

SUMMARY OF MEASURES IN THE CRIMINAL JUSTICE BILL

1. Bail

The proposed legislation includes the following provisions in relation to bail:

When deciding whether to grant bail in respect of an offence which appears to have been committed while the defendant was on bail for another offence, courts will be required to give particular weight to that fact when assessing the risk that (if granted bail) the defendant would commit further offences.

The right of the prosecution to appeal to the Crown Court against a decision by magistrates to grant bail is to be extended to cover all imprisonable offences, and not just those carrying a maximum penalty of 5 years as at present.

The Bill creates a presumption that bail will not be granted for a person who is charged with an imprisonable offence, and who tests positive for a specified Class A drug and refuses treatment (the three "criteria") – unless there are exceptional circumstances in a particular case.

2. Conditional Cautioning

The Bill allows for a caution with specific conditions attached to it to be given where there is sufficient evidence to charge a suspect with an offence which he/she admits, and the suspect agrees to the caution. It would be for the CPS to decide whether a conditional caution was appropriate, and for the police to administer it.

If the suspect failed to comply with the conditions, he or she would be liable to be prosecuted for the offence.

3. Charging

The Bill provides that cases in which the police would now charge a suspect should generally be referred to the CPS to determine whether proceedings should be instituted, and if so on which charge. Meanwhile the suspect would be released on bail; provision is made for conditions to be attached (with the suspect's consent) to police bail in such circumstances.

For certain offences and in certain circumstances (to be set out in guidance), it would remain open to the police to charge without reference to the CPS e.g. minor, routine offences, or cases where it is necessary to bring the suspect before a court to seek a remand in custody (or on bail on conditions to which the suspect has refused to consent).

Pilot projects have shown that involving the prosecutor at an earlier stage leads to more accurate charges and earlier guilty pleas.

4. Disclosure

The Bill includes a number of amendments to the current provisions which govern the prosecution's disclosure of unused material to the defence before the trial and defence disclosure requirements. These include:

- replacing the existing two-stage disclosure test, with an objective single test for the disclosure of unused material, requiring the prosecution to disclose to the defence unused material that has not previously been disclosed and which might be considered reasonably capable of undermining the prosecution case or of assisting the accused;
- increasing the amount of detail that an accused will be required to provide in his/her defence statement which he/she is required to serve before trial, setting out the nature of his/her defence;
- requiring the judge to warn the accused about failures to comply with the defence statement requirement;
- giving the Court power to order an accused to give a defence statement to his/her co-accused, with the aim of placing all parties on an equal footing

and

- also giving the Courts power to direct that the jury be given a copy of the defence statement and, if necessary, to direct that the statement be edited to exclude any inadmissible evidence.

The proposed provisions would also require the accused, in advance of the trial, to give the Court and the prosecutor a notice giving details of witnesses that he/she intends to call to give evidence at the trial and disclose details of experts consulted but whom it is not intended to call to give evidence.

5. Judge-alone trials

The proposed legislation would allow trial by a judge alone in the following circumstances:

- where the defendant has asked for it, subject to the consent of the court ;
- in cases involving complex or lengthy financial and commercial arrangements;
- where there is a serious risk of jury intimidation;

The defendant would be able to appeal against a decision to try a case by judge alone, or against a refusal by the court to grant his/her request for judge-alone trial.

Where a trial is conducted or continued without a jury, and the defendant is convicted, the judge will be required to give a reasoned verdict.

6. Jury Service

The Bill includes provisions to abolish the categories of ineligibility (with the exception of mentally disordered persons and certain groups of convicted persons) for, and excusal as of right from, jury service. This means that certain groups of people such as members of the armed forces, members of the armed forces, over 65s, who currently must not, or need not, do jury service would, when these provisions are enacted, be required to do it unless they can show good reason not to.

7. Live Links

Legislation would enable witnesses to give evidence using TV links from remote locations if this would be more efficient or effective.

8. Prosecution Appeals

Provisions in the Bill would introduce an interlocutory prosecution right of appeal against those rulings by a Crown Court judge that have the effect of terminating the trial early before the jury has considered the evidence.

9. Double Jeopardy – Retrial for serious offences

The proposed provisions include an exception to the double jeopardy rule for a defined list of very serious offences where new evidence emerges that strongly indicates that an acquitted person is in fact guilty of that offence and it is right in all the circumstances of the case for that person to be retried. A number of safeguards would be included in the legislation to guard against the possible harassment of acquitted persons. The DPP's consent would be needed

before a suspect can be re-investigated and before an application can be made to the Court of Appeal to quash the acquittal. It would only be possible to make one application for an acquittal to be quashed, so there is no prospect of repeated re-trials.

10. Evidence of Bad Character

The proposed reforms would enable judges to let juries hear about a defendant's previous convictions and other misconduct where this is relevant to the case. The court would be able to exclude evidence of previous misconduct if it thinks that the jury will give it disproportionate weight (in other words, if the relevance of the evidence to the case is outweighed by any prejudicial effect). The starting point will, however, be that relevant evidence is admissible.

11. Reported Evidence (Hearsay)

The proposals would enable witness statements to be used as evidence, subject to a number of safeguards, where the witness is identified but unavailable to testify or the statement is contained in a business document. The court would have a further discretion to admit hearsay evidence where it would not be contrary to the interests of justice for it to be used. In addition, witnesses' previous statements would become more widely admissible at trial including allowing witnesses to refer to their statement whilst giving evidence in court and greater use of video recorded statements for crucial evidence in serious cases.

12. Purposes and Principles of Sentencing

The Bill would set in statute the purposes of sentencing to protect the public, act as punishment, reduce crime (including to deter, incapacitate, reform and rehabilitate) and promote reparation. It would also make explicit the principles that should determine the seriousness of an offence and the severity of the resulting sentence.

13. Magistrates' Sentencing Powers

This Bill would extend magistrates' sentencing power from 6 to 12 months.

14. Sentencing Guidelines Council

The Bill would provide for the establishment of a Sentencing Guidelines Council, which would be tasked with drafting and promulgating a consolidated set of sentencing guidelines to be taken into account by all criminal courts.

15. Deferred Sentence

This Bill would require more of the offender on a deferred sentence. He/She may have to

complete undertakings in the community as set by the court.

16. Generic Community Sentences

The Bill would create a single community sentence under which all of the options currently attached to the different community orders would be available.

17. Custody Minus

This would be a short prison sentence of between two and thirteen weeks which can be suspended for up to two years while requirements in the community which are set by the court are undertaken. If the offender breaches any of the activities or requirements, the custodial term is activated, and the sentence becomes one of custody plus. Committing a further offence during the entire length of suspension would also count as breach.

18. Intermittent Custody

The Bill would create a new sentence of intermittent custody (modelled on the structure for custody plus – see below) in which the custodial period can be served intermittently. The licence period, complete with requirements set by the court, is served in between the custodial periods, and beyond (if applicable).

19. Custody Plus

This sentence would consist of a custodial period of between two and thirteen weeks, followed by a period of at least six months served in the community on licence within an overall sentence envelope of less than 12 months. Some of the options under the Generic Community Sentence are available as licence conditions.

20. Sentences of over 12 months

For offenders serving a sentence of over 12 months (apart from the sentences for dangerous offenders outlined below) release would be automatic at the halfway point and they would remain on licence until the end of the sentence. The Prison and Probation Services would set a number of requirements in addition to be followed during the licence period.

21. Sentences for Dangerous Offenders

The Bill would introduce a new scheme for the sentencing of dangerous adults. Offenders who have committed a specified sexual or violent offence and have been assessed as dangerous would get one of two new sentences for dangerous offenders or a discretionary life sentence.

Release from all of these sentences would be at the discretion of the Parole Board. The most dangerous offenders who continue to pose a risk to the public may be kept in prison for an indeterminate period.

22. Sentence Enforcement

Enforcement of community orders is to be strengthened by giving the court stronger options in the case of breach. This Bill makes recall to custody an executive decision, rather than having to be approved by the Parole Board as currently. The Parole Board would scrutinise all recall decisions, to ensure they are fairly taken.

23. Duty to Co-operate in the Supervision of Dangerous Offenders in the Community

The Bill would strengthen the provisions that have taken the form of Multi Agency Public Protection Panel (MAPPPs). It would also require specified bodies to co-operate with the police and probation in performing their obligations and would provide for lay members to be appointed to MAPPPs.

24. Sentence Calculation

The existing method of calculation based on the principle of single-terming would be simplified and replaced with a set of clear provisions for calculating the time served in custody where several sentences are passed. The method for deducting time spent on remand from the custodial part of the sentence to be served would also be simplified by the Bill.

25. Powers of review

Under the new suspended sentence, the court would have the power to review the progress of the offender if it chooses, and alter the requirements accordingly. The aim is to increase the court's involvement in the outcome of the sentences it hands down.

26. Juvenile provisions

The Bill extends the use of parenting orders by making them available at an earlier stage, allowing the order to be issued to parents of first time offenders who plead guilty and who are given a Referral Order by the court. (2195 Parenting Orders have been made between April 2000 and April 2002).

27. Drugs provisions

The Bill would:

extend drug testing provisions to those under 18 for specified Class A drugs charged with trigger offences;

make a presumption against bail where someone has tested positive for Class A drugs but refused to undergo assessment for treatment and refused then to undertake treatment; the court must be satisfied that if granted bail the individual does not pose a real risk of re-offending;

increase penalties for trafficking Class C drugs to 14 years and new powers of arrest for Class C drugs – so that can continue to arrest for cannabis possession, after cannabis is reclassified.

28. Police and Criminal Evidence Act

The Bill would:

extend stop and search powers for items intended to cause criminal damage;

enable immediate bail from the scene of arrest ("street bail");

allow those accompanying the police under a warrant to actively assist in searching premises;

modify PACE to allow the use of sealable property bags;

extend the time for which someone may be detained, under the authority of a superintendent, from 24 to 36 hours for any arrestable offence;

extend circumstances under which inspectors can carry out reviews of detention by telephone; and

revise the way in which changes are made to the Codes of Practice.