

# Failing to Surrender to Bail

Bail Act 1976 (section 6)

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**Triable either way**

**Maximum: 12 months' custody Crown Court, 3 months' custody magistrates' court**

**Offence range: Discharge – 12 months' custody**

## Failing to Surrender to Bail

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	Deliberate attempt to evade or delay justice
B	Factors in categories A and C not present
C	Breach just short of reasonable excuse

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
<b>Category 2</b>	Failure to attend magistrates' court hearing results in substantial delay and/or interference with the administration of justice*
<b>Category 3</b>	Factors in categories 1 and 2 not present

\* In particularly serious cases where the failure to attend is in the magistrates' court and the consequences of the delay have a severe impact on victims and witnesses the case should be committed to the Crown Court pursuant to s.6(6)a Bail Act 1976 and the Crown Court should sentence the case according to the range in Category A1.

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 13 weeks' custody	<b>Starting point</b> 28 days' custody	<b>Starting point</b> 7 days' custody
	<b>Category range</b> 6 weeks' – 40 weeks' custody	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Low level community order – 6 weeks' custody
Category 2	<b>Starting point</b> 14 days' custody	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Band B fine – High level community order	<b>Category range</b> Band A – Low level community order
Category 3	<b>Starting point</b> 7 days' custody	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – 6 weeks' custody	<b>Category range</b> Band A fine – Low level community order	<b>Category range</b> Discharge – Band B fine

Maximum sentence in Magistrates' court – 3 months' imprisonment

Maximum sentence in Crown Court – 12 months' imprisonment

The table over the page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**Factors increasing seriousness*****Statutory aggravating factor:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

***Other aggravating factors:***

Breach committed shortly after order made

History of breach of court orders or police bail

Distress to victims and witnesses

**Factors reducing seriousness or reflecting personal mitigation**

Genuine misunderstanding of bail or requirements

Prompt voluntary surrender

Sole or primary carer for dependant relatives

See page 75.

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.