

## BREACH OF BAIL (Failure to Surrender)

### Criminal Justice (NI) Order 2003

4. – (1) A person released on bail shall be under a duty to surrender to custody.  
 (2) In this Part-  
 "surrender to custody" means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail)-  
 (a) into the custody of the court at the time and place for the time being appointed for him to do so; or  
 (b) at the police station and at the time appointed for him to do so; or  
 (c) into the custody of the governor of a prison at the time and place for the time being appointed for him to do so.
5. – (1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.  
 (2) If a person who-  
 (a) has been released on bail, and  
 (b) has, with reasonable cause, failed to surrender to custody,  
 fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

### Maximum Sentence:

*Criminal Justice (NI) Order 2003, Article 5(3)*

*Indictment: 3 years imprisonment or an unlimited fine or both [for offences committed on or after 4 July 2004]*

*Summary: 12 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both [for offences committed on or after 4 July 2004]*

### Assessment of Offence

*(Starting points and ranges based on 1<sup>st</sup> time offender convicted following contest)*

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under Article 5(1)	Negligent or non-deliberate failure	Fine + Estreatment of Recognizance	Fine to Community Order + Estreatment of Recognizance
	Deliberate failure	1 month Custody + Estreatment of Recognizance	Community Order to 6 months Custody + Estreatment of Recognizance
Offence under Article 5(2)		Fine + Estreatment of Recognizance	Fine to Community Order + Estreatment of Recognizance

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
1. Deliberate attempt to evade justice 2. Deliberate evasion of authorities 3. Lengthy absence	1. Innocent misunderstanding 2. Prompt voluntary surrender 3. A non-custodial sentence was imposed for the offence on which bail was originally granted

### Relevant Cases:

*NI Cases:*

N/A

*English Cases:*

1. R v White; R v McKinnon [2003] 2 Cr App R(S) 29

### Notes:

1. Where the offender fails to appear before a Magistrates' Court following his entering into a recognizance to do so, the Court SHALL (a) order the estreat of the recognizance; and (b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound – Article 132 of the Magistrates' Courts (NI) Order 1981.