

TITLE

Amendment to PSO 6100 - The Bail System

PROCESS

6100

**IMPLEMENTATION
DATE**

11 July 2000

EXPIRY DATE

12 July 2001

CONTAINS MANDATORY INSTRUCTIONS

For Action

Governing Governors of local prisons, directors and controllers of contracted out local prisons. All staff in establishments who are involved in bail work

Monitored by

Operational Directors, Area Managers, Standards Audit Unit

For information

Area Manager support team, Headquarters staff

On authority of

Prison Service Management Board

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Other processes affected

None

NOTES

None.

Issued

10/07/2000

AMENDMENTS TO THE PRISON SERVICE ORDER ON THE BAIL SYSTEM

Purpose of Instruction

1. To clarify advice and guidance given in Prison Service Order 6100.

Performance Standards

2. This PSI underpins the Performance Standard which relates to Legal Services and Bail.

Output

3. The PSI has three purposes:
 - ♦ to clarify, as the result of a recent legal case, Prison Service responsibilities for ensuring that bail conditions set out in court warrants are met;
 - ♦ to provide prototype forms for the taking of recognisances;
 - ♦ to incorporate an earlier Instruction to Governors (IG 46/1994) into the PSO, in accordance with Woodcock 60.
4. The clarification of Prison Service responsibilities for ensuring bail conditions are met will necessitate some prisons changing their current practice. It is important that the procedures described in paragraphs 5.1 - 5.3 are followed, otherwise prisoners may be detained illegally. The remaining changes to the PSO do not change current policy or practice.

Impact and Resource Assessment

5. Governors will need to ensure that prison staff who deal with bail matters are aware of the contents of this PSI. Some changes to administrative processes will be necessary, but the PSI does not overall increase the time that will be devoted to these duties.

Mandatory Actions

6. *Governing governors and Directors and Controllers of contracted out prisons are responsible for ensuring that officers who carry out bail work are aware of the contents of this PSI and that the following amendments are made to all copies of PSO 6100 held in the prison:*

- (i) Forms for taking recognisances

Replace chapter 3 with the attached new one. Although the changes only affect paragraph 3.4 a new chapter 3 is attached for ease of replacement. A revised Appendix 3 (including sample forms) should replace the existing one.

(ii) Release procedures when bail is granted

Remove existing Chapter 5 and insert the new one.

A new contents page reflecting these amendments is also attached.

(iii) Cancellation of Instructions Cancel Instruction to Governors 46/1994, Circular Instructions 51/1975 and 44/1974

Audit and Monitoring

7. Standards Audit Unit will monitor compliance with the Key Audit Baselines in the Legal Services and Bail Standard. Governors, Directors and Controllers are responsible for ensuring that all policies and practices set out in the PSO are followed.

Ke Sb

Ken Sutton
Director of Regimes

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CHAPTER THREE: RECOGNISANCES, SURETIES AND SECURITIES

The prison must have in place systems to ensure that recognisances and sureties which can be taken by the Governor are forwarded to the relevant court and that checks are made that recognisances and sureties taken elsewhere have been taken before the prisoner is released

Notes:

- (i) definitions of the terms recognisance, surety and security are given in Appendix 2
- (ii) references in this Order to a principal (ie an accused person)/prisoner entering into a recognisance or having a recognisance taken by the Governor relate to requirements in connection with civil or Immigration Act proceedings. In the case of criminal proceedings (where the Bail Act applies) only sureties enter recognisances, their sole obligation being to ensure the accused's attendance at court

3.1 Taking of recognisances and securities by Governors

3.1.1 A Governor may take recognisances or securities in the following circumstances:

- (i) from a principal where a Crown Court has ordered an applicant for bail to be released from custody provided they enter into a recognisance
- (ii) from a principal if a Judge in Chambers grants bail, does not order immediate release, but authorises the Governor in writing to take a recognisance or security
- (iii) if, in accordance with Rule 86(1) of the Magistrates' Courts Rules 1981, a Magistrates' Court has fixed the amount of a recognisance to be entered into by a principal if they are in prison, or their surety if the surety produces evidence of their ability to pay (as set out in Form 128 of the Magistrates' Courts (Forms) Rules 1981). The form must, if brought to the prison, be signed in the margins by the surety and the signature should be compared with that of the person offering themselves as surety
- (iv) from a principal if the Court of Appeal has ordered that principal to enter into a recognisance. The Governor may not take the recognisance of a surety - this must be taken by the Registrar, a justice of the peace, the clerk of a Magistrates' Court, a police officer of at least Inspector rank or an officer in charge of a police station

3.2 Taking of recognisances other than by Governors

3.2.1 A recognisance ordered by a Magistrates' Court may be taken by a justice of the peace, a justices' clerk or a police officer. This person must notify the Governor using Form 129 of the Magistrates' Courts (Forms) Rules 1981, that the recognisance has been taken.

3.2.2 Recognisances for bail ordered by a Judge in Chambers or a Crown Court may be taken by a justice of the peace at the prison, in which case the Governor will supply the correct forms. If a surety's recognisance is taken at the prison, the justice must be satisfied that the surety has sufficient means, if it becomes necessary, to discharge the financial obligation. The police can be asked to make enquiries on this point. The conditions should also be explained to prisoners before they are given a copy of the form relating to the recognisance. Any such recognisance taken in this way should be forwarded to the Clerk of the Court before which the prisoner is to appear.

3.2.3 The prisoner's relatives or friends may arrange for recognisances to be taken before a justice of the peace. The prisoner may be produced at the court for this purpose.

3.3 General Information

- 3.3.1 The recognisance of a surety may be taken separately from that of the principal, and either before or after the recognisance of the principal. Where more than one surety is required their recognisances may be taken together or separately.
- 3.3.2 It is an indictable offence to indemnify a surety against a loss. When seeking sureties, prisoners must not attempt to make arrangements which appear to be indemnifying their sureties.
- 3.3.3 When the Governor has either taken all sureties or been notified in writing on the relevant form that they have been taken elsewhere, the prisoner may be allowed to enter into a recognisance if appropriate and will be discharged if held for no other cause. Governors may release prisoners before receiving written notification of recognisances taken if they are satisfied that all recognisances have been entered into - the surety's copy of the written notice will be sufficient, as will oral confirmation from the person who took the recognisance.
- 3.3.4 Similarly, if a recognisance ordered by the Court of Appeal has been entered into before the Governor, the relevant form must be forwarded to the Registrar and copied to the prisoner. The prisoner may be released only when the Governor has received written confirmation of any recognisances taken elsewhere or can otherwise satisfy himself / herself that they have been taken.
- 3.3.5 If a Governor takes a recognisance that has been ordered by a Magistrates' Court, it will be forwarded to the Clerk of the committing Magistrates' Court unless the prisoner has been committed for trial, in which case the recognisance will be sent to that court
- 3.3.6 Where a recognisance is taken at the prison the conditions will be explained to prisoner before they are given a copy of the form relating to the recognisance

3.4 Forms for taking recognisances

- 3.4.1 The Magistrates' Court prescribes forms on which recognisances should be taken. Versions of these, which may be adapted as required, are at Appendix 3. There are no forms prescribed for Crown Court and High Court cases, but the Magistrates' Courts forms can be used as a basis for other courts.

CHAPTER FIVE: RELEASE PROCEDURES WHEN BAIL HAS BEEN GRANTED

The prison must ensure that, when notification of a bail decision is received from a court, the procedures set out below are carried out before a prisoner is released.

It is important that these procedures are followed to ensure that prisoners are neither released in error nor falsely detained following a court's decision to grant bail.

5.1 Notification of bail decision

5.1.1 The initial notification to the prison of a bail decision will normally be by telephone from the court. The caller may be either the custody officer at the court, or if the custody officer is not there, a court official. The name, prison number and conditions of bail of the bailed person will be given, together with the caller's name, official position and telephone number. The prison should verify the call by ringing the caller back at the court, having first checked that the phone number given by the caller is that of the court.

5.1.2 A written notification will then be provided to the Governor by the court, if the person who has been granted bail is in custody. This will usually be in the form of a court warrant setting out the decision, together with any conditions attached to the bail. If the prison has any reason to doubt the validity of the warrant (eg it is not clear, no court seal), confirmation of validity should be sought from the court. If such a warrant is received after court hours, it is legitimate to hold the prisoner until the check can be made (the next morning), provided the prison can show that its doubts were reasonable. It is difficult to be prescriptive about the nature of a reasonable doubt - it will depend on the individual case.

5.1.3 The prisoner will not normally be released until the written notification has been received and conditions satisfied (see paragraph 5.2.2 below). Telephone notification can be accepted as authority for release if there was no custody officer in court to receive the written one or if the officer(s) at the court will not be returning to the prison that day or would be doing so very late. A faxed copy of the written notification may also be accepted provided that the sending court's fax number is at the top of the page and can be confirmed to be correct, or, if it is not, can be verified from information held at the prison.

5.1.4 If release arrangements for a prisoner have been made on the basis of a faxed notification and the prisoner wishes to have the original one, the Governor is justified in holding the prisoner pending its receipt. If the prisoner is content to accept the faxed copy in the interim, the original must be posted to him/her at a later date.

5.2 Administrative procedures following notification of a bail decision

5.2.1 When a prison is notified of a bail decision by a court (see above for methods of notification), the prison must do the following:

- ◆ check that there are no other outstanding warrants applying to the prisoner
- ◆ if there are no other such warrants, hand the prisoner a written notice of the bail decision and conditions
- ◆ make a note in the prisoner's records of the delivery of the notice and place a copy with with committal or command warrants
- ◆ ensure that the prisoner understands the conditions and possible consequences if they are not met. The prisoner should sign the office copy of the notice of conditions to confirm this.

5.2.2 Bail conditions, which are often set out in the form of a warrant, fall into two broad categories -

- ♦ those to be met **before** release from custody, and
- ♦ those to be met **after** release from custody

5.2.3 The Governor must ensure that conditions that fall into the first category (ie recognisances, sureties and securities) have been met before the prisoner is released.

5.2.4 However, some conditions, eg residence at a specified bail hostel, prohibition on approaching named individuals, can only be met after release. It is not the prison's responsibility to ensure that such conditions are met - it is for the court to be satisfied (as with all bail conditions) that they can be met after release and for the police to take action if they are not.

5.2.5 The prison has no lawful authority to hold a prisoner even if it appears that conditions to be met after release cannot be met - eg the lack of a bail hostel place. The Prison Service could be liable for a claim for false imprisonment and compensation if the prisoner is not released in accordance with the order of the court. It may occur that the notification is received by the prison late in the day. If this happens and it includes a condition of residence at a specific place and it is too late for the prisoner to comply with the condition, he/she can still only be held in the prison with consent. (A prisoner who has complied with conditions that are to be met prior to release from custody is entitled to be released if he/she so wishes). If, for practical reasons the prisoner decides to spend the night in the prison, this should be noted on his/her records. If he/she insists on being released, the consequences should be explained to him/her (see paragraph 5.2.1).

5.2.6 If bail conditions set out on a warrant are unclear, clarification should be sought from the court. An example of this is that a condition to be met after release may be to reside at a bail hostel, but with no specified hostel. It is unlawful for the prison to hold the prisoner in these circumstances and it is not the prison's responsibility to find a bail hostel place. However, since there are clearly difficulties in releasing a prisoner to no fixed abode, the prison should make an attempt to clarify the meaning of the condition with the court.

5.3 Release procedure when a defendant is granted bail at court but returns to prison

5.3.1 This might occur if a prisoner is granted bail at court subject to pre-release conditions, which cannot be fulfilled at court and is returned to prison pending compliance. In these circumstances, a Magistrates' Court will send the Governor a committal warrant backed for bail together with a certificate (Form 127) stating details of recognisances and any other conditions of bail. In the case of a Crown Court, a Governor will receive the warrant of committal and form 5048 which incorporates the record of the bail decision and any conditions. Defendants who later comply with the conditions should be given a copy of the document setting out the bail decision and conditions and should be released in the normal way after being notified of his/her responsibilities in respect of the conditions.

**5.4 Appeals by the prosecution against bail
(NB The following is likely to apply to only a few cases)**

5.4.1 The Bail (Amendment) Act 1993 gives the prosecution a right of appeal in certain circumstances against the decision of a Magistrates' Court to grant bail in respect of persons who have been charged with or convicted of the following:

- ♦ an offence punishable by a term of imprisonment of five years or more (including a life sentence)
- ♦ an offence of taking a conveyance without authority or aggravated vehicle taking

5.4.2 The appeal, which is to a Crown Court Judge, may only be made if the prosecution have opposed bail before it was granted. The prosecution must tell the court as soon as bail has been granted that they intend to appeal. The Court will then remand the prisoner in custody until the appeal is heard or disposed of. The prosecution has two hours in which to submit written notice of appeal and failure to do so will result in the appeal being regarded as disposed of. The hearing of the appeal must take place within 48 hours of the day on which oral notice of appeal was given, excluding weekends and public holidays.

5.4.3 The prisoner will remain at the court for the two hour period unless the notice of appeal is lodged earlier. Once the notice of appeal is lodged, the prisoner must be escorted to the designated prison. If the prisoner is likely to arrive late, the escorting staff must contact the duty Governor to advise of the reason for the delayed arrival. Arrangements should then be made to facilitate the reception of the prisoner.

5.4.4 The prison must then hold the prisoner until the appeal is heard. The prisoner has no right to appear automatically at the hearing unless he/she is acting in person, and it will not normally be necessary to produce him/her. In the rare cases that the court does wish the prisoner to be produced, it will be necessary to arrange this probably at short notice. The court will notify the prison and the prisoner of the date and time of the hearing, whether the prisoner must attend, and afterwards of the outcome. **If nothing is heard from the court shortly after the time for the hearing, a progress report should be sought from the Clerk of the Crown Court.** If the prosecution abandon the appeal within the 48 hours, the clerk of the Magistrates' Court will serve a notice on the Governor directing the release of the prisoner as previously granted. Having checked that all recognisances and sureties have been taken and that there are no other outstanding warrants, the prisoner should then be released.

5.4.5 An officer of the Crown Court will inform the Governor of the outcome of the hearing. If the appeal is accepted by the court, the prisoner will be remanded in custody. If the appeal is rejected, the judge will grant bail and may apply conditions as he thinks fit. The procedures for releasing a prisoner on bail as set out earlier in this chapter will apply.

FORMS FOR TAKING RECOGNISANCES

The following forms should be used for taking recognisances:

Form 1888 Recognisance of surety (criminal cases)

Form 1889 Recognisance (civil cases)

Form 23 Recognisance to prosecute an appeal before the High Court on
 case stated and for bail pending the appeal

Form 897 Recognisance: Bail; Appeal to Crown Court

Examples of these forms for use or adaptation as required, are attached.

RECOGNISANCE OF SURETY(CRIMINAL CASES)

Magistrates' Court (code)

Date:

Accused (Name):

Address:

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the accused fails to surrender to [the custody of the court at am/pm]

[custody at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned]

-Signature £

Taken before me

Governor HM Prison /Director

RECOGNISANCE (CIVIL CASES)

Magistrates' Court (code)

Date:

Principal (Name):

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if I fail to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Taken before me

.....
Governor HM Prison
/Director

CONDITION

The principal shall appear before the court at on
at am/pm

RECOGNISANCE TO PROSECUTE AN APPEAL BEFORE THE HIGH COURT ON CASE STATED AND FOR BAIL PENDING THE APPEAL

Magistrates' Court (code)

Date:

Principal (Name):

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if I fail to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Taken before me

Governor HM Prison
/Director

CONDITION

The principal shall prosecute without delay the principal's appeal to the High Court from the following decision.

Magistrates' Court

.....

Offence/Order and date

Decision subject to appeal:

and shall submit to the judgement of the High Court and pay such costs as may be awarded by the High Court [and, unless the decision appealed against is reversed, appear before the above Magistrates' Court within ten days after the judgment is given*]. This recognisance shall then be void but otherwise shall remain in force.

* Delete

RECOGNISANCE: BAIL; APPEAL TO CROWN COURT

Magistrates' Court (code)

Date:

Principal (Name):

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if I fail to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Surety:

Address:

I acknowledge my obligation to pay the court the sum specified opposite my signature if the principal fails to comply with the condition specified below.

Signature £

Taken before me

Governor HM Prison
/Director

CONDITION

The principal shall appear at the Crown Court at..... at such time as the principal may be directed for the hearing of the principal's appeal. This recognisance shall then be void but otherwise shall remain in force.