

# Rebalancing the Criminal Justice System in favour of the law-abiding majority

Consultation on restricting the  
use of backed for bail warrants

28 December 2006

CRIMINAL JUSTICE SYSTEM





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# Chapter 1: Introduction

## Aim and structure

1.1 The purpose of this paper is to consult on how to restrict the use of “warrants backed for bail” in order to help speed the return to court of bailed defendants who fail to appear, in line with the commitment in the Home Office’s review on *Rebalancing the criminal justice system in favour of the law-abiding majority* (July 2006).

*“Once the police have found a bail breacher, it is critical that they can take effective action. At present, courts can issue either a warrant with or a warrant without bail when someone fails to attend. But warrants with bail just mean that the person who has not attended is served with another piece of paper telling them to appear at some future date. So we will restrict the use of warrants with bail, so that, except for the most minor of offenders, anyone failing to answer to bail can expect to be taken into police custody as soon as they have been found until they can be brought before the court.” Paragraph 2.4.1, page 20<sup>1</sup>*

1.2 The consultation paper is structured as follows:

- Chapter 2 provides some background information relevant to the consultation exercise;
- Chapter 3 analyses the problems posed by backed for bail warrants;
- Chapter 4 sets out what action is already being taken to reduce the use of backed for bail warrants, including good practice and planned legislation;
- Chapter 5 seeks views on options for further legislative change aimed explicitly at restricting the use of backed for bail warrants;
- Annex A is the ACPO/OCJR Warrant Priority Matrix, providing guidance on how to prioritise warrants into appropriate categories;
- Annex B is the Schedule of qualifying offences for retrial of serious offences in the Criminal Justice Act 2003;
- Annex C offers an assessment of the potential impact of restricting the use of backed for bail warrants on prison places and police cells;
- Annex D is a list of those persons and bodies that have been consulted.

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<sup>1</sup> *Rebalancing the criminal justice system in favour of the law abiding majority. Cutting crime, reducing re-offending and protecting the public* Home Office, July 2006 Ref: 275921

## How to respond to the consultation

1.3 Questions about the consultation and any responses should be directed to:

Aidan Wilkie  
Justice and Enforcement Unit  
Office for Criminal Justice Reform  
Ground Floor Fry Building  
2 Marsham Street  
London SW1P 4DF  
Aidan.Wilkie@cjs.gsi.gov.uk  
020 7035 8459

Elizabeth Austin  
Justice and Enforcement Unit  
Office for Criminal Justice Reform  
Ground Floor Fry Building  
2 Marsham Street  
London SW1P 4DF  
Elizabeth.Austin8@homeoffice.gsi.gov.uk  
020 7035 8693

## Deadline for responses

1.4 Responses are requested by 19th March 2007.

## Responses and disclaimer

- 1.5 The information you send in may be sent to colleagues within the Office for Criminal Justice Reform, the Government or related agencies. Furthermore, information provided in responses to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.6 If you want the information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
- 1.7 An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 1.8 The Department will process your personal data in accordance with the Data Protection Act – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# Chapter 2: Background

## What is a backed for bail warrant?

This consultation relates to Fail To Appear (FTA) warrants, issued under the Bail Act 1976 s.7 or the Magistrates' Courts Act 1980 (MCA 1980) s.13. Magistrates obtain their power to back a warrant for bail under the MCA 1980 s.117. The Crown Court obtains its power to back a warrant for bail under the Supreme Court Act 1981 s.81 (4).

When a defendant fails to appear at court in answer to a summons or to bail, the magistrate can issue a warrant for his arrest. This can be "backed for bail" or "not backed for bail" (MCA 1980 s.117). If the magistrate issues a warrant backed for bail, the police will find the defendant and produce the warrant which will contain a direction that the person arrested be released on bail (with or without conditions) subject to a duty to appear before a particular court at a particular time. If the warrant is **not** backed for bail the defendant will be arrested, detained and brought before the court at the earliest possible opportunity. Depending on the time of day of the arrest, the defendant may spend a night in police custody – in some cases up to three nights if arrested on late on a Friday and no Saturday court is available.

Any subsequent remand decision remains with the magistrates. The decision whether to issue a warrant and whether to back it for bail is a judicial one based on law and the facts of the case.

A warrant cannot be issued unless the substantive offence to which the warrant relates is punishable with imprisonment, or the Court, having convicted the accused, is proposing to impose a disqualification on him (MCA 1980 s.13).

The judiciary have an unfettered discretion to issue backed for bail warrants. The prosecution can oppose this if they feel a no-bail warrant is more appropriate. Soundings with practitioners suggest that there are two main reasons for issuing a backed for bail warrant:

- it is believed the defendant may have a justifiable reason for non-attendance (e.g. illness or doubt over whether the defendant was informed of the court date);
- the alleged offence is relatively minor and a no-bail warrant, possibly resulting in custody (once the warrant is executed), would be a disproportionate response.

Any failure to attend in response to a backed for bail warrant is an offence under the Bail Act 1976. This is irrespective of whether the proceedings were initiated by arrest and charge or summons. Failure to appear in answer to a summons itself is not a Bail Act offence.

FTA warrants backed for bail are only very rarely issued by the Crown Court. (As an indication of this, only 8 out of the 8,500 unexecuted warrants held by the Metropolitan Police in July 2006 were Crown Court backed for bail warrants). This consultation therefore concentrates on magistrates' courts.

2.1 The Department for Constitutional Affairs report *Delivering Speedy, Simple, Summary Justice*<sup>2</sup> provides the context for restricting the use of backed for bail warrants:

*“Police and courts working together have made major improvements in the enforcement of fail to appear warrants, achieving a 43% reduction in the number outstanding over the past two years. The challenge now is to sustain this momentum through more integrated approach to improving compliance with the terms of bail, sharing information, and faster and more certain execution of warrants for failure to appear at court.”*

- 2.2 Since the launch of “Operation Turn Up” in September 2004 the number of outstanding failure to appear (FTA) warrants has been driven down from 65,321 to 35,871 in September 2006. This reduction (now 44%) is equivalent to a reduction from 4.7 to 2.8 months’ worth of warrants issued.
- 2.3 In almost all areas FTA warrants – both backed for bail and not backed for bail – are executed by a police officer. With the progressive introduction over the next 18 months of the Warrant Handling Strategy, under the aegis of the National Enforcement Service, it will fall to Court Enforcement Officers (CEOs) to execute most backed for bail warrants. This consultation concentrates on police as warrant executors, but the same efficiency arguments apply to CEOs.
- 2.4 The evidence in this consultation comes from two main sources: the warrant management systems developed by police over the past two years; and interviews with practitioners. The analysis of this evidence (outlined in this paper) suggests that:
- restricting the use of warrants backed for bail does not necessarily require increasing the use of warrants not backed for bail (“no-bail” warrants) – there may be more effective “non-warrant” alternatives;
  - replacing most backed for bail warrants with no-bail warrants would not necessarily result in a more efficient redeployment of resources. While the overall number of warrants issued might be expected to fall, no-bail warrants require more police resources to execute than warrants backed for bail; and police would still need to give priority to the execution of more serious offence/defendant warrants; and
  - the key principles informing any new approach should be speed, certainty and proportionality.

## Judicial independence

- 2.5 Decisions in relation to bail, including the issue of a warrant, are for the judiciary. None of the following proposals on how to restrict the use of warrants backed for bail is intended to undermine that discretion, but rather to enable the judiciary to make a major contribution to achieving two important aims:
- ensuring that more defendants are returned more quickly to court;
  - allowing police (and, increasingly, CEOs) to focus their resources where most needed.

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<sup>2</sup> *Delivering Simple, Speedy, Summary Justice*, DCA, July 2006, DCA 37/06



# Chapter 3: What problems are posed by backed for bail warrants?

## In many cases backed for bail warrants delay the defendant's return to court

- 3.1 The *Rebalancing the Criminal Justice System Review* focused on the need to return those who breach bail back to court as quickly as possible. A swift response sends a message that breaches of Court orders will be taken seriously (and thus should improve compliance), heightens the likelihood of enforcement and limits the opportunity for re-offending.
- 3.2 Much effective work has gone into speeding up processes associated with failure to appear: for example, in the period from April 2005 to August 2006 courts have improved the speed with which they notify police of the issue of a warrant.

	<b>April 05</b>	<b>August 06</b>
<b>% notified to police in one working day</b>	61%	95%
<b>% notified to police in three working days</b>	87%	100%

- 3.3 Data are now being collected on how quickly the warrants themselves are being executed, and Local Criminal Justice Board timeliness of execution targets will be set from April 2007.
- 3.4 However, there is still work to be done in improving the speed of execution, including addressing issues associated with backed for bail warrants, which have been identified as a blockage to the quick return to court of defendants who fail to appear.
- 3.5 Based on a sample of 12 criminal justice areas, around 23% of all FTA warrants issued are backed for bail (approximately 40,000 warrants a year). Around 30% of the current total of outstanding, unexecuted warrants are backed for bail (approximately 11,000), although this ranges from 3% in some areas to 47% in others. Backed for bail warrants therefore account for a disproportionate amount of the outstanding warrants total, suggesting that they are not accorded a high priority by the executing agencies.
- 3.6 On receiving an FTA warrant, the police assign it a priority in line with the ACPO/OCJR Warrant Priority Matrix (Category A, B or C in descending order) according to the seriousness of offence, the offending history of the defendant, and other factors derived from the National Intelligence Model (see annex A). The prioritisation aims to ensure that police resources are directed first at those defendants posing the highest risk. As the new warrant handling strategy rolls out, an increasing proportion of category C warrants are being allocated to CEOs to execute.

## National Enforcement Service – Warrant Handling Strategy

On 15 March 2005 Lord Falconer and the Attorney General announced the Government's proposal for a National Enforcement Service (NES). Building on the wide range of initiatives currently being taken forward to improve performance across all aspects of enforcement. It will put in place a framework for improved enforcement and sentence compliance, with enforcement professionals who will focus on fine defaulters, those skipping bail, community penalty breaches and confiscation orders.

The warrant handling strategy divides responsibility for execution between Police and Court Enforcement Officers (CEOs). The dividing line is set in accordance with the ACPO/OCJR warrant matrix, with CEOs taking responsibility for the execution of category C warrants (subject to risk assessment). As the vast majority of backed for bail warrants are classified as category C warrants, this will free considerable police resource which will allow them, amongst other things, to return the more serious offenders to court as quickly as possible.

The warrant handling strategy is currently being piloted in the North West of England, with plans for staged roll-out across the rest of the country throughout 2007/2008.

- 3.7 Almost all backed for bail warrants are given priority C; and around half of priority C warrants are backed for bail. Timeliness of execution is considerably worse for category C warrants than for Category A or B warrants.

Priority	% executed within	Number of days
A	62	14
B	61	21
C	51	28

- 3.8 With only 51% of Category C warrant currently being executed within 28 days, this does not compare well with the post. With a letter, one might expect 100% delivery to the given address within two days at a fraction of the cost of personal delivery. There is no centrally held data on when, within those 28 days, most warrants are executed. Practitioners have suggested that some may be executed on day one and others on day 27.
- 3.9 There are no separate data for timeliness of execution of backed for bail warrants, but police practitioners have suggested that backed for bail warrants are regarded as lower priority than no-bail warrants – in effect an unofficial category D. This is not just because the relevant defendants are generally regarded as low risk. It is also because executing backed for bail warrants is often seen as an inefficient use of police resources. The reason for this is that a backed for bail warrant is viewed as similar to an adjournment notice – albeit one which requires personal service by an executing officer, and where failure to surrender is an offence. The warrant having been executed, there is also no guarantee that the defendant will in fact subsequently attend court.<sup>3</sup>
- 3.10 There are a number of other factors associated with backed for bail warrants which also contribute to major delays in the process:
- the time taken to execute the warrant, given its relative low priority;
  - the time lapse until a new court date can be set; and

There are, however, fundamental differences between a backed for bail warrant and an adjournment notice. If the defendant is not on bail (i.e. fails to appear in answer to a summons) and then subsequently fails to appear in answer to an adjournment notice he/she will not have committed an offence under the Bail Act 1976. However, if a backed for bail warrant is issued and the defendant fails to appear, then a Bail Act offence will have been committed.

- possible further failure to appear on the new court date.

## **In certain situations a backed for bail warrant is not a sufficiently robust response**

- 3.11 Despite the inherent delays, a backed for bail warrant may be the most proportionate response in certain situations, for example where the offence is minor and there is no evidence to suggest the defendant will fail to appear again (although the Court may also choose to send a defendant warning letter (see para 3.12) in this situation).
- 3.12 However there are certain situations where a more robust response (no-bail warrant) is required, specifically:
- where the substantive offence is 'serious';
  - where the defendant has a 'poor' bail history and there is real concern over their future attendance at court;
  - where a backed for bail warrant has already been issued in the proceedings but the defendant has failed to appear in answer to it.
- 3.13 Anecdotal evidence suggests that in some cases backed for bail warrants are being issued in these circumstances, although there is limited evidence to support this.
- 3.14 The aim should be to restrict the use of backed for bail warrants in such circumstances. In these situations the issue of a no-bail warrant will result in the defendant returning to court more quickly. This sends a strong message that the orders of the Court should be complied with, reduces the chances of further failure to appear and limits the opportunity for re-offending.

# Chapter 4: What is currently being done to restrict the use of backed for bail warrants?

4.1 This chapter sets out what is already being done in terms of good practice to reduce the number of backed for bail warrants, and the planned legislative changes which should also help in this respect.

## Good Practice

4.2 Some criminal justice areas have already succeeded in restricting the use of backed for bail warrants. Nottinghamshire in particular has implemented a number of measures with this aim in mind, resulting in a very significant reduction in the number of backed for bail warrants issued.

### Nottinghamshire case study

The use of FTA warrants with bail is rare in Nottinghamshire, with Courts in Nottinghamshire issuing only 125 (out of 3,708) in total during the past twelve months. In recent months, bail warrants have averaged less than 1% of the domestic FTA warrant volume received by Nottinghamshire Police. Currently, there are just 10 outstanding backed for bail warrants in the area (<2% of total outstanding).

A cross-agency FTA Warrants Working Group was set up following Operation Turn-Up under the auspices of the Nottinghamshire Criminal Justice Board, which identified that backed for bail warrants were a blockage to swift return of defendants to court. While the action taken when a defendant fails to appear remains a judicial decision, legal advisers now remind magistrates of the potential impact of issuing a backed for bail warrant and remind magistrates of the other options available to them.

The Courts have confirmed that they found the use of backed for bail warrants ineffective and, while they are used in some cases, enlarging bail is often found to be a preferable alternative – bail is enlarged for between 14 and 21 days whereas a backed for bail warrant always sets a hearing date over 28 days ahead (and may require subsequent re-dating should the warrant not be executed within the timeframe). This has significantly improved the speed at which defendants are returned to court.

Notification of enlarged bail is made both in writing and through the defence solicitor, and there is a clear message that further failure to appear will result in the issue of a warrant for arrest.

4.3 The Office for Criminal Justice Reform (OCJR) has initiated a project aimed at identifying and disseminating good practice more widely as a means of restricting the use of backed for bail warrants. The project will build on some of the examples of existing good practice set out below in relation to bail, trials and sentencing in absence, and providing better information on bail

history. Many of these examples focus on alternatives to warrants, rather than on upgrading backed for bail warrants to no-bail status.

- 4.4 This project will also explore how any such changes in process can be agreed and adopted locally. One possible avenue is the local inter-agency bail agreements which already have wide cross-CJS buy-in and are currently being rolled out across the country, under the auspices of Local Criminal Justice Boards. The Justices' Clerks Society and Magistrates' Association will play a crucial role in promulgating any findings from the project.

### **(i) Bail in Absence**

- 4.5 One of the main reasons for issuing a backed for bail warrant (rather than a no-bail warrant) is that the defendant appears to have a justifiable excuse for non-attendance (e.g. illness or lack of knowledge of the court date). However, in some criminal justice areas, Courts will simply 'enlarge bail' (also known as 'extend' bail and 'bail in absence') under the MCA 1980 s.129(3) (supplemented by s.43(1)), by informing the defendant by letter (known as an adjournment notice) of the new court date. This course of action is only possible if the defendant has been bailed previously.
- 4.6 Where an adjournment notice is sent to the defendant, there is no requirement in the Criminal Procedure Rules to show that it came to his or her knowledge or, alternatively, that it was sent by recorded delivery or registered letter to his or her last known address. It is merely necessary to satisfy the Court that the defendant had 'adequate notice' of the adjournment date (MCA 1980, s.10(2)). Most Courts require service of an adjournment notice to be proved as strictly as service of a summons<sup>4</sup>, but some are willing to proceed on less full evidence.
- 4.7 That said, if delivered by post, there is no guarantee that the adjournment notice will be received by the defendant. By contrast, an executed backed for bail warrant does offer the certainty that the defendant was made aware of the new court date.
- 4.8 One of the advantages of an adjournment notice is that an earlier new court date can be set than would be the case if a backed for bail warrant were issued, because of the expectation of earlier delivery with the postal system. If the defendant answers the 'enlarged bail' then he or she will generally be back in court more quickly than if a backed for bail warrant had been issued. Bail in absence negates the need to issue a warrant thus saving on executing agency resources, while still essentially resulting in the same outcome as a backed for bail warrant.
- 4.9 A variant on the practice described above of enlarging bail is for the Court to issue a defendant warning letter. OCJR issued guidance in March 2006 (ref GDC 18) aimed at encouraging Courts to consider sending letters instead of issuing backed for bail warrants, particularly where a defendant fails to appear in answer to a summons (and the Court decides not to proceed in absence). The Senior Presiding Judge, Lord Justice Thomas, wrote to colleagues in May 2006 in support of this approach, highlighting the need to deal robustly with the defendant if they failed to appear in answer to the letter, either by proceeding in absence or issuing a warrant not backed

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<sup>4</sup> A summons may be served on a person by:  
(a) personally delivering it to him;  
(b) leaving it for him with another person at his last known or usual place of abode;  
(c) posting it to his last known address or usual abode (CrimPR, r. 4.1(1))

for bail<sup>5</sup>. Such letters are already being used by a number of areas and, although there is a dearth of evaluative evidence, some areas report the results have been positive.

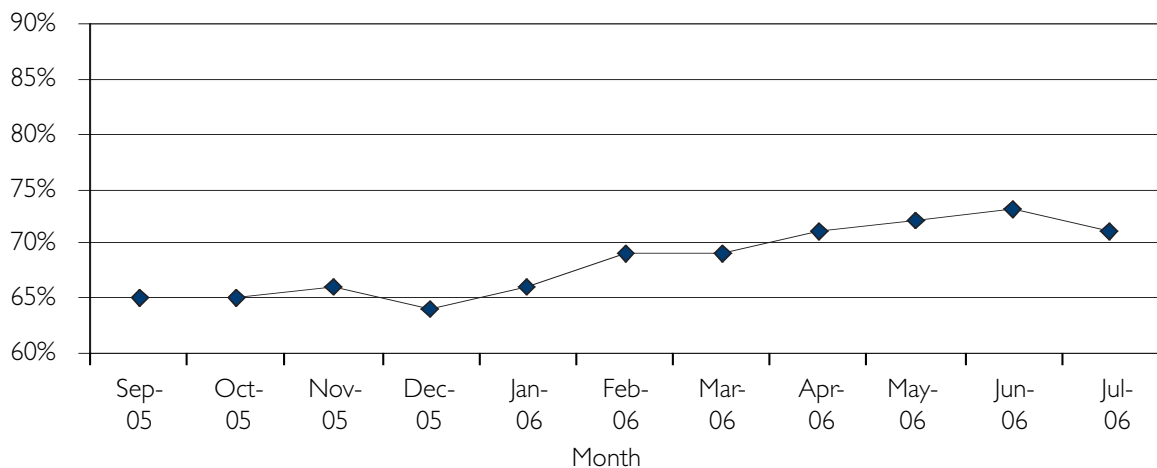
## (ii) Trials and Sentencing in Absence

4.10 One way of reducing the number of warrants issued, whether backed for bail or otherwise, is, in appropriate cases to try and sentence the defendant in their absence. If the defendant does fail to appear, the Court is within its right to proceed in his or her absence under the MCA 1980 s.11(1), as highlighted in the then Lord Chief Justice's Practice Direction of February 2004.

The Practice Direction has 3 key strands:

- the Court should seek to deal with the Bail Act offence, even if the "main" offence cannot be dealt with at that time, and a separate sentence should be imposed for the Bail Act offence;
- when the Court cannot deal with the main offence at the same time as the Bail Act offence, it should carefully consider whether to revoke bail or to impose more stringent bail conditions;
- the Court should consider trying a defendant in his or her absence in appropriate cases.

4.11 Data are now being collated from each criminal justice area on the proportion of trials proceeding in absence in magistrates' courts. This shows an overall increasing trend in trials in absence at a national level, although there are regional variations.



4.12 As well as trying the case in absence, the Court may, if it finds the defendant guilty, sentence in absence.<sup>6</sup> This also helps reduce the need to issue a warrant; a warrant may still need to be issued after a conviction or sentence in absence, but the numbers issued are reduced as they relate to the end of a process, not the beginning.

4.13 The project will investigate areas with a high proportion of trials in absence and identify the drivers for this. If replicable and appropriate, these approaches can then be promoted in other areas directly and through promulgation of the overall findings of the project.

<sup>5</sup> "there may be little to be gained by the issue of a warrant backed for bail in such circumstances (In cases where (1) a defendant does not attend, (2) the court decides not to proceed in absence and (3) the court is considering issue of a warrant backed for bail). Furthermore its execution is not accorded the highest priority; such warrants are, I understand, sometimes viewed as consuming a disproportionate amount of police resource.

If the defendant does not attend the rearranged hearing without good reason, the court should then consider proceeding in absence or issuing a warrant not backed for bail. Unless there were unusual circumstances, any other course of action would undermine the process. The letter to the defendant should make it clear that, if the defendant did not attend the rearranged hearing, a court might well proceed in absence or issue a warrant not backed for bail."

<sup>6</sup> There are different approaches to this in different Courts, particularly as regards disqualification for driving.

### (iii) Bail history

- 4.14 Consultation with practitioners suggests that some defendants with a poor bail history are being issued with backed for bail warrants. There is no evidence that the Court is ignoring bail history, rather this points to a lack of information being available to the Court at the time they make the decision to issue the warrant.
- 4.15 OCJR is currently working on a separate project aimed at ensuring that sufficient information is presented to the Court to ensure they can make an informed bail/remand decision in the first instance. The two issues are clearly linked and so the project will be widened to focus also on improving the information available to the Court in relation to the issuing of warrants.
- 4.16 The development of the *Criminal Justice – Simple, Speedy, Summary* programme<sup>7</sup> and various IT projects (Libra, NES IT) are also likely to have a positive impact on improving information flows to the Court.

### IT developments

#### LIBRA

LIBRA is the new magistrates' courts' IT system. It has the potential to improve bail information, including the provision of information on the breakdown of conditional bail, a defendant's non attendance at court and a defendant's attendance record. Roll-out is due to re-commence in January 2007 in pockets of areas. At present there is no end date.

#### NATIONAL ENFORCEMENT SERVICE (NES) IT

The NES warrant management tool that is currently under development will allow a much clearer view of a defendant's bail history as well as other outstanding enforcement issues. It is anticipated that the NES tool will be progressively rolled out from April 2007 but full functionality may take until 2008.

## Legislation

- 4.17 In addition to the good practice project (and linked to trials and sentencing in absence), the Government has also announced an intention to legislate:
- (i) to create a statutory presumption that, where a defendant fails to attend for trial at a magistrates' court without good reason, the Court should try (and, if convicted, sentence) him in his absence, unless to do so would be contrary to the interests of justice; and
  - (ii) to remove the prohibition (MCA 1980 s.11(3)) on magistrates' courts imposing a custodial sentence on an offender who has been tried in absence and convicted, except where the proceedings were commenced by summons or written charge.
- 4.18 Once enacted any such legislation should encourage the increasing trend in trials and sentencing in absence, in tandem with the approach identified in paragraph 4.13.

<sup>7</sup> "Delivering Simple, Speedy, Summary Justice" Department for Constitutional Affairs, July, DCA 37/06

One of the main pieces of work under CJSSS is streamlining magistrates' court proceedings. An important aspect of this is to ensure that all the necessary and relevant information is collected in time for the first hearing, to enable cases to be resolved at the earliest possible opportunity. New processes aimed at achieving this are currently being tested in various pilot areas, prior to national roll-out.

# Chapter 5: What more could be done to further restrict the use of backed for bail warrants?

5.1 The identification and dissemination of good practice, and legislation on trials and sentencing in absence as set out in Chapter 4 of this paper, are two ways of reducing the use of backed for bail warrants. This chapter seeks views on another potential approach, of introducing further legislation explicitly aimed at restricting the use of such warrants.

5.2 Five potential legislative options are set out below. In considering which might be the most appropriate option, it is important to ensure that it requires a response from the Court that is not disproportionate to the actions of the defendant.

## **(i) Remove entirely the Court's power to issue a warrant backed for bail**

5.3 Removing the Court's power to issue a backed for bail warrant would restrict their use completely. However, it could result in disproportionate responses from the Court. If a defendant failed to appear and the Court decided against proceeding in absence, they would be left with two choices, namely bailing in absence (possibly through a defendant warning letter) or issuing a no-bail warrant. In the case of a minor offence, but one where there is no reason to believe the defendant has a reasonable excuse for not appearing, neither response is desirable. Bailing in absence may not be sufficiently robust, whereas a no-bail warrant might be disproportionately severe.

5.4 Backed for bail warrants may be the correct response in certain circumstances and this approach would seem to be a step too far.

## **(ii) Restrict the Court's power to issue backed for bail warrants when the substantive offence is 'serious'**

5.5 Another option would be to restrict the power to issue backed for bail warrants on the basis of the seriousness of the substantive offence.

5.6 Around 5% of warrants subsequently prioritised by the police as Category A or B were backed for bail when issued by the Court. (This represents about 4500 warrants a year). This appears inconsistent with ensuring that the more serious cases are prioritised by returning the defendant to court as quickly as possible. However the majority (approximately two thirds) of these category A and B warrants are so prioritised by the police not because of the seriousness of the offence but because of the defendant's past offending behaviour or considerations under the National Intelligence Model, of which the Court may not be aware.

5.7 It is also likely that, in many cases, backed for bail warrants are issued in relation to defendants charged with serious offences because the Court believes the defendant may have a legitimate reason for absence. The good practice model project, outlined in Chapter 3, looks to encourage the use of bail in absence in such cases.



- 5.8 In order to legislate in this way, there would need to be a statutory definition of seriousness in this context. To implement on the basis of seriousness of offences requires a clear objective basis for the selection of offences. There are a number of options:
- (a) Defining seriousness on the basis of the ACPO/OCJR Warrant Priority Matrix, which is used subsequently by the police to prioritise the warrant. This is an operational tool agreed by CJS partners, with no legal status, and it would be problematic to replicate it in statute. In addition, it does not provide the robust objective basis which would be required. This option is unlikely to have a significant impact, in that only 1,500 backed for bail warrants per year are currently categorised as A or B.
  - (b) Defining seriousness in terms of 'indictable only' offences. This would ensure the focus was on the top end of the range of serious offences but would not catch some that can be tried either way, such as certain drugs or sexual offences. As with the first option, the impact is likely to be limited, as it is arguable that these defendants would already attract no-bail warrants if they failed to appear.
  - (c) Defining seriousness in terms of the maximum sentence which the substantive offence attracts (over 'x' years). This would ensure more offences were covered than under option (b) but would mean that some offences would be captured even when, on the facts, they were not particularly serious. The impact of such a provision would depend on the threshold that was set: the lower the threshold, the greater the impact but the greater the chances of disproportionate outcomes.
  - (d) Specifying the relevant substantive offences on the face of legislation, as in the schedule of Qualifying Offences for Retrial of Serious Offences in the Criminal Justice Act 2003 (see annex B). This would help avoid some of the disadvantages of the other options, but would not remove all risk of anomalies. Careful consideration would have to be given as to which offences should be included.
- 5.9 There is little evidence on which to base a robust impact assessment of these various options. Significant further work would be required to gather this evidence, including data captures from warrant management systems and considerable trawling, cleansing, organising and analysis of information. This will be undertaken as part of the good practice project, with a view to informing future consideration of legislative options.

**(iii) Restrict the Court's power to issue backed for bail warrants when the defendant is deemed 'serious' (although the substantive offence may be minor)**

- 5.10 Another option is to restrict the use of backed for bail warrants by reference to the defendant, rather than to the substantive offence.
- 5.11 Where a warrant is categorised as A or B but the substantive offence is not deemed serious, it is almost invariably because of the previous offending nature of the defendant, for example, they have been identified by the agencies as a Prolific and Priority Offender (PPO). However, PPOs are not defined in statute, and indeed, the definition varies across the country according to local priorities and problems. Moreover, at present the Court will generally not be made aware of an individual's offender status as it could be prejudicial.
- 5.12 Furthermore, it is arguable that a backed for bail warrant is a proportionate response to a minor offence, irrespective of the defendant's previous offending behaviour. In short, the defendant is being bailed in relation to the current offence, not previous offences.
- 5.13 For these reasons, this is not considered to be a viable option.

#### **(iv) Restrict the Court's power to issue backed for bail warrants when the defendant has a poor bail history**

- 5.14 A stronger argument can be made that a defendant with a history of failing to attend should not be given a warrant backed for bail. Prosecutors currently have the opportunity to oppose the issuing of a backed for bail warrant if they believe the defendant's bail history suggests that a no-bail warrant would be more appropriate.
- 5.15 Defining what constitutes poor bail history may be problematic, particularly as the circumstances of each case will be different. It might be possible to introduce a provision which stated that the likelihood of absconding should be taken into account before issuing a backed for bail warrant (in a similar manner to the provisions in the Bail Act 1976 which govern the decision whether to grant bail). This would ensure that the Court consciously took bail history into account in deciding what kind of warrant to issue.
- 5.16 However, anecdotal evidence suggests that although backed for bail warrants are on occasion issued in relation to defendants with a history of non-attendance, this generally occurs because the Court is not made aware of the defendant's bail history rather than because the Court knowingly fails to take that history into account.
- 5.17 This suggests that legislation alone would not be the best way of addressing the problem, without first tackling the root cause by ensuring that the appropriate information is available at the time the warrant is issued.

#### **(v) Remove the Court's power to issue repeat backed for bail warrants in the same proceedings**

- 5.18 This is a more tightly defined variant of the option described in (iv) above, removing the power to issue a backed for bail warrant specifically where a previous backed for bail warrant had been issued and executed in the same proceedings.
- 5.19 Such an approach would seem logical, and there would seem to be no practical problems in legislating in this way. However, it is unlikely that this would have a very significant impact in practical terms. There is no quantitative evidence to suggest that Courts are issuing repeat backed for bail warrants in relation to the same proceedings, although the issue has been raised occasionally by police practitioners.
- 5.20 Again, further work would be needed to gather the necessary evidence to project the potential impact of this legislative option. This would take some time to complete as this information is not readily available from electronic systems, and a dip-sampling exercise would need to be undertaken.

### **Consultation questions**

- 5.21 As indicated above, there is very limited existing evidence to project the impact of any of these legislative options. What little there is suggests that the changes would have only a limited impact on restricting the use of backed for bail warrants. Further evidence will be gathered as part of the ongoing good practice project.

5.22 Based on the analysis in earlier chapters and the legislative options highlighted in this chapter, this consultation seeks views from respondents on:

**Question 1: Would further legislation, along the lines outlined at options (i) to (v) above, help in further restricting the use of backed for bail warrants?**

**Question 2: If so, which of the five legislative options outlined above is likely to be most effective in further restricting the use of backed for bail warrants, and why?**

**Question 3: Should the decision whether to legislate and, if so, which option to choose, be postponed until further evidence of likely impact is available as a result of the good practice work currently being undertaken?**

# Annex A: Warrant Priority Matrix – ACPO/OCJR

The warrant priority matrix offers **clarity on the timescales** within which warrants should be executed as well as guidance on which agency should be responsible for the execution. The categorisation of warrants (A, B or C) only applies to Fail To Appear (FTA) warrants as does their associated timescales.

Whilst it is LCJBs that are held responsible for the achievement of targets rather than individual agencies – it is right that any LCJB may approach warrants execution differently and therefore might have their own local arrangements. One of the key principles of the National Enforcement Service is that the right agency should execute the right warrant and although we should aim for consistency as per the matrix, execution might differ according to local needs.

In cases where HMCS are deemed to be the lead executing agency, it is always the case that risk to the executor may cause that warrant to be handed to the police for their execution. Local arrangements will determine how that risk assessment would operate.

Inspector Gail Spruce  
ACPO (Disposal and Enforcement portfolio)  
0161 856 1338  
gail.spruce@gmp.pnn.police.uk

Inspector Kevin Keen  
National Enforcement Service  
0207 2100561  
Kevin.keen@HMCourts-Service.gsi.gov.uk

<b>Warrant Type</b>	<b>Category</b>	<b>Enforcement Lead Owner</b>	<b>Comments</b>
FTA – Any Offender subject of the Forces National Intelligence Model (NIM) control Strategy*	A	Police	<ul style="list-style-type: none"> <li>This is intended for the most serious offences or those other offences that have the greatest priority for the Force</li> </ul>
FTA – Any offender involved in criminality defined in the Forces NIM control strategy	A	Police	<ul style="list-style-type: none"> <li>This is intended for the most serious offences or those other offences that have the greatest priority for the Force</li> </ul>
FTA – Serious Offence	A	Police	<ul style="list-style-type: none"> <li>See attached appendix C for list of offences</li> </ul>
FTA – Prolific or Priority Offender	A	Police	<ul style="list-style-type: none"> <li>As defined by local PPO Strategy (see appendix C for list of definitions)</li> </ul>
FTA – Persistent Young Offender	A	Police	<ul style="list-style-type: none"> <li>As per national definition (see appendix C for list of definitions)</li> </ul>
FTA – Hate Crime	A	Police	<ul style="list-style-type: none"> <li>See appendix C for ACPO definition</li> </ul>
FTA – Registered Sex Offenders – Probation defined “Dangerous Offender”	A	Police	<ul style="list-style-type: none"> <li>This information should be found on PNC or local intelligence systems</li> </ul>
FTA – Other crime matters	B	Police	
Community Penalty Breach Warrants (Crown Court)		Police	<ul style="list-style-type: none"> <li>See appendix A for guidance on execution</li> </ul>
Community Penalty Breach Warrants (Magistrates Court)		CEOs	<ul style="list-style-type: none"> <li>See appendix A for guidance on execution</li> </ul>
FTA – Non Crime matters	C	CEO	
Non Payment of Fine		CEO	<ul style="list-style-type: none"> <li>Execution timescale as defined by current CEO guidelines</li> </ul>
Any FTA warrant issued with bail	C	CEO	<ul style="list-style-type: none"> <li>For execution by CEO subject to risk assessment</li> </ul>

<b>Warrant Type</b>	<b>Category</b>	<b>Enforcement Lead Owner</b>	<b>Comments</b>
Warrant of Distress		Certified Bailiff	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>
Warrant of Commitment		CEO	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>
Warrant of Commitment – Child Support		CEO	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>
Warrant of Arrest and Commitment – Council Tax		CEO	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>
Warrant of Arrest and Commitment – Non Domestic Rates		CEO	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>
Warrant of Arrest and Commitment – Community Charges		CEO	<ul style="list-style-type: none"> <li>• Execution timescale as defined by current CEO guidelines</li> </ul>

## Appendix A

### Execution Timescales for FTA warrants

Enforcement Officers (Police, Police CEO, Court CEO) should execute the warrant as soon as practicable but should as an absolute minimum make every effort to execute in the timescales below.

Category A – within 14 total days.

Category B – within 21 total days.

Category C – within 28 total days.

Any FTA warrant that covers more than one category should retain the higher status ie a category C warrant for a PYO should become a category 'A' and be executed in the 14 day timescale.

### Relevant timescales for Community Penalty Breach Warrants (CPBW)

Community Penalty Breach warrants differ to FTAs in that the target measured is **not** the execution timescale for the warrant.

The targets relating to Community Penalty Breach Warrants are:

- Proceedings should take an average of 35 working days from second unacceptable failure to comply to resolution of the case and
- 50% of all breach proceedings to be resolved within 25 working days of the second failure to comply

Resolution' includes the time taken to initiate breach proceedings, obtain and execute the warrant, hear the case at court, adjourn where necessary and then finalise.

Although the timeframe for execution of the warrant is not the target there are **recommended** timescales from warrant issue to execution in order to enable the overall resolution target to be achieved.

CBPW are either fast tracked (timescales roughly equivalent to an FTA category A) or standard (timescales equating roughly to a category C FTA).

	Adults	Youths
<b>Standard</b>	20 working days (28 total)	10 working days (14 total)
<b>Fast track</b>	10 working days (14 total)	5 working days (7 total)

## Appendix B

### Categorisation of warrants

Categorisation of a warrant is the process that determines the executing agency and the timescales that it should be executed in. Some of the factors to be considered are the risk to the public and the intelligence value. Where an offender has committed a serious offence they should be monitored and managed by the police. When a targeted offender comes to light, the police should control the warrant as there is intelligence that can be gathered by which to manage that case and the offender's behaviour. If the offence or the offender is low level then the warrant should be managed by HMCS

CPBW that are fast tracked need not automatically default to the police for execution hence HMCS remain as the lead agency. To ensure the principle of 'the right agency executing the right warrant' any CPBW should only be handed to the police where there is a risk of danger to the executor or where specifically requested because the offender or offence is identified as a target by the relevant police area (as identified using NIM).

### Health and Safety Risk Assessment

Each agency should undertake generic health and safety risk assessments of operational business to ensure that staff are properly trained equipped and briefed.

In the case of category C warrants managed by HMCS, in addition to generic assessment of the business the health and safety risk assessment is likely to be dynamic or situational (ie the circumstances faced on the doorstep) rather than individual intelligence packages.

The health and safety risk assessment undertaken prior to execution of the warrant is intended to identify extenuating circumstances that may be present and to inform the tactics that can be appropriately employed.

Any warrant initially issued to HMCS staff that is deemed to present an unmanageable health and safety risk should transfer to the police. Grade A or B warrants with a low health and safety risk can be undertaken by CEOs (though this is only likely to be in exceptional circumstances).

Where a cross border warrant is being sent to another force it is essential that a health and safety risk assessment is completed prior to the warrant being sent and details recorded on the proforma (see GDC 20, or email [FTAwarrants@cjs.gsi.gov.uk](mailto:FTAwarrants@cjs.gsi.gov.uk) for a copy of the form). There may be local intelligence or issues that might not be known to the receiving force and for the safety of our colleagues we must ensure that this information is communicated to them. If there are no known risks then similarly this must be indicated otherwise it will not be clear to the receiving force if a health and safety risk assessment has been done.

A risk assessment/intelligence package should include the following:

- Identification of any warning signs using the PNC
- Scanning of local intelligence to identify potential warning signs and other useful information
- For breach warrants – an evaluation of the offender should have been done by the Probation Service (OAS – 'offender additional information sheet') and provided to the issuing court for onward transmission to whoever seeks to execute the warrant-check the availability of this with the probation area associated with the court issuing the warrant .You may be able to negotiate a local protocol to ensure that probation will automatically provide this information to you.



**Although a risk assessment will be done by the sending force (and risk/warning detail recorded on the proforma) the receiving force **MUST** still check its own intelligence systems and PNC for any additional risk information.**

**It is the responsibility of the individual executing the warrant to ensure that it is still live before an arrest is made.**

# Appendix C

## Definitions

### Serious Offences

The term 'serious arrestable offence' no longer exists within the Police and Criminal Evidence Act 1984 as amended (PACE). The matrix has now been revised to include as category A offences, those deemed '**serious**'. These are largely the same as before but with some additions.

The following offences should be categorised as 'A'

- Treason
- Murder
- Manslaughter
- Rape
- Other serious sexual assault
- Kidnapping
- An offence under section 3, 50(2), 68(2) or 170 of the Customs and excise Management Act 1979
- Cause explosion likely to endanger life or property
- Possession of firearms with intent to injure
- Use of firearm/imitation firearm to resist arrest
- Carrying firearms with criminal intent
- Hostage taking
- Hijacking
- Torture
- Cause death by dangerous driving
- Cause death by careless driving under influence of drink/drugs
- Offences under the Aviation and Maritime security act 1990
- Offences under the Channel Tunnel Security Order 1994
- Protection of Children Act 1978 – indecent photographs of children
- Publication of obscene matter
- Offences under Sexual Offences Act 2003
- Production, Supply and Possession for supply of controlled drugs
- Offences under the Criminal Justice International Co-operation Act 1990
- Terrorism offences

We should also include as 'serious offences' any conspiracy to commit, attempt, aid, abet, counsel or procure any of the above.

Other offences may also be classed as serious if their consequences are as per the following list. Such cases will be rare and it is possible that the individual grading the warrant will not have this information.

If this information is not clearly known to the person grading the warrant then the warrant would be graded B or C as appropriate.

- serious harm to the security of the state or public order
- serious interference with the administration of justice or investigation of an offence,
- the death or serious injury of a person
- substantial financial gain or loss to a person

As an example, a traffic offence that would otherwise have been minor and classed as a category C should be graded as an A where the consequences have led to the death or serious injury of a person.

### *Prolific or priority offender*

There is no national definition but guidance states;

Individuals to be targeted should be selected locally, using the National Intelligence Model (NIM), to identify those who are causing the most harm to their communities based on local priorities. These are likely to be NIM level 1 type offenders.

The general criteria to be used in selecting the individuals should be:

- the nature and volume of the crimes they are committing;
- the nature and volume of other harm they are causing (e.g. as a consequence of their gang leadership or anti-social behaviour);
- other local criteria, based on the impact of the individuals concerned on their local communities.

### *Persistent Young Offender*

A Young person aged 10-17 years, sentenced by a criminal court in the UK, on 3 or more separate occasions, for 1 or more recordable offence and within 3 years of the last sentencing occasion has been arrested (or information laid) for another recordable offence.

### *Hate Crime*

A hate crime is defined as any hate incident that constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hatred.

### *National Intelligence Model*

This model allows information to be categorised and policing activity to be planned based on intelligence. Intelligence is gathered from different sources including partner agencies, crime reports and stop and account/search forms and is then used to identify current and future problem areas and to target persistent offenders.

Areas will have in place strategic (force or local) priorities identified by using the 'NIM' (this may be referred to as a control strategy).

By applying this model your local area will have identified either specific individuals who are targets for the police or certain offences that are a priority to your area.

# Annex B: Schedule of Qualifying Offences for Retrial of Serious Offences in the Criminal Justice Act 2003

## List of offences for England and Wales

### Offences Against the Person

#### *Murder*

- 1 Murder.

#### *Attempted murder*

- 2 An offence under section 1 of the Criminal Attempts Act 1981 (c. 47) of attempting to commit murder.

#### *Soliciting murder*

- 3 An offence under section 4 of the Offences against the Person Act 1861 (c. 100).

#### *Manslaughter*

- 4 Manslaughter.

#### *Kidnapping*

- 5 Kidnapping

### Sexual Offences

#### *Rape*

- 6 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) or section 1 of the Sexual Offences Act 2003 (c. 42).

#### *Attempted rape*

- 7 An offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence under section 1 of the Sexual Offences Act 1956 or section 1 of the Sexual Offences Act 2003.

#### *Intercourse with a girl under thirteen*

- 8 An offence under section 5 of the Sexual Offences Act 1956.

#### *Incest by a man with a girl under thirteen*

- 9 An offence under section 10 of the Sexual Offences Act 1956 alleged to have been committed with a girl under thirteen.

### *Assault by penetration*

- 10 An offence under section 2 of the Sexual Offences Act 2003 (c. 42).

### *Causing a person to engage in sexual activity without consent*

- 11 An offence under section 4 of the Sexual Offences Act 2003 where it is alleged that the activity caused involved penetration within subsection (4)(a) to (d) of that section.

### *Rape of a child under thirteen*

- 12 An offence under section 5 of the Sexual Offences Act 2003.

### *Attempted rape of a child under thirteen*

- 13 An offence under section 1 of the Criminal Attempts Act 1981 (c. 47) of attempting to commit an offence under section 5 of the Sexual Offences Act 2003.

### *Assault of a child under thirteen by penetration*

- 14 An offence under section 6 of the Sexual Offences Act 2003.

### *Causing a child under thirteen to engage in sexual activity*

- 15 An offence under section 8 of the Sexual Offences Act 2003 where it is alleged that an activity involving penetration within subsection (2)(a) to (d) of that section was caused.

### *Sexual activity with a person with a mental disorder impeding choice*

- 16 An offence under section 30 of the Sexual Offences Act 2003 where it is alleged that the touching involved penetration within subsection (3)(a) to (d) of that section.

### *Causing a person with a mental disorder impeding choice to engage in sexual activity*

- 17 An offence under section 31 of the Sexual Offences Act 2003 where it is alleged that an activity involving penetration within subsection (3)(a) to (d) of that section was caused.

## **Drugs Offences**

### *Unlawful importation of Class A drug*

- 18 An offence under section 50(2) of the Customs and Excise Management Act 1979 (c. 2) alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38)).

### *Unlawful exportation of Class A drug*

- 19 An offence under section 68(2) of the Customs and Excise Management Act 1979 alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971).

### *Fraudulent evasion in respect of Class A drug*

- 20 An offence under section 170(1) or (2) of the Customs and Excise Management Act 1979 (c. 2) alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38)).

### *Producing or being concerned in production of Class A drug*

- 21 An offence under section 4(2) of the Misuse of Drugs Act 1971 alleged to have been committed in relation to a Class A drug (as defined by section 2 of that Act).

## **Criminal Damage Offences**

### *Arson endangering life*

- 22 An offence under section 1(2) of the Criminal Damage Act 1971 (c. 48) alleged to have been committed by destroying or damaging property by fire.

### *Causing explosion likely to endanger life or property*

- 23 An offence under section 2 of the Explosive Substances Act 1883 (c. 3).

### *Intent or conspiracy to cause explosion likely to endanger life or property*

- 24 An offence under section 3(1)(a) of the Explosive Substances Act 1883.

## **War Crimes and Terrorism**

### *Genocide, crimes against humanity and war crimes*

- 25 An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17).

### *Grave breaches of the Geneva Conventions*

- 26 An offence under section 1 of the Geneva Conventions Act 1957 (c. 52).

### *Directing terrorist organisation*

- 27 An offence under section 56 of the Terrorism Act 2000 (c. 11).

### *Hostage-taking*

- 28 An offence under section 1 of the Taking of Hostages Act 1982 (c. 28).

## **Conspiracy**

### *Conspiracy*

- 29 An offence under section 1 of the Criminal Law Act 1977 (c. 45) of conspiracy to commit an offence listed in this Part of this Schedule.

# Annex C: Impact assessment: prison places and police cells

## Prison population

There is no evidence to suggest that restricting the use of backed for bail warrants will have a direct impact upon prison places. It is possible that the proposals will both reduce the number of warrants issued (through use of bail in absence, trials in absence) and also increase the number of no-bail warrants.

When an individual appears in court following the execution of a warrant, the Court may not be able to proceed immediately and may adjourn to a future date. There is no evidence to suggest that an individual produced from police custody (following the execution of a no-bail warrant) is more likely to be remanded in custody for a subsequent hearing than an individual who has been bailed to attend court (following the execution of a backed for bail warrant).

## Police custody suites

Restricting the use of backed for bail warrants will have an impact on police custody suites if the alternative is to issue more no-bail warrants. However, the impact would be lessened if the use of bail in absence and defendant warning letters were encouraged as an alternative.

Although there is a lack of sufficient evidence to model the impact accurately, the following set of assumptions gives an idea of how many extra custody places may be needed.

It is assumed that no more than 5,000 of the 40,000 backed for bail warrants will become no-bail warrants (it is assumed that a number will result in no warrant outcomes). Of these, it is assumed that 4,750 (95%) will be executed within 12 months of issue. Of these, it is reasonable to assume that no more than 50% of defendants will be required to spend a significant time in police custody which they would otherwise not have done (taking into account that many warrants are executed when an individual is arrested on other matters). Assuming each defendant spends one night in custody, this means that approximately 2,375 extra custody places a year will be required throughout England and Wales. This works out, on average, as 6.5 extra cell places per night.

There are over 6,000 police custody places in England and Wales, which suggests that the system should be able to bear the extra pressure.

# Annex D: List of persons and bodies consulted

Lord Chief Justice of England and Wales

Sir Igor Judge, President of the Queen's Bench

Senior Presiding Judge

Council of Her Majesty's Circuit Judges

Senior District Judge

Magistrates' Association

Criminal Bar Association

General Council of the Bar

Whitehall Prosecutors Group

Institute of Legal Executives

Her Majesty's Courts Service

Crown Prosecution Service

Association of Chief Police Officers

Association of Police Authorities

Justices' Clerks' Society

National Offender Management Service

National Enforcement Service

Local Criminal Justice Board representatives

Law Society

Legal Services Commission











Criminal Justice System: working together for the public