

# Bail Process

National Guidance

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## Introduction/purpose

This document is intended to provide police officers and members of police staff with guidance around bail processes and their general principles.

This guidance document supports the following Police Service of Scotland (PSoS) Standard Operating Procedures (SOPs):

Domestic Abuse PSoS SOP

Crime Investigations PSoS SOP

Case Reporting PSoS SOP

Criminal Justice (Scotland) Act 2016 (Arrest Process) National Guidance

## What is Bail?

Bail is a set of conditions (including potential bespoke ‘special’ conditions) to ensure that an accused attends all future court appearances and does not commit any further offences.

Before an accused person (the accused) is released on bail, they must agree to all conditions and sign a bail order to that effect. Failing to comply with any of these conditions (other than the commission of an offence whilst subject to bail) is a criminal offence under Section 27 Criminal Procedure (Scotland) Act 1995.

An accused person may be released from police custody on what is known as an Undertaking to Appear (UTA). This process is similar to court-imposed bail. Further details can be found in Criminal Justice (Scotland) Act 2016 Arrest National Guidance. Care should always be taken to confirm which is being referenced and can be confirmed by checking the accused / suspect’s record on the Criminal History System (CHS).

### Standard Bail Conditions

Section 24 Criminal Procedure (Scotland) Act 1995 details the conditions that would be attached as standard when an accused is released from court. The standard conditions are that the accused:

* Appears at the appointed time at every diet relating to the offence with which they are charged and of which they are given due notice.
* Does not commit an offence whilst on bail.
* Does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to themselves or any other person.
* Does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses.
* Makes themselves available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with them, for the offence with which they are charged.
* Makes themselves available for the purpose of participating in an identification parade or other identification procedure or of enabling any print, impressions or sample to be taken from them.
* Where the offence for which they have been liberated on bail is one to which Section 288C of the Criminal Procedure (Scotland) Act 1995 applies (certain sexual offences), or Section 288DC of the Criminal Procedure (Scotland) Act 1995 (certain domestic offences), does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.

### Special Conditions

In addition to standard bail conditions the court can impose special conditions. These can be anything which the court deems necessary to ensure that the standard conditions are observed.

Some examples of Special Bail conditions are listed below:

* Does not enter nor seek to enter “street name where victim resides.”
* The accused does not approach or contact, nor attempt to approach or contact “named individual” in any way.
* Remains within his/her/their bail address each day, for example, from 7.00 pm until 7.00 am the following morning (or other relevant curfew period) and must present themselves at the door when requested to do so by officers of The Police Service of Scotland (PSoS).
* The accused does not access the internet except in the course of his employment and from a computer situated in his employer’s premises.
* The accused does not have any unsupervised access to any person under the age of 16 years old.

#### Special Bail Additional Considerations

The following section contains examples of how officers may consider wording requests for special conditions within a Standard Prosecution Report 2 (SPR2).

#### Approaching or Contacting a Specific Person

Special bail conditions could be sought if the accused has committed a crime against a named victim. These are commonly used in assault cases and there is scope to apply such conditions for all witnesses in a case. This may be appropriate where there is likelihood that the witnesses may be intimidated by the accused.

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

If a decision is made to request special bail conditions, the wording below could be considered for inclusion in the SPR2:

“It is the reporting officer’s opinion that if the accused is to be released on bail it would be appropriate to attach a special condition preventing them from approaching, contacting or communicating, or attempting to approach, contact or communicate with (name of person) either directly or indirectly until the conclusion of these proceedings. This condition will deter the accused from committing similar offences and provide reassurance to the victim and witnesses.”

#### Attending a Specific Location. (This could include exclusion zones)

Special bail conditions could be requested if the accused has committed a crime that is relative to a specific location. Justification will be required that exclusion from this particular location will prevent re-offending. For example a known shoplifter is arrested for shoplifting, you may seek to have a special bail condition preventing them from entering a specific shop. For example Tesco, or a specific shopping centre such as Silverburn. This can also be utilised for anti-social behaviour in town centres or offences in licensed premises.

If the accused is to be released on bail it would be appropriate to attach a special condition preventing them from attending or seeking to enter (detail specific location) until the conclusion of these proceedings. This condition will prevent further similar offences and provide reassurance to witnesses.

#### Domestic Related Bail Conditions

When preparing the SPR2 for a domestic incident, the reporting officer should consider seeking special bail conditions on the offender. If the victim in a domestic incident has children it may be likely that the accused will attempt to contact the victim and/or the children at locations they may frequent. For example, school, nursery, work, friends and family addresses. It is prudent to seek restrictions on the accused, from attending such locations to prevent re-offending.

The reporting officer requests that if the accused is to be released on bail the following special bail conditions be imposed:

* The accused must not approach or contact the victim.
* The accused must not attend or approach the home address of the victim.
* The accused must not approach or contact any other witnesses.
* The accused must not approach a specific locus.

#### Offences against Children

Special conditions can be sought for offences relating to indecent conduct with children. For example, downloading indecent images of children.

Bail conditions could be sought which will prevent the accused having contact or unsupervised contact with children. Special conditions may also be attached which prevent the accused accessing the internet or possessing any equipment which is capable of accessing the internet.

Due to the serious nature of this charge involving images of children, should the accused be released on bail it is requested that a condition of bail be that they do not have unsupervised contact with children. It is further requested that additional bail conditions be imposed to prevent the accused accessing the internet or using a mobile device capable of internet access.

#### Home Curfew

Special conditions restricting the accused to remain within a certain location at specific times is known as a curfew. This should be requested if the accused is a prolific offender, having committed acts of violence, disorder and anti-social behaviour. This is particularly effective when an offender is a member of a gang/group impacting on a community.

The reporting officer requests that if the accused is to be released on bail the following special bail conditions should be imposed.

The accused must remain within their bail address each day from 7.00 pm until 7.00 am the following morning and must present themselves at the door when requested to do so by officers of Police Service of Scotland to prove compliance of same until the conclusion of these proceedings.

#### Football Banning Orders (FBO)

FBOs are not a suitable disposal for everyone who commits a football related offence. Instead, FBOs will target those who display the most extreme behaviour, sending a message to others that such conduct will not be tolerated. This represents a deterrent to others who may choose to act in this manner.

Information on the application of FBOs (and the use of interim bail conditions) is set out in the Policing Football National Guidance.

#### Electronic Monitoring of Bail (EMB)

In addition to special conditions, the court may also impose an order that the specific conditions are electronically monitored. This monitoring, also known as being ‘tagged’, can either monitor a person’s presence within a curfew address between prescribed hours, or their presence near to a place which they have conditions not to approach, often known as a ‘stay away’ box.

Electronic Monitoring of Bail contains full guidance on this process.

This additional order does not create any new offence and any electronic breach will be reported to C3 and should be investigated in the normal manner with the same considerations. The flowchart for EMB providing detail is contained within the guidance but does not replace the overarching bail process flowchart. Should conventional enquiries provide insufficient evidence, the Electronic Monitoring Company should be contacted within 48 hours for a copy of the breach report. This report should be treated as a production in the case and substantive evidence of the breach.

#### Breach of Bail Supervision

Bail Supervision is a social work or third sector service that supports people to comply with the conditions of their bail set by the court.

Bail Supervision is monitored by Bail Supervision workers from justice social work services. Police Scotland will receive information from justice social work services on alleged breaches of bail supervision. This information is received via an agreed template report compiled by the Bail Supervision worker.

On receipt of a report from the Bail Supervision worker of an alleged breach of bail supervision, Police Scotland will, allocate this enquiry to an appropriate enquiry officer.

The allocated enquiry officer must make initial contact with the reporting Bail Supervision worker to establish a line of communication, and thereafter provide regular feedback on the enquiry, and its outcomes, to the Bail Supervision worker.

The Scottish Government Bail Supervision National Guidance contains full guidance on this process, including a copy of the template report (Annex 10) that would be submitted to Police Scotland.

## How to Apply for Bail

Police Scotland has a responsibility to provide the Crown Office and Procurator Fiscal Service (COPFS) with high quality police reports. These take the form of a SPR2 and should be completed where there is sufficient evidence to libel a charge and alternative direct measures, for example conditional offers or fixed penalty notices have been considered and are either inappropriate or have not been complied with.

It is absolutely essential that, where deemed necessary, officers request specific bail conditions when completing the SPR2. To do this effectively, reporting officers must ensure that the ‘Accused Bail’ section is populated with detailed, specific and accurate information. Should there be a victim who officers are considering an electronically monitored ‘stay-away’ condition, then the victim’s opinion on the installation of an electronic monitoring box being installed at their address should be sought and included in the bail question free text section.

This section should be completed in all custody, undertaking or warrant craved cases, thus providing appropriate and necessary information to COPFS. This information is vital to ensure that the Procurator Fiscal (PF) is fully informed of police opinion in relation to the granting of bail or otherwise and if special conditions would be relevant.

More information and guidance about requesting bail conditions is contained within the Reports and Statement Writing Guide National Guidance.

## Bail Decision Making

When an accused person appears from custody or appears on an undertaking, they can ask to be released on bail. It is for the court to decide whether or not bail is appropriate. Human Rights legislation states that an accused person is entitled to bail in all cases (including murder) unless there are circumstances to suggest that bail is not appropriate. Bail may be opposed by the PF, but the ultimate decision is for the court, who must give their reasons for the decision to refuse or grant bail.

The information contained within the SPR2 Bail section will be presented to the court. In addition, the court will take account of a number of other factors when deciding whether or not to grant bail, these include:

* The nature (including seriousness) of the offences before the court.
* The probable disposal of the case if the person was convicted.
* Whether the accused was subject to a bail order at the time of the alleged offences.
* Whether the offences before the court are alleged to have been committed when the accused was subject to another court order, on release on licence, or parole or during a period for which the sentence of the accused was deferred.
* The character and antecedents of a accused and in particular the nature of any previous convictions, whether they have contravened a bail order, breached any terms of release on license or parole or whether they have recently served a sentence of imprisonment for any offences.
* The associations and community ties of the accused.

### Bail Granted

When an accused is released on bail this will be for a specific time period until further proceedings are dictated by the court. The accused’s CHS record will be updated automatically with the conditions of their release. The police will also receive a copy of the accused’s bail conditions which should be forwarded onto to the respective local policing division so that local officers can commence perpetrator management arrangements.

### Bail Refused

If bail is refused, the accused will be held in custody to appear at court on a specific date. Every accused has the right to appeal any decision where bail has been refused. If following an appeal, the accused is released on bail, their CHS record will be updated to reflect the current bail conditions and the police will receive a copy of the bail order.

## Divisional Impact/Managing Perpetrators

The management of perpetrators within the community can be a demanding area of policing. Therefore a consistent approach is necessary in achieving the aim of effective perpetrator management.

It is the intention of the police to reduce the risk posed by certain perpetrators through effective active perpetrator management. These steps are in no way a guarantee that perpetrators will not commit further offences as ultimately, the responsibility for their conduct rests with them. However effective perpetrator management can significantly mitigate the risk posed by these individuals.

The extent to which a perpetrator is managed will depend on the restrictions placed on them at court. A proportionate level of police action should commence when the perpetrator is released, based on the risk that they pose to a victim, location or community.

### Standard Conditions

When a perpetrator is released with standard bail conditions there are implications on their liberty. Although there may be no specific special conditions attached, the general conditions contained within Section 2 of this document should be fully observed by the perpetrator.

Officers should note that if a perpetrator is released on bail with standard conditions they are ineligible to receive an Anti-Social Behaviour Fixed Penalty Notice (ASB FPN). Guidance is provided within the Direct Measures SOP. Alternative routes to prosecution should be followed.

There may be instances when a perpetrator is released on bail with standard conditions for an incident with a domestic aggravator. In such cases officers should refer to the Domestic Abuse Toolkit for specific guidance.

### Special Conditions

#### Curfew

A bail curfew is a restriction placed on a perpetrator which requires them to remain within their identified accommodation during times specified by the court. Bail curfew reduces the likelihood of individuals being held on remand by allowing them to remain in the community, subject to control measures.

All perpetrators who are subject to curfew conditions should be managed at a divisional level. Checks should be carried out by officers to ensure the perpetrator is complying with their curfew. The frequency of checks should be dictated by the Local Area Commander and reviewed regularly.

Where a bail condition specifies that the curfew holder must make themselves available to the police on their attendance, the offence is complete on their failure to do so. In such circumstance, it is appropriate to raise a crime report and submit a police report craving a warrant for the person. However, attempts must be made to trace an accused with a view to arresting and reporting them by way of custody, before submission of a warrant craved case.

### Electronically monitored Bail (EMB)

The nature of EMB is that an aspect of a court bail condition can be electronically monitored.

Curfew - any absence from the bail address during the curfew period will be detected by the Electronic Monitoring Company and will be reported to Police Scotland.

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

Stay Away- In the event of an offence with a victim, the court may impose conditions that the accused does not approach a specific address. This can be electronically monitored in the same manner as a curfew with any detection by the stay away being detected by the Electronic Monitoring Company and reported to Police Scotland.

### Sheriff Appeal / High Court Bail

Bail conditions imposed on a perpetrator can be considered, reviewed, or appealed at various stages during the criminal justice process.

When bail is granted by the Sheriff Appeal or High Court, the accused is immediately released from the court or from the relevant Scottish Prison Service (SPS) establishment if the hearing was not attended in person. Thereafter the Sheriff Clerk will immediately intimate the decision via an automated process to PSoS in order that the accused's CHS record can be updated. Victim Information and Advice (VIA) will notify the police by emailing them a copy of the bail paper.

Perpetrators released on bail following a successful remand appeal should be managed rigorously. These individuals actions require careful assessment for the threat, risk and harm they may pose to communities. The Local Area Commander should decide on an appropriate level of police management.

### Use of Perpetrator Management Plan

A Perpetrator Management Plan (Force Form 117-009) should be considered for individuals who are identified as posing a significant risk within the community and would benefit from police management. Actions from the plan should be tasked out to the most appropriate resource at daily tasking meetings. This process will ensure prolific offenders are managed effectively with police action recorded. Local Area Commanders will retain ownership for all active perpetrator action plans, which cannot be completed without their authority and final sign off. They should be reviewed regularly and archived electronically as per the Record Retention SOP.

The perpetrator management plan will replace any current perpetrator focused plans and victim safety plans.

## Divisional Management – Domestic Perpetrators

### Victim

Research and experience indicates that directly following the release of a domestic abuse perpetrator from court, a period of heightened risk commences in relation to the victim. The Domestic Abuse Toolkit outlines responsibilities and considerations in this regard.

### Accused / Perpetrator

To complement the victim visit and to ensure Police Scotland mitigate the risk posed by perpetrators, a robust ‘two level’ domestic abuse ‘Perpetrator Bail Strategy’ should be implemented. Such a strategy will ensure that perpetrators are aware of the restrictions placed on them by means of bail conditions and that the police are actively monitoring compliance of these conditions.

### Level 1 – Special Bail Conditions

All perpetrators released on bail with special conditions should receive a minimum of three bail compliance checks. These checks should be carried out within four weeks from the date of the bail conditions being imposed. Divisions will identify the most suitable officers to complete such checks and may include, for example, Community Policing Teams (CPT), Domestic Abuse Units (DAU), Proactive Teams or Response Officers.

### Perpetrator Bail Compliance Check Timescales

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

On completion of compliance check 3, a local policing officer or the rank of Inspector or other as appointed by the Local Area Commander, who must satisfy themselves that all police action is proportionate to the level of risk posed by the perpetrator. Further compliance checks should be considered dependant on the continued risk posed.

If the special bail conditions prevent the perpetrator from approaching a victim, witness or location, it is essential that compliance checks include visiting named persons or specific locations to ensure that bail conditions are being complied with. Care should be taken to ensure a trauma informed victim-centred approach is employed, ensuring that visits to victims and witnesses do not cause unnecessary harm or suffering to the victim.

All compliance checks must be recorded. An “AD-52 Standing Complaint” STORM incident should be raised and managed by officers to record these checks. It is the responsibility of Local Policing to update and close Standing Complaint incidents as required.

### Level 2 - High Risk Perpetrators

All police officers are responsible for identifying risk posed by the perpetrator to the victim, and to record these on the interim Vulnerable Persons Database (iVPD).

Divisional Domestic Investigations Unit (DAIU) officers routinely utilise risk assessments to generate action/ safety plans to mitigate risk. As part of the ‘Perpetrator Bail Strategy’ it will be incumbent upon officers within the DAIU to utilise risk assessments, but also their experience, training and specialist professional judgement to provide additional comments and determine the requirement for a minimum Level 1 response or a heightened Level 2 response. This update should form part of the initial DAIU update on iVPD.

Once a Level 2 response has been identified as most appropriate an action plan (Force Form 117-009) must be developed and its implementation coordinated by the DAIU. This plan is all encompassing and will replace any current victim safety plans.

The area commander retains ownership of all active action plans, which cannot be completed without their authority and final sign off.

## Detecting a Breach of Bail

In all incidents where a complaint has been made regarding a breach of bail, a full and thorough investigation must be conducted in accordance with the requirements of the Scottish Crime Recording Standard.

### Criminal Procedure (Scotland) Act 1995 Section 27

If a notification is received regarding a breach of bail the police will investigate the matter thoroughly. If there is a sufficiency of evidence to substantiate a criminal offence having occurred, the police will report this to the PF by way of an SPR2 and within the same timescales as a custody case. The accused may be detained in custody pending appearance at court, or if appropriate, a warrant will be sought for the accused’s arrest. As in all cases, the Lord Advocate’s guidelines: Liberation by the police | COPFS and the Police Scotland / COPFS Joint Protocol ‘In partnership, challenging Domestic Abuse’ should be followed.

### Criminal Procedure (Scotland) Act 1995 Section 28

Where there are reasonable grounds to suspect that an accused person has broken or is likely to break any condition of bail imposed, the accused may be arrested and detained in custody pending appearance at court. There does not require to be corroboration to arrest the accused, merely reasonable grounds to suspect. The matter will be reported to the PF by way of an ancillary report requesting a bail review and within the same timescales as a custody case. As in all cases, the Lord Advocate’s guidelines: Liberation by the police | COPFS and the Joint protocol between Police Scotland and the Crown Office and Procurator Fiscal Service 'In partnership challenging domestic abuse' should be adhered to.

The content of the ancillary report must include:

* The perpetrators details.
* The original bail details.
* The circumstances giving rise to the breach of bail (summary of events).
* A request that a bail review takes place.

As this is not a criminal offence there is no requirement to raise a Nominal Descriptive Form.

The following guidance provides officers with the process to follow, and deal with Section 27 Criminal Procedure (Scotland) Act 1995 and Section 28 Criminal Procedure (Scotland) Act 1995, offences.

Step 1. Report of Breach of Bail received:

When a breach of bail report is received, officers should carry out a full and thorough investigation.

An assessment should then be made to identify if the perpetrator has been subject of previous allegation of Breach of Bail for which they are still outstanding.

If this is no; officer should raise a crime report (CR), and if it is a domestic, the officer should submit a iVPD.

If this is yes; officer should not raise a CR. They should update the original CR to reflect circumstances of this incident. (This works on the proviso that once bail is breached the accused continues to breach until court makes a decision). If this is a domestic, officer should submit a iVPD.

#### Step 2. Enquiry to Trace Suspect:

Officers should follow all lines of enquiry in order to trace the suspect.

If suspect is traced; suspect should be arrested as a Not Officially Accused and interviewed.

If suspect is not traced; Officers should raise a locate trace in line with the guidance contained within the Crime Investigation SOP.

#### Step 3. Assessment of evidence:

Officers should assess if sufficient corroborative evidence exists to substantiate charge under Section 27 Criminal Procedure (Scotland) Act 1995;

* If sufficient evidence exists, the following steps should be followed -

If suspect is in custody, suspect status should be changed to Officially Accused. Custodial decision will then be taken by the custody supervisor based on Lord Advocates Guidelines. Officers should then submit SPR2 within required timescales.

If suspect is not in custody, officers should submit SPR2 craving a warrant within required timescales.

* If insufficient corroborative evidence exists, the following steps should be followed -

If reasonable cause to suspect that the suspect has broken, or is likely to break bail conditions, Section 28 Criminal Procedure (Scotland) Act 1995 is relevant.

If suspect is in custody, do not raise a new CR. Officers should update the original CR to reflect the circumstances. Officers should then report as custody to PF by means of a ancillary report for Section 28 CPSA 1995 using the original CR number.

If suspect is not in custody, officers do not raise a new CR. They should update the existing CR to reflect the circumstances.

#### Step 4. For any subsequent breach of bail reported, this process recommences.

The flow chart below details the process for Section 27 Criminal Procedure (Scotland) Act 1995 and Section 28 Criminal Procedure (Scotland) Act 1995, offences:



## Key Contacts

Information has been removed due to its content being exempt in terms of the Freedom of Information Scotland Act 2002 Section 30 Prejudice to effective conduct of public affairs.

## Compliance record

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| --- | --- | --- |
| 1.00 | Initial Approved Version (Archived December 2019) | 17/03/2014 |
| 2.00 | Full review. Updated to reflect introduction of Criminal Justice (Scotland) Act 2016. | 24/09/2021 |
| 3.00 | Full review. Updated to include EMB and Bail Supervision guidance. Change of title and ownership. | 06/02/2024 |

## Feedback

All Police Scotland service delivery Policies, Standard Operating Procedures (SOPs) and National Guidance are subject to regular reviews. It is important that user feedback is taken into account when documents are reviewed.

If any officer / staff member wishes to provide comment, or make suggestions for improvements to this or any associated document, Force Form 066-014 should be used.