



# **PUBLIC SAFETY FIRST** **REDUCING THE RISK** **OF OFFENDING BY** **SUSPECTS ON BAIL**

**August 2008**

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# CONTENTS

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<b>FOREWORD BY NICK HERBERT</b>	<b>3</b>
<b>1. SUMMARY OF OUR PROPOSALS</b>	<b>4</b>
<b>2. BAIL ISN'T WORKING</b>	<b>6</b>
<b>3. PUBLIC SAFETY FIRST</b>	<b>7</b>
3.1 The right to bail in murder proceedings	
3.2 Convicted, unsentenced prisoners	
3.3 Persistent and prolific offenders	
3.4 Bail offenders	
3.5 Dangerous offenders	
<b>4. IMPROVING ENFORCEMENT</b>	<b>13</b>
4.1 A new offence: breach of bail	
4.2 Better information	
4.3 Monitoring compliance with bail conditions	
4.4 Housing of bailed suspects	
<b>5. ANNEX</b>	<b>20</b>
Offences under the law of England and Wales covered by Schedule 15A of the Criminal Justice Act 2003	
<b>6. REFERENCES</b>	<b>21</b>

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# FOREWORD

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In February 2008, the Conservative Party published a consultation on bail with a view to reforming the operation of the Bail Act and improving public safety. Following consultation with the judiciary, police, legal practitioners and victims of crime, we are now bringing forward proposals to tighten the bail laws and put public safety first.

We have been explicit that we want to protect, and where possible enhance, judicial discretion as a cornerstone of the English legal system. We also recognise the vital need to safeguard the presumption of innocence which has been a long-standing feature of English Common Law. Throughout we have sought solutions that will respect our traditions of liberty, maintain the confidence of those who work with offenders and suspects, and ensure that bail is focused on public protection.

Bail decisions based on the facts of individual cases must continue to be made by the courts. But politicians have a responsibility to provide the right legislative framework which reflects the priorities of our communities. There is justifiable public concern not only that too many criminal suspects are bailed and then left free to commit more crimes – including the most serious – but that when suspects breach bail they face weak sanctions, or none at all.

After evaluating the operation of the Bail Act and the statistics on bail, we are concerned that the current rules are flawed. They allow too many violent and persistent offenders to receive bail who then too often fail to comply with the conditions. The effect is that more crimes are committed, victims are created unnecessarily, and a signal is sent out that the system is weak. We want to make certain that when courts decide on bail, public safety is an explicit consideration, and when bail conditions are applied, they are properly enforced.

These changes will effectively bring the bail laws in England and Wales broadly into line with Scotland where breach of bail is already a free-standing criminal offence and where new bail laws came into force in December 2007 providing for many similar measures to the ones we propose. Not all of the changes we propose will require legislation: some may be achieved by way of new practice directions issued to courts. A future Conservative Government would immediately consult with the judiciary to design the most effective approach to ensure these policy proposals are implemented.

Our bail proposals will enhance public safety while respecting the rights of the accused. They will provide criminal justice agencies with better information. They will send a clear signal that abuses of bail will not be tolerated. And they will help rebuild public confidence in the bail process. Together with our prisons and sentencing reforms, outlined in Prisons With A Purpose (March 2008),<sup>1</sup> these new Conservative policies form part of a comprehensive approach to improve the criminal justice system and make Britain safer.

**NICK HERBERT MP**  
Shadow Secretary of State for Justice

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# 1. SUMMARY OF OUR PROPOSALS

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**Two main areas of bail law require urgent attention - the decision whether to bail or to remand a defendant in custody, and the enforcement of conditions when a suspect is bailed.**

## THE DECISION TO BAIL

Existing rules allow too many violent and persistent offenders to receive bail. We therefore propose significant changes to the Bail Act, including:

- public safety to be an explicit consideration in bail decisions;
- a strong presumption against bail in murder cases (subject to judicial discretion in exceptional circumstances);
- denial of bail for those previously convicted of the most serious offences (subject to judicial discretion in exceptional circumstances);
- persistent offenders to lose the benefit of the presumption of bail, and
- those convicted of bail offences to lose the benefit of the presumption of bail.

## ENFORCEMENT OF BAIL CONDITIONS

The current framework for enforcement is seriously deficient with inadequate sanctions for non-compliance. We propose:

- a new offence of breach of bail, punishable with imprisonment to tighten the system and give magistrates and judges crucial information on whether an offender has previously complied with bail conditions, and
- to extend the use of tagging of suspects who pose a risk of committing offences on bail and explore further the use of third-party bonds to cover sureties for bail and the involvement of the private sector in administering bail orders.

These changes comprise a package of reforms to court bail that will ensure:

- Fewer offences are committed by suspects on bail. Stricter tests for the granting of bail and tighter conditions on suspects who are bailed will serve as a crime reduction measure.
- Bail is better targeted at those violent and persistent offenders most likely to re-offend and cause harm so the law can best focus custodial resources on those who pose the highest cost to society by their offending behaviour.
- Enforcement of the existing bail procedures is improved so that breaches are punished swiftly and a culture of tolerance towards bail breaches is challenged.
- Sanctions for disobeying a bail order are increased so that deterrence is enhanced and defendants understand their responsibilities. This will send a clear signal that abuses of bail will not be tolerated.
- Public confidence in the criminal justice system is repaired and police and criminal justice practitioners have more faith in the bail process.
- Courts receive more information about bail and the cases they oversee so that they can make better judgments in individual cases.
- Criminal justice agencies coordinate more effectively to enforce and administer bail provisions, enhancing information-sharing and the overall performance of the criminal justice system.

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# 1. SUMMARY OF OUR PROPOSALS continued

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## IMPACT OF OUR PROPOSALS

Our bail reforms will lead to an increase in suspects remanded in custody, and consequently an increase in the remand prison population. However, the overwhelming majority of people remanded in custody are eventually convicted. Most of these subsequently receive a custodial sentence, and all time spent on remand is deducted from the total sentence to be served by a prisoner, so the net impact on the total prison population in the long-term will be relatively modest. Our proposals will have the most marked impact on bail decisions affecting defendants charged with the most serious crimes such as murder, for which there are only a relatively small number out on bail at any one time. For these reasons, the cumulative impact of these proposals on the prison population can be accommodated within existing plans in our recent green paper, Prisons With a Purpose, in which we set out detailed, costed proposals to create additional prison capacity of 5,000 places, over and above Labour's plans, by selling off prisons in high-value locations. This would involve the redevelopment of up to a fifth of the prison estate, replacing Victorian jails with new facilities better aimed at rehabilitation.

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# 2. BAIL ISN'T WORKING

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The murder of Traute Maxwell by her son-in-law Gary Weddell, and the conviction of Adam Swellings and two other teenagers for the murder of Garry Newlove, both in January 2008, drew attention to serious failings in the bail process in England and Wales. Weddell was on bail, charged with murdering his wife, and had already breached the terms of his bail. Mrs Maxwell was a witness for the prosecution. Adam Swellings had been released on bail on the morning of the attack on Mr Newlove, having been convicted of assault – an assault committed immediately after he was bailed pending sentencing for another assault – itself committed in violation of a restraining order.

These cases may have been dismissed as unrepresentative had not, in April 2008, the inquiry into the killing of Richard Whelan by Anthony Leon Peart (aka Anthony Leon Joseph) found “what may best be described as a lackadaisical or nonchalant approach to bail within the [criminal justice system] to many routine aspects of the handling of cases [including] lack of diligence in verifying suggested bail conditions, scant evidence of enforcement of those conditions, and a failure to deal effectively with breaches when they occurred”.<sup>2</sup> It is clear that reforms both to the law governing the granting of bail and to the mechanisms for enforcing bail conditions and monitoring breaches are necessary.

The Weddell case suggested that reform of the rules governing the grant of bail are necessary. Although it was claimed that for a person charged with murder to be granted bail was “very rare”<sup>3</sup>, figures released by the Ministry of Justice in response to a Freedom of Information request demonstrated otherwise. In January 2008, 13 per cent of defendants charged with murder, and 85 per cent of manslaughter suspects, were on bail.<sup>4</sup> Indeed, despite a “consistent thread of concern about granting bail to persons accused of murder”, academics admit that the practice may now be regarded as commonplace.<sup>5</sup>

The Swellings case, in contrast, highlighted deficiencies in the enforcement of bail conditions. Swellings continually violated his bail conditions, intimidated and attacked witnesses, and yet was repeatedly re-bailed to commit further crimes. It is clear that the pattern of release and re-offending exhibited by Swellings was not untypical:

“To continually arrest offenders who choose to break their bail conditions and then have the Courts re-grant bail time after time not only impacts on police resources, it increases the number of victims of crime, loses confidence in the bail process and allows the offender to show contempt for the criminal justice process and the law of the land” (Police Federation).

“There is a view that a number of offenders have a casual approach to compliance [with bail conditions]” (Magistrates Association).

We are supported in this view by the conclusions of the Peart Review and by the admission by the Ministry of Justice that “a recent canvass of a small number of Chief Crown Prosecutors raised concerns about the monitoring of bail conditions.”<sup>6</sup>

In practice, bail is too easily granted, frequently breached and improperly enforced. In 2006, almost 65,000 violent crime suspects were freed on bail, amounting to four out of every five violent crime suspect arrested by the police.<sup>7</sup> Far fewer, just under 14,000, were remanded in custody.<sup>8</sup> In the same year, an estimated 5,500 suspects charged with violence against the person failed to answer bail.<sup>9</sup> In all, over 25,000 suspects were convicted of failing to answer bail.<sup>10</sup> Only 3,000 of these – one in eight – were jailed.<sup>11</sup> Data from police forces in England, Scotland and Wales has shown that in one out of every six murders last year the alleged perpetrator was on bail facing separate charges at the time of the offence.<sup>12</sup>

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# 3. PUBLIC SAFETY FIRST

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We believe that public safety should be a prime consideration in bail decisions. At present the grounds for denying bail are that there are substantial grounds to believe that (i) the offender will fail to answer to custody, or (ii) the offender will commit offences while on bail, or (iii) the offender would interfere with witnesses or obstruct the course of justice. Bail can also be refused if it is necessary for the protection of the defendant himself.

In many cases, these provisions will enable judges and magistrates to withhold bail where there is a significant risk to the public if a suspect is bailed. However, we believe that the statutory provisions do not focus adequately on the risks entailed by the commission of offences while on bail. We are strengthened in this by the evident pattern in the Swellings case, in which the offender was repeatedly bailed and re-bailed despite clear evidence of his committing violent offences whilst on bail.

There will be cases where a remand in custody may be necessary notwithstanding that the defendant does not pose a substantial risk to public safety. For instance a repeat offender with a history of failing to surrender to custody might need to be remanded notwithstanding that he poses a negligible risk of causing physical or mental harm. Likewise, a serial car thief's high risk of re-offending may not pose a direct threat to public safety but may nonetheless warrant remanding in custody. However, we believe that a statutory reference to public safety, making explicit what may already be implicit in the bail law, would send an important signal and help courts better to frame their decision to remand or to bail a defendant. In Scotland, similar measures have recently been implemented, having received cross-party support in the Parliament.<sup>13</sup>

We propose amending the Bail Act, so that:

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

- (a) pose a risk to public safety, or
- (b) commit an offence whilst on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person

Where there are substantial grounds for believing that a person would commit an offence whilst on bail, the court shall have particular regard to the extent to which such offence would pose a risk to public safety.

In this section, 'pose a risk to public safety' means that the defendant would, through the commission of an offence or offences whilst on bail, place one or more persons at risk or in fear of serious physical or mental harm.

Since we published our consultation paper,<sup>14</sup> legislation has been passed to restrict the use of remand for summary offences (i.e. those which are usually tried only in the magistrates' court) to cases where there is a risk of serious harm.<sup>15</sup> We believe that this reform has been enacted solely to reduce the remand population in the light of the crisis in prisoner numbers.

We also believe that if our amendment is made, it will not be necessary to treat summary only offences differently under Schedule 12 of the Criminal Justice and Immigration Act. It would be open to magistrates to remand a defendant in custody if he was likely to commit offences whilst on bail, but only after considering whether this offending would put the public at risk.

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## 3. PUBLIC SAFETY FIRST continued

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Also, following our consultation paper, the Government has made proposals for limited reform to the bail laws pertaining to murder, following the Weddell and Peart cases. It is currently consulting on whether judges and magistrates should be required to have regard to the risk of serious injury resulting if a defendant released on bail goes on to commit further crimes. However, while we welcome this measure, we do not think that it is, on its own, a satisfactory answer to the problems associated with murder charges, or that the Government's proposals address the wider problems associated with bail.

### 3.1 The right to bail in murder proceedings

The Ministry of Justice recognises that the Weddell case caused considerable disquiet. The consultation paper 'Bail and Murder' published some time after our 'Public Safety First' consultation raised the possibility of restricting the right to bail in murder cases. These proposals directly echo the approach suggested by the Conservatives.

Murder is a unique crime. We believe that there should be a general expectation that those charged with murder will not be bailed. The law already provides that where a person previously convicted of one of the most serious category of crime (murder, attempted murder, rape, attempted rape or manslaughter<sup>16</sup>) is charged with a further such offence, he may only be bailed if there are exceptional circumstances which justify it. Similar provisions apply where the offender has a history of committing offences on bail or where the offender tests positively for Class A drugs (although this provision has not yet been implemented). To ensure compatibility with the European Convention on Human Rights, the relevant statutes provide discretion for the court to bail a person if there is no significant risk of the defendant committing an offence while on bail.

We believe that similar protections should apply to bail in murder cases. Bail should not be granted to a defendant charged with murder unless, exceptionally, the court believes there is no substantial risk of the defendant committing a crime if released. Such circumstances might include where a householder with no previous criminal history had killed an intruder claiming self-defence or where a mother is accused of killing her baby but doubt exists as to the reliability of medical evidence and it is possible that the death was due to natural causes. In such cases there may be little risk of witness intimidation or a repetition of the alleged offending, and doubt as to whether a crime had

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## 3. PUBLIC SAFETY FIRST continued

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been committed at all. For that reason, we believe it is right for the court to have discretion to bail even in murder cases, provided that this is limited to exceptional cases.

We also propose extending the scope of s. 56 of the Crime and Disorder Act 1998. This section prohibits bail (again, other than in exceptional circumstances) where an offender who has previously been convicted of murder, attempted murder, rape, attempted rape or manslaughter<sup>17</sup> is again charged with one of these offences. As we highlighted in our consultation paper, if the person is accused of other serious offences, including offences preparatory to offences identical to the original offence, the prohibition does not apply. For instance, a person convicted of rape will be denied bail if charged with rape or attempted rape, but if charged with sexual assault will continue to benefit from the presumption of bail.

We believe that where a person has previous convictions for one of these most serious offences, the prohibition on bail should be extended to cover subsequent charges for any serious violent or sexual crime. We believe that offenders charged with such a crime – defined as one of the offences covered by Schedule 15A to the Criminal Justice Act 2003 (see Annex) – should have no right to bail, other than where, exceptionally, the court believes there is no significant risk of the defendant committing an offence if bailed.

The jurisprudence of the European Court of Human Rights has established that a person cannot lose the right to bail simply because of previous convictions. However, the right can be curtailed on the grounds that those previous convictions might indicate a propensity to re-offend (and hence to commit further offences if bailed). Under our proposals, curtailing the right to bail because of previous convictions would be a proportionate response to the danger posed by re-offending by those convicted of the most serious offences. Moreover, loss of the right to bail would not be intended as

a punishment in itself, but simply as a measure intended primarily to protect the public from the risk of the commission of further very serious crimes.

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## 3. PUBLIC SAFETY FIRST continued

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### 3.2 Convicted, unsentenced offenders

The right to bail is closely related to the principle that a defendant is innocent until proved guilty. Yet the Bail Act draws no distinction between those who are awaiting trial and those who have been convicted and are awaiting sentence.<sup>18</sup> In our consultation paper we raised the possibility of removing the presumption of bail from those convicted, unsentenced offenders. This proposal was supported by the Police Federation, the Association of Chief Police Officers, officers from the Metropolitan Police and the National Victims Association. The Bar Council, while submitting that the presumption of bail for unsentenced offenders should continue, drew attention to the fact that the Criminal Justice Act 2003 has rendered pre-sentence reports (PSRs) necessary in most Crown Court cases, thereby applying the presumption of bail to an increasing number of unsentenced offenders, for whom a custodial sentence is almost inevitable.

We do not believe that this is a satisfactory situation. Those who have been convicted and are awaiting sentence, especially those who face the prospect of imprisonment, are at a heightened risk of absconding. We propose that once someone is convicted of an imprisonable offence, bail should be entirely at the discretion of the judge or magistrates. There should be no 'right' to bail for those convicted of an imprisonable offence.

In our consultation, we also questioned whether there would be value in amending the criteria for unsentenced offenders so that where the custody threshold had been passed, bail would only be granted in exceptional circumstances. Despite the initial attractiveness of this proposal, we are persuaded that (i) it will often be more fruitful for probation officers to observe suspects in the community when preparing pre-sentence reports; (ii) judges would always reconsider bail in the light

of a conviction anyway, and (iii) it is not always clear immediately after conviction whether the custody threshold had been passed. We have therefore concluded that removing the presumption of bail for those convicted of imprisonable offences will give judges and magistrates adequate discretion to detain those convicted of imprisonable offences.

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## 3. PUBLIC SAFETY FIRST continued

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### 3.3 Persistent and prolific offenders

In our consultation, we also asked what other classes of offender might lose the presumption of bail. The Police Federation suggested that public confidence in the criminal justice process was being undermined by “the number of offenders who are continually re-bailed every time they commit an offence.” The Metropolitan Police suggested that those convicted of committing offences while on bail should lose the presumption of bail, as should those “whose antecedents demonstrate that they are a persistent or prolific offender.” We believe that this is a useful approach. Those who show a strong pattern of re-offending will frequently pose a risk of offending if bailed and should not enjoy the benefit of the presumption of bail.

We therefore propose that the presumption of bail should not apply to persistent offenders. The Government already uses a category of ‘persistent young offender’, defined as an offender aged 10–17 who has been sentenced by any criminal court on three or more occasions (for one or more recordable offences), and within three years of the last sentencing occasion is subsequently arrested (or had information laid against them) for a further recordable offence.<sup>19</sup> We believe that adult offenders who exhibit a pattern of persistent re-offending should lose the presumption of bail.

We agree with the Magistrates Association that each case should be looked at individually. Our proposals would not alter this. Indeed, it would be open to judges and magistrates to bail or remand any persistent offender, without the current presumption.

### 3.4 Bail offenders

Current law excludes from the presumption of bail defendants whose alleged offence was allegedly committed while on bail. Offenders who breach conditions attached to their bail lose the benefit of the presumption of bail in those proceedings. However, there is no such limitation placed on those with a history of breaching bail.

A recurring complaint among police officers is the frequency with which suspects who commit new offences while on bail are nonetheless re-bailed. As the Police Federation remarked in their response to our consultation:

“This can be one of the most frustrating issues for the police service, victims of crime and local communities. To continually arrest offenders who choose to break their bail conditions and then have the courts re-grant bail time after time not only impacts on police resources, it increases the number of victims of crime, loses confidence in the bail process and allows the offender to show contempt for the criminal justice process and the law of the land.”

We believe that a more satisfactory approach would be to exclude from the presumption of bail those who have a history of failing to abide by bail conditions. We propose that following the introduction of an offence of breach of bail (see below) the presumption of bail should not apply to those who have convictions for breaching bail, whether by failing to abide by bail conditions or by failing to surrender to custody.

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## **3. PUBLIC SAFETY FIRST** continued

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### **3.5 Dangerous offenders**

Our attention was drawn to a particular problem with regard to offenders with severe personality disorders or other psychiatric problems. Magistrates are unable to remand defendants in secure mental hospitals. At present, therefore, such defendants may be bailed, with a condition that they remain in hospital.

We believe that this is unsatisfactory, and amounts to remand in secure accommodation by the back door. Magistrates should have statutory authority to remand an offender in secure accommodation where this is necessary and medically appropriate. We will therefore consult further on how to ensure that magistrates can deal appropriately with mentally disordered defendants.

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# 4. IMPROVING ENFORCEMENT

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The Peart Review found that “there seems to be too ready an acceptance of the commission of offences while on bail, insufficient rigour in respect of checking the validity of proposed bail conditions, and an apparent acceptance of the continual breach of bail conditions.”<sup>20</sup> In the case of Peart, the defendant was required to live at an address which (it transpired during the inquiry) did not exist and at which he could not have been expected to reside had it done so; to abide by a curfew with ‘doorstep’ conditions (requiring him to present himself to a police officer at the door of those premises at any time during that curfew); to report daily to a named police station, and not to go in the Congestion Charge zone. The inquiry found that only the last of these conditions was policed, but Peart was allowed to remain at liberty even when he was found in the Congestion Charge zone.

We conclude that there is an urgent need to change this culture of tolerance. Bail conditions are set by a court for the protection of the public and the judicial process, and as an alternative to keeping a suspect detained. They should not be viewed as optional.

## 4.1 A new offence: breach of bail

Where a court makes an order, there is an expectation that it will be observed and that breaches will be punished. Public confidence in the Criminal Justice System relies on the swift enforcement of court orders and effective sanctions to deter non-compliance. Unfortunately, this is not currently the case with breaches of bail conditions. Where a suspect breaks the terms of his bail, he can be arrested for the breach and must be brought to court within 24 hours, where the court may choose to remand the suspect in custody. However, in reconsidering its decision the court will again have regard to the risk of the suspect offending, or interfering with witnesses or evidence, and the likelihood of a custodial sentence at the end of the trial. It is therefore entirely possible that a suspect brought back to court for breaching his bail conditions will once again be bailed subject to similar conditions.

The Bar Council argued that a separate offence of breaching bail was unnecessary and that the possible withdrawal of bail which can result from a breach “is sufficient punishment”. We disagree. If the defendant is subsequently convicted and receives a custodial sentence, those days spent remanded in custody will be remitted against the sentence to be served. Where the defendant is convicted and receives a non-custodial sentence, the court will take into account time spent on remand when determining the sentence. Perversely, therefore, a person who is remanded in custody as a consequence of breaching their bail conditions, will only be punished for the breach if he is found to be innocent of the original charge. We do not believe this is right.

There was strong support among police respondents for breach of bail conditions to be a criminal offence. The Magistrates Association suggested that to do so “would indicate a more

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## 4. IMPROVING ENFORCEMENT continued

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robust approach to ensuring that the [defendant] realised the seriousness and importance of any bail conditions”, although they acknowledged that it would not, of itself, necessarily prevent the commission of further offences. We therefore propose a new offence of ‘breach of bail’ which would replace the existing offence of failing to surrender. This would mirror provisions enacted in Scotland by the last Conservative government (in 1995) and reformed recently by the previous Labour–Liberal Democrat Executive in the 2007 Criminal Proceedings Act.<sup>21</sup>

Current treatment of people who breach bail conditions stands in stark contrast to the penalties available for other breaches of court orders. A person who breaches an Anti–Social Behaviour Order (ASBO), a civil injunction, a football banning order, Sex Offender Order or Violent Offender Order (VOO) can be jailed for the breach. Moreover, the maximum penalties for breaching these orders are vastly greater than the maximum penalties available where a person is convicted of failing to surrender to bail, for which the maximum penalty is three months in a magistrates’ court or twelve months in the Crown Court. In practice, one in ten of those convicted of failing to surrender is discharged, and almost half receive a fine, of which the average amount is only £60. Only one in ten of those convicted is jailed, and for this group the average sentence is one month.<sup>22</sup>

**TABLE 1 Disposals for failing to surrender to bail at all courts** <sup>23</sup>

<i>Result</i>	<i>Percentage</i>
Absolute discharge	2.3
Conditional discharge	6.3
Fine	47.6
Community sentence	13.1
Suspended sentence	1.3
Immediate custody	11.3
Otherwise dealt with	18.2
Total	100.0

**TABLE 2 Fine disposals for failing to surrender to bail 2006** <sup>24</sup>

Number of persons fined	12,909
Average fine amount	£61.07

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## 4. IMPROVING ENFORCEMENT continued

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Breach of any bail conditions is entirely distinct from the commission of the original offence and should be punished separately. This means that if the defendant is convicted of both the original offence and of breaching bail conditions, any custodial sentences should normally run consecutively, as per the guidance on Bail Act offences issued by the Sentencing Advisory Panel: “where determinate custodial sentences are being imposed for a Bail Act offence and the original offence at the same time, the normal approach should be for the sentences to be consecutive.”<sup>25</sup>

Creating a new offence would allow police, prosecutors and the courts the necessary degree of discretion whether to pursue a prosecution, and if a prosecution is pursued, what sentence to apply. A breach of bail conditions may be relatively minor, such as arriving home shortly after the start of a curfew. On the other hand, a breach might have very profound effects. For instance, when the presence of the suspect in an area from which he has been excluded has the effect of intimidating witnesses, the ultimate result may be the collapse of the case against him. We conclude therefore that there should be a full range of penalties available to the court.

Although it was put to us that “the vast majority of those defendants who fail to abide by the conditions of their bail will also take a similarly cavalier approach to paying any fine imposed”, we wish to ensure that magistrates would have an appropriate sanction for dealing with relatively low-level breaches of bail conditions (such as arriving home slightly late for a curfew or inadvertently straying into a prohibited area). We believe that courts should retain the discretion to fine offenders for breach of bail conditions and there was a consensus among respondents that the maximum penalty for breach of bail should mirror that for failure to attend.

### **TABLE 3 Court Orders in England and Wales** **A variety of orders are now available to courts for the prevention of offending and re-offending:**

**Anti-Social Behaviour Orders (ASBOs).** ASBOs were introduced by the Crime and Disorder Act 1998. They can be made when a person engages in “conduct which caused or was likely to cause alarm, harassment, distress, or harm to one or more persons not of the same household as him or herself and where an ASBO is seen as necessary to protect relevant persons from further anti-social acts by the Defendant”. Although ASBOs are civil orders, breach of an ASBO is a criminal offence and attracts a maximum sanction of five years’ imprisonment. ASBOs can be made by a magistrates court. They can also be made by the Youth Court or Crown Court in relation to a conviction.

**Civil injunctions.** Civil injunctions are obtained from the County Court. A power of arrest can be added to an injunction where there is violence or the threat of violence, or significant risk of physical or other harm. Breach of an injunction is punishable by an unlimited fine or up to two years’ imprisonment.

**Restraining Orders under the Protection from Harassment Act 1997.** Breach of a restraining order is an offence punishable by a fine or imprisonment for up to five years.

**Sex Offender Orders under the Crime and Disorder Act 1998.** Breach of a sex offender order is punishable by a fine or up to five years’ imprisonment.

**Violent Offender Orders under the Criminal Justice and Immigration Act 2008.** Breach of a violent offender order is punishable with a fine and/or five years’ imprisonment.

**Football banning orders.** Non-compliance with the terms and requirements of a football banning order is an offence which carries a maximum sentence of 6 months’ imprisonment and/or a £5,000 fine.

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## 4. IMPROVING ENFORCEMENT continued

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It follows that since breach of bail will be a separately-punished offence in its own right, it need not be, and should not be, considered as an aggravating factor for the original offence. However, where the breach of bail consists solely of committing a further offence on bail, the breach should be treated as an aggravating factor for the new offence and not punished separately.

It is also important that breaches of bail are dealt with swiftly. Too often they can become lost in a litany of multiple charges during a subsequent trial process. A suspect charged with breach of bail should be returned to court at the earliest opportunity and dealt with immediately. Sentencing for the breach of bail should not be adjourned for when the new trial starts, because this waters down the significance of the bail offence – especially if the suspect is then granted bail again.

### 4.2 Better information

Magistrates, police officers and criminal law practitioners frequently complain that they lack adequate information on the bail arrangements that apply to individual suspects. For instance, a recent joint report by HM Inspectorate of Court Administration, HM Inspectorate of Constabulary and HM Inspectorate of Probation found “there is no single IT system to support enforcement within or between criminal justice agencies. The lack of shared IT systems impedes information flows between agencies. Data is routinely re-keyed by the separate agencies into their own IT systems, which increases the risk of error and inconsistencies in data.”<sup>26</sup>

Creating a new offence of breach of bail would have the additional advantage of providing fuller information about a defendant’s bail history and antecedents. The Bar Council has said that it would be of assistance if breaches of bail were marked on the Police National Computer (PNC) database. We believe this would be an efficient mechanism for giving criminal justice agencies a readily available tool to determine bail status. If breaches of bail were a recordable offence, then the PNC would automatically contain details of known breaches, and this information would be available to the Crown Prosecution Service and therefore the court.

Better information is also a key component of more informed judgements in bail cases. Unfortunately at present, in many cases, including the Weddell case, Crown Court judges bail murder suspects only for subsequent breaches of that bail to be handled by a magistrates’ court – sometimes without even the knowledge of the original sentencing judge. This creates a disjointed process that allows vital information on a suspect’s case history to be denied to the court best placed to evaluate risk and the bail status of a defendant. As the Ministry of Justice notes “there is a strong argument that the court that granted bail – possibly even the same judge

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## 4. IMPROVING ENFORCEMENT continued

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– should have the opportunity of reviewing it ... especially where (again, as with Weddell) it was a borderline case where bail was granted only after the production of a good deal of evidence.”<sup>27</sup>

To ensure that the court responsible for granting bail is also the same court that considers any suspect’s subsequent bail breaches should these occur, we recommend that suspects who are bailed on charges for the most serious category of crimes, and who subsequently breach their bail conditions, should return to their original Crown Court to be sentenced (and where possible, by the same sentencing judge). We also support the possibility raised by the Ministry of Justice in their consultation on bail and murder that a judge making a bail order should be able to direct that any future bail hearings in those proceedings should take place in the Crown Court.

Better information on bail should be part of a broader agenda to enhance intelligent information-sharing between agencies and provide courts with higher quality information to aid their sentencing decisions. Inadequate information from the police or the Crown Prosecution Service during a trial can completely undermine the ability of a judge or magistrate to take proper account of the offending behaviour of the accused. With breach of bail as a separate, stand-alone offence, it will remain incumbent on all agencies in the criminal justice system to improve their recording of data and the practical procedures for sharing information in an efficient and timely manner.

### 4.3 Monitoring compliance with bail conditions

In our consultation paper, we raised the question of whether there should continue to be a presumption that bail should be unconditional. The Magistrates Association said that this would go “too far in curtailing the freedoms of unconvicted citizens who must be presumed innocent.” The Bar Council argued for a presumption of unconditional bail. We find persuasive the argument of police respondents that there remains a place for unconditional bail, and that unnecessary conditions can be onerous and bureaucratic for the police without having any real effect on offending. The Metropolitan Police were particularly concerned with the frequent use of reporting requirements:

“We are currently attempting to discourage reporting to police stations as a conditions as this has been shown to be onerous, expensive and of little practical effect in preventing offences, although it remains an attractive option for the defence as an alternative to custody. The imposition of a curfew has been much more effective, however these require daily monitoring, often requiring several visits per day.”

We believe that reporting requirements have a place in the bail armoury available to the criminal justice system. For instance, where a person is charged with football related violence, and is prohibited by bail conditions from attending football matches, a condition that he attends a police station at the time of a team’s matches would have the practical effect of making it difficult for him lawfully to attend matches, or would draw to the police’s attention the fact that he may be attending a match in breach of his bail conditions. However, a requirement such as that imposed on Anthony Peart, to report to a police station three days a week, could have little practical effect, especially since no action was taken when Peart failed to report.

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## 4. IMPROVING ENFORCEMENT continued

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At this stage, we make one proposal to enhance conditional bail arrangements through the expansion of electronic monitoring. The Criminal Justice and Immigration Act 2008 extends the use of electronic bail monitoring to adults. We welcome this. However, the Government restricted the use of electronic monitoring ('tagging') to situations where the court would otherwise remand the suspect in custody. It can be concluded from this that electronic monitoring was advanced not as a means of managing suspects in the community, but as a means of reducing pressure on the prison population. We propose removing this restriction so that an offender who would otherwise be bailed might nonetheless be subject to electronic monitoring as an additional component of the bail order where to do so would enhance the protection of the public. Again, this is a change that has recently been implemented with cross-party support in Scotland and does not appear to have given rise to any legal challenges.

Regulations would ensure that this scheme was rolled out gradually and would initially only be available in areas where the Secretary of State is satisfied that adequate provision exists. In the long run, we would expect this scheme, if successful, to be rolled out nationwide.

We will consider further on how the burden that reporting requirements place on the police might be alleviated. For instance, we are interested in the role that the private sector might play in enforcing such requirements and monitoring suspects on bail. In America, private bail bond companies have for many years been authorised by State authorities to assist the police in enforcing bail conditions and tracking breaches. These arrangements often comprise contracts with financial incentives for agencies to perform, for instance by delivering suspects to court on time, thereby saving taxpayers' money through reduced costs to the criminal justice system.

### 4.4 Housing of bailed suspects

Over recent months, serious concerns have also been raised about the provisions in place to monitor suspects on bail who are otherwise homeless and who are housed awaiting trial or sentencing in privately-managed accommodation. On 18 June 2007, the Ministry of Justice quietly announced that the National Offender Management Service would be introducing a new 'Bail Accommodation and Support Service' (BASS) to 'enable the courts and prison governors to make greater use of bail and early release on a strict curfew'.<sup>28</sup>

The 'BASS' service is operated on a regional basis by a private property company, ClearSprings Ltd, which provides housing and support to vulnerable people. The contract with ClearSprings is for three years with options for two one-year extensions.<sup>29</sup> When introduced last June, the scheme planned for around 500 people to be placed in 150 properties in England and Wales in the first year. To date, 167 houses have been made available. A small number have been withdrawn following campaigns by local residents and at 10 July there were around 160 properties in the service providing about 550 beds.<sup>30</sup> As of 16 July 2008, 827 defendants on bail and 639 offenders released from jail on Home Detention Curfew had been put into the Bail Accommodation and Support Scheme, and of these individuals 776 defendants and 621 offenders were placed in ClearSprings properties.<sup>31</sup>

In a letter to MPs in April, the Minister of State, David Hanson, stated: "In acquiring the properties ClearSprings has a contractual obligation to consult with police forces, probation and Local Authorities so that local knowledge can inform the selection of addresses. This enables us to avoid inappropriate locations." However, the Ministry of Justice does not require that this consultation process includes local residents, and the Ministry of Justice has explicitly confirmed that "there is no requirement

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## 4. IMPROVING ENFORCEMENT continued

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for ClearSprings to consult local residents about the provision of properties in their locale to people who are defendants on bail or offenders released on home detention curfew.”<sup>32</sup>

The Clearsprings scheme has disrupted local communities and eroded confidence in the criminal justice system through the lack of consultation with the residents affected. It also fails to provide adequate support for, and supervision of, suspects and offenders. Conservatives have called upon the Government to suspend the scheme pending a full review of the operational arrangements and the consultation process. A Conservative Government would permit courts to remand in custody people currently housed by ClearSprings – including accommodation in the open prison estate where, despite overcrowding in the overall prison population, there is still surplus capacity.

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# 5. ANNEX

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## Offences under the law of England and Wales covered by Schedule 15A of the Criminal Justice Act 2003

- 1 Murder.
- 2 Manslaughter.
- 3 ... (soliciting murder).
- 4 ... (wounding with intent to cause grievous bodily harm).
- 5 ... (rape).
- 6 ... (intercourse with a girl under 13).
- 7 ... (possession of firearm with intent to endanger life).
- 8 ... (use of a firearm to resist arrest).
- 9 ... (carrying a firearm with criminal intent).
- 10 An offence of robbery under section 8 of the Theft Act 1968 (c. 60) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.
- 11 ... (rape [- Sexual Offences Act 2003]).
- 12 ... (assault by penetration).
- 13 ... (causing a person to engage in sexual activity without consent) if the offender was liable on conviction on indictment to imprisonment for life.
- 14 ... (rape of a child under 13).
- 15 ... (assault of a child under 13 by penetration).
- 16 ... (causing or inciting a child under 13 to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.
- 17 ... (sexual activity with a person with a mental disorder impeding choice) if the offender was liable on conviction on indictment to imprisonment for life.
- 18 ... (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.
- 19 ... (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender was liable on conviction on indictment to imprisonment for life.
- 20 ... (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.) if the offender was liable on conviction on indictment to imprisonment for life.
- 21 ... (paying for sexual services of a child) if the offender was liable on conviction on indictment to imprisonment for life.
- 22 ... (committing an offence with intent to commit a sexual offence) if the offender was liable on conviction on indictment to imprisonment for life.
- 23 (1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule ("a listed offence").  
(2) Conspiracy to commit a listed offence.  
(3) Incitement to commit a listed offence.  
(4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence is the offence (or one of the offences) which the person intended or believed would be committed.  
(5) Aiding, abetting, counselling or procuring the commission of a listed offence.

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- 15 In the 2008 Criminal Justice & Immigration Act
- 16 In the case of a person previously convicted of manslaughter, this provision will only apply if the offence was dealt with by a custodial sentence.
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