



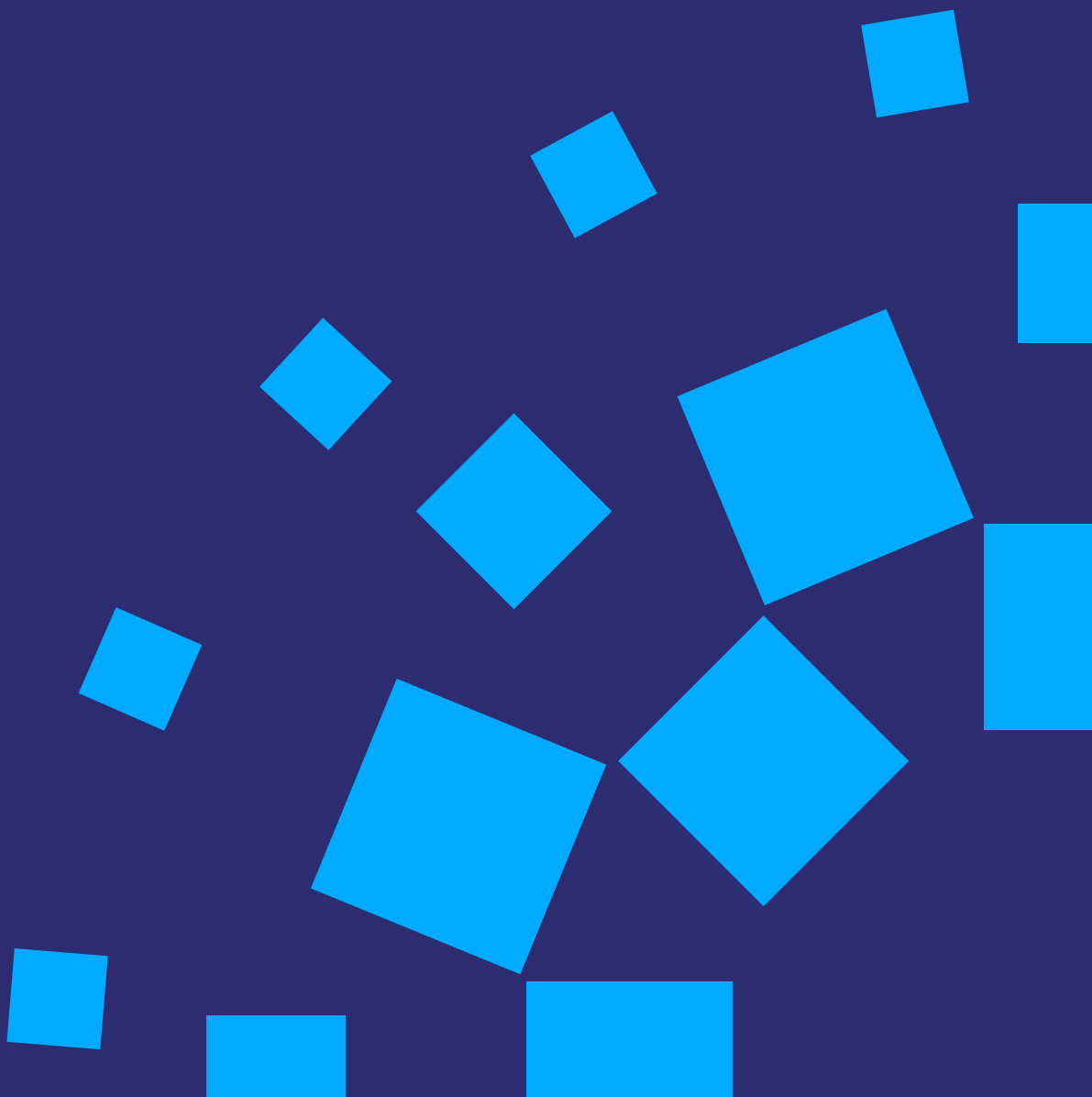
College of
Policing

Working together
to prevent crime

Pre-charge bail

Statutory guidance

March 2023



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Pre-charge bail

Statutory guidance

Presented to Parliament pursuant to Section 50B (5)
of the Police and Criminal Evidence Act 1984

March 2023

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1 Background

- 1.1 The Policing and Crime Act 2017 was introduced to address concerns that individuals were being kept on pre-charge bail for long periods. This introduced the presumption against pre-charge bail, unless necessary and proportionate, as well as stricter controls on bail periods and raised authority levels.
- 1.2 The Police, Crime, Sentencing and Courts Act 2022 (PCSC) has been introduced to rebalance the use of pre-charge bail. It removes the presumption against bail, replacing it with a neutral position to encourage the use of pre-charge bail where it is necessary and proportionate in all of the circumstances of the case. It amends the levels of authority and changes the duration of the applicable bail periods (ABPs), including extending the initial ABP to three months in standard cases. To provide further protection for victims, the PCSC introduces a duty to seek the views of victims when imposing or varying bail conditions. It provides for a three-hour pause to the detention clock so that arrests for breach of bail conditions, or failing to answer bail, do not negatively affect the original Police and Criminal Evidence Act 1984 (PACE) clock.

2 Statutory guidance overview

- 2.1 The PCSC introduced a power for the College of Policing to issue statutory guidance on pre-charge bail granted under Part 3 or 4 of PACE.
- 2.2 This statutory guidance is issued under section 50B of PACE. It has been approved by the Home Secretary and laid before Parliament, in accordance with the PCSC.
- 2.3 A person who exercises functions relating to pre-charge bail must have regard to the guidance, with the exception of the following:
- a member of the Serious Fraud Office (SFO)
 - a member of staff of the Financial Conduct Authority (FCA)
 - an officer of HM Revenue and Customs (HMRC)
 - an officer of the National Crime Agency (NCA)

Note: a custody officer still has the responsibility to authorise the initial ABP in SFO, FCA, HMRC and NCA cases. The initial ABP for these cases is six months (instead of three as in all standard cases). All other pre-charge bail criteria apply as usual. However, the police do not authorise extensions for these cases. This must be done by a designated officer for those agencies.

- 2.4 A failure to comply with the guidance does not, of itself, render a person liable to any criminal or civil proceedings. The guidance is, however, admissible in evidence in criminal or civil proceedings. A court may take into account a failure to comply with it in determining a question in the proceedings (section 50B of PACE). The application of the guidance is deliberately not limited to constables or police officers, to take into account the number of civilian police staff exercising functions relating to pre-charge bail. However, there are certain functions specified in the legislation for particular ranks and roles.

- 2.5 The guidance may also be of interest to victims, witnesses and suspects (and those who represent them), as well as wider criminal justice partners and voluntary organisations.
- 2.6 The guidance has been issued to underpin the pre-charge bail regime and to ensure consistency across forces in how the regime is applied in the standard of service for victims, witnesses and suspects.
- 2.7 The guidance covers the exercise of powers:
- to release someone on pre-charge bail
 - to impose, vary or change conditions
 - to arrest someone for failing to answer pre-charge bail or for breaching any conditions
 - to extend the period of pre-charge bail
- 2.8 It also covers the duty to seek the views of victims when imposing and varying bail conditions and suspects released under investigation.
- 2.9 The guidance does not cover the voluntary attendance process, nor does it address release options from custody where out-of-court disposals, charges or no further action are to be taken.

3 Note on terminology

- 3.1 The College of Policing has chosen to use terminology in this statutory guidance that differs from the terminology used in statute.
- 3.2 We use the term ‘suspect’, while PACE refers to ‘person’. We have done this to provide clarity by using familiar language, to make the guidance accessible for officers. However, the term is not intended to imply guilt. PACE Code G refers to reasonable grounds to suspect, when setting out the criteria for a lawful arrest. An officer will have considered the person a suspect at the point of arrest and on release on bail, so we consider ‘suspect’ to be an appropriate term for the purposes of the guidance.
- 3.3 The PCSC refers to ‘alleged victim’, while the Victims’ Code doesn’t use the term ‘alleged’. For consistency across College products, we have chosen to also omit the word ‘alleged’ in the guidance, and to adopt the language used in the Code.
- 3.4 The definition of ‘a victim’ is the same as the definition provided by the Victims’ Code.
- 3.5 Neither point applies where we have directly quoted from, or are making specific reference to, the legislation itself.

4 An introduction to pre-charge bail

- 4.1 The guidance addresses three ways to deal with people who are being investigated for criminal offences but who have not yet been charged:
- pre-charge bail without conditions
 - pre-charge bail with conditions
 - released under investigation (RUI)

- 4.2 Pre-charge bail is a unique policing tool and should be tailored to the specific circumstances for which it is being granted. Bail is an alternative to custody – it allows for officers and staff to continue the investigation without the suspect being detained. Conditional bail allows officers to attach conditions to bail, which may help to protect victims or witnesses, preserve evidence and mitigate the risk of further criminality. However, bail can result in disadvantages for the suspect. Its use must therefore be justified in all circumstances and subject to regular review. Police forces must ensure that rigorous, transparent processes exist that closely align bail management to the developing investigative plan in each case. Pre-charge bail is not solely an in-custody process – it must be actively revisited and managed throughout the course of the investigative lifecycle.
- 4.3 Section 47ZZA of PACE sets out that if reasonably practicable, the investigator must seek the views of the victim (if any) on any relevant bail conditions. Once these conditions are in place, the investigator must notify the victim as such. By maintaining regular contact with the victim during the investigation, this ensures that they are engaged in the process and provides an opportunity to report any further incidents or change in circumstances.
- 4.4 Section 34(2) of PACE makes clear that if a custody officer becomes aware that there are no grounds to justify the continued detention of a suspect, the suspect should be immediately released¹. At this point, the custody officer should consider whether it is appropriate to release the suspect on pre-charge bail. An alternative way to deal with uncharged suspects is RUI. Suspects who are RUI have no conditions or controls applied to them in relation to the investigation. There is no legal framework underpinning the use of RUI.

¹ A custody officer does not have to immediately release a suspect who appears to the custody officer to have been unlawfully at large when they were arrested.

5 Roles

Investigator

5.1 Not all individuals involved in investigation, will have a formal investigator title. Investigators seek information, look for evidence and record what they find. Different roles require different levels and stages of involvement in the investigative process. Anyone involved in investigations should consider carefully how they apply and manage pre-charge bail in their work.

5.2 Bail is an integral part of the investigation. Investigators must:

- seek the views of the victim where practicable on whether conditions should be imposed, and if so what conditions. The final bail decision will remain with the police.
- conduct a risk assessment of the case, including the risk to the victim, witnesses, public, investigation and the suspect, to form the basis of their discussion with the custody officer on appropriate release options. Record their justification as part of their investigation log.
- consider other protective orders or actions that can add to the web of protection. Pre-charge bail should not be used in isolation where there is a risk of harm to the victim, witnesses, suspect or the public.
- ask themselves whether conditional or unconditional bail is appropriate. Conditions should be specific, achievable and enforceable by police. They should also be relevant to the offence.
- ensure appropriate communication with children, vulnerable adults and suspects with special educational needs (and any appropriate adults acting on their behalf). Investigators must ensure the persons involved fully understand the bail process in a way that is meaningful to them. It is vital the suspect understands the consequences of breaching their bail or committing further offences, and the process they may be

subject to if this occurs.

- obtain representations from the suspect or their legal representative. These will be considered when the custody officer makes their bail decision.
- discuss all above points with the custody officer, who may test or challenge their rationale and any relevant conditions to ensure the decision to bail is justified prior to release.

Investigators' Supervisor

- 5.3 Supervisors' responsibilities are less well defined by the law. But they do have a direct role in ensuring investigations are conducted both diligently and expeditiously and that their investigators are requesting bail appropriately and engaging with victims, witnesses and suspects as they should be under the law.

Investigation plans

- 5.4 It is the responsibility of the investigator's supervisor to ensure that outstanding enquiries are being conducted in a diligent and expeditious manner and to check that regular victim and suspect updates are being completed in line with PACE and the Victims' Code. Supervisors should proactively monitor investigations to ensure timely progression, adherence to ABPs, quality assurance and to provide direction and guidance.
- 5.5 Investigators should be making good use of the time available as part of the applicable bail period and not leaving enquiries until the end of this period. Supervisors have a role in ensuring investigations continue in a timely manner and evidence is collected as soon as it becomes available.

Custody Officer

- 5.6 The custody officer is responsible for authorising the initial ABP. It is the investigator's responsibility to provide the risk assessment/rationale to the custody officer to be able to grant bail.

- 5.7 It is the responsibility of the custody officer to ensure bail is necessary and proportionate and to authorise, decline or request further work to the application as appropriate. This decision must be recorded.

Inspector and Superintendent

- 5.8 Both have roles in granting extensions to the ABP, these are covered later in the guidance.

6 Necessity and proportionality

- 6.1 In determining whether a suspect should be released on bail, the pre-conditions for bail under section 50A of PACE must be satisfied.
- The custody officer must be satisfied that releasing the suspect on bail is necessary and proportionate in all the circumstances (having regard to any conditions of bail that would be imposed).
 - The custody officer must consider any representations made by the suspect or their legal representative.
- 6.2 In determining whether releasing a suspect on bail is necessary and proportionate in all the circumstances, the custody officer must have regard in particular to the need to:
- secure their surrender to custody
 - prevent offending
 - safeguard victims and witnesses, taking into account any vulnerabilities where these have been identified by the custody officer
 - safeguard the suspect where vulnerabilities have been identified by the custody officer
 - manage risk to the public

- 6.3 The investigator should explain their rationale, as well as why they consider bail and any conditions to be necessary and proportionate, to assist the custody officer in making the decision whether to release a suspect with or without bail, and with or without conditions.
- 6.4 If there is a risk of serious harm to the victim(s), witness(es), suspect or public, bail must be considered in conjunction with other protective measures. Bail with conditions should always be considered in any domestic or sexual abuse cases.
- 6.5 The decision-making process and rationale should be recorded. Forces should have defined processes in place for ensuring this is captured. This could be on:
- the suspect's custody record
 - the case investigation log (it must be clear to which suspect each rationale refers)
 - local systems or documents used in force for case management purposes
- 6.6 Pre-charge bail, with or without conditions, can only be granted when a suspect has been arrested and is to be released for that offence. Bail cannot be imposed if a suspect has only taken part in a voluntary attendance interview and has not been arrested as part of the investigation. There is nothing in law that prevents a suspect from taking part in a voluntary attendance interview while on bail.
- 6.7 Where possible, investigators should ensure that all reasonable lines of enquiry have been completed prior to arresting a suspect. This allows for a more expeditious investigation. However, it is not always practical due to the nature or spontaneity of the offences being investigated.
- 6.8 Investigators should aim to finalise investigations during the first period of detention wherever possible. However, it will often be necessary to release suspects with or without bail conditions while the investigation continues.

7 Pre-charge bail powers

What follows in this section are the powers under which the police can bail suspects. These are set out below.

Release of a suspect prior to attending a police station – street bail (Section 30A)

- 7.1 Where a suspect has been arrested or taken into custody under section 30(1) of PACE, a constable may release them on bail before they arrive at a police station. This is often referred to as ‘street bail’. As with pre-charge bail, following release from a police station, the ABPs are the same. The first ABP is three months.
- 7.2 A constable may release a suspect on bail with or without conditions if:
- they are satisfied that releasing them is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail that would be imposed)
 - a custody officer authorises the release on bail (having considered any representations made by the suspect) (s 30A(1A))
- 7.3 When officers are considering whether the use of street bail with or without conditions is necessary and proportionate, they must have regard to the need to:
- ensure that the suspect surrenders to custody
 - prevent the suspect offending
 - safeguard victims of crime and witnesses, taking into account any vulnerabilities that have been identified
 - safeguard the suspect, taking into account any vulnerabilities that have been identified by the constable
 - manage risks to the public (s 30A(1B))

- 7.4 A suspect may be released without bail at any time before they arrive at a police station, if the conditions for bail are not met (s 30A(2)).
- 7.5 Officers can impose conditions on street bail where necessary to:
- ensure the suspect surrenders to custody
 - prevent the suspect from committing offences while on bail
 - prevent the suspect from interfering with witnesses or obstructing justice
 - provide the suspect with protection (or if under the age of 18, for their own welfare) (s 30A(3B))
- 7.6 The arresting officer must give the suspect a notice in writing that states the following:
- the offence for which they were arrested
 - the grounds on which they were arrested
 - whether they are being released without bail or on bail (s 30B)
- 7.7 A notice given to a suspect who is released on bail must inform them they are required to attend a police station, must specify which police station they are required to attend, and must specify the time and date when they are required to attend. Officers should use street bail reasonably, according to the nature of the offence, the victim, the suspect's circumstances and the needs of the investigation.
- 7.8 Officers should consider the impact of granting street bail on a case-by-case basis. Street bail may seem to be a preferable option in some circumstances because it avoids the risks of bringing a certain suspect into custody. Children and vulnerable persons, in particular, may not have access to the same level of safeguards and support as quickly as if they were transferred directly to a police station. An example of this would be the provision of an appropriate adult.

- 7.9 Section 30D of PACE – Failure to answer to bail under section 30A (street bail) provides a constable with the power to arrest a suspect for failure to attend a police station following their release on street bail. A power is also provided for the arrest of a suspect who is suspected to have breached any of the conditions attached to their street bail. There is no three-hour pause to the detention clock for breach of street bail.

Bail for further investigation (section 34(5))

- 7.10 If the pre-conditions for bail are satisfied, the suspect must be released on bail where it appears to a custody officer that either:
- there is a **need for further investigation** of any matter in connection with which the suspect was detained
 - proceedings may be taken against the suspect or they may be given a youth caution (under section 66ZA of the Crime and Disorder Act 1998)

Bail when insufficient evidence to charge (section 37(2))

- 7.11 When a suspect is arrested for an offence, the custody officer shall determine whether they have sufficient evidence to charge. They may detain the suspect, in accordance with the time limits set out in PACE, to allow them to do so.
- 7.12 Where the custody officer becomes aware that there is insufficient evidence to charge a suspect in custody, they must consider their immediate release. If the pre-conditions for bail are met, pre-charge bail must be granted under section 37(2) of PACE.²

2 However, where the suspect's detention is necessary to preserve evidence or obtain further evidence by questioning, the custody officer may keep them in detention, observing all usual timelines set out in PACE (s 37(3)).

There is little difference between section 34(5) and 37(2) bail, and the circumstances when each should be used to bail the suspect are likely to be very similar. Prior to 2017, conditions could not be imposed on bail under section 34(5) of PACE. The Policing and Crime Act 2017 amended PACE to allow a custody officer to impose bail conditions under any of the provisions of Part 4 of PACE.

Although the case was heard before the changes to PACE in 2017, *R (on the application of Torres) v Commissioner of Police of the Metropolis* [2007] EWHC 3212 (Admin) highlights the overlap between these sections.

The court stated that section 37 of PACE applies to every single occasion when a suspect under actual or deemed arrest is produced to a custody officer, including the occasion when they are first arrested. There is a similarity in circumstances envisaged by section 34(5) and sections 37(1) and (2). The former concerns a situation where the custody officer considers that 'there is a need for further investigation', whereas the latter requires the custody officer to 'determine whether they have before them sufficient evidence to charge' the suspect. If the custody officer determines that they do not have such evidence before them, they may release the suspect on bail for reasons that must include a need for further investigation, which brings this directly in line with the criteria of section 34(5).

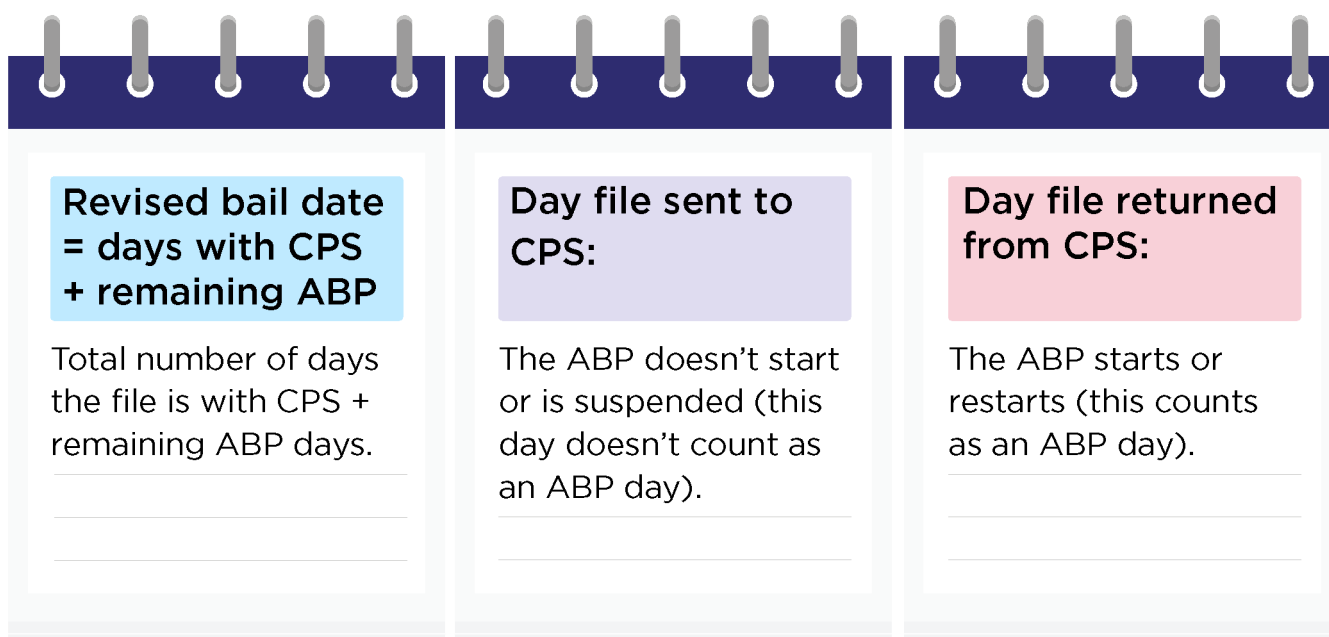
It would therefore appear that in most, if not all, cases where the custody officer does not have sufficient evidence to charge and further investigation is required, either section 34(5) or 37(2) could be used to release a suspect on bail, provided the pre-conditions for bail are met.

Bail for CPS charging decision (section 37(7)(a))

- 7.13 The consideration of bail under section 37(7)(a) of PACE is applicable where the custody officer has sufficient evidence to charge the suspect and the only outstanding action is to obtain a Crown Prosecution Service (CPS) charging decision.

7.14 When a suspect has been bailed under section 37(7)(a) and the case is being considered by the CPS, the ABP either does not begin (in the case of a first release on bail) or is suspended. This would apply in cases, for example, where a suspect was initially released on bail for further investigation then, during the ABP, the case was sent to the CPS for a charging decision.

Note: ABPs are calculated in days and not hours. The day when the file is sent to the CPS does not count as an ABP day.



7.15 Section 47ZB states that the ABP begins the day after the day when the person was arrested for the offence. It therefore follows that when the ABP is suspended for the purposes of section 37(7) (a), the day when the file is sent to CPS does not count as an ABP day. Similarly, the day when the file is returned does count, which ensures that a day is not gained overall.

7.16 If there are fewer than seven days left of the ABP on the day when the CPS requests further work, the ABP is further suspended, to ensure that the police have at least seven days to complete the actions. The ABP starts again once the deficit is made up - see the following example.

ABP example

Day 1



13:18
20/07/2022

File back from the CPS
Five days of ABP remain

This is counted as a suspended ABP day.

There are fewer than seven days of the ABP remaining.

The police are given two additional days to make sure that seven days of the ABP remain for outstanding actions.

Day 2



00:00
21/07/2022

ABP suspended

Day 3



00:00
22/07/2022

ABP resumes

Day 4



00:00
23/07/2022

ABP

Day 5



00:00
24/07/2022

ABP

Day 6



00:00
25/07/2022

ABP

Day 7



00:00
26/07/2022

ABP

ABP ends at the end of the period of seven days, beginning with the day on which the request was made.

In this scenario, ABP ends at 23:59 on 26/07/2022.

- 7.17 During this time, police should make decisions as to how best to progress the required work.
- 7.18 If an action plan is received back with the file, and the request for further information is met, the ABP will be suspended again when the file is sent back to the CPS (s47ZL(10)). This may happen on multiple occasions.
- 7.19 The sections of PACE that relate to the initial limit and extensions of the ABP are all subject to section 47ZL. Therefore an application for an extension should be sought before the expiry of the revised ABP, which takes into account the time the ABP was suspended while it was with the CPS. Extensions are not simply 3, 6, 9 or 12 calendar months from the bail start date. The running of the ABP is also determined by whether it was suspended under section 47ZL. When extensions to the ABP are authorised, they are authorised for a set period, for example 6 months from the start date; they are not authorised to run to a specific calendar date. This applies to extensions by inspectors, superintendents and magistrates' courts.

Sufficient evidence to charge but releasing on bail for any other reason (section 37(7)(b))

- 7.20 Section 37(7)(b) bail may be used where the custody officer determines that there is sufficient evidence to charge a suspect, yet they release the suspect on bail (provided the pre-conditions for bail are met), for purposes other than for a CPS charging decision. Section 37(7)(b) bail might be used:
- to help coordinate multiple charges and bail dates in relation to a vulnerable suspect, so they only have to come into custody once for charge
 - to seek a civil or protective order before the charge
 - where the suspect may have been interviewed and it is determined there is no immediate risk to safety, but the investigator may wish to instigate a non-urgent psychiatric assessment, if they feel that the suspect's capacity to comprehend the charge may be compromised

- where a person is arrested for multiple offences and there is evidence to charge for one or more, but not all.

7.21 This is not an exhaustive set of examples and the use of section 37(7)(b) will depend on the individual circumstances of the case.

8 Seeking the views of victims

8.1 Section 47ZZA of PACE requires that, if it is reasonably practicable to do so, the investigator must seek the views of the victim (if any) on whether conditions – and if so, what conditions – should be imposed. If conditions are imposed then, if reasonably practicable, the investigator must then notify the victim of those conditions. There is an equivalent duty placed on street bail under section 30CA. However, the duty to seek the views of the victim in relation to street bail only applies when the conditions are being varied.

8.2 Where considering when and how to engage with the victim, as well as what is reasonably practicable in the circumstances, the best interests of the victim should be paramount.

8.3 The investigator must inform the custody officer of any views obtained (s 47ZZA(4)).

8.4 **Victim** – For the purpose of this section, a person is a victim if an allegation has been made that an **individual** has suffered physical, mental or emotional harm or economic loss caused directly by the offence (s 47ZZA(13)).

8.5 If the victim is a business or corporation, the duty to seek their views does not apply. However, it is considered best practice to keep them informed.

8.6 Where practicable, investigators must obtain the views of the victim in their decision making relating to pre-charge bail. The victim's views on pre-charge bail, as well as their perception of future risk of harm, must be carefully considered against the rights of the uncharged suspect, not to be treated punitively.

The decisions regarding whether to grant bail, whether relevant conditions should be imposed and what those conditions are should be made by the custody officer. Some victims may underestimate the risk they are in and/or may diminish the crime that has been perpetrated against them. Professional judgement and the facts of the case should be considered, alongside the victim's views, to decide on the most appropriate response.

- 8.7 The Victims' Code states that the victim has the right to an update within **five working days** if a suspect is arrested, interviewed under caution, charged or released without charge, or released on bail or RUI, or if bail conditions are changed or cancelled.
- 8.8 Vulnerable and intimidated witnesses (including victims of the most serious offences or persistently targeted victims) must be updated about **all key decisions**, including in relation to a suspect's bail, within **one working day**.
- 8.9 If a suspect requests for their conditions to be varied, and if reasonably practicable to do so, the investigator must seek the views of the victim (if any) on whether the conditions should be varied and if so, what variations should be made (s 47ZZA(8)). The investigator must inform the custody officer of any views obtained (s 47ZZA(9)).
- 8.10 The investigator should document the views of the victim and/or any attempts made to contact them (even if these have failed). They should also notify the victim of any variations to bail under section 47ZZA(10) if reasonably practicable to do so.
- 8.11 Where a victim expresses certain views on bail and conditions, but the pre-conditions for bail are not met or the police take an opposing view, the views of the victim should be recorded, along with the rationale for the police decision. This should be clearly communicated to the victim.

Where the victim is a child or is vulnerable, investigators have a duty to liaise with the victim's representative as well as the victim. See section on **Children and vulnerable victims and witnesses**.

Where it is not possible to contact the victim

- 8.12 If it is not possible to seek the views of the victim prior to the suspect's release, or if the case is high-risk and there are concerns regarding the traumatising of the victim, the investigator must make a record of their considerations. They may also consider liaising with an Independent Domestic Violence Advisor (IDVA) or Independent Sexual Violence Advisor (ISVA) to obtain their views where appropriate. Any attempts they have made to contact the victim – or an advocate – during the first period of detention should be recorded. There is no power to detain suspects for the purposes of seeking a victim's views. The victim must be notified of any pre-charge bail granted and conditions set, as soon as practicable after the suspect's release. This should also be recorded, in line with force procedures.
- 8.13 There will be circumstances where it is not reasonably practicable to speak to the victim before a suspect is released, due to medical or urgent mental health treatment. There may be occasions where the victim is too traumatised to engage in meaningful conversations about pre-charge bail and/or may not be in a position to have processed and rationalised what has happened to them, and therefore cannot reasonably consider any risks posed to them.
- 8.14 Investigators should consider a trauma-informed³ approach, giving due regard to what the victim has experienced. This is especially true in cases of rape, sexual assault and serious harm. Professional judgement should be exercised, considering the individual facts of the case. The investigator's rationale should be recorded, especially where they have taken the decision not to obtain the victim's views at this point because it has not been reasonably practicable to do so.

³ In certain circumstances, the view of the victim may not be sought because doing so may re-traumatise. In these circumstances, you may consider getting advice from a victims' charity or trauma specialist (if that can be done within the time available).

Extending bail

8.15 It is good practice to seek the views of victims at the point of a bail extension, section 47ZZA sets out a legislative duty to notify the victim if conditions are imposed. The police have to assess risk when deciding whether to extend bail after the initial bail period at three-month intervals. An accurate risk assessment will be informed by the views of the victim in most cases.

Note: Compliance with bail conditions should not be a reason to cease pre-charge bail. Pre-charge bail with conditions may be having a deterrent effect and this can equally be justification for maintaining bail and the conditions that have been set.

8.16 The bail extension provisions require consultation with the suspect or their legal representative. Parallel consultation with the victim is crucial to ensure that officers have a full picture when making these important decisions. Cases that involve extensions after three or six months are likely to be more serious cases, where investigations take longer and risk is also higher. Consultation every three months may also reduce attrition rates, as victims often disengage from the criminal justice process when they have no communication or feel that their safety is being disregarded.

8.17 Initial responders should consider gathering the views of victims on their future risk of harm and their feelings toward potential bail, with or without conditions, at the point of reporting or when an arrest is planned, as this can replace the need to contact the victim at the point when the suspect is due to be released from custody.

9 Bail with conditions

- 9.1 Bail conditions should be imposed to mitigate any risks that could remain by granting unconditional bail. The investigator is required to consider the necessity and proportionality of any proposed conditions, to present to the custody officer to make the decision. The risks that the suspect poses to the victim(s), witness(es) or public – or to themselves – may give cause to impose a range of conditions on their bail. These will be specific to each case, dependent on the circumstances and assessment of risk.
- 9.2 Conditions may only be imposed where it is necessary:
- to prevent the suspect from failing to surrender to custody
 - to prevent the suspect from committing an offence while on bail
 - to prevent the suspect from interfering with witnesses or otherwise obstructing the course of justice
 - for that suspect's own protection – or, if a child or young person, for their own welfare (s 3A(5), Bail Act 1976)
- 9.3 The investigator has a duty to seek the views of the victim, when reasonably practicable to do so, on whether conditions should be imposed and if so, what relevant conditions (s 47ZZA, PACE). Once bail and conditions have been imposed, the investigator must notify and explain the conditions to the victim, as soon as reasonably practicable. The investigator must also explain what the victim should do if the conditions are breached. Although not prescribed by legislation, forces should record this and establish their own processes to ensure this is done.
- 9.4 The Victims' Code prescribes when victims should be updated. Victims have a right to be told when key decisions are made and, where applicable, to have the reasons explained within five working days (one working day under enhanced rights) of a suspect being released on bail.

- 9.5 It is important to note that the suspect is not charged with an offence at this stage. As such, conditions should not be unreasonable, overly restrictive nor punitive. Representations must be sought from the suspect or their legal representative, and any objections made by them should be considered and noted. Unnecessarily restrictive or unreasonable conditions may lead to a further risk of offending, absconding or risk to the suspect if they are vulnerable.
- 9.6 Where practicable and appropriate, investigators may wish to consider other information sources to inform their considerations about the conditions that may be suitable. This could be by liaising with support services. This could also be useful when considering an application for protective orders.
- 9.7 Any risks posed to the victim should be central to making this decision. However, the uncharged suspect is entitled to have the least restrictive conditions possible. The practicality of the conditions in relation to the suspect's life and commitments needs to be workable. For example, can the suspect continue to work (except in the most exceptional circumstances where this needs to be prohibited)? Do they have other commitments and responsibilities that they can reasonably be expected to continue, such as caring for an elderly relative?
- 9.8 The purpose of any bail conditions should be carefully considered and justified. Legitimate reasons to impose conditions could be to assist in investigative management, protect victims and witnesses, or aid suspect management. All conditions should be:
- specific
 - achievable
 - enforceable by police
- 9.9 Where a custody officer imposes bail conditions, they are required to make a note of the reasons for imposing those conditions and include it in the custody record. A notice must be given to the suspect. Where practicable, it is good practice for the investigating officer to also notify the victim of those conditions. However,

there is no legislative duty to provide the victim with a notice. The investigator should ensure that the suspect understands the conditions and the likely consequences of breaching them.

9.10 Custody officers should test the investigator's rationale and challenge it where necessary, prior to authorising a release on bail, to ensure that the conditions of release are both necessary and proportionate.

9.11 Police **cannot** impose conditions on pre-charge bail:

- to reside at a bail hostel
- to attend an interview with a legal representative
- to make the suspect available for enquiries and reports
- that contain electronic monitoring requirements

9.12 Investigators and custody officers must consider whether any condition is placing the suspect at increased risk of harm, especially when identified as vulnerable. For example, curfew orders should only be imposed when officers can be sure the suspect can reside at a place of safety during the curfew.

10 Bail without conditions

10.1 Releasing a suspect on bail without conditions can be a valid and useful tool in suspect management. This option should be used where conditions are not likely to assist in safeguarding any victim or witness, but the suspect is still required to answer their bail on a specific time, date and location.

10.2 The difference between unconditional bail and RUI is that unconditional bail provides a specific date and time on which the suspect must surrender to custody, as well as a power of arrest should they fail to do so. Unconditional bail also gives specific timescales, as the investigation has to adhere to the intervals set by the ABP.

11 Pre-charge bail authority levels and ABPs

Calendar month	Pre-charge bail arrangements - standard cases
1	Initial bail period Custody officer
2	
3	
4	1st extension Inspector
5	
6	
7	2nd extension Superintendent
8	
9	
10	3rd extension Magistrate
11	
12	
13	4th extension Magistrate
14	
15	
16	5th extension Magistrate
17	
18	
+	No legislative limit to magistrate extensions

Initial ABP

- 11.1 The initial ABP begins the day after the suspect is arrested for the relevant offence (s 47ZB). Subsequent extensions will also be calculated from this date. The initial ABP is three months.
- 11.2 The ABPs, processes and authority levels for the FCA, SFO, NCA or HMRC cases are different.⁴ A custody officer still has the responsibility to authorise the initial ABP in SFO, FCA, HMRC and NCA cases. The initial ABP for these cases is six months (instead of three, as in all standard cases). The same considerations apply as in all standard cases.
- 11.3 In a scenario where the police are the initial investigating agency, but this later changes to one of the other agencies listed, it is recommended that the existing ABP runs to its conclusion. At this point, the new investigating agency can review the ABP and consider how best to proceed, as they will need to manage the ongoing risks in the case. As the investigation becomes a non-standard case, the handling agency is responsible for authorising any further extensions to the ABP.
- 11.4 The custody officer is responsible for authorising the initial release on pre-charge bail. It is the responsibility of the investigator to provide the risk assessment and rationale to the custody officer to determine the suspect's suitability to be released on pre-charge bail and whether it is proportionate and necessary. The custody officer will then authorise, decline or request further work as appropriate, having considered any representations made by the suspect or their legal representative, as well as the views of the victim, where they have been obtained.

First extension: Inspector

- 11.5 The initial ABP can be extended on the authority of an inspector to six months, but only where the initial ABP has not ended and where several conditions are met.

⁴ The initial ABP for FCA, SFO, NCA or HMRC cases is set at six months. This can be authorised by the custody sergeant. Extensions are authorised by designated individuals in those organisations.

11.6 The investigator's inspector is likely to be in the best position to provide the relevant ABP extension authority, because they will be able to:

- ascertain that the investigation is being conducted diligently and expeditiously
- hold the investigator to account
- ensure that victim and suspect contact has been completed correctly
- manage performance issues and identify any relevant trends

11.7 To authorise an extension to the ABP, the inspector should ask the following questions.

- Is the ABP still valid? If the ABP has lapsed, no extensions can be authorised.
- Have representations been sought from the suspect or their legal representative?
- Have the views of the victim been sought, if reasonably practicable to do so?
- Are conditions A to D of section 47ZC of PACE met?

11.8 The inspector must be satisfied that they have reasonable grounds for:

- suspecting that the suspect is guilty of the offence (Condition A)
- believing that further time is needed for making a decision as to whether to charge the suspect with the offence, or otherwise, that further investigation is needed (Condition B)
- believing that the decision as to whether to charge the suspect with the offence is being made diligently and expeditiously, or otherwise, that the investigation is being conducted diligently and expeditiously (Condition C)
- believing that the release on bail of the suspect is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions that are to be imposed) (Condition D)

- 11.9 Prior to the authorisation of each extension, the inspector must arrange for the suspect or their legal representative to be informed and given time to submit representations. In determining whether to authorise an extension, the inspector must consider any representations made by the suspect or their legal representative (s 47ZD).
- 11.10 This should be documented, along with a rationale for the decision that has been taken. The inspector must arrange for the suspect or their legal representative to be informed whether an authorisation has been given.
- 11.11 While there is no legislative duty to do so, it is good practice to seek the views of the victim when considering an extension. The rights and entitlements under the Victims' Code must be also considered and the victim should be updated accordingly.

Second extension: Superintendent

- 11.12 A superintendent can authorise a further extension from six to nine months. This can only occur where the ABP has not ended and where conditions A to D described above are met. This extension should follow the same process as for the inspector's extension.
- 11.13 In most cases, the ABP will expire at the end of nine months and further extensions will be required from the courts. In exceptionally complex cases, the ABP can be extended.

An authority for an extension must be completed prior to the expiry of the current ABP. A new bail date can still be issued after this if the authority is in place.

Example: An inspector authorises an extension at 22:00hrs on the final day of the ABP. A new bail date is sent out on the following day during office hours.

Exceptionally complex cases

- 11.14 Section 47ZE of PACE provides for a case to be designated as exceptionally complex by the Director of Public Prosecutions (DPP). This allows for extensions to the ABP from nine months to 12 months. Extensions in these cases will be authorised by a qualifying police officer, which is a police officer of the rank of commander or assistant chief constable, or above. As with other extensions, the qualifying police officer must be satisfied that Conditions A to D are met.
- 11.15 Before determining whether to authorise an extension, the qualifying police officer must arrange for the suspect or their legal representative to be informed and consult with the DPP. The qualifying police officer must consider any representations made by the suspect or their legal representative and arrange for them to be informed whether an authorisation has been made.
- 11.16 Any designation must be made, and any extension must be authorised, before the ABP has ended (s 47ZE(8)).

Further extensions: Magistrates' court

- 11.17 Where the superintendent's or qualifying police officer's extension is about to expire and the police consider that they require additional bail time, they can apply to a magistrates' court for an extension (this should be at least one week before the ABP is due to end). The magistrates' court only have to apply conditions B to D listed above, when considering whether bail can be extended (s 47ZF).
- 11.18 The magistrates' court have the flexibility to grant extensions up to 12, 18 or 24 months (for exceptionally complex cases only), depending on the circumstances of the case.

12 Pre-charge bail process and management

- 12.1 Not all forces will have dedicated teams of staff to oversee the general administration, management and review of bail demand. It is up to individual forces to outline the roles and responsibilities of those involved in the bail management process.
- 12.2 It is the responsibility of the investigator's supervisor to ensure that outstanding enquiries are being conducted in a diligent and expeditious manner, and to check that regular victim and suspect updates are completed.
- 12.3 Supervisors should proactively monitor investigations to ensure timely progression, adherence to ABPs and quality assurance, and to provide direction and guidance.
- 12.4 Pre-charge bail is best managed by those who hold all the information on the case and are familiar with the investigation's progress, because this knowledge will equip them to make decisions to respond to threat, risk and harm as it evolves in each specific case. This is especially true of investigators and their supervisors in specialist roles, such as domestic abuse, vulnerable persons, economic crime and major crime.

Answering bail: Administration

- 12.5 Forces should consider having processes in place to ensure the robust management of suspects answering bail. Cases should be fully updated, including the rationale for all decisions in the case, at the time when the suspect attends to answer their bail, so that custody officers are aware of what actions are to be taken - for example, no further action, charge or bail extension.
- 12.6 Other administrative functions also include re-bailing of suspects where the case is with the CPS and notifying the suspect that they are not required to attend their initial bail appointment. New ABPs will need to be calculated, allowing for the time the case spends with CPS.

- 12.7 Custody officers should consider completing a pre-release risk assessment when a suspect answers their bail. This should consider how the risk profile has changed because of developments in the case.
- 12.8 These tasks can be completed through proactive management by the investigator's supervisor, the custody officer or a dedicated team. Forces should have clear policies in place outlining all necessary roles and responsibilities in this process.

Conditional to unconditional bail conversion

- 12.9 A supervisor should review any case where the investigator considers conditional bail to no longer be necessary and requests a conversion to unconditional bail. If the case is considered to be high-harm⁵, or involves domestic abuse, vulnerable persons or sexual abuse, the National Policing Lead for bail recommends that a detective inspector should review the case and provide a rationale for why unconditional bail is now suitable.
- 12.10 If an ABP has lapsed without update, action or rationale from the investigator, the National Policing Lead for bail recommends that the matter should be reviewed by a superintendent as soon as practicable, to ensure the safety of the victim, witnesses and public, and to hold the investigator to account.

Arrests to impose bail conditions

- 12.11 Whether you can arrest someone solely to impose bail conditions will depend on the specific circumstances of the case and whether the arrest is considered necessary, taking into account the necessity criteria set out in PACE Code G.
- 12.12 In the case of *R(TL) v Chief Constable of Surrey Police* [2017] EWHC 129 (admin), the court stated that:

'If there are reasonable grounds for believing that bail conditions are necessary to protect a witness from intimidation which would

⁵ High-harm is defined by the Home Office's Pre-charge bail government response 2021 as: 'cases where the offences incur significant adverse impacts, whether physical, emotional or financial upon individuals or the wider community'.

or might render the investigation substantially less effective, then the requirements of s.24(e) PACE would be satisfied.’

Diligent and expeditious investigations

- 12.13 Investigations should be conducted diligently and expeditiously, irrespective of the time available as part of any remaining ABP. Regular progress against an investigative plan should be shown and investigations should not drift. If there are actions to be taken to finalise the case and obtain a charging decision, these should be conducted as soon as reasonably practicable, not left until the end of the bail period.
- 12.14 A diligent and expeditious investigation ensures a better service for victims and witnesses, better management and welfare of the suspect, and improved evidence gathering and case file preparation. It also enhances the likelihood of justice being served. Where a suspect breaches their bail, then is arrested and brought into custody, the case will be in a better state of readiness.

Bail date alterations

- 12.15 There are several powers within PACE that give a custody officer the ability to change the original bail date given to the suspect upon their initial release on bail. Section 47 of PACE states:

‘(4) Where a custody officer has granted bail to a person subject to a duty to appear at a police station, the custody officer may give notice in writing to that person that his attendance at the police station is not required.

(4A) Where a person has been granted bail under this Part subject to a duty to attend at a police station, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.’

Forces often use the powers in 4A for high-risk cases (although there are other uses). This is sometimes referred to as ‘short turn-around bail’. You may bail a suspect to return within days of release. This might be to interview someone after obtaining key

evidence. Short turn-around bail is an effective means of suspect and risk management.

12.16 The suspect must be advised in writing and the bail date must not be after the ABP has expired.

Note: there are additional powers to alter bail dates when the custody officer grants the initial applicable bail period. Section 47ZA of PACE specifically refers to the police power to alter bail dates:

- to allow for alignment with another bail date, if the suspect is already on bail for another offence (s 47ZA(3))
- if a custody officer feels that an earlier charging decision is likely (s 47ZA(4))

Identifying and managing risk

12.17 Bail is an important tool to manage risk in an investigation. Bail can be used as one tool to offer protection to the victim(s), witness(es), suspect, public and investigation. Bail should not be used in isolation as a risk management tool in isolation.

12.18 While there is no evidence that pre-charge bail has a deterrent effect, there is evidence that a victim's perception of their safety and level of protection increases when bail with conditions is used.⁶ We are told that many suspects adhere to bail conditions when they are set. However, it cannot be assumed that the use of pre-charge bail makes it less likely that further offences will be committed, and bail should be used as part of a wider risk management or safeguarding plan. Bail is one tool that can be used – with or without conditions, and along with other protective measures – to create protection around the victim or witness in the case.

12.19 Bail with conditions can also be used proactively to support vulnerable suspects. For example, in a county lines operation, an investigator may choose to impose pre-charge bail with conditions during the investigation, to impose a curfew and

⁶ HMICFRS, College of Policing and the Independent Office for Police Conduct. (2021). [**A duty to protect: Police use of protective measures in cases involving violence against women and girls**](#) [internet]. [Accessed 19 July 2022]

movement restrictions, and to safeguard the suspect against further exploitation by drug gangs. The use of pre-charge bail in respect of vulnerable suspects is likely to lead to a timelier investigation and can sometimes assist a suspect's access to wider support services.

- 12.20 Pre-charge bail can also sometimes have a detrimental effect when the conditions set may place the suspect at a greater risk of harm. For example, curfew orders may expose the suspect to violence or drug and alcohol abuse, due to the chaotic lifestyles of those around them. The full impact of conditions should be considered on all parties to an investigation. There should be a holistic approach that fully considers all potential and unintended consequences of the conditions to be imposed, especially where it is thought that a suspect has been coerced into the commission of a criminal offence.
- 12.21 Investigators are required to consider a range of tools and options to assess and mitigate the risks in each case. The use of pre-charge bail may form one of those options. However, additional considerations could include tactical options, such as the use of partner agencies, issuing panic alarms, safety apps, direct contact to police control rooms and any other relevant threat mitigation tactics that may be available in your force.
- 12.22 Investigators need to be aware that if no breaches of bail have occurred, this may indicate that the conditions are working and providing the victim with the protection needed. Removal of conditions should only be considered if there is a change in circumstances. A new risk assessment will be required to detail the rationale, alongside consultation with the victim and witness.⁷
- 12.23 Even if other protective measures are in place, such as court orders, the use of bail must still be considered to add to the level of protection provided.
- 12.24 When considering risks posed to victims, investigators should be aware that incidents that are perceived to be minor can indicate significant risk of future harm.

⁷ The duty to seek the views of the victim doesn't apply when releasing someone on bail following breach of bail (when released originally under section 37(7)(a) or (c) of PACE).

Children and vulnerable victims and witnesses

12.25 If the victim or witness appears to the investigator to be vulnerable, a person who represents the victim must be spoken to in order to ascertain their views on whether conditions should be imposed and what those conditions should be. This might be a friend or family member or a support service acting on their behalf, such as a key worker or social worker. The duty extends to both the vulnerable person and their representative in these circumstances.

12.26 A victim is considered vulnerable for the purposes of the duty to seek their views (section 47ZZA(14) of PACE) if any of the following apply:

- they were aged under 18 at the time of the offence
- they may have difficulty understanding a communication from an investigator or communicating effectively in response to it, due to:
 - a physical disability or disorder
 - a mental disorder within the meaning of the [Mental Health Act 1983](#)
 - a significant impairment of intelligence and social functioning

12.27 It is important that children and vulnerable persons are allowed to engage and offer their thoughts and feelings on matters affecting them. Investigators should consider, on an individual basis, whether the views of any children involved in the case should be sought. This will be dependent on their age, development and understanding, and should be considered on a case-by-case basis.

Note: The Domestic Abuse Act 2021 recognises the devastating impact that domestic abuse can have on children. Section 3 of the Domestic Abuse Act came into force on 31 January 2022. It provides that a child (0 to 18 years old) who sees, hears or experiences the effects of domestic abuse and is related to the victim or the perpetrator is also to be regarded as a victim of domestic abuse.

Children and vulnerable suspects

Extra attention should be given to communication with child or vulnerable adult suspects, including those who have special educational needs (and any appropriate adult acting on their behalf). Every effort should be made to ensure that the suspect fully understands the bail and RUI process, in a way that is meaningful to them. It is vital that the suspect understands the consequences of breaching their bail or committing further offences while on bail, as well as the process they may be subject to if this occurs.

- 12.28 When dealing with children and vulnerable suspects, consideration should be given to the use of pre-charge bail as a tool for suspect management, which may include protective factors. The use of pre-charge bail in respect of children and vulnerable suspects is likely to lead to a timelier investigation.
- 12.29 Special consideration is required to expedite investigations where the suspect is approaching 18 years old, as they will have been arrested for the offence as a child, but will be treated by the court as an adult and may be disproportionately affected by the transition from being treated as a child to an adult.
- 12.30 Encountering the criminal justice system when under 18 or with vulnerabilities can influence social development, education, access to services and future job prospects. Restrictive bail conditions on children can have a particularly significant impact. These conditions may disregard their everyday circumstances and affect whether or not they get access to further support services, such as education or employment. There are circumstances where a Police Protection or Emergency Protection Order⁸ may be a better option, in order to safeguard the child suspect.
- 12.31 Imposing certain bail conditions without considering a child or vulnerable person's wider lifestyle and environmental factors may put them at further risk of harm. Any representations made by the suspect or their legal representative should be carefully

⁸ Police Protection and Emergency Protection Orders are options available to use in an emergency when a child is at risk of imminent harm.

considered and weighed against the risk the suspect poses to the victim, witness and public. The investigator should ensure that the child or vulnerable person fully understands their rights and what being on bail means to them.

- 12.32 Investigators should update, and liaise with, a child's or vulnerable suspect's appropriate adult, parent or guardian and legal representative (where applicable). Consideration can also be given to contact with partner agencies about bail decisions and safeguarding.

Consider the situation and the punitive nature of conditions the suspect may be subjected to, and whether there are other lifestyle factors that would prevent them from adhering to conditions or would place them at risk of harm.

Officers must take into account all of the vulnerabilities of a child when deciding whether the statutory grounds for arrest apply and when deciding the appropriate action to take in the circumstances.

The police have a duty under the Children Act 2004 to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. Officers should consider the appropriateness of arrest in relation to the original offence and when considering arrests for breach of bail.

See *ST v The Chief Constable of Nottinghamshire Police* [2022] EWHC 1280 (QB) (26 May 2022). The grounds for arrest may be justifiable, but the administration of the arrest could prove inappropriate (for example, arresting a child in the middle of the night for a low-level offence).

The rights of the child should always be balanced against the risk they pose to themselves and/or the public.

13 Released under investigation

- 13.1 The process whereby a suspect is RUI is not specified in law. The phrase is used to describe where a suspect is released from custody without charge, not subject to no further action and not on bail.
- 13.2 The use of the RUI process can have a significant impact on the suspect's life. Victims, witnesses and suspects are entitled to regular updates and timely resolution of the investigation, whether the case is dealt with by RUI or released on pre-charge bail.
- 13.3 The RUI process must be capable of withstanding similar scrutiny to bail, having due regard to proportionality and necessity. Where the pre-conditions for pre-charge bail are not met, the use of RUI can be considered. Police must always consider the need to **protect victims and witnesses**, and to **ensure the safety of the public**. The threat, risk and potential for future harm associated with the investigation must be proportionately managed, taking into consideration the safeguarding of all persons linked to the investigation. RUI should only be used in circumstances where the pre-conditions for bail are not met and there is little, or no, risk identified. Decisions to RUI should be fully justifiable and documented. Decisions whether to bail or RUI should not be made on the basis of resources and/or administration.
- 13.4 Following the in-custody investigation process, the investigator should liaise with the custody officer to determine the type of release (pre-charge bail or RUI). The custody officer will then decide whether to release the suspect under investigation. Onward suspect management and welfare assessment will be the responsibility of the investigator, with oversight from their supervisor. There should be a clear plan in place, linked with the likely progress of the investigation.
- 13.5 Forces are recommended to establish a formal mechanism, prior to release, for notifying suspects that they have been RUI and explaining what this means. The suspect could be issued with

some kind of RUI notice. Suspects or their legal representatives can expect to be regularly updated regarding progress of the investigation. Forces are recommended to provide an indication of the likely update intervals in writing or on the notice at the time of release.

- 13.6 If the suspect is of no fixed abode, the investigator should endeavour to identify a service address for the service of a postal charge or personal service in the future. In the following circumstances, the use of pre-charge bail should be considered to ensure their surrender to custody:
- the suspect lives out of force
 - a genuine service address cannot be ascertained
 - there is limited knowledge of the suspect
 - intelligence is known that the suspect is a flight risk
- 13.7 The investigator must update victims and witnesses when a suspect is RUI, as per their responsibilities under the Victims' Code. Officers should provide the details of the processes to follow when a victim or witness feels they are subject to criminal actions by, or linked to, the suspect.⁹

Domestic abuse and high-harm cases

- 13.8 If a suspect has been arrested in connection with an offence involving vulnerable people or domestic abuse, serious consideration must be given to the imposition of bail with conditions to safeguard the victim. A detective inspector should be consulted and review the case before a domestic abuse or high-harm offence suspect is RUI. There should be a well-documented record of their decision making in each case.

9 Ministry of Justice. (2021). [Code of Practice for Victims of Crime in England and Wales \(Victims' Code\)](#) [internet]. [Accessed 19 July 2022]

Timescales

- 13.9 There should still be a clear investigative plan where a suspect is RUI. Investigations should be conducted as expeditiously as those released on bail in order to ensure that victims, witnesses and suspects are not subject to long delays, which can have a negative impact on the investigation, the case and all involved.
- 13.10 The investigator's supervisor should endorse the investigation log with an initial expected finish date (EFD) alongside the investigation plan. This date must take the investigation plan into consideration, including how long it will take to process any forensic and digital evidence submissions that are deemed necessary.
- 13.11 Once a suspect has been released, investigations should have a documented supervisory review at least every 30 days until the investigation has been completed and a disposal actioned.
- 13.12 At each review and at the end of the investigation, the supervisor must ensure that the investigator has updated the victim, the suspect and their legal representative (where applicable).

14 Breach of bail

- 14.1 It is important that police take positive action when a suspect has breached their bail conditions. Officers are encouraged to arrest for breach of bail or another substantive offence, wherever reasonable. This gives a positive message to victims and witnesses of crime. It ensures that the suspect is aware that further offending behaviour will not go unaddressed and may act as a deterrent to suspects, who may otherwise believe there is no consequence to a breach of police bail conditions.

In taking a proactive approach to arrest for breach of bail, officers should still use their professional judgement in considering when and where to arrest for the breach. This is especially true in respect of children and vulnerable suspects. For example, it may not be appropriate to arrest a child in the middle of the night for a relatively low-level breach of bail with mitigation.

The rights of the child or vulnerable suspect should always be balanced against the risk they pose to themselves and/or the public.

- 14.2 It is essential to collect data around breaches of bail to help protect victims and further inform the law. A breach of bail conditions may indicate an increased risk to the victim or witness.
- 14.3 Section 46A of PACE gives a constable the power to arrest, without warrant, any person who, having been released on bail under Part 4 of the Act (s 34-51), fails to attend the police station at the time appointed to do so. It also includes a power to arrest where a constable has reasonable grounds to suspect, that the suspect has broken their bail conditions (s 46A(1A)). Sections 46A(1) and 46A(1A) carry a power of entry under section 17 of PACE.
- 14.4 A person arrested under this power shall be taken to the police station appointed as the one they were due to surrender to custody, as soon as practicable after the arrest.

- 14.5 This has implications for police where the suspect has been arrested a considerable distance away from the police station at which they were due to answer bail. The suspect must be returned to that station as soon as practicable and cannot be processed at any other local station. The usual rules surrounding the relevant time and transfer between forces shall apply (section 41 of PACE).

There may be rare circumstances where this is not operationally possible and forces must consider their plans should this occur.

- 14.6 When attending an allegation of a breach of bail, officers should:
- check that bail conditions are still valid, what conditions are in place and whether they have been breached
 - consider the circumstances of the alleged breach and any potential mitigation (for example, to receive medical treatment, a genuine family emergency or childcare)
 - give priority to arrest for any new substantive offences that occur alongside the breach
 - consider the grounds for arrest (the necessity criteria under section 24 of PACE do not apply to an arrest under section 46A of PACE)
 - following arrest, take the suspect to the station where they were due to answer bail

Where the breach of pre-charge bail conditions involves the commission of another substantive offence, the substantive offence should take precedence. If you don't arrest for the breach of bail, the breach must still be recorded. Forces will have different ways of achieving this depending on the IT systems they use. This information must be readily available. Offences such as harassment, witness intimidation and perverting the course of justice should be considered. These offences will generate their own 24-hour detention clock and form an investigation in their own right.

Arrest for breach of section 37(7) bail

- 14.7 Where a suspect released on bail under section 37(7)(a) (for a CPS charging decision) or under section 37(7)(b) (sufficient evidence to charge but released for purposes other than a CPS charging decision) is arrested under section 46A of PACE, the custody officer shall decide whether they should be charged or released without charge, either on bail or without bail (s 37C and 37CA).
- 14.8 If the suspect is released on bail, they shall be subject to the same conditions (if any) that applied immediately before their arrest (s 37C(4) and s 37CA(4)). Bail conditions must not be changed or removed. If this is required due to a change in the circumstances and/or risk, CPS should be advised and will make a decision to apply to the court as needed for a variation.
- 14.9 If the suspect is not in a fit state to enable them to be dealt with, they may be kept in police detention until they are in a fit state (s 37D(5)).

Failing to answer police bail offence

- 14.10 It is an offence under section 6 of the Bail Act 1976 for a person who has been released on pre-charge bail to fail, without reasonable cause, to surrender to custody. There are two arrest powers that can be used.
- Section 24 of PACE arrest powers (necessity criteria required) – this will generate a new custody record and 24-hour detention clock. These powers are to be used in relation to an arrest for a **new** offence.
 - Section 46A breach of bail powers (no necessity criteria required) – an arrest for the original offence, which incurs a three-hour pause followed by any remaining time on the detention clock. Suitable to use if the suspect is likely to be immediately charged with a section 6 Bail Act offence.

Three-hour pause to the detention clock

- 14.11 Where a suspect has been arrested under section 46A of PACE, the detention clock is paused for a period of three hours (s 47(6A)). This begins when the suspect arrives at the police station and is still regarded as a PACE detention. This means that when someone is arrested for breach of bail, the suspect can be held for up to three hours without any effect on the original clock. This time is lost once the suspect is released – it is not cumulative and sits aside, or separate, from the original clock. Each instance of breach of bail attracts a separate three-hour pause. For example, a suspect arrested for a second breach cannot have any unused time from the first breach added on.
- 14.12 The three-hour pause does not apply to any arrests under the following sections:
- section 46(1ZA) – suspect attends to answer bail via live link and leaves before it begins
 - section 46(1ZB) – suspect attends to answer bail but refuses to be searched

How can the three-hour pause be used

- 14.13 When a suspect is arrested for a breach of pre-charge bail, the overriding objective is to progress the investigation to a full code test charging decision. This will not always be possible depending on the circumstances of the case, outstanding investigative actions and the point when the breach has occurred (for example, a few hours, days, weeks or months after release). The three-hour pause can be used with any time remaining on the original detention clock. The pause should not be used punitively.
- 14.14 Actions that could be considered are listed below. This list is not exhaustive.
- 14.15 Consider any further substantive or series offences that have been committed alongside the breach, such as witness intimidation, harassment or perverting the course of justice.

14.16 Consider the following options.

- The main consideration is whether to:
 - obtain a charging decision, considering a threshold or emergency charge if possible
 - obtain any outstanding evidence that could progress the case to a charging decision
- You may also be able to:
 - provide further safeguarding and support as necessary for the victim, including referral to support services and target hardening¹⁰
 - provide further safeguarding and support as needed for a vulnerable suspect, including referrals to support and diversion partners as appropriate
 - change existing bail conditions to better manage the risk posed
 - consider other protective orders that could support bail and assist in risk management

14.17 The three-hour pause comes into effect at the moment when the suspect arrives at a police station. They should therefore immediately be accepted into the custody suite.

14.18 Forces need to have considered how quickly they can put the suspect in front of the custody officer – for example, if there is a queue in the holding area. It may be possible to introduce a triage system. However, suspects for drink driving, children or vulnerable people, and suspects with medical issues may need to be prioritised. There could also be delays, which will need to be considered and mitigated against.

14.19 Suspects are entitled to a number of rights when they arrive in custody. A suspect's rights must be observed in the same way as they would for any other detention. Custody staff must ensure that

¹⁰ Target hardening is a security tactic aimed to deter potential attackers through a range of protective measures.

sufficient time is allocated to the provision of a suspect's rights, some of which may have an impact on the time available – for example, being able to read the Codes of Practice or conversations with legal representatives. The remaining detention clock may need to be used if required.

14.20 There may be suspects arrested for a breach of bail who require an initial mental health assessment by the healthcare practitioner or Criminal Justice Mental Health Team, to see if the suspect is fit for detention. There may be follow-up actions that need to be taken as result of this – for example, requesting an appropriate adult from Appropriate Adult services. The suspect may not be fit to be detained and a full mental health assessment may be required, which could result in lengthy delays.

14.21 If the suspect requires hospital treatment then the three hours is paused, in the same way that the detention clock would be paused.¹¹ If the suspect is taken straight to hospital from the place of arrest, the detention clock would not start until they arrived at a police station. The three-hour pause works in the same way and will not begin until the suspect reaches the station.

14.22 It should be noted that the review clock continues as per the original detention clock. For example, a person arrested and bailed after two hours' custody would have four hours until their first review. If they were arrested for breaching the conditions of bail, the review would still be required after four hours, but the 24-hour clock for detention would be paused for up to three hours.

Where a suspect is arrested for breach of pre-charge bail and presents information in mitigation of the breach, a note should be made of the representations on the custody record. This may inform how risk is managed throughout the life of the case (for example, if the breach forms part of a decision to place more onerous conditions on the suspect or is considered as justification to remand them post-charge).

¹¹ Section 41(6) of PACE shows that any period where the person is in hospital – or travelling to, or from, hospital – and not being questioned by police shall not be included in any period that falls to be calculated.

Suspect is unfit for charge or detention

- 14.23 Circumstances may occur whereby a suspect is arrested for breach of pre-charge bail while unfit to be dealt with, by virtue of intoxication through drink or drugs, a mental health crisis or a medical incident.
- 14.24 If a suspect is arrested for breach of 37C(2)(b) or 37CA(2)(b) bail but is not fit to be dealt with by way of charge or release, they can be held in police detention until they are fit to be dealt with (s 37D).
- 14.25 For an arrest for breach of pre-charge bail conditions under section 46A of PACE, there is no specific provision. In such cases, where the three-hour pause is insufficient to process the suspect, officers will need to consider what time is remaining on the original detention clock and manage the suspect accordingly.
- 14.26 Under section 42 of PACE, a superintendent or above who is responsible for the police station at which a suspect is detained may extend the original PACE clock to a period expiring at, or before, 36 hours after the relevant time, if they have reasonable grounds for believing that:
- their detention without charge is necessary to secure or preserve evidence relating to an offence for which they are under arrest, or to obtain such evidence by questioning them
 - an offence for which they are under arrest is an indictable offence
 - the investigation is being conducted diligently and expeditiously
- 14.27 An extension cannot be authorised for the purpose of purely obtaining a charging decision or awaiting a suspect to become fit for release if intoxicated or otherwise unfit.

Emergency charging

14.28 Emergency charging can be used where a prosecutor's authority cannot be obtained before the expiry of a PACE time limit. In such cases, an officer of the rank of inspector or above may authorise the charging of an offence, which must ordinarily be referred to a prosecutor, provided it is given in accordance with the Director's Guidance on Charging. There may be circumstances where this will apply where a suspect has been arrested for breach of bail, where the three-hour pause has been used but there is very little time remaining on the PACE clock. This should only be used where the continued detention of the suspect can be justified. It cannot be used if the suspect will be released after charge.

Postal charge requisition

14.29 A postal charge requisition (PCR) is a legal document notifying a suspect that a decision has been made to prosecute their offence(s) at court. PCRs can only be used where a suspect has been RUI or released on unconditional bail.

14.30 When a PCR is generated, this has the effect of cancelling the ABP. This makes PCRs unsuitable for use with conditional bail, as the conditions will be cancelled as soon as the PCR is issued.

15 Re-bailing a suspect with new and different bail conditions

A suspect's bail conditions can be **varied** when requested by the suspect or their legal representative. Bail conditions may be **changed** at the behest of the police, including upon the request of a victim when a suspect is re-released on bail, in most circumstances. In this context, to change bail conditions means to re-bail the suspect with new and different bail conditions.

- 15.1 Section 3(8) of the Bail Act 1976, read with section 3A(4), allows bail conditions to be **varied** by the police following a request for variation by the suspect (or their legal representative). There is no similar provision allowing bail conditions to be varied at the behest of the police, or upon the request of the victim of the alleged offence. However, a suspect may be **re-bailed with new conditions** in most circumstances, whenever the suspect is in front of the custody officer.
- 15.2 The suspect can be re-released on bail with new (and different) conditions at any point during an active ABP, if those conditions are necessary and the usual requirements for imposing pre-charge bail with conditions are met.
- 15.3 This does **not** apply where the suspect is arrested for breach of bail under section 46A of PACE and they were originally released under 37(7)(a) or (b) (bail for CPS charging decision or where there is sufficient evidence to charge, but the police are not charging the suspect and release them for any other reason). In these circumstances, any conditions must be the same as those that applied immediately before the suspect's arrest if the suspect were subsequently re-bailed. It would be expected that in these circumstances, an urgent charging decision would be sought.
- 15.4 A power to re-arrest exists under section 47(2) of PACE, where new evidence has come to light since the suspect's release or where further examination or analysis of evidence has been made. Section 47(2) states:

‘Nothing in the Bail Act 1976 shall prevent the re-arrest without warrant of a suspect released on bail, subject to a duty to attend at a police station, if since their release new evidence has come to light, or an examination or analysis of existing evidence has been made, which could not reasonably have been made before their release.’

- 15.5 This would be a new detention clock (s 47(7) PACE), which resets the ABP. Any previous extensions are now void. Provided the requirements for bail with conditions were met, this may also lead to a change in conditions, if there were a requirement to do so. This does not apply for arrests for breach of bail.

Re-bail process

- 15.6 Where a suspect answers bail (returns to a police station to answer bail granted under Part 4 of PACE), they are to be treated as arrested for the offence in connection with which they were granted bail in the first place (s 34(7) PACE). Section 37 not only applies when a suspect returns to the police station to answer bail, it also applies to every single occasion when a suspect under actual or deemed arrest is produced to a custody officer (see *R (Torres) v Commissioner of Police of the Metropolis* [2007] EWHC 3212 (Admin)).
- 15.7 Once section 37 is engaged, the usual considerations apply for the custody officer, including:
- whether there is sufficient evidence to charge
 - whether the suspect should be remanded to obtain such evidence
 - where there is insufficient evidence, whether the suspect should be bailed
- 15.8 Therefore, when a suspect answers bail, the custody officer must reach a fresh decision under section 37 of PACE as to whether to bail (or re-bail) the suspect and whether to impose bail conditions. Every time a suspect returns to custody, there is an

opportunity to release the suspect on bail and impose conditions, which may be the same or different to any conditions previously imposed. This may be done at the behest of the police, with or without a request of a victim or the suspect, provided the requirements for imposing bail with conditions are met. Any bail conditions imposed on the suspect when they are re-bailed are not constrained by any earlier conditions.

- 15.9 As a re-bail is considered a release on bail under Part 4 of PACE, the duty to seek the views of the victims on the conditions (s 47ZZA) will apply.¹²

Setting a new bail return date

- 15.10 Section 47ZA(2) of PACE requires that the bail return date that is set when bail is initially granted must be set for the day the ABP ends, but allows for two specific exceptions:

- to align bail periods in the case of multiple offences
- where the custody officer believes a charging decision is likely to be made before the end of the ABP

- 15.11 However, section 47(4A) of PACE provides:

‘Where a person has been granted bail under this Part subject to a duty to attend at a police station, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.’

- 15.12 PACE does not place limitations on the purposes for which the power under section 47(4A) may be exercised. Therefore, the custody officer may use their power under section 47(4A) to bring forward the bail return date or impose an additional date, in order to impose new and different bail conditions, provided the ordinary requirements for imposing bail with conditions are met. The power under section 47(4A) can be exercised at any time during the ABP.

12 This doesn't apply where a suspect is re-bailed under section 37C(2)(b) (breach of bail following release under sections 37(7)(a)) or 37CA(2)(b) (breach of bail following release under s 37(7)(b)). It also does not apply where the suspect is arrested for breach of bail under sections 37(C)(2)(b) and 37(CA)(2)(b) of PACE.

However, it cannot be used to appoint a time for attendance after the end of the ABP (s 47(4D)).

- 15.13 Forces need to have a process in place for managing and monitoring pre-charge bail, with or without conditions. Careful consideration should be given to how conditions are articulated at the time of initial release, to negate the need for frequent technical updates (for example, to deal with a change in address). Overly prescriptive conditions may increase the likelihood of requiring a change. It may be preferred, for example, to state that the suspect 'should not attend the victim's address, currently 14 Hawthorne Drive' as opposed to stating that the suspect 'should not visit 14 Hawthorne Drive'. It must be clear to the suspect what is and isn't permitted by the conditions. Conditions should be specific, achievable and enforceable by police.
- 15.14 When seeking to change the bail return date, it may be necessary to show that the suspect has been informed of the specific requirements, such as date, time and place for surrender, as well as how the information was notified (for example, by provision of a statement from a police officer serving a notice of the new requirement). Forces should have processes in place to capture this information in case it is required at a later date.
- 15.15 The custody officer must give the suspect notice in writing when exercising the power under section 47(4A) of PACE to appoint a different time, or additional time, for them to attend the station to answer bail.

Examples

Suspect A bailed – first ABP set, bail return date at three months and a condition not to attend the victim’s specified home address. The victim moves house and the police want to change condition in response. The victim’s views are sought and they agree (there is no legislative duty to seek the victim’s views at this stage but we feel it should be considered). The custody sergeant brings forward the date to return on bail. When the suspect returns to custody and is re-bailed, new conditions can be applied, including that the suspect is not to attend the victim’s new specified address. The ABP then continues as before, provided the criteria for pre-charge bail are met.

Suspect B bailed – first ABP set, bail return date at three months. The suspect requests a change in conditions. Conditions can be varied and the custody officer may impose conditions or more onerous conditions (s 3A, Bail Act 1976). The custody officer must give reasons for the decision, include a note of those reasons on the custody record and give a copy of that note to the suspect (s 5A, Bail Act 1976). The views of the victim should be obtained where practicable. Conditions can be varied and notified by post.

16 Protective orders

- 16.1 There are a wide range of protective orders available that investigators should consider using in conjunction with pre-charge bail and any conditions imposed. Using orders can mean that a breach is a criminal offence with specific arrest powers.
- 16.2 Where a protective order is in place as well as conditional bail, officers should consider whether there is evidence of a breach of an order and take appropriate action. This is because breach of these orders have criminal or civil justice consequences, whereas breach of police pre-charge bail does not.
- 16.3 It is the role of police to help make victims safe. It is not appropriate for officers to routinely advise victims to seek civil orders themselves. However, there are some orders that can be obtained as part of civil proceedings and victims may wish to explore these options.
- 16.4 If bail cannot be extended due to delays in the police investigation, police may be able to apply for other protective orders where the criteria for the civil order are met.

Glossary

Applicable bail period (ABP) – The period for which a suspect can be subject to pre-charge bail. ABPs are defined by law.

Child – In England, a child is defined as anyone who has not yet reached their 18th birthday. In the context of the [Children Act 1989](#), a child means a person under the age of 18, except in relation to certain applications under [Schedule 1](#).

Detention clock – The period that a suspect can be detained for under section 41 of the Police and Criminal Evidence Act 1984 (PACE). This period is no more than 24 hours from when the person arrives at the station, subject to several caveats and exclusions.

Domestic abuse – As defined under section 1 of the Domestic Abuse Act 2021, domestic abuse is where ‘person A and B are each aged 16 or over and are personally connected to each other and the behaviour is abusive’.

High-harm – High-harm is defined by the Home Office’s Pre-charge bail government response 2021 as ‘cases where the offences incur significant adverse impacts, whether physical, emotional or financial upon individuals or the wider community’.¹³

Investigating officer – The constable or other person in charge of the investigation of the offence, as per the Police, Crime, Sentencing and Courts Act 2022 (PCSC).

Released under investigation (RUI) – This phrase is used to describe instances when a suspect is released from custody without charge, is not subject to ‘no further action’ (NFA) and is not on bail.

Relevant condition – A condition that relates to the safeguarding of the victim (section 47ZZA(3) of PACE).

Review clock – The reviews of the detention of suspects held in police custody, which are carried out in accordance with section 40 of PACE.

¹³ Home Office. (2021). Police powers: Pre-charge bail government response [internet]. [Accessed 19 July 2022]

Series offences – Linked offences or offences showing a continued course of conduct, such as harassment and stalking.

Victim – Under certain sections of PCSC, a person is a victim if an allegation has been made that an individual has suffered physical, mental or emotional harm or economic loss caused directly by the offence (section 47ZZA(13) of PACE). We also acknowledge the definition provided by the Victims' Code, whereby the definition of a victim is:

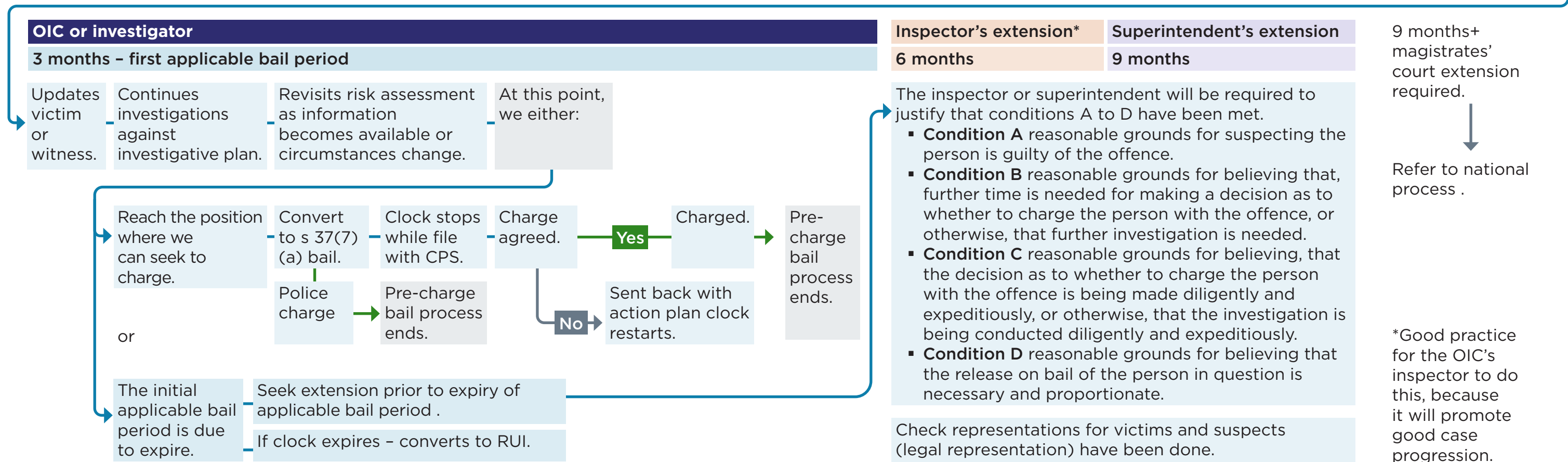
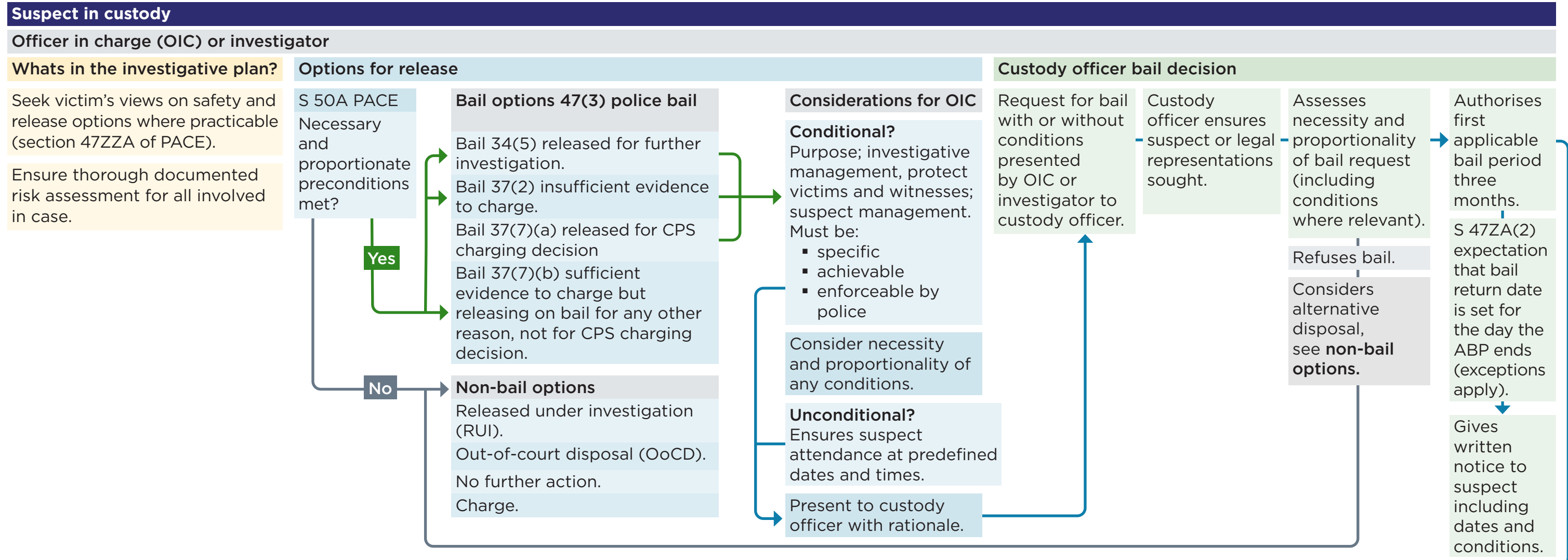
- a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence
- a close relative (or a nominated family spokesperson) of a person whose death was directly caused by a criminal offence

Vulnerable person – A victim is considered vulnerable for the purposes of the duty to seek their views (section 47ZZA of PACE) if any of the following apply:

- they are aged under 18 at the time of the offence
- they may have difficulty understanding a communication from an investigator or communicating effectively in response to it, due to:
 - a physical disability or disorder
 - a mental disorder within the meaning of the Mental Health Act 1983
 - a significant impairment of intelligence and social functioning

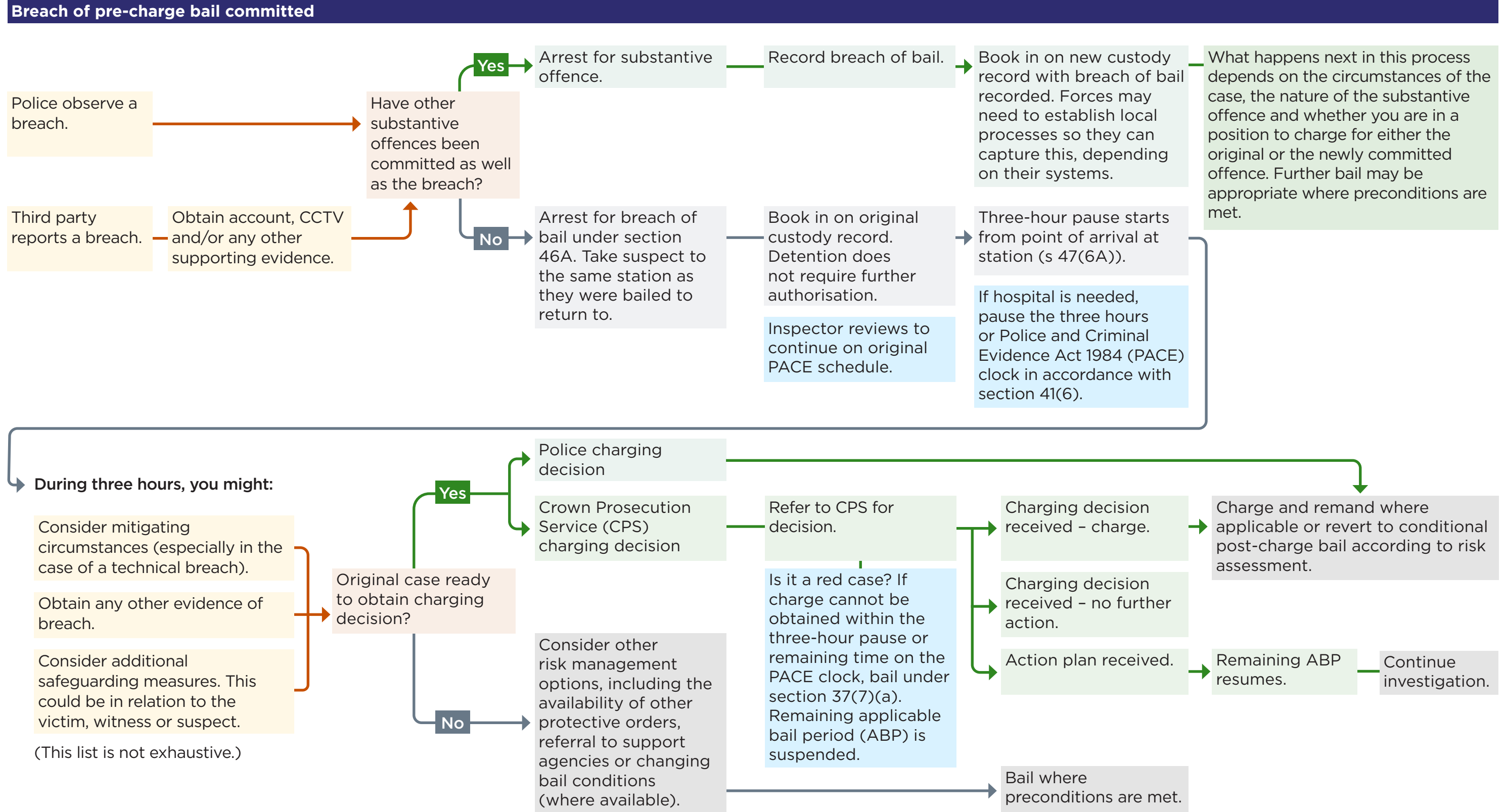
Wherever the term 'vulnerable person' is used within the guidance, it shall be within the context of this definition.

Appendix 1 Process flow for basic bail application

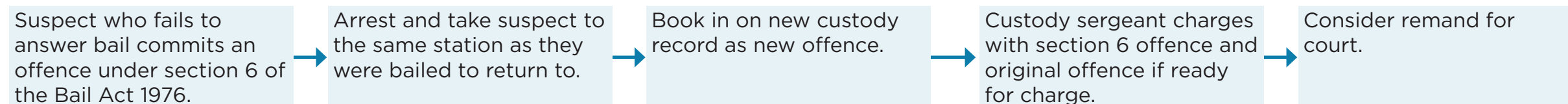


Appendix 2 Breach of pre-charge bail conditions

Basic process (variations likely based on case specifics)



Failure to answer pre-charge bail (section 6, Bail Act 1976): Basic high-level process



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