1 A.C. 249](#)

[R. \(on the application of Vickers\) v West London Magistrates Court \[2003\] EWHC 1809 \(Admin\); \(2003\) 167 J.P. 473](#)

[Letellier v France \(A/207\) \(1992\) 14 E.H.R.R. 83](#)

[R. \(on the application of Fergus\) v Southampton Crown Court \[2008\] EWHC 3273 \(Admin\)](#)

[Stogmuller v Austria \(A/9\) \(1979-80\) 1 E.H.R.R. 155](#)

[Toth v Austria \(A/224\) \(1992\) 14 E.H.R.R. 551](#)

[Clooth v Belgium \(A/225\) \(1992\) 14 E.H.R.R. 717](#)

[Neumeister v Austria \(A/8\) \(1979-80\) 1 E.H.R.R. 91](#)

Key Texts

Blackstones' Criminal Practice 2013, s.D7; D27.14

[Archbold Criminal Pleading Evidence and Practice 2013 Ed. Ch.3-1 et seq.](#)

Discussion of Detail

The general presumption in favour of granting bail

1. [Section 4\(1\) of the BA 1976](#) creates a rebuttable presumption in favour of bail: "a person to whom this section applies shall be granted bail except as provided in [Sch.1](#) to this Act". [Sections 4\(2\) to \(4\)](#) define the persons to whom [subs.\(1\)](#) applies. They are:
 - a. any defendant 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. any defendant, having been convicted of an offence, who appears or is before the court under [Sch.1](#) or [8 to the Powers of Criminal Courts \(Sentencing\) Act 2000](#) (namely where a youth offender panel refers an offender back to a court or for a breach of a requirement of a reparation order); [Sch.2 to the Criminal Justice and Immigration Act 2008](#) (breach, revocation or amendment of youth rehabilitation orders); [Pt 2 of Sch.8 to the Criminal Justice Act 2003](#) (for an alleged breach of a requirement of a community order); or [Sch.1 to the Street Offences Act 1959](#) (breach of orders under [s.1\(2A\)](#) of that Act) ([s.4\(3\)](#)); and
 - c. a defendant who has been convicted of an offence and whose case is adjourned for reports before sentencing ([s.4\(4\)](#)). It should be noted that pursuant to [s.4\(2\)](#), apart from cases where the defendant has been convicted and the matter adjourned for reports, the presumption does not apply once a defendant has been convicted e.g. it does not apply to a defendant who has been committed to the Crown Court for sentence. In such circumstances, it is a matter for the discretion of the court.

Grounds for refusing bail

1. The grounds for refusing bail are:

Defendant charged with homicide or rape with previous convictions for such offences

1. Pursuant to [s.25 of the Criminal Justice and Public Order Act 1994](#) ("CJPO"), the court may not grant bail to a defendant who is charged with or convicted of murder, attempted murder, manslaughter, rape or attempted rape, or other specified offences under the [Sexual Offences Act 2003](#), if he has been convicted of any of these offences, or culpable homicide, in the past, unless it is satisfied that there are exceptional circumstances. In a case where the previous conviction is for manslaughter, the restriction applies only if the defendant received a custodial sentence. It should be noted that "conviction" encompasses a finding that the defendant was not guilty by reason of insanity or did the act charged where he 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 ([Coroners and Justice Act 2009 Sch.17, para.3](#)).

A defendant charged with an imprisonable offence

1. [Schedule 1, Pt I, to the BA](#) specifies the circumstances in which a defendant may be refused bail if he is charged with, or convicted of, an either-way or indictable offence which is punishable with imprisonment. [Part IA of Sch. 1](#) applies to imprisonable summary only offences. [Part II](#) applies where none of the offences charged are imprisonable (see below).
2. To refuse bail, the court has to be satisfied that there are "substantial grounds" for believing that the consequences specified would occur. In [R. \(on the application of F\) v Southampton Crown Court \[2009\] EWHC 2206 \(Admin\)](#), the Judge had refused bail on the basis that he was "not sure" the accused would "turn up or stay out of trouble". On appeal, Collins J. held that the wrong test had been applied: "it is not a question of him not being sure that the defendant would turn up or stay out of trouble...he was only entitled to refuse bail if there were substantial grounds for believing that he would breach, he would fail to turn up or would commit further offences"([8]). The importance of applying the correct test was emphasised again in [R. \(on the application of S\) v Newcastle Crown Court \[2012\] EWHC 1453 \(Admin\)](#). It is not a question which has to be answered in accordance with the strict rules of evidence, for example, in [Moles, Re \[1981\] Crim. L.R. 170](#) it was held that it was permissible for a police officer to narrate what he had been told by a potential witness about threats that had been received.
3. [Part I paras 2-6ZA](#) specify the grounds on which a defendant may be denied bail (if charged with an imprisonable offence). [Paragraph 7](#) particularises a further ground, which is applicable to defendants who have been convicted but where proceedings have been adjourned e.g. for a pre-sentence report. The grounds most commonly relied upon in objecting to bail are those listed in [para.2](#), namely that there are substantial grounds for believing that the defendant, if released on bail, would:
 - a. fail to surrender to custody;
 - 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.
4. A non-exhaustive list of considerations which the court will take into account when making a decision under [para.2](#) are listed in [para.9 of Pt I](#). These are:
 - a. the nature and seriousness of the offence (and the probable method of dealing with the defendant for it): the relevance of the seriousness of the offence is that if the offence is likely to attract a severe sentence, the temptation for a defendant to abscond is likely to increase. In [Hurnam v Mauritius \[2005\] UKPC 49; \[2006\] 1 W.L.R. 857](#), the Privy Council said that the seriousness of an offence cannot be treated as a conclusive reason for refusing bail: the right to personal liberty is an important constitutional right and it should not be unnecessarily curtailed.
 - b. the character, antecedents, associations and community ties of the defendant: the significance of a defendant having previous convictions is that they will be likely to aggravate a sentence. Furthermore, a person of good character is likely to be trusted by the court to a greater extent. Previous convictions under [s.6 of the BA](#), for failing to surrender to custody in answer to bail, are especially relevant. Any known negative associations may give the court concern about the possibility of further offences being committed whilst the defendant is on bail. The court will examine the community ties of the defendant in order to come to an informed decision on how likely it is that he will abscond. The court will usually find the following information of utility: how long the defendant has lived at his address (and whether it is owned by the defendant or rented);

his marital status; his family ties, especially whether he has dependent children; and whether he is in employment (and for how long). A defendant of no fixed abode is not automatically prohibited from being granted bail but in practice it causes significant difficulty (although attempts are being made to improve this, for example, through initiatives such as the Bail Accommodation Support Service ("BASS")). In this situation, a defence representative can make enquiries as to the availability of a bail hostel.

- c. his record in respect of having answered bail in the past.
 - d. the strength of the evidence against the defendant: this is relevant to whether or not the defendant has an interest in absconding. However, it is also relevant on the basis that a remand in custody followed by an acquittal creates a manifest, and sometimes avoidable, injustice. In borderline cases the court may prefer to run the risk of a defendant absconding rather than the risk of his being acquitted after a spending a long period in custody awaiting trial.
 - e. if the court is satisfied that there are substantial grounds for believing that the defendant would, if released on bail, commit an offence, the risk that the defendant may do so by engaging in conduct that would be likely to cause physical or mental injury to another.
5. [Schedule 1, Pt I](#) further specifies a number of other grounds for withholding bail: for example, the defendant's own protection (or his own welfare if he is a child or young person) ([para.3](#)); if he is currently serving a custodial sentence ([para.4](#) (this is only applicable to defendants in custody pursuant to a sentence)); where the court does not have sufficient information to make a decision ((the court usually remands the defendant in custody for seven days in these circumstances ([para.5](#))). (See also [paras 2A, 6](#) and [paras.6A-C](#) (applicable to drug users)). Further, where a defendant is charged with murder, he may not be granted bail unless the court is of the opinion that there is no significant risk of his committing, while on bail, an offence likely to cause physical or mental injury to any other person ([para.6ZA](#)).

A defendant charged with an imprisonable summary-only offence

- 1. Where the imprisonable offence is a summary only offence, or [MCA 1980 s.22](#) applies (criminal damage where the value is £5000 or less), [Pt I of Sch.1](#) does not apply ([Sch.1, Pt I, para.1\(2\)](#)). Rather [Sch.1, Pt IA](#) applies ([Pt IA, para.1](#)). In such cases, the following exceptions to bail apply:
 - a. the defendant has previously been granted bail and failed to surrender to custody and the court believes, in view of this failure, that the defendant if released on bail would fail to surrender to custody ([para.2](#));
 - b. the defendant was on bail at the date of the offence and the court is satisfied that there are substantial grounds for believing the defendant, if released on bail, would commit an offence while on bail ([para.3](#));
 - c. if the court is satisfied that there are substantial grounds for believing the defendant if released on bail would commit an offence while on bail by engaging in conduct that would be likely to cause or cause physical or mental injury to an associated person (associated with the defendant within the meaning of [s.62 of the Family Law Act 1996](#)) or an associated person to fear physical or mental injury ([para.4](#));
 - d.

- if the court is satisfied that the defendant should be kept in custody for his own protection (or his own welfare if he is a child or young person) ([para.5](#));
- e. if the defendant is in custody serving a custodial sentence ([para.6](#));
 - f. if the defendant, having been released on bail, was arrested under [s.7](#) and the court is satisfied that there are substantial grounds for believing the defendant would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice ([para.7](#));
 - g. if the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of making a decision about bail due to the lack of time since the institution of proceedings ([para.8](#)).
2. [Paragraphs 6A-C of Pt I](#) (mentioned above) apply to a defendant to whom this part applies as they would apply to a defendant to whom that part applies ([para.9](#)).

A defendant charged with a non-imprisonable offence

1. [Part II of Sch.1](#) sets out the grounds justifying a refusal of bail where the defendant is charged solely with a non-imprisonable offence ([Sch.1, Pt II, para.1](#)):
- a. the defendant has previously been granted bail and failed to surrender to custody and the court believes, in view of this failure, that the defendant if released on bail would fail to surrender to custody ([para.2](#));
 - b. if the court is satisfied that the defendant should be kept in custody for his own protection (or his own welfare if he is a child or young person) ([para.3](#));
 - c. if the defendant is in custody serving a custodial sentence ([para.4](#));
 - d. if the defendant, having been released on bail, was arrested under [s.7](#) and the court is satisfied that there are substantial grounds for believing the defendant would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice ([para.5](#));
 - e. if the defendant, having been released on bail, was arrested under [s.7](#) and the court is satisfied that there are substantial grounds for believing the defendant 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 (associated with the defendant within the meaning of [s.62 of the Family Law Act 1996](#)) or an associated person to fear physical or mental injury ([para.6](#)).
2. Other grounds e.g. insufficient information, do not apply when the offence is non-imprisonable.

Granting bail: Unconditional and conditional bail

1. If the court decides to grant the defendant bail, it will either be unconditional or conditional bail. Where the court grants unconditional bail, the defendant's only obligation is to attend court at the date, time and location specified, which is commonly fixed at the time bail is granted ([s.3\(1\)](#)). Failure to surrender without a reasonable excuse is an offence under the BA [s.6](#) (see below).
2. Conditional bail means that the court will attach a number of additional requirements. A condition may only be imposed if it is deemed "necessary". Under [s.3\(6\)](#) of the BA a defendant may be required by the court to comply with any conditions that the court deems necessary to ensure that he:
 - a. surrenders to custody;
 - b. does not commit an offence while on bail;
 - c. does not interfere with witnesses or otherwise obstruct the course of justice;
 - d. makes himself available for inquiries or reports to be made to assist the court in sentencing;
 - e. attends an interview with a legal representative.
3. The [BA 1976 Sch.1, Pt I, para.8\(1\)](#) provides that no conditions may be imposed (except in relation to [s.3\(6\)\(d\) or \(e\)](#)) 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 [para.2\(1\)](#) of this Part of the Schedule, or (b) for the defendant's own protection (of if a child or young person, for his own welfare or in his own interests). The "events" mentioned in [Sch.1, Pt I, para.2](#) are the same as those mentioned in [s.3\(6\)\(a\)-\(c\)](#), a product of, according to Lord Lane C.J. in [R. v Mansfield Justices Ex p. Sharkey \[1985\] Q.B. 613](#), "indifferent drafting" (at p.625C). However, as he continued:

"the intention of the legislature emerges as the logical wish to impose less rigorous requirements when a defendant is being admitted to bail than when an unconvicted man is being refused bail altogether."
4. The BA refers to some specific conditions (such as sureties and security ([s.3\(4\)](#))) but it does not specify all of the conditions that may be imposed. The court will commonly impose one or more of the following conditions:
 - a. a condition of residence (usually described by the court as a condition that the defendant is to live and sleep at a specified address. Under the [Criminal Procedure Rules 2012/1726](#) ("CrimPR"), [r.19.11](#), the defendant must notify the prosecutor of the address at which he proposes to reside; the prosecutor (with the assistance of the Police Liaison Officer) must help the court to assess the suitability of a proposed address);
 - b. a condition that the defendant notify the police of any change in address;
 - c. a reporting condition to a local police station (at specified times/frequency);
 - d.

- a curfew (i.e. the accused must be indoors between certain hours);
- e. a condition that the defendant is not to enter a certain area/premises;
 - f. a condition that he is not to contact (whether directly or indirectly) the complainant and/or any other witnesses and/or co-defendants; and
 - g. a condition that he is to surrender his passport to the police and/or a condition that the defendant should not apply for any travel documentation.
5. A defence representative should take instructions from his client on whether he is willing and able to comply with any conditions before making a bail application in order to present suggestions to the court if required. Usual practice when the defendant is a youth is that a representative of the Youth Offending Team will have also discussed the matter with the defendant prior to the hearing and they then provide the court with their recommendation as to the appropriate bail package.
 6. The court will impose conditions in order to allay their particular concerns e.g. a curfew may be appropriate where the offence was allegedly committed at night. A "door step" condition can be imposed by the court; this is where the defendant is required to present himself at the door of his residence when required to do so by a police officer during the hours of his curfew. Furthermore, electronic monitoring ("tagging") is available as a condition of bail in conjunction with a curfew. It alerts the police to any breach of the curfew e.g. by the defendant leaving his address during the curfew period.
 7. Electronic monitoring cannot be imposed unless the defendant is at least 12 years old. Where the defendant is under the age of 17, it can only be imposed if (a) the defendant is charged with (or has been convicted of) a violent or sexual offence, or an offence punishable, in the case of an adult, with at least 14 years' imprisonment or (b) the present charges are imprisonable offences, which, together with his previous convictions for imprisonable offences, amount to a recent history of repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation ([s.3AA\(3\)](#)). Additionally, it has to be deemed suitable by a Youth Offending Team ([s.3AA\(5\)](#)). For a defendant aged 17 and over a court may not impose an electronic monitoring requirement unless without this requirement he would not be granted bail ([s.3AB\(2\)](#)). If the defendant is 17, the Youth Offending Team must also have informed the court that an electronic monitoring requirement is suitable ([s.3AB\(4\)](#)).
 8. A defendant may be required, before being released on bail, to provide one or multiple sureties to secure his surrender to custody ([s.3\(4\)](#)). [Schedule 1, Pt I, para.8](#) provides that this requirement is also subject to the necessary test. A surety's only obligation is to ensure that a defendant attends court and therefore logically sureties should only be necessary in cases where the defendant appears to be at risk of absconding. The BA [s.8](#) contains the detailed provisions about the taking of a surety: the factors listed at [s.8\(2\)](#) are to be taken into consideration when deciding whether the proposed surety is suitable. The normal consequence, if the defendant fails to attend court, is that the surety is ordered to forfeit the entire sum provided. A person cannot stand surety for himself ([s.3\(2\)](#)) but can be required to give security i.e. deposit with the court money or valuables, which will be liable to forfeiture in the event of his non-attendance ([s.3\(5\)](#)). The level of security to be required was discussed in [Mangouras v Spain \(12050/04\) \(2012\) 54 E.H.R.R. 25](#).

Analysis

KEY AREAS OF COMPLEXITY OR UNCERTAINTY

Breach of bail

1. If a defendant fails to surrender to custody, the court can issue a warrant under [s.7\(1\)](#) for his arrest. This warrant usually directs that the defendant is arrested and brought to court. However, at the court's discretion, warrants can be issued "backed for bail" (i.e. once the defendant has been arrested he can be released on bail ([MCA 1980 s.117](#) and [SCA 1981 s.81\(4\)](#)). Alternatively, the court can adjourn and extend the defendant's bail under [s.129 of the MCA](#) (the Crown Court can act similarly) or the court may decide that it is appropriate to proceed in the defendant's absence.
2. Breach of any bail condition may result in the defendant being arrested under the [BA s.7\(3\)](#) and his bail being withdrawn. Following an arrest under [s.7\(3\)](#), the defendant must be brought before a Magistrates' Court as soon as practicable and in any event within 24 hours ([s.7\(4\)](#)). The question then for the Magistrates is whether the person is likely to fail to surrender to custody or has broken or is likely to break any condition of his bail. If answered in the affirmative, the Magistrates may remand him in custody ([s.7\(5\)](#)). Alternatively, he may be granted bail subject to different conditions. When the answer is in the negative, the defendant must be granted bail on the same conditions (if any) as before. A breach of bail under [s.7](#) is not a criminal offence. The question for the court in these proceedings is simply whether or not the defendant breached his bail conditions. There is no "reasonable excuse" defence available [R. \(on the application of Vickers\) v West London Magistrates Court \[2003\] EWHC 1809 \(Admin\); \(2003\) 167 J.P. 473](#): a defendant either accepts the breach or denies it. If he denies it representations are made or evidence called.
3. The BA [s.6](#) makes it a criminal offence to fail to surrender: under [s.6\(1\)](#) a person is guilty of an offence if, without reasonable cause, he fails to surrender to custody after being released on bail. The burden of showing a reasonable excuse is on the defendant ([s.6\(3\)](#)): being mistaken as to the time does not amount to a reasonable excuse ([Laidlaw v Atkinson Times, August 2, 1986](#)). A defendant with a reasonable excuse may, however, still have committed an offence if he has failed to surrender as soon as reasonably practicable after the excuse ceased to apply ([s.6\(2\)](#)). The procedure to be followed is specified in the [Consolidated Criminal Practice Direction para.1.13](#). The maximum penalty on conviction is 12 months' imprisonment in the Crown Court and three months' imprisonment in a Magistrates' Court (see the [Sentencing Guidelines Council Guidelines on Failing to Surrender to Bail](#)). A sentence will normally be in addition to any sentence for the original offence ([R. v Leigh \(Anthony Jason\) \[2012\] EWCA Crim 621](#)).
4. See also case law on what has been held to amount to surrendering to the court: [R. v Central Criminal Court Ex p. Guney \[1996\] A.C. 616](#); [DPP v Richards \[1988\] Q.B. 701](#); [R. v Evans \(Scott Lennon\) \[2011\] EWCA Crim 2842; \[2012\] 1 W.L.R. 1192](#).

LATEST DEVELOPMENTS

1. [Sch.11 of the Legal Aid Sentencing and Punishment of Offenders Act 2012](#) came into force on 3 December 2012. It amended the following provisions of the [Bail Act 1976](#):
 - a. [s.2\(2\)](#) (definitions);
 - b. [s.3](#) (general provisions);
 - c.

- [s.3AA](#) (conditions for the imposition of electronic monitoring requirements: children and young people);
- d. [s.3AB](#) (conditions for the imposition of electronic monitoring requirements: other persons);
 - e. [s.3AC](#) (electronic monitoring: general provisions);
 - f. [s.7](#) (liability to arrest for absconding or breaking conditions of bail);
 - g. [s.9A](#) (bail decisions relating to persons aged under 18 who are accused of offences mentioned in the [Magistrates' Courts Act 1980, Sch.2](#)); and
 - h. [Sch.1](#) (persons entitled to bail: supplementary provisions).
2. A new exception to the right of bail in the case of non-imprisonable offences is created, namely if the court is satisfied that there are substantial grounds for believing that a defendant, if released on bail, would commit an offence by engaging in conduct involving domestic violence (see above). Furthermore, the exception in [para.4 of Pt IA](#) (see above), relating to defendants who are likely to commit an offence of violence, is narrowed to apply only to domestic violence.
 3. A new [s.3AAA](#) (conditions for the imposition of electronic monitoring requirements: children and young persons released on bail in extradition proceedings) is inserted ([Sch.11, para.5](#)).
 4. [Section 1 of the Bail \(Amendment\) Act 1993](#) is also amended to allow for prosecution appeals to the High Court against bail granted by the Crown Court ([Sch.11, para.32](#)).

Procedure

1. The [Criminal Procedure Rules 2012/1726](#) ("CrimPR") [Pt 19](#) (as amended by the [Criminal Procedure \(Amendment\) Rules 2012/3089](#), which came into force on 1 April 2013) particularises the procedure for bail applications and appeals.
2. Normal practice in a full bail application is for the court to ask the prosecution if they have any objections to bail. Following these submissions (if there are objections), the defence representative (or defendant, if unrepresented) presents the arguments in favour of bail, addressing the concerns raised by the prosecution. The prosecutor does not normally reply but can do so to correct a factual error. The court, after hearing the submissions and considering the matter, announces its decision, for which it must give reasons ([BA ss.5\(2A\) and 5\(3\)](#); [CrimPR r.19.2\(5\)](#)). The decision is invariably based on the submissions of the respective parties; however, either party can adduce evidence in support of their arguments. The defence can choose not to make a bail application. In those circumstances, usually the prosecutor will summarise the objections to bail so that the court has information on which to base a refusal. When a case is adjourned for reports following conviction, the Crown is not usually asked if they have any objections to bail. The question is conventionally regarded as one for the court, subject to representations from the defence.

Repeat bail applications

1. When the defendant's first bail application is unsuccessful and he is remanded in custody he may make another fully argued bail application at the next hearing which, unless he consents to being remanded in his absence, will be within eight clear days ([MCA 1980 s.128\(6\)](#)). At this hearing, any arguments made in the first application can be repeated ([Sch.1, Pt IIA, para.2](#)). Should this second application be unsuccessful, at subsequent hearings the court "need not hear arguments as to fact or law which it has heard previously" ([Sch.1, Pt IIA, para.3](#)). This is so even though the court should consider the question of bail at each hearing ([Sch.1, Pt IIA, para.1](#)). Therefore, if there has been no material change in circumstances since the last application, the defendant is not entitled to reopen the matter ([R. v Nottingham Justices Ex p. Davies \[1981\] Q.B. 38](#); [R. \(on the application of B\) v Brent Youth Court \[2010\] EWHC 1893 \(Admin\)](#)).
2. It is important to remember, especially when prosecuting, that custody time limits will apply to those defendants who are remanded in custody ([s.22 of the Prosecution of Offences Act 1985](#); [Prosecution of Offences \(Custody Time Limits\) Regulations 1987/299](#); [R. \(on the application of McAuley\) v Coventry Crown Court \[2012\] EWHC 680 \(Admin\)](#); [\[2012\] 1 W.L.R. 2766](#)).

Variation of bail conditions

1. Where bail has been granted subject to conditions, the defence may apply to vary the defendant's bail conditions ([s.3\(8\)\(a\)](#)). The application should be made to the court which granted bail (or to the Crown Court where the proceedings have been sent or committed). The Prosecution can make a similar application ([s.3\(8\)\(b\)](#)). Advance notice of the application must be provided to the court and other party.

Applying and appealing to the crown court

1. Where a defendant has been refused bail by the Magistrates' Court he may apply to the Crown Court for bail. The right to apply to the Crown Court is governed by the [Senior Courts Act 1981 s.81\(1\)\(g\)](#). A certificate of full argument ([s.5\(6A\) of the BA](#)) must have been obtained from the Magistrates' Court to found the application to the Crown Court ([s.81\(1J\) of the Senior Courts Act](#)). The defendant can, therefore, apply to the Crown Court after the first or second refusal of the Magistrates' Court to grant bail. The procedure for bail applications in the Crown Court is governed by the [CrimPR r.19.8](#).
2. If a defendant has been sent for trial, he 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. There is no need to obtain a certificate of full argument. [The Consolidated Criminal Practice Direction para.III.25.2](#) states that once the trial has begun, the granting of bail during adjournments is a matter for the discretion of the trial judge ([The Consolidated Criminal Practice Direction Pt III Further Directions Applying in the Crown Court and Magistrates' Courts](#)).
3. The [Criminal Justice Act 2003 s.16\(1\)](#) enables a defendant to appeal to the Crown Court against the imposition of the bail conditions contained in [s.6\(3\)](#). This right of appeal can only be exercised if the accused has previously made an application to the Magistrates' Court (under [BA s.3\(8\)\(a\)](#)) 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\(1\)](#). Once the Crown Court has disposed of the appeal, no further appeal can be made under section 16 unless a further application under [s.3\(8\)\(a\)](#) is made to the Magistrates' Court ([s.16\(8\)](#)).
4. There also remains the possibility of challenging a refusal of bail by way of judicial review ([R. \(on the application of M\) v Isleworth Crown Court \[2005\] EWHC 363 \(Admin\)](#); [R. \(on the](#)

[application of Shergill\) v Harrow Crown Court \[2005\] EWHC 648 \(Admin\); R. \(on the application of Allwin\) v Snaresbrook Crown Court \[2005\] EWHC 742 \(Admin\)](#)).

5. The [Bail \(Amendment\) Act 1993](#) confers upon the prosecution the right to appeal to the Crown Court against a decision by Magistrates to grant bail. The right is limited to cases under [s.1\(1\)-\(3\)](#). The [Bail \(Amendment\) Act 1993](#) and the [CrimPR r.19.9](#) lay down the procedural requirements with which the prosecution must comply in order to exercise its right e.g. the prosecutor must give oral notice of appeal at the conclusion of the proceedings in which bail is granted and before the defendant is released from custody, which is then confirmed in writing to the accused within two hours ([s.1\(4\) and \(5\) of the 1993 Act](#)).
6. Under [s.5B of the BA 1976](#), the prosecution can apply for the grant of bail to be reconsidered by a Magistrates' Court. It is limited to an offence that is triable either-way or Indictable only and any application must be based on information which was not available to the court granting bail when the decision was taken ([s.5B\(3\)](#)).

POSSIBLE FUTURE DEVELOPMENTS

None.

HUMAN RIGHTS

1. [Article 5 \(the right to liberty and security of the person\) of the European Convention on Human Rights](#) ("ECHR") is understandably of relevance to bail. The impact of the [Human Rights Act 1998](#) on the law of bail in criminal proceedings was considered by the [Law Commission \(Law Com No.269\)](#). It concluded that there are no provisions in the [BA 1976](#) which are incompatible with Convention rights. Further, it produced a guide to assist decision makers in applying the Act in a way that is compatible with the ECHR ([Law Commission Guidance For Bail Decision-Takers And Their Advisers](#)), i.e. bail should only be refused if it can be justified under both the ECHR and domestic legislation. Under [art.5](#) a person charged with an offence must be released pending trial unless there are "relevant and sufficient" reasons to justify continued detention ([Wemhoff v Germany \(A/7\) \(1979-80\) 1 E.H.R.R. 55](#)). See also [R. \(on the application of Fergus\) v Southampton Crown Court \[2008\] EWHC 3273 \(Admin\)](#); [Stogmuller v Austria \(A/9\) \(1979-80\) 1 E.H.R.R. 155](#); [Neumeister v Austria \(A/8\) \(1979-80\) 1 E.H.R.R. 91](#); [Letellier v France \(A/207\) \(1992\) 14 E.H.R.R. 83](#); [Clooth v Belgium \(A/225\) \(1992\) 14 E.H.R.R. 717](#), [Toth v Austria \(A/224\) \(1992\) 14 E.H.R.R. 551](#).
2. The relationship between [s.25 of the CJPO 1994](#) and [art.5](#) has been considered in a number of cases: [R. \(on the application of O\) v Harrow Crown Court \[2006\] UKHL 42; \[2007\] 1 A.C. 249](#); [O'Dowd v United Kingdom \(7390/07\) \(2012\) 54 E.H.R.R. 8](#). The imposition of certain onerous bail conditions have also been subject to (unsuccessful) challenge relying on [art.5: McDonald v Dickson 2003 S.L.T. 467](#).

EUROPEAN UNION ASPECTS

None.

Further Reading

[CPS Legal Guidance on Bail](#)

[Consolidated Criminal Practice Direction](#)

[The Sentencing Guidelines Council Guidelines on Failing to Surrender to Bail](#)

[Law Commission Report \(Law Com No.269\)](#)

© 2013 Sweet & Maxwell Ltd

The logo for Westlaw UK, featuring the word "Westlaw" in a blue sans-serif font with a series of small dots above the "l", followed by ".UK" in a smaller blue font.