

SI0219

# Bail

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This Service Instruction explains the Police Service of Northern Ireland’s approach to the grant of bail within custody suites.

This instruction also outlines the approach to monitoring those persons who have been released on bail, whether by Police or a Court, with conditions imposed.

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## 1. Introduction

The Police Service of Northern Ireland (PSNI) is responsible for granting bail in accordance with Articles 38, 39 and 48 of the Police and Criminal Evidence (NI) Order 1989 [PACE].

The PSNI is also responsible for the management of those persons released on bail, whether by a Custody Officer in a Police Station or by a Court.

Bail after arrest is an effective investigative tool to minimise the amount of time a person remains in custody, whilst an investigation or prosecution is conducted. The alternative to bail is for the person to remain in custody pending the conclusion of the investigation or the prosecution.

In order to minimise the risk posed by the person when released conditions may be imposed. The PSNI recognises that the imposition of conditions has consequences for the individual.

## 2. Aims

The aim of this instruction is to outline the PSNI approach to the grant of bail after

arrest and to outline the management of persons on bail granted by either Police or a Court.

The PSNI will take a proportionate, risk based approach to both issues. The PSNI will seek to ensure that those who are identified as posing the greatest risk to the public are managed appropriately.

The PSNI will seek to minimise the amount of time a person is on bail, where possible investigations should be completed within the first period of bail.

This instruction is intended to assist Officers in making decisions regarding bail by considering the following:

- Should the person be released on bail before charge? – Article 38
- Should the person be released on bail after charge? - Article 39
- Is it necessary to impose bail conditions? – Article 48
- Having released a person on bail conditions how should compliance with bail be monitored?

### 3. Purpose of Bail

Bail is granted when a person who is accused or suspected of committing an offence is released from custody either by a Court or a Custody Officer. The person will be required to reappear at a notified time, date and place and subject to conditions. For the purposes of this instruction '*bail conditions*' do not include the date which the person is required to reappear at a Court or Police Station.

The purpose of bail is to reduce the amount of time a person is detained in custody pending the outcome of the criminal proceedings against them. It allows sufficient time for investigators to complete enquiries and for Courts to conduct trials.

There are two alternatives to bail:

- **Remand in custody** –this is appropriate when the risk posed by the person cannot be safely managed by imposing bail conditions.
- **Release without conditions** – this is appropriate where the risk posed by the person does not necessitate the imposing of bail conditions or the person does not need to return at a later date.

### 4. Bail before Charge

Bail may be granted to a person who has been arrested for an offence before they are charged. This is sometimes referred to as investigative bail or pre-charge bail.

[Article 38\(2\) of PACE](#) requires that if a Custody Officer determines they do not have sufficient evidence to charge the person with the offence for which they are arrested the person will be released either on bail or without bail unless it is necessary to keep the person in custody to secure and preserve evidence or obtain such evidence by questioning.

This involves five decisions by a Custody Officer:

- Is there sufficient evidence to charge?
- If not is keeping the person in custody necessary to secure and preserve evidence by questioning?
- If not should the person be released on bail or without bail?
- If they should be released on bail – are conditions required?

- If conditions are required – what conditions are required to mitigate any risk identified?

## 5. Bail after Charge

Bail may be granted to a person who has been charged with an offence. This is sometimes referred to as post-charge bail.

[Article 39\(1\) of PACE](#) requires that the Custody Officer shall release a person from custody, either with or without bail unless certain conditions are met. This is a presumption in favour of bail. These conditions are different for adults than juveniles.

This involves three decisions by a Custody Officer:

- Is the persons release required? - Article 39(1) PACE
- If they should be released on bail – are conditions required?
- If conditions are required – what conditions are required to mitigate any risk identified?

## 6. Before charge – Is there Sufficient Evidence to Charge?

The question of whether there is sufficient evidence to charge a person arises when they are initially brought to a Police Station and must be reviewed periodically in accordance with [Article 41 of PACE](#).

In determining whether there is sufficient evidence to charge a person, the Custody Officer will determine whether the case is ready to proceed to prosecution. In particular the Custody Officer will consider:

- Has the investigation secured sufficient evidence addressing the points to prove for the offence?
- Is that evidence ready for prosecution?

## 7. After charge – Is the persons Release Required?

If the Custody Officer decides there is sufficient evidence to charge a detained person they must also consider if their release is required. [Article 39 of PACE](#) contains a presumption in favour of bail unless certain conditions are met.

## **8. Before and After Charge – Should the Person be Released on Bail or Without Bail?**

In deciding if a person should be released on bail or without bail there are a number of relevant issues that should be researched by the investigating Officer and considered by the Custody Officer:

- The nature and seriousness of the offence;
- The character, antecedents, associations and community ties of the person;
- The person's history in relation to complying with previous grants of bail;
- The strength of the terms of bail previously; and
- Any other considerations which appear to be relevant.

Having considered these issues if the Custody Officer decides release on bail is appropriate they may impose such conditions as necessary to prevent the person from:

- Failing to surrender to custody;

- Committing an offence whilst on bail;
- Interfering with witnesses or obstructing the course of justice.

Conditions may not be imposed for any other purpose.

## **9. Deciding Appropriate Bail Conditions**

Bail conditions are a restriction on a person's family and private life; therefore they must be lawful, pursue a legitimate aim, necessary and be proportionate to the aim.

Conditions should not prohibit conduct which is itself an offence. Guidance on imposing bail conditions including precedent bail conditions is available on the Operational Custody Point page.

## **10. Records**

Details of when a person is required to re-appear along with the conditions imposed, if any, must be recorded. The person should be given a copy of those details upon request. This should be done as

soon as practicable after the record is made.

## 11. Varying Bail

Where bail has been granted by a Custody Officer at a Police Station it may be varied by another Custody Officer at that station or by a Magistrates' Court. There is no power for a Police Officer to vary bail granted by a Court - that requires an application to the Court which granted bail.

Changes to the terms of bail granted by Police may be considered if:

- The person bailed requests that the conditions of their bail be varied;
- The person is unable to attend by reason of illness or some other unavoidable cause the Custody Officer may extend bail; or
- The person bailed applies to a Magistrates' Court to vary the conditions of bail.

In each case the Custody Officer or Court may impose new conditions or more onerous conditions on the person, this

includes varying the date which the person shall re-appear.

Where bail is varied the person should be given a record of their bail upon request. Where a person is unable to read or understand that record - it should be read to the person and their understanding confirmed.

## 12. Proportionate Use of Bail Before Charge

Bail involves restrictions on the person's family and private life therefore investigating Officers must conduct their enquiries expeditiously. In cases where evidence is readily available (see [Appendix B](#)) this should be completed within the first period of bail which will be a maximum of 28 days.

If there is a requirement to re-bail or extend bail for matters where evidence is readily available this should be reviewed by an Inspector. This review should consider:

- The enquiries conducted to date;
- Enquiries conducted during the first period of bail;



- Whether there has been any delay in completing enquiries;
- What enquiries remain outstanding;
- When they are likely to be completed;
- Whether it is necessary for the person to remain on bail; and
- If they are to remain on bail are any changes to the conditions of bail required.

Inspectors will conduct reviews as below:

Investigation	Reviewing Inspector
Detective led investigations	Detective Inspector
Case Progression Team (CPT) or Volume Crime Support Team (VCST) investigations	CPT or VCST Inspector
Investigations where Gatekeeper has been consulted on other matters	Gatekeeper Inspector
All other cases	Duty Inspector

For investigations where evidence is not readily available (see [Appendix B](#)) Officers should bail the person for a realistic period of time to allow their enquiries to be completed. This period must not be excessive and should be based on the nature of enquires required, the length of time to complete them and any representations made by the person on bail or their legal representative. Investigating Officer, Supervisors and Custody Officers shall endeavour, where possible, to avoid persons returning to a Police Station solely for the purpose of fixing a new bail date.

Where they will not be dealt with on a date the person should be contacted and advised of this in advance, offered the opportunity to fix a new date, and provided with a record of the new date in accordance with Sections [10](#) and [11](#). New dates to reappear shall be agreed in advance with Custody Suites.

Where bail is varied the person should be given a record of their bail upon request. Where a person is unable to read or understand that record - it should be read to the person and their understanding confirmed.

### 13. Management of Persons on Bail

Where a person has been released either on Police or Court bail the management of that person during their period of bail will be determined by:

- The bail conditions imposed; and
- The risk posed by that person.

If a person has been released with a curfew condition they shall be actively managed through an assessment of the risk posed by that person and bail checks carried out during the curfew period.

Investigating Officers will complete a Bail Risk Assessment Matrix ([Appendix A](#)) for all persons with a curfew condition, whether imposed by a Custody Officer or a Court. This will assess the risk posed by the person and determine the appropriate frequency for bail checks. These checks will be generated by NICHE task automatically. A record should also be made on the Bail Log of all bail checks by the Officer who completed the bail check.

Where additional conditions are imposed alongside the curfew condition, checking

Officers are expected to check all conditions. For example a person on curfew also subject to a no alcohol condition should have both conditions checked at the same time.

If a person is released on a condition to attend at a Police Station at regular intervals, compliance with that will be monitored. This process will be a managed via Bail Logs on NICHE. When a person attends a Police Station as required by bail this must be recorded in the appropriate NICHE Bail Log.

If a person is released to reappear at a Police Station on a date whether or not they return will be monitored. This will be done by means of electronic tasks and auditing. Ten days before a person is due to re-appear the Investigating Officer will be asked to confirm whether the person is still required to re-appear or not. The day after a person was due to re-appear NICHE will check records to confirm if the person did re-appear.

If a person is released subject to electronic curfew monitoring this will be reactively monitored. Bail checks will be generated in response to information from the system

operator, or other sources, that the person is in breach of that curfew.

Other bail conditions will be monitored in response to information that the person has breached the condition. This primarily relates to conditions which are not fixed in time or location, such as no contact with a specified person or group of persons, not to consume alcohol or not to do certain acts. Those conditions will be monitored reactively on the basis of information suggesting the condition has been breached.

This information may be received from the public, other Police Officers or criminal justice partners. This will be done in line with existing contact procedures and will normally result in an Officer being assigned to investigate that breach.

## **14. Action upon Breach of Bail**

Where a breach of bail is detected the actions outlined in [SI0118 Wanted Persons](#) Section 5 - 'Breach of Bail' must be complied with.

Appendix A Bail Risk Assessment Matrix

Offence Type	1	2	3	4	5	
Most Serious Offences – homicide, terrorism, rape, serious violence offences						5
Violent Offences sexual offences, offences involving weapons						4
AOABH, drugs offences with intent						3
Driving offences with injury, common assault, drugs offences (not w/intent), hate crime						2
Regulatory offences – no insurance, driving offences (non-GBI)						1
<b>Likelihood to breach conditions</b> <b>Likelihood to commit offences</b>	No history of breaching bail, offending on bail, breaching court orders, no criminal record	Criminal record or history of offending on bail, breaching bail or court orders PPANI Category 1 offender Former ROU nominal	4 or more of bail breaches, committing offences on bail or breaching court orders Offends against vulnerable persons On licence	High risk DV offender Current ROU nominal, PPANI Category 2 offender 3 or more serious violence convictions (GBH and above)	PPANI Category 3 offender, Registered Sex Offender, Subject to ROSHO / VOPO / TPIM / TNO 3 or more serious violence convictions AND significant other offending	
<b>Additional Factors</b>	<b>Vulnerable Victim</b>	<b>2</b>	<b>Community Tensions</b>	<b>2</b>	<b>Confidence</b>	<b>1</b>

## Appendix B Bail Limits Guidance

In an investigation where evidence is readily available the enquiries to obtain that evidence should be completed within the first period of bail which will be a maximum of 28 days. Where there is a requirement to re-bail or extend bail for investigation where evidence is readily available this should be reviewed by an Inspector.

In an investigation where evidence is not readily available the first period of bail should be an appropriate amount of time for the evidence to be made available. Care should be taken to avoid excessive or protracted periods of bail.

Below is guidance to distinguish between these situations, however given the varied nature of investigations each case should be considered on their own merits. Officers may be required to justify why evidence is not readily accessible.

Evidence Readily Available	Evidence NOT Readily Available
Investigations involving single suspects and a single witness;	Investigations requiring the examination of IT equipment;
Investigations not requiring forensic or eCrime submissions;	Investigations requiring forensic examination or evidence;
Most road traffic offences;	Investigations where there are a number of witnesses that cannot practicably be spoken to within 28 days;
Most volume crime matters that do not meet the evidence not readily available criteria;	Investigations where blood alcohol results are required;
	Investigations where there are protracted enquiries with external organisations;
	Investigations where there are a number of other suspects.

## **Appendix C Contact Us**

### **Service Instruction Author**

Criminal Justice Branch

### **Branch Email**

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