



Home Office

Bail and refusal of bail by criminal courts and police officers

Version 5.0

Contents

Contents.....	2
About this guidance.....	4
Contacts	4
Publication	4
Changes from last version of this guidance	4
Bail in England and Wales	6
The general principles of bail	7
Exceptions to the general right to bail.....	7
Bailing a suspect	9
Police bail	9
Granting bail	9
Street bail	9
Magistrates' court bail.....	10
Bail with conditions.....	11
Imposing conditions whilst on police bail	11
Imposing conditions whilst on court bail.....	11
Varying bail	13
Variation of police bail.....	13
Variation of court bail	13
Appeals and reconsiderations of bail.....	14
Defence right of appeal against magistrates' imposing bail conditions	14
Prosecution application to reconsider bail	14
Breach of conditions of bail	16
Breach of conditions of bail pre-charge	16
Breach of conditions of bail post-charge.....	16
Failure to surrender to bail	17
Breach of court granted bail.....	17
Breach of police granted bail	17
Penalties	18
Refusal of bail	19
Exceptions to right to bail.....	19
Time limits on period of bail.....	21
Applicable bail period: initial limit	21

Conditions which must be met for extension of time limit in sections 47ZD to 47ZG	22
Applicable bail period: extension of initial limit in standard cases	22
Applicable bail period: extension of limit in designated cases	23
Applicable bail period: first extension of limit by court.....	24
Applicable bail period: subsequent extensions of limit by court	25
Applications to court: withholding sensitive information	25
Sections 47ZF to 47ZH: proceedings in magistrates' court	26
Sections 47ZF and 47ZG: late applications to magistrates' court.....	26
Applicable bail period and bail return date: referral to Crown Prosecution Service (CPS) and periods in hospital	27
Release under provisions of PACE: re-arrest	27
Grounds for bail in Scotland	29
Grounds for bail	29
Entitlement to bail in Scotland	31
Entitlement to bail	31
Restrictions on bail in certain solemn cases	32
Bail conditions in Scotland	33
Police liberation in Scotland	35
Police liberation	35
Initial decision by the Procurator Fiscal to prosecute or liberate.....	35
Bail services	36
Changing bail, refusal of bail and bail offences in Scotland	37
Changing bail.....	37
Refusal of bail.....	37
Bail and police liberation offences	38
Police bail in Northern Ireland	39
Police bail	39
Entitlement to bail and bail conditions in Northern Ireland.....	42
Entitlement to bail	42
Bail conditions	43
If a defendant is granted bail	44
Bail applications, appeals and offences in Northern Ireland.....	45
Bail applications following remand in custody.....	45
Appeals.....	45
Bail offences	46

About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about bail and refusal of bail by criminal courts and police officers.

It tells you about:

- bail in:
 - England and Wales
 - Scotland
 - Northern Ireland
- the general principles of bail
- bailing a suspect
- bail with conditions
- varying bail
- appeals and reconsiderations of bail
- failing to surrender
- refusal of bail

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: [Vulnerable people and children](#).

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: [Data protection changes \(GDPR and Data Protection Act 2018\)](#)

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Criminal and Financial Investigation Operational Guidance team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **21 April 2020**

Changes from last version of this guidance

- Added further links to legislation

- Other minor housekeeping changes

Related content

[Contents](#)

Bail in England and Wales

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the legislation that governs bail in England and Wales and explains when they can use bail.

In criminal courts decisions relating to bail are an important stage in the prosecution process and can:

- have significant consequences for:
 - victims of crime
 - the public in general
- result in the withdrawal, or control, of a defendant's freedom for a long period of time

It is very important for prosecutors to:

- recommend appropriate courses of action to a court in connection with bail
- provide sufficient information to a court in relation to the decision about whether or not to grant bail

The main pieces of legislation that deal with bail applications in England and Wales are the:

- [Bail Act 1976](#)
- [Bail \(Amendment\) Act 1993](#)
- [Magistrates' Court Act 1980](#)
- [The Magistrates' Courts Rules 1981](#)
- [Criminal Procedure Rules 2015](#)
- [Police and Criminal Evidence Act 1984 \(PACE\)](#)
- [Policing and Crime Act 2017](#)

Related content

[Contents](#)

The general principles of bail

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the general principles of bail.

[Section 4 of the Bail Act 1976](#) applies when a person appears before a magistrates' court or the Crown court, and states that bail shall be granted to a person:

- accused of an offence who:
 - appears before a magistrates' court or the Crown court in connection with proceedings for the offence
 - applies to a court for bail in connection with the proceedings
- who has been convicted of an offence and:
 - appears before a magistrates' court to be dealt with for a breach of a probation or community service order
 - whose case has been adjourned for reports to be obtained before sentencing
- subject to extradition in respect of an offence who:
 - appears or is brought before the court in the course of or in connection with extradition proceedings in respect of the offence
 - applies to the court for bail or for a variation of the conditions of bail in connection with the proceedings

Exceptions to the general right to bail

Exceptions to the general right to bail are covered in schedule 1 to the Bail Act 1976. Schedule 1 states where a person is accused, or convicted, of an offence punishable with imprisonment they may not be granted bail in the following circumstances if:

- the court is satisfied there are substantial grounds for believing that the defendant, if released on bail would:
 - fail to surrender to custody
 - commit an offence while on bail
 - interfere with witnesses or otherwise obstruct the course of justice
- the court is satisfied that the defendant must be kept in custody, either:
 - for their own protection
 - if they are a child or young person, for their own welfare
- the defendant is already in custody in pursuance of (as a result of) a court sentence
- it has not been possible, due to time constraints, to gather enough information to allow the court to make its decision on bail
- having been released on bail, the defendant has been arrested for absconding or breaking the conditions of their bail
- the offence is triable on indictment or either way and the defendant was on bail in criminal proceedings on the date of the offence

Where the accused is charged with an offence which is not punishable with imprisonment, schedule 1 states that bail may only be withheld if:

- the court:
 - is satisfied that the defendant must be kept in custody for their own protection, or if they are a child or young person, for their own welfare
 - believes that the defendant would abscond if released on bail because they have previously failed to surrender to custody
- the defendant is already in custody in pursuance of (as a result of) a court sentence
- having been released on bail, the defendant has been arrested for absconding or breaking the conditions of their bail

For more information about legislation covering the general principles of bail and exceptions to the general right to bail see:

- [Bail Act 1976](#)
- [Extradition Act 2003](#)

Related content

[Contents](#)

Bailing a suspect

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about bailing a suspect.

Police bail

There is now a general presumption that release will be without bail unless the pre-conditions of bail are met. Police have powers under sections 30A, 34, 37 and 38 of Police and Criminal Evidence Act (PACE) 1984 to grant bail to people arrested either:

- without a warrant
- under a warrant not endorsed for bail

For more information about police bail, see:

- [Police and Criminal Evidence Act \(PACE\) 1984 Section 30A](#)
- [Police and Criminal Evidence Act \(PACE\) 1984](#)

Granting bail

When granting bail (with or without conditions) the police can decide to grant a person one of the following:

- bail under section 30A of PACE to attend a police station
- pre-charge bail under section 37 of PACE for a charging decision to be made
- bail under section 34(5) of PACE for further investigation
- bail post-charge under section 38(1) of PACE

For more information about granting bail, see:

- [Police and Criminal Evidence Act \(PACE\) 1984 Section 30A](#)
- [Police and Criminal Evidence Act \(PACE\) 1984](#)

Street bail

Street bail is governed by sections 30, 30A to 30D of PACE 1984 and only police officers can use them.

There are 4 important considerations that the police must observe when deciding if street bail is a suitable alternative to taking a suspect into custody:

- the nature of the offence
- the ability to progress the investigation at a police station
- confidence in the suspect answering bail
- the suspect's level of awareness and understanding of the procedure

The [Policing and Crime Act 2017](#) has amended the bail provisions of PACE to the effect that there is now a general presumption that if a person is released following their arrest it will be without bail. To release a person on bail the police must be satisfied that bail is necessary and proportionate in all the circumstances with particular regard paid to any conditions of bail which would be imposed. The release on bail must be agreed by an officer of at least inspector rank having considered any representations made by the person.

For more information about street bail, see:

- [Police and Criminal Evidence Act \(PACE\) 1984 Section 30A](#)
- [Police and Criminal Evidence Act \(PACE\) 1984](#)

Magistrates' court bail

The following pieces of legislation govern bail in magistrates' court:

- [Magistrates' Courts Act 1980](#)
- [Bail Act 1976](#)
- [Criminal Justice Act 2003](#)
- [Powers of Criminal Courts \(Sentencing\) Act 2000](#)

They state that a defendant may apply for bail at the court when they:

- are brought before a magistrates' court and the hearing is adjourned
- are committed for trial to the Crown court
- are committed to the Crown court for sentencing
- have been convicted of a summary offence and the magistrates adjourn proceedings to consider sentencing

It is the prosecutor's responsibility to oppose bail in court if they do not feel it is appropriate for the suspect to be granted bail.

Related content

[Contents](#)

Bail with conditions

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about granting bail with conditions.

Section 3 of the [Bail Act 1976](#) states that bail may be granted on conditions. Some examples of possible conditions are:

- provision of sureties- this is when a person makes an obligation to pay a sum of money for another in the event that the other person fails to abide by the bail conditions
- reporting
- residence
- restrictions

It is important to note that the range of bail conditions highlighted above is not exhaustive. The court has a very wide discretion in setting out conditions as long as they apply the statutory test.

Imposing conditions whilst on police bail

If the police are not confident a defendant will answer bail they can attach conditions:

- to make sure the defendant:
 - surrenders to custody
 - does not commit further offences whilst on bail
 - does not interfere with witnesses or obstruct the course of justice
- that are for the defendant's own protection and, where the defendant is a child or young person, for their own welfare

Imposing conditions whilst on court bail

Magistrates may impose conditions when granting bail if they feel it is necessary. They can attach conditions:

- to make sure that the defendant:
 - surrenders to custody
 - does not commit further offences whilst on bail
 - does not interfere with witnesses or obstruct the course of justice
- to make sure the defendant makes themselves available to allow for:
 - enquiries
 - attending an interview with a lawyer
 - a report to be made to assist the court in dealing with the offence for which the defendant has been charged
- that are for the defendant's own protection and, where the defendant is a child or young person, for their own welfare

For more information see the [Bail Act 1976](#).

Related content

[Contents](#)

Varying bail

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about bail variation.

Variation of police bail

A person may apply to the magistrates' court for bail or variation of the conditions where a police custody officer has:

- granted conditional bail subject to part IV of the Police and Criminal Evidence Act (PACE) 1984
- varied conditions of bail

The magistrates' court has the power to:

- grant bail (with or without conditions)
- withhold bail
- impose conditions which are stricter than those imposed by the custody officer

Variation of court bail

Where a court has granted bail, the prosecutor may apply to the magistrates' court for conditions:

- of bail to be varied
- to be imposed where unconditional bail was granted

Any bail conditions that the prosecutor recommends must be:

- specific
- justifiable
- likely to be effective
- capable of being enforced

For more information see: [Police and Criminal Evidence Act \(PACE\) 1984](#).

Related content

[Contents](#)

Appeals and reconsiderations of bail

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about circumstances where imposition of bail conditions can be appealed against and bail applications can be reconsidered.

Defence right of appeal against magistrates' imposing bail conditions

An accused may appeal to the Crown court against the imposition of certain bail conditions by magistrates. Those conditions are:

- a residence requirement specifying where a defendant must stay
- to provide a surety or give a security
- a curfew imposed by the court on a case by case basis
- using electronic monitoring
- a non-contact requirement

Before the accused can exercise this right of appeal, the magistrates' court must have had an opportunity to reconsider the conditions. This could have been when the:

- accused applied for conditions to be varied
- prosecutor or police applied for conditions to be varied
- prosecutor applied for reconsideration of the bail decision

Prosecution application to reconsider bail

Under section 5B of the Bail Act 1976 the prosecution may apply to have bail reconsidered by the magistrates' court. This only applies to:

- offences triable on indictment (a notice of the charges the accused will face) or either way
- bail granted by:
 - the magistrates' court, including where bail has been granted to a person in connection with extradition proceedings
 - a police officer

The prosecution may apply to:

- vary the conditions of bail
- impose conditions in respect of bail which has been granted unconditionally
- withhold bail

They can only apply on the basis of information which was not available to the court or police officer when the original decision was made.

For more information see the [Bail Act 1976](#).

Related content

[Contents](#)

Breach of conditions of bail

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office what happens when a person breaches the conditions of their bail.

Breach of conditions of bail pre-charge

The police have the power to arrest, without warrant, any person who fails to attend a police station at an appointed time.

If a person is re-arrested, [section 37C\(2\)\(b\)](#) of the Police and Criminal Evidence Act (PACE) 1984 gives police the power to release (again) without charge either:

- without bail unless the pre-conditions for bail are satisfied
- on bail if those pre-conditions are satisfied

If released under this section, [section 37C\(4\)](#) states whatever bail conditions applied before the re-arrest will still stand.

Immigration officers have a power of arrest for both failure to answer pre-charge bail (surrender to custody) and breach of pre-charge bail conditions under section 46A PACE.

For more information see: [Police and Criminal Evidence Act \(PACE\) 1984](#).

Breach of conditions of bail post-charge

[Section 7](#) of the Bail Act 1976 allows the police to arrest a person, without warrant, if:

- they have reasonable grounds for believing that person is:
 - not likely to surrender to custody
 - likely to break any of the conditions of their bail
- they have reasonable grounds for suspecting that person has broken any of those conditions
- in a case where that person was released on bail with one or more surety, and that surety notifies an officer in writing that the person is unlikely to surrender to custody, and so they wish to be relieved of their obligations as a surety

However, immigration officers do not have any power of arrest under [Section 7 of the Bail Act 1976](#).

For more information see the [Bail Act 1976](#).

Related content

[Contents](#)

Failure to surrender to bail

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office what happens when a person fails to surrender to bail.

[Section 6 of the Bail Act 1976](#) creates 2 offences:

- failing to surrender to custody without reasonable reasons
- having reasonable cause for failing surrender, but failing to surrender to custody after the appointed time in a reasonably practical time

The section 6 offences apply when the:

- police grant bail to a:
 - suspect to appear at a police station
 - defendant to appear at court on the first appearance
- court grant bail to the defendant to return to court at a later date and time

For more information see the [Bail Act 1976](#).

Breach of court granted bail

A breach of court granted bail is treated as a contempt of court. The court must begin proceedings itself against the defendant.

The 6-month time limit for laying an information (a document used as one way to start criminal proceedings and outlines the alleged offences to the accused so they can consider how they wish to plead), does not apply to a breach of court granted bail.

Proceedings for breach of court granted bail must be started at the first hearing that the defendant appears following their arrest.

Breach of police granted bail

Failure to answer police bail is not seen as contempt of court because the court did not impose the original bail.

The prosecutor must start the court proceedings by laying an 'information for failing to surrender to police bail'.

Magistrates are able to try a bail act offence:

- if an information was laid within 6 months of the bail act offence
- within 3 months of the person:
 - surrendering to custody
 - being arrested

- being brought before a court for the bail act offence or the offence they were granted bail for originally

Penalties

Where a magistrates' court convicts a person summarily of an offence of failing to surrender and does not commit it to the Crown court for sentencing that person is liable to:

- a maximum of 3 months imprisonment
- a fine not exceeding £5,000
- both of the above

Where the offence is committed to the Crown court for sentencing that person is liable to:

- a maximum of 12 months imprisonment
- a fine
- both of the above

For more information see the [Bail Act 1976](#).

Related content

[Contents](#)

Refusal of bail

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office what happens when bail is refused.

[Schedule 1 of the Bail Act 1976](#) sets out the grounds for refusing bail to a defendant. Where bail is refused the defendant will be remanded in custody (held in custody).

Exceptions to right to bail

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:

- fail to surrender to custody
- commit an offence while on bail
- interfere with witnesses or otherwise obstruct the course of justice, whether in relation to themselves or any other person

The defendant need not be granted bail if:

- the offence is an indictable (a notice of the charges the accused will face) offence or an offence triable either way
- it appears to the court that they were on bail in criminal proceedings on the date of the offence

The defendant need not be granted bail if the court is satisfied that the defendant:

- should be kept in custody for their own protection or, if they are a child or young person, for their own welfare
- if they are in custody to pursue the sentence of a court or of any authority acting under any of the armed services acts

Similarly, the defendant need not be granted bail if the court is satisfied that it has not been practical to obtain sufficient information to make decisions since the institution (beginning) of the proceedings against the defendant.

The defendant also need not be granted bail if, having been released on bail or in connection with the proceedings for the offence, they have been arrested to pursue section 7 of this act.

For more information, see:

- [Schedule 1 Bail Act 1976](#)
- [The Bail Act 1976](#)

For more information about service acts, see:

- [Armed Services Legislation](#)
- [Armed Forces Act 2011](#)
- [Armed Forces Act 2006](#)
- [Armed Forces Discipline Act 2000](#)

Related content

[Contents](#)

Time limits on period of bail

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the different bail time limits and the processes to extend the time limits in England and Wales brought in by the [Policing and Crime Act 2017](#).

Under section 30A (commonly called 'street bail') of the Police and Criminal Evidence Act 1984 (PACE) the time limit or 'bail end date' in relation to a person is the last day of the period of 28 days. This period begins with the day after the day on which the person was arrested for the offence in relation to which bail is granted under section 30A having been authorised by a police officer of at least inspector rank.

Various sections have been inserted (by the [Policing and Crime Act 2017](#)) into Part 4 of PACE to cover limits on periods of bail without charge. There are various rules which apply regarding initial time limits and subsequent extensions in standard cases and cases which are designated as exceptionally complex by a prosecutor. For more details see:

- [applicable bail period: initial limit](#)
- [conditions which must be met for extension of time limit in sections 47ZD to 47ZG](#)
- [applicable bail period: extension of initial limit in standard cases](#)
- [applicable bail period: extension of limit in designated cases](#)
- [applicable bail period: first extension of limit by court](#)
- [applicable bail period: subsequent extensions of limit by court](#)
- [applications to court: withholding sensitive information](#)
- [sections to 47ZF to 47ZH: proceedings in magistrates' court](#)
- [sections 47ZF and 47ZG: late applications to magistrates' court](#)
- [applicable bail period: referral to Crown Prosecution Service \(CPS\) and periods in hospital](#)
- [release under provisions of PACE: re-arrest](#)

Applicable bail period: initial limit

[Section 47ZB of the Police and Criminal Evidence Act 1984 \(PACE\)](#) defines the initial limit of the applicable bail period.

The applicable bail period in relation to a person means:

- in a Serious Fraud Office case the period of 3 months beginning with the person's bail start date
- in a Financial Conduct Authority case or any other case, the period of 28 days beginning with the person's bail start date

The initial release on bail must be authorised by a police officer of at least inspector rank. A person's bail start date is the day after the day on which the person was

arrested for the relevant offence. Any extension of the initial limit must be authorised by a 'senior officer'. This is defined as a police officer of the rank of superintendent or above.

The applicable bail period may be extended under sections 47ZD to 47ZG or treated as extended under [Section 47 ZJ \(3\) PACE](#).

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Conditions which must be met for extension of time limit in sections 47ZD to 47ZG

[Section 47ZC of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies for the purposes of sections 47ZD to 47ZG of PACE. It specifies conditions which must be met for an extension of the applicable bail period to be agreed.

Condition A is that the decision maker has reasonable grounds for suspecting the person in question is guilty of the relevant offence.

Condition B is that the decision maker has reasonable grounds for believing either:

- further time is needed for making a decision as to whether to charge the person with the relevant offence
- further investigation is needed of any matter in connection with the relevant offence

Condition C is that the decision maker has reasonable grounds for believing either:

- that the decision as to whether to charge the person with the relevant offence is being made diligently and expeditiously
- that the investigation is being conducted diligently and expeditiously

Condition D is that the decision maker has reasonable grounds for believing that the release on bail is necessary and proportionate in all the circumstances (having regard to any bail conditions).

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applicable bail period: extension of initial limit in standard cases

If the applicable bail period in CFI cases under section 47ZB (1) (b) of the Police and Criminal Evidence Act 1984 (PACE) has not ended a senior officer (police officer of

the rank of superintendent or above) may authorise the applicable bail period to be extended under section 47ZD PACE. They can do this if they are satisfied that conditions A to D in section 47ZC PACE are met in relation to the person. The bail period will be extended so that it ends at the end of 3 months beginning with the person's bail start date.

The senior officer must arrange for the person or the person's solicitor to be informed that consideration is being given to extending the bail period and consider any representations made as a result of this. The senior officer must then arrange for the person or their legal representative to be informed whether an extension has been authorised. See [Section 63 Policing and Crime Act 2017](#) for more details.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applicable bail period: extension of limit in designated cases

[Section 47ZE of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies in CFI cases in relation to a person, if a senior officer (a police officer of the rank of superintendent or above) has authorised an extension of the applicable bail period for a person under [section 47ZD PACE](#).

A qualifying prosecutor may designate the person's case as being an exceptionally complex case (a 'designated case'). The qualifying prosecutor will be a senior Crown Prosecution Service (CPS) lawyer. This designation must be made before the applicable bail period in relation to the person has ended.

Subsequently a qualifying police officer (a police officer of the rank of commander or assistant chief constable or above) may authorise the applicable bail period to be extended so that it ends at the end of the period of 6 months beginning with the person's bail start date. Any such authorisation must be given before the applicable bail period in relation to the person has ended. To do this the qualifying police officer must be satisfied that conditions A to D in [section 47ZC PACE](#) are met in relation to the person in that designated case.

Before deciding whether to authorise an extension of bail, the qualifying police officer must arrange for the person or their lawyer to be informed that a determination is to be made and that police officer must consult a qualifying prosecutor. The qualifying police officer must also consider any representations made by the person or their lawyer. They must also arrange for the person or their lawyer to be informed whether a bail extension has been authorised.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applicable bail period: first extension of limit by court

[Section 47ZF of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies to CFI cases if:

- a senior officer (police superintendent rank or above) has authorised an extension of the applicable bail period in relation to the person under section 47ZD PACE
- an appropriate decision-maker (police officer of commander or assistant chief constable rank) has authorised an extension of the applicable bail period in relation to the person under section 47ZE PACE

Before the applicable bail period ends a qualifying applicant (a police officer or prosecutor) may apply to a magistrate's court for it to authorise an extension of the applicable bail period.

If the court is satisfied that conditions B to D in section 47ZC PACE it can extend the applicable bail period:

- so that it ends at the end of the period of 6 months, beginning with the person's bail start date where a senior officer has authorised an extension of the applicable bail period under section 47ZD PACE
- so that it ends at the end of the period of 9 months, beginning with the person's bail start date where an appropriate decision-maker has authorised an extension of the applicable bail period under section 47ZE PACE

If the court is satisfied that conditions B to D are met, but if the nature of the decision or further investigations mentioned in condition B means that the decision is unlikely to be made or investigations completed, then it can extend the applicable bail period:

- so that it ends at the end of the period of 9 months, beginning with the bail start date for a case where a police superintendent has authorised an extension under section 47ZD PACE
- so that it ends at the end of the period of 12 months, beginning with the bail start date for a case where a commander or an assistant chief constable has authorised an extension under section 47ZE PACE

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applicable bail period: subsequent extensions of limit by court

[Section 47ZG of the Police and Criminal Evidence Act 1984 \(PACE\)](#) covers situations where a court has already authorised an extension of the applicable bail period under section 47ZF of PACE.

Before that applicable bail period ends a qualifying applicant (a police officer or prosecutor) can apply to a magistrates' court for it to authorise an extension of the applicable bail period.

If the court is satisfied that conditions B to D are met in relation to the person, it may authorise the applicable bail period to be extended so that it ends at the end of the period of 3 months, beginning with the end of the current applicable bail period.

If the court is satisfied that conditions B to D are met in relation to the person, but that the nature of the decision or further investigations mentioned in condition B means a decision is unlikely to be made or the investigations completed unless an extension is granted, it may authorise the applicable bail period to be extended. In this case the applicable bail period would end at the end of the period of 6 months beginning with the end of the current applicable bail period.

Where a court has already authorised an extension of the applicable bail period under this section, a qualifying applicant can make further applications to extend bail.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applications to court: withholding sensitive information

[Section 47ZH of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies where a qualifying applicant (police officer or prosecutor) makes an application to a magistrates' court under section 47ZF or 47ZG PACE. That application is for the court to authorise the specified information to be withheld from the person and any legal representative of the person. The court may only grant an application if there are reasonable grounds for believing that the specified information is sensitive information.

Information is sensitive information if its disclosure would have one or more of the follow results:

- evidence connected with an indictable offence would be interfered with or harmed
- a person would be interfered with or physically injured
- a person suspected of having committed an indictable offence but not yet arrested for the offence would be alerted

- the recovery of property obtained as a result of an indictable offence would be hindered

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Sections 47ZF to 47ZH: proceedings in magistrates' court

An application to extend bail made to a magistrates' court under section 47ZF or 47ZG of the Police and Criminal Evidence Act 1984 (PACE) will be normally considered by a single justice of the peace on written evidence.

If a single justice of the peace (JP) considers the interests of justice need an oral hearing, then the application will be determined by two or more JPs. This applies where the effect of the application would be to extend the applicable bail period so that it ends at or before the end of the period of 12 months, beginning with the person's bail start date.

If the person on bail or the person who made the application requests an oral hearing then the application will be determined by two or more JPs. This applies where the effect of the application would be to extend the applicable bail period so that it ends after the end of the period of 12 months, beginning with the person's bail start date.

In both the above scenarios the applications will not be considered in open court and the JPs may direct that the person and any legal representative of the person should be excluded from any part of the hearing. This will only happen where the JPs are satisfied that there are reasonable grounds for believing sensitive information would be disclosed as part of the hearing.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Sections 47ZF and 47ZG: late applications to magistrates' court

[Section 47ZG of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies where an application to extend bail under section 47ZF or 47ZG is made to a magistrates' court before the end of the applicable bail period, but it is not practicable for the court to determine the application before the end of that period.

The court must determine the application as soon as is practicable. The applicable bail period is treated as extended until the application is determined.

However, if it appears that the application could reasonably have been made in time for it to be determined by the court before the end of the applicable bail period it can refuse the application. Magistrates have stated that they require at least 5 working days' notice before the end of the existing applicable bail period, in normal circumstances.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Applicable bail period and bail return date: referral to Crown Prosecution Service (CPS) and periods in hospital

[Section 47ZL of the Police and Criminal Evidence Act 1984 \(PACE\)](#) applies where a person is released on bail under section 37(7)(a) or 37C(2)(b) PACE to allow the prosecutor to decide whether there is sufficient evidence to charge a suspect.

The running of the applicable bail period in relation to the person does not begin (in the case of a first release on bail) or it is suspended (in any other case) at the point when a charging decision referral is made to the CPS.

If a file is sent to the CPS, the applicable bail period clock stops the day it is sent. When a file is returned from the CPS with a request for further information before a decision is taken on whether there is sufficient evidence to charge a suspect, this automatically starts the applicable bail period clock.

Where the applicable bail period is less than 7 days, you are automatically awarded 7 days to process the suspect. If there are more than 7 days on the clock, you can use all of the remaining applicable bail period. The custody officer has discretion to set a bail return date in line with the CPS' estimate about how long a charging decision will take in line with section 37(7B) and 47(4A) of PACE. In addition any suspect must be kept updated about their return dates and progress with your investigation.

If, at any time on the day on which the applicable bail period would end, the person is in hospital as an in-patient, the running of the applicable bail period is treated as having been suspended for any day on which the patient was in hospital as an in-patient.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Release under provisions of PACE: re-arrest

The Police and Criminal Evidence Act 1984 (PACE) has been amended by the Policing and Crime Act 2017, so that the various provisions of PACE that deal with

re-arrest after a release on bail extend the circumstances in which the power can be used. The powers of re-arrest can now be used where existing evidence has been analysed and that analysis could not reasonably have been carried out while the suspect was in detention.

This means that for the re-arrest without warrant of a person released under section 30A, 41(7), 42(10) and 43(18) PACE, an arrest can be made where there is new evidence available justifying arrest which came to light following release. An arrest of a person released under the same provisions can now also be made where an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release. It also applies exactly the same to re-arrest without warrant of a person released on bail and subject to a duty to attend at a police station under section 47(2) of PACE.

For more information see:

- Policing and Crime Act – pre-charge bail frequently asked questions
- [Policing and Crime Act 2017](#)

Related content

[Contents](#)

Grounds for bail in Scotland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about grounds for bail in Scotland.

In Scotland, bail is governed by the [Criminal Procedure \(Scotland\) Act 1995, Part III](#).

It is for the court to decide whether bail should be granted. As a result of the [Bail, Judicial Appointments etc. \(Scotland\) Act 2000](#), all crimes are bailable, although the nature and gravity of an offence remains a valid ground of opposition to bail.

Grounds for bail

In any proceedings where a person is accused of an offence, the following are grounds that may determine there is good reason for refusing bail. Any:

- substantial risk that the person might abscond or fail to appear at court as required, if granted bail
- substantial risk of the person committing further offences if granted bail
- substantial risk that the person might, in relation to themselves or any other person, if granted bail:
 - interfere with witnesses
 - otherwise obstruct the course of justice
- other substantial factor which appears to the court to justify keeping the person in custody

In assessing whether there is a good reason for opposing bail, the court must look at all material considerations (as far as they are relevant to a particular case) including:

- the nature (including the level of seriousness) of the offences before the court
- probable disposal (probable outcome) of the case if the person was convicted of the offences
- whether the person was subject to a bail order when the offences are alleged to have been committed
- whether the offences before the court are alleged to have been committed:
 - while the person was subject to another court order
 - while the person was on release on licence or parole
 - during a period for which sentence of the person was deferred
- the character and antecedents (in this context, details of the previous criminal history) of the person, in particular:
 - the nature of any previous convictions of the person (including convictions by courts outside the European Union)
 - whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise)
 - whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise)

- whether the person is serving or recently has served a sentence of imprisonment in connection with a matter above
- the associations and community ties of the person

For more information regarding the grounds for bail, see:

- [Criminal Procedure \(Scotland\) Act 1995 Section 23C](#)
- [Crown Office and Procurator Fiscal Service Book of Regulations Chapter 8 - Bail](#)

Related content

[Contents](#)

Entitlement to bail in Scotland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about entitlement to bail and restrictions on bail in certain solemn cases in Scotland.

Entitlement to bail

It is for the court to decide whether bail should be granted.

As a result of the [Bail, Judicial Appointments etc. \(Scotland\) Act 2000](#), all crimes are bailable, although the nature and gravity of an offence remains a valid ground of opposition to bail. So, bail is to be granted to an accused person except where there is a good reason for refusing bail.

The attitude of the prosecutor towards the question of bail does not restrict the court in any way, although the court will be informed by the prosecutor's attitude. The court must make the final decision about granting bail regardless of the prosecutor's view. To determine whether to grant, the court may request the prosecutor (or the accused person's representative) to provide it with relevant information.

The Procurator Fiscal (PF) should, where possible, be in a position to provide any information requested by the court. In particular, the PF must be in a position to provide:

- the schedule of previous convictions for the accused person
- details of the charges relating to any bail order being considered
- a short statement outlining the circumstances of the case, similar to the information contained in a custody statement prepared where the PF intends to oppose bail

As the information would also have to be disclosed to the accused, the PF must not provide details of any:

- operational matters to the court
- intelligence contained within the standard prosecution report

Also, the PF is not obliged to offer to the court a view on the risk of something occurring if the accused person is admitted to bail (although such an assessment may form part of the PF's opposition to bail).

Once the PF has decided to raise proceedings against an accused person, the following options are open to the court in terms of the accused's liberation:

- ordain (order) the accused to appear (where it is felt that no bail conditions are needed)
- admit the accused to bail (release on bail) on standard bail conditions (for more information, see: [Bail Conditions in Scotland](#))

- admit the accused to bail, subject to both the standard bail conditions and certain additional or special conditions (for more information, see: [Bail Conditions in Scotland](#))
- remand (keep) the accused in custody

In summary matters, the PF must consider whether:

- release on bail is required
- the accused need only be ordained to appear at subsequent diets (hearings)

For more information, see: Criminal investigations: court proceedings.

In summary proceedings, where there is no information to suggest that there will be a risk to the public or a risk to the course of justice through, for example, offending on bail or failure to appear, there may be no need to make the accused's release subject to their acceptance of bail conditions.

PFs must consider the possibility of asking the court to ordain the accused, to appear even in situations where the person has been released on an undertaking by the police to appear at court and conditions have been attached to that undertaking by the police.

An accused is only considered for release on bail if it is intended to 'hold' them to their acceptance of the conditions of bail, and action will be taken if they breach the conditions.

For more information, see: [Crown Office and Procurator Fiscal Service Book of Regulations Chapter 8 - Bail](#)

Restrictions on bail in certain solemn cases

There are statutory restrictions on bail in certain solemn cases contained within [Section 23D Criminal Procedure \(Scotland\) Act 1995](#). When a person is in solemn proceedings accused of:

- a violent or sexual offence and has a previous conviction on indictment for a violent or sexual offence - bail is only granted if there are exceptional circumstances
- a drug trafficking offence and has a previous conviction on indictment for a drug trafficking offence - bail is only granted if there are exceptional circumstances

For section 23D, a conviction on indictment includes a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence, and a conviction in a member state of the European Union (other than the UK) which is equivalent to conviction on indictment for an equivalent offence.

Related content

[Contents](#)

Bail conditions in Scotland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about bail conditions in Scotland.

All crimes and offences in Scotland are bailable. Whenever the court grants or refuses bail, it will state its reasons.

The court must also state why it considers that conditions are unnecessary where the court grants:

- bail to a person accused of a sexual offence as defined in section 210A (10) and (11) of the Criminal Procedure (Scotland) Act 1995
- it without imposing further conditions to make sure the accused observes the standard conditions of bail

It is not lawful to grant bail or release for a pledge or deposit of money, and:

- a release on bail may only be granted on conditions which do not include a pledge or deposit of money except as defined in the limited circumstances of Section 24(6) of the Criminal Procedure (Scotland) Act 1995
- liberation may be granted by the police under section 21, 22 or 43 of the Criminal Procedure (Scotland) Act 1995

In granting bail, the court or, as the case may be, the Lord Advocate imposes on the accused:

- the [standard conditions](#)
- any further conditions as the court, or the Lord Advocate, considers necessary to secure that:
 - they observe the standard conditions
 - the accused makes themselves available for participating in an identification parade or other identification procedure or for allowing any finger print, impression or sample to be taken from them

The standard bail conditions are conditions that the accused:

- appears at the appointed time at every diet (all Scottish court hearings are called 'diets') relating to the offence that they are charged for which they are given due notice (that is notice which is adequate in law, and sufficient in time, and likely to reach the defendant), or:
 - at which they are required by the Criminal Procedure (Scotland) Act 1995 to appear
- does not:
 - commit an offence while on bail
 - interfere with witnesses or otherwise obstruct the course of justice whether in relation to themselves or any other person

- behave in a manner which causes, or is likely to cause, alarm or distress to witnesses
- make themselves available for helping enquiries or making a report to assist the court in dealing with them for the offence they are charged for

And if the offence is one to which section 288C of the Criminal Procedure (Scotland) Act 1995 applies, they must only contact the complainer through their solicitor in relation to the details of the offence.

For more information, see:

- [Section 210A Criminal Procedure \(Scotland\) Act 1995](#)
- [Section 24 Criminal Procedure \(Scotland\) Act 1995](#)
- [Section 21 Criminal Procedure \(Scotland\) Act 1995](#)
- [Section 22 Criminal Procedure \(Scotland\) Act 1995](#)
- [Section 43 Criminal Procedure \(Scotland\) Act 1995](#)
- [Section 288C Criminal Procedure \(Scotland\) Act 1995](#)

Related content

[Contents](#)

Police liberation in Scotland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about police liberation (release on conditions) in Scotland, the initial decision by the Procurator Fiscal (PF) to prosecute or liberate and criminal justice social work bail services.

Police liberation

By virtue of [section 22 of the Criminal Procedure \(Scotland\) Act 1995](#), where a person (other than a child) has been charged with an offence which may be tried summarily, the police officer who charged the person or the officer in charge of a police station (where an immigration officer has charged the person) has 3 options. Either to:

- detain the accused in custody
- liberate the accused on a written undertaking
- liberate the accused for report

If the police consider that the Procurator Fiscal (PF) is likely to proceed on petition, the police must not liberate the accused.

If the police decide to liberate the accused on a written undertaking, the accused is required to appear at a specific court on a specified day at a specified time.

For more information, see: [Section 22\(1C\) Criminal Procedure \(Scotland\) Act 1995](#).

The accused may also be required to comply with certain standard conditions of bail imposed by the police or any further conditions the police officer considers necessary.

For more information, see: [Section 22\(1D\) Criminal Procedure \(Scotland\) Act 1995](#).

Initial decision by the Procurator Fiscal to prosecute or liberate

If an accused person has been apprehended and detained in custody, the PF can choose to liberate that person after considering the available evidence and the full circumstances of the case. The PF can do this either before or after the case has been formally reported. Liberation at this stage does not prevent the PF from raising proceedings in relation to the same matter at any point in the future, provided that the PF has not advised either the accused or the legal representative that there will be no proceedings.

However, where the PF is satisfied that there is sufficient evidence against the accused person detained in custody, and that it would be in the public interest to prosecute that person, the matter of bail must be considered. On the first occasion a

person appears on petition or summary complaint, the sheriff or judge will either admit or refuse to admit that person to bail.

For more information, see: [Crown Office and Procurator Fiscal Service Book of Regulations Chapter 8 - Bail](#).

Bail services

The local criminal justice social work services provide a range of services to assist the court. This can include bail information services which can provide:

- more detailed information about the alleged offender
- their circumstances

In addition, bail supervision services can be used to provide supervision and support in the community. Both of these services can:

- monitor the accused
- help support their compliance with their bail conditions

Related content

[Contents](#)

Changing bail, refusal of bail and bail offences in Scotland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about changing bail, refusal of bail and bail offences in Scotland.

Changing bail

A court can review its bail decision or its decision about the conditions where it has:

- not bailed a person
- bailed a person but they did not accept the bail conditions imposed
- required money to be deposited but the person did not deposit it
- bailed a person and they want conditions changed or removed

In order for the court to review that decision, however, the circumstances of the person must have changed materially or the person must put before the court material information which was not available to it when its decision was made.

Before the court makes its decision the court gives the prosecutor an opportunity to be heard.

For more information, see: [Criminal Procedure \(Scotland\) Act 1995 Section 30](#).

The prosecutor may also apply to the court to review its decision at any time, after a court has granted bail to a person, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person.

For more information, see: [Criminal Procedure \(Scotland\) Act 1995 Section 31](#).

Refusal of bail

Bail will be refused if the sheriff thinks there are good reasons why an accused should not be granted bail.

Common reasons include a substantial risk that the person will:

- abscond
- not attend at court
- commit further offences
- interfere with witnesses
- otherwise obstruct the course of justice

For more information, see:

- [Criminal Procedure \(Scotland\) Act 1995 Section 23C](#)

- [Criminal Procedure \(Scotland\) Act 1995 Section 23D](#)

The prosecution can appeal against a decision to grant bail. The procedure demands:

- consideration by the high court promptly
- a written notice of appeal is given to the opposite party immediately

It is possible for the accused to appeal a decision to refuse bail. The procedure is the same as that for the prosecution appealing a decision to grant bail.

For more information, see: [Criminal Procedure \(Scotland\) Act 1995 Section 32](#).

Bail and police liberation offences

If an individual is released on bail or liberated (released with conditions) by police, it is an offence if they fail to:

- appear at court for any hearing of which they have been notified
- adhere to any conditions which have been imposed by the court

Breach of bail is a criminal offence and can attract:

- imprisonment of up to either:
 - 60 days if dealt with by a justice of the peace court
 - 12 months if dealt with by a sheriff court
- a fine of £1000

For more information, see: [Criminal Procedure \(Scotland\) Act 1995 Section 27](#).

Related content

[Contents](#)

Police bail in Northern Ireland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about police bail procedures in Northern Ireland.

In Northern Ireland the issue of bail is governed by:

- [The Criminal Justice \(Northern Ireland\) Order 2003](#)
- [The Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)
- [The Magistrates' Courts \(Northern Ireland\) Order 1981](#)

Police bail

If a person is arrested with, or without, a warrant except if it is a warrant endorsed for bail under [article 38\(1\) of the Police and Criminal Evidence \(Northern Ireland\) Order 1989](#) (PACE (NI) order 1989), the following applies:

- if the custody officer determines that they do not have sufficient evidence to charge the suspect they may detain that person:
 - to secure or preserve evidence
 - for questioning
- if there is no need to detain the suspect for those purposes, or if the detention period has elapsed, then the custody officer will release the suspect with, or without bail

For more information, see: [article 38\(2\) PACE \(NI\) order 1989](#).

The period for which they can be detained pre-charge as above is governed by the provisions of the PACE (NI) order 1989.

It is ordinarily a maximum of 24 hours after the accused arrives at the police station. A Superintendent, or above, can extend this period to 36 hours. Beyond that, an application to the court can be made for a warrant for further detention for an additional period of up to 36 hours. Finally, an application can be made for an extension of that warrant for a period of up to 36 hours, as long as the total period in detention does not exceed 96 hours.

For more information, see:

- [article 42 PACE \(NI\) order 1989](#)
- [article 43 PACE \(NI\) order 1989](#)
- [article 44 PACE \(NI\) order 1989](#)
- [article 45 PACE \(NI\) order 1989](#)

If the custody officer determines that they have sufficient evidence to charge, they have the option of not charging the suspect but simply releasing that person with, or without, bail.

For more information, see: [article 38\(8\) PACE \(NI\) order 1989](#).

If the custody officer decides to charge the person, then they must release them with, or without, bail unless any of the restrictions within article 39(1) PACE (NI) order 1989 apply.

For more information, see: [article 39\(1\) PACE \(NI\) order 1989](#).

Where the suspect or accused is released on bail in any of those circumstances, then they may have terms of bail imposed on them to make sure that they:

- surrender to custody
- do not:
 - commit further offences while on bail
 - do not interfere with witnesses
 - do not otherwise obstruct justice

For more information, see: [article 48\(3D\) PACE \(NI\) order 1989](#).

In all cases, the duty is to surrender to custody, either at a magistrates' court or a police station, at a time and location appointed by the custody officer.

For more information, see: [article 48\(1\) PACE \(NI\) order 1989](#).

When an accused returns to a police station to answer to bail, then consideration of release on bail can begin again.

For more information, see: [article 38 PACE \(NI\) order 1989](#).

The net effect of this is that, whether or not an arrested person is charged, if there is no objection to bail (whether on terms or not), then they can be bailed to attend a police station.

When they answer that bail, then they can again be released to attend the station at a later date. At any stage in these return attendances, the cycle can be broken and the person charged (if they haven't been already) and bailed to attend court.

Where a person is held in custody following charge where one of the restrictions in article 39(1) PACE (NI) order 1989 applies, then the police must make sure that person is brought before a court as soon as practicable and, subject to certain days which are excepted, not later than the following day.

In circumstances where this is required the police must produce the defendant before a magistrates' court no later than the day after the defendant is charged.

This is to make sure that an independent and impartial judge can:

- review the lawfulness of the detention, and determine whether the defendant should continue to be:

- detained in custody until their trial (remanded in custody)
- released until their trial (remanded on bail)
- release the accused without remand conditions

For more information, see: [Article 47\(1\) The Magistrates' Courts \(Northern Ireland\) Order 1981](#).

Related content

[Contents](#)

Entitlement to bail and bail conditions in Northern Ireland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about entitlement to bail and bail conditions in Northern Ireland.

The law relating to whether a person is to be remanded in custody or remanded on bail is the same regardless of whether the application is made to the:

- Magistrates' court
- Crown court
- High court

Where a defendant applies for bail, the judge makes their decision in line with the law, having considered:

- all the relevant factors relating to the individual circumstances of the offence being charged
- the individual circumstances of the defendant

Entitlement to bail

Whilst there is no statutory presumption of a right to bail in Northern Ireland, it is nevertheless a presumption at the heart of any bail application.

The starting point is that bail should be granted unless the prosecution establishes that one of the European Court of Human Rights (ECHR) grounds of objection applies, which are embodied in domestic case law and, specifically, in the case of [Donaldson's Application for Bail \(2002\) NI Queen's Bench Division \(68\)](#).

The grounds of objection are that the defendant will:

- fail to appear for trial
- interfere with the course of justice
- commit further offences
- pose a risk to the preservation of public order

The above 4 points are the only grounds on which court bail can be lawfully refused. The safety of the accused is not an actual ground of objection to court bail. However, a police custody officer may decline to release an accused from detention after charge if they consider it necessary for the accused's protection. This is provided for under Article 39(1)(a)(iv) of the Police and Criminal Evidence Act (PACE) (NI) Order 1989. For more information, see [article 39\(1\)\(a\)\(iv\) PACE \(NI\) order 1989](#).

Bail cannot be refused simply because the defendant has been charged with a very serious offence. However, the seriousness of the offence can be taken into account as a factor in deciding if one of the grounds of objection to bail exists.

The burden of proving to the judge that one or more of the grounds of objection to bail exists rests on the prosecution.

If the prosecution fails to prove this, the:

- presumption in favour of bail will succeed
- judge will remand the defendant on bail

Bail conditions

If a judge is satisfied that the prosecution has proved that one or more of the grounds for refusing bail applies, they must assess whether there are any bail conditions that could be imposed to sufficiently reduce the relevant risk.

Where a judge is satisfied that a condition, or combination of conditions, would sufficiently reduce the risk they will release the defendant on bail subject to those conditions.

Examples of some bail conditions could be:

- the defendant has to be at an approved address between certain times (known as a curfew)
- the defendant may not be allowed to:
 - go to certain places
 - see certain people
 - drink alcohol
- electronic tagging

The above is not a complete list of conditions, and any conditions chosen by the judge are dependent on:

- the individual circumstances of each case
- the risk the judge is trying to reduce

Whatever decision is made by the judge regarding bail, they state in open court their reasons for:

- imposing conditions (if conditions have been set) in relation to the risk they are seeking to reduce
- refusing bail, if that is the outcome

If a defendant is granted bail

At court a defendant must always enter into a recognizance (a bond between them and the court) to pay money if they fail to attend for trial or break the conditions of bail.

For more information see: [Article 47 The Magistrates' Courts \(Northern Ireland\) Order 1981](#).

Additionally, a person other than the accused can also act as a surety, giving an undertaking to the court whereby they will forfeit a specified sum of money if the defendant fails to attend for trial or breaches their bail conditions.

Where someone else acts as surety for an accused person in court the accused themselves must have entered into a recognizance first.

This is different from police bail under [article 48\(3C\) PACE \(NI\) order 1989](#) where either the accused or another person may be required to give security for their surrender to custody before release on bail. This means there is no absolute requirement for an accused person to give security when bailed by the police.

Related content

[Contents](#)

Bail applications, appeals and offences in Northern Ireland

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about bail applications following remand in custody, bail appeals and bail offences in Northern Ireland.

Bail applications following remand in custody

If a defendant is remanded in custody and held in prison they may apply:

- for bail again, but usually only when there has been a change in circumstances since they last applied for bail
- on compassionate grounds to be released for a short period for a reason such as a family funeral, however:
 - after this they cannot make any further applications unless they can persuade the judge that something about the case, or their personal circumstances has changed

The judge must grant bail unless the prosecution can show that there is a specific risk.

If the court grants bail the:

- public prosecutor may appeal against the decision
- appeal will be heard in the High court

Appeals

If bail is refused in the Magistrates' court or Crown court the defendant has the right to make a fresh application for bail to the High court, where a new hearing takes place independent of the bail application already heard in the magistrates' or Crown court.

For more information, see: [Article 148\(2\) The Magistrates' Courts \(Northern Ireland\) Order 1981](#).

If bail is granted in the Magistrates' court the prosecution may appeal the decision to the High court, where there will be a fresh bail hearing independent of the original bail application in the magistrates' court.

The prosecution must give verbal notice of their intention to appeal against a grant of bail at the end of the magistrates' court hearing, and then serve written notice on the court and bail applicant, within 2 hours of the end of the proceedings. On receipt of the verbal notice the court must remand the accused in custody until the appeal is

determined but if the prosecution fails to serve either or both of the written notices within the time limit, then the appeal process is deemed to have been concluded.

If an appeal is lodged, the defendant will be detained until the High court has come to a decision regarding the appeal.

Bail offences

Under [The Criminal Justice \(Northern Ireland\) Order 2003](#), failure to surrender to bail is a criminal offence.

Bail offences can be heard in either:

- Magistrates' court where the maximum sentence for offences can be:
 - 12 months imprisonment
 - a fine not exceeding £5000
 - both of the above
- Crown court where the maximum sentence for offences can be:
 - 3 years imprisonment
 - an unlimited fine
 - both of the above

For more information see: [Article 5 of The Criminal Justice \(Northern Ireland\) Order 2003](#).

Related content

[Contents](#)