



Home Office

## **Pre-Charge Bail**

A Consultation on the Introduction of  
Statutory Time Limits and Related  
Changes

December 2014

# Pre-Charge Bail – A Consultation on the Introduction of Statutory Time Limits and Related Changes

1. Foreword by the Home Secretary
2. Executive Summary
3. Introduction and Background
4. Issues and Options
5. Potential Model for Periodic Review
6. Impact of Proposals
7. Consultation Questions
8. How to Respond

# Foreword by the Home Secretary



The issue of pre-charge bail, or police bail as it is often referred to, has been of particular public interest in recent months as a number of individuals have either not been charged or have been acquitted after spending months, and in some case years, on pre-charge bail. While the complexity of some investigations means that it can take the police a significant period of time to assemble evidence and present it to the Crown Prosecution Service, it can be extremely stressful for individuals to be under suspicion for extended periods of time, particularly if onerous conditions are attached to their bail.

That is why I asked the College of Policing last year to look at the way the police manage the pre-trial bail system. The College carried out its own consultation earlier this year on ten principles of bail management and will incorporate the results of that consultation in new Authorised Professional Practice in the New Year.

But while improvements in the consistency and practice of bail management are welcome, the Government is looking to set in statute time limits on pre-charge bail, in order to prevent people spending months or even years on bail at a time that they have not even been charged with an offence. Whilst we recognise the complexity of many investigations, and are determined to support the police as they work tirelessly to bring justice to victims, there must also be justice for those under investigation.

This consultation aims to achieve significant reform in this area. It sets out a number of options in some detail, which will also ensure swifter justice and increase the efficiency of the police, prosecutors and the courts, as well as some more general questions. I encourage you to respond.

**Rt Hon Theresa May MP**  
**Home Secretary**

# Executive Summary

The Government is consulting on a series of measures whose overall impact should be to reduce both the number of individuals subject to, and the average duration of, pre-charge bail. This consultation builds upon, and is complementary to, that carried out by the College of Policing between 27 March and 19 June 2014<sup>1</sup>, the responses to which were published on 11 December<sup>2</sup>.

The measures being consulted upon include:

- Enabling the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary;
- Setting a clear expectation that pre-charge bail should not last longer than a specified finite period of 28 days, as recommended by the College of Policing;
- Setting the extenuating circumstances in which that period might be extended further, and who should make that decision;
- Establishing a framework for the review by the courts of pre-charge bail;
- Considering whether extension of pre-charge bail should only be available in certain types of case, such as fraud or tax evasion, or in all cases where there are exceptional reasons for an extended investigation;
- Considering how best to enable the police to obtain timely evidence from other public authorities; and
- Considering whether individuals subject to pre-charge bail should be able to challenge the duration as well as the conditions in the courts.

This consultation is open until 8 February 2015; details of how to respond are set out towards the end of this document.

---

<sup>1</sup> See <http://www.college.police.uk/en/21590.htm>

<sup>2</sup> <http://college.pressofficeadmin.com/component/content/article/45-press-releases/821>

# Introduction and Background

There have been a number of recent high-profile cases where individuals under investigation have been subject to pre-charge bail for many months and even years, yet ultimately no charges have been brought against them. The injustice of these cases has led to calls for a fundamental re-examination of the way pre-charge bail is used.

The College of Policing published a consultation document on the principles of pre-charge bail management on 27 March 2014 and the consultation closed on 21 July. The College has recently published the responses to that consultation and a proposed way forward and aims to publish revised Authorised Professional Practice (APP) on Bail Management early in 2015.

While we welcome the greater consistency and sharing of best practice that should result from the College's consultation process, it is time to review whether the current legislative framework surrounding pre-charge bail is fit for purpose. The key pieces of legislation in this area are the Bail Act 1976 and the Police and Criminal Evidence Act 1984 (PACE) and, while both of these have been revised extensively since their enactment, they are at least thirty years old and the pre-charge bail provisions need review.

In her speech to the College of Policing's Annual Conference on 15 October 2014, the Home Secretary, Rt Hon Theresa May MP, said:

*"...you are building an evidence base of what works so that in future police practice is always based on evidence, and not habit.*

*"This includes sensitive areas like police bail. I am pleased that the College is developing evidence based guidance to bring consistency, transparency and rigour to the way in which pre-charge bail is used in criminal investigations. You have consulted on the operational guidance and will publish your findings shortly. But in parallel we must also look at statutory time limits on the use of pre-charge bail to prevent people spending months or even years on bail only for no charges to be brought."*

This document sets out key issues in relation to pre-charge bail and presents options for reform. It also includes a consultation stage impact assessment and seeks further data to inform a full impact assessment that will inform decisions as to how to take forward these reforms.

# Issues and Options

While the College has consulted on issues of best practice, there are further issues that can only be reformed through legislation. They are:

- Enabling a suspect to be released without bail while an investigation continues;
- Placing an absolute limit on the length of pre-charge bail;
- Placing key 'trigger points' in respect of the length of pre-charge bail, with further extension permitted only in certain extenuating circumstances;
- Enabling the police to obtain key evidence from public sector partner agencies within specified time frames; and
- Enabling the courts to review the duration and/or conditions of pre-charge bail.

This section examines those issues and identifies options for addressing them.

## Enabling a suspect to be released without bail while an investigation continues

Section 34(5) of PACE requires that, where a person has been arrested and there is no need to detain them further, but there is a need for further investigation, they must be released on bail. However, Section 37(2) states that the custody officer must release an arrested person either on bail or without bail where there are no grounds to detain. The tension between these sections was examined, particularly in the context of bail conditions, by the Divisional Court in *Torres*<sup>3</sup> and this could be addressed in any subsequent legislative change.

Section 37(7)(c) of PACE does provide for a suspect to be released without bail and without charge, but this is generally used in cases where a case is disposed of out of court, such as by way of a conditional caution, or where no further action is to be taken. It can also be used to release a person who it is intended to charge by post.

By releasing a suspect on bail, this protects the suspect by ensuring that they remain within the overall detention time limit of a single custody clock and can protect victims and witnesses by enabling the imposition of appropriate bail conditions. The requirement to release an individual on bail while the investigation continues was designed to ensure they were not detained for longer than the total single maximum period permitted, which is 96 hours. However, in practice, the vast majority of detention periods are much shorter than this; in 2012/13, 1.1 million people were arrested by the police, but only 457 warrants of further detention (to extend the period of detention beyond 36 hours) were applied for.<sup>4</sup>

Some would argue that suspects on bail for an extended period, particularly where there are conditions attached to that bail, are restricted from taking family holidays or making long term plans, and are effectively putting their lives on hold. Such uncertainty can, in some

---

<sup>3</sup> R (Torres) vs. The Commissioner of Police of the Metropolis, [2007] EWHC 3212 (Admin)

<sup>4</sup> National Statistics on Police Powers and Procedures, England and Wales, 2012 to 2013, April 2014: <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-2012-to-2013/police-powers-and-procedures-england-and-wales-2012-to-2013>

circumstances, outweigh the likely inconvenience of being detained for greater than a single maximum period of detention.

In general, an individual released from custody without bail can only be re-detained for the same offence where new evidence becomes available. Where a suspect is bailed for further investigation, it is often the case that new evidence is uncovered by that further investigation. A proposed reform could, therefore, be to amend section 34(5) so that, where an individual is to be released pending further investigation, and there is no operational need to release on bail, such as the need to impose conditions<sup>5</sup>, they should be released without bail.

Neither a proactive release without bail, following the amendment of section 34(5), nor the non-extension of bail as contemplated later in this consultation document, should preclude the investigation continuing and the suspect being either charged by post or rearrested (should sufficient new evidence become available to justify a fresh arrest). As part of the statutory changes to give effect to these proposals, it could also be appropriate to clarify the definition of 'new evidence' as applied by the courts to take account of developments in recent years, such as, for example, the need to analyse vast quantities of material held on computers that have been seized but not yet analysed.

#### Question

**Q1:** To what extent do you agree or disagree that the Police and Criminal Evidence Act should be amended to enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q2:** To what extent do you agree or disagree that it would be appropriate to change the definition of 'new evidence' (on the basis of which a fresh arrest could be made) to include material that was in the police's possession but which it was not reasonable to have expected them to analyse while the suspect was previously in detention or on bail?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

### Placing an absolute limit on the length of pre-charge bail

In response to the College of Policing's consultation on bail management, Liberty proposed<sup>6</sup> that "...a six-month statutory limit on pre-charge bail is the only effective way of ensuring diligent and efficient police investigations and justice for victims and suspects." Liberty contends that "...six months would be more than adequate for police to gather and analyse evidence post arrest."<sup>7</sup>

Placing a hard limit of a six-month maximum may not enable the police to investigate thoroughly those complex cases such as those involving historic inquiries or large amounts of financial evidence or where, for example, mutual legal assistance processes need to be used to obtain evidence from overseas. These often take longer than six months to bring to the point of

<sup>5</sup> For example, in a case of suspected domestic violence, it may well be necessary to impose bail conditions to prevent contact between the suspect and the alleged victim.

<sup>6</sup> Liberty's Response to the College of Policing's Consultation on Pre-charge Bail, June 2014, paragraph 3

<sup>7</sup> *Ibid.*, paragraph 23

charge, and this Government will not allow those who perpetrate complex crimes to escape justice.

Placing a 'hard' limit on the period of police bail could also produce a disincentive for suspects to co-operate with police investigations, in the belief that if they can prolong the investigation beyond six months, they may be able to defeat the time limit. In fact, as with the previous option, even if an absolute time limit for pre-charge bail were exceeded, the suspect could still be rearrested (if new evidence became available) or charged by post. Nonetheless, we should if at all possible avoid introducing incentives to 'game' the system.

### Questions

**Q3:** Do you think there should be an absolute maximum period of pre-charge bail?

*Yes / No / Don't know*

**Q4:** If yes, how long should that period be?

*28 days / 3 months / 6 months / 12 months / No maximum / Other*

**Q5:** What do you think the benefits of introducing statutory limits for pre-charge bail durations would be?

*Please specify/quantify (if possible)*

**Q6:** Should there be different periods for different types of case? If yes, which?

*All cases where there are exceptional reasons / Only cases involving international inquiries / Fraud / Tax evasion / Multiple suspects / Historic cases / Other types of case (please specify)*

### Placing a limit on the length of pre-charge bail at 28 days, with further extension permitted only in certain circumstances

Establishing an absolute time limit for pre-charge bail will have the effect of frustrating the effective investigation of complex cases, such as those involving detailed financial investigations, such as fraud or tax evasion. As Liberty say in their response to the College's consultation, "Unduly limiting the period for which a suspect may be bailed by police could encourage premature and inappropriate charging or impede public protection by inhibiting the police's ability to gather sufficient evidence to deal with crime, particularly in complex cases and/or those involving forensic analysis."<sup>8</sup>

We propose to set the limit at 28 days, beyond which bail would only be extended in exceptional cases, or in particular circumstances that might be set out in either the legislation or in regulations. The law already provides that summary offences must be charged within six months<sup>9</sup>. While some groups propose an absolute limit of six months' pre-charge bail, we could instead provide a model whereby the police could make decisions on bail, possibly up to three months, with extensions beyond that only in particular circumstances and authorised by the courts.

<sup>8</sup> *Ibid.*, paragraph 22

<sup>9</sup> Section 127(1), Magistrates' Courts Act 1980

In setting limits for pre-charge bail, a further safeguard for suspects could be to include periodic independent reviews of bail, in the same way as has been done since PACE was introduced for pre-charge detention. As with detention reviews, bail reviews would be of increasing levels of seniority, initially within the police (although independently of the investigation) and subsequently by the judiciary.

As with detention reviews under sections 40 and 42 of PACE, and consideration of warrants of further detention under sections 43 and 44, the reviewing officer, magistrate or judge will need to consider whether:

- there remain reasonable grounds to suspect the person on bail of committing the offence for which he or she was originally arrested or subsequently suspected;
- there is a need for further investigation of any matter in connection with which he or she was originally arrested or subsequently suspected;
- the investigation is being conducted diligently and expeditiously; and
- where bail conditions have been imposed, that bail remains necessary to ensure that i) the suspect surrenders to custody, ii) does not commit an offence while on bail, iii) does not interfere with witnesses or otherwise obstruct the course of justice, iv) the person's own protection, or v) if they are a child or a young person, for their own welfare or in their own interests.<sup>10</sup>

There could also be additional criteria for magistrates and judges to consider in those cases where the police turn to the courts to seek an extension to pre-charge bail.

## Questions

**Q7:** To what extent do you agree or disagree that it should be possible to extend the period of pre-charge bail?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q8:** If pre-charge bail could be extended, who should be able to authorise that?

*Senior police officer / Magistrate / Judge / Home Secretary / Other (please state)*

**Q9:** To what extent do you agree or disagree that the criteria set out above for the authorising of a bail extension are the right ones?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q10:** Are there other criteria that should be added or substituted?

*If yes, please specify.*

<sup>10</sup> As set out section 3(6)(a)-(ca) of the Bail Act 1976

## Enabling the police to obtain key evidence more rapidly from other public sector agencies

Police investigations can be delayed by the inability of the police to secure evidence from other public sector agencies, resulting in suspects being held on bail for significant periods. For example, when investigating serious assaults and other offences against the person, a report is required from the doctor who treated the victim's injuries. While the remainder of the evidence (e.g. statements, DNA, CCTV etc) can be gathered relatively quickly, we understand that the police can often wait 4-6 weeks or even longer for the doctor's report. This delays the case proceeding to the CPS for a charging decision; in multi-handed cases<sup>11</sup>, one missing piece of evidence can delay all the linked cases. Similar issues can arise with the police accessing social services or children's services records from local authorities.

Where the police seek evidence from private sector organisations such as financial institutions, they will obtain production orders from the Crown Court, which require the production of material within seven days. The police have not obtained production orders against public sector organisations in the past, relying on their co-operation, which can (as set out above) sometimes take time to secure.

If the end result of this consultation is a change in the statutory basis underlying pre-charge bail, this will increase the expectation to resolve investigations more quickly. It is in the interest of both victims and suspects that cases are investigated both robustly and promptly. To ensure any new time limits are met, the police could negotiate Memoranda of Understanding with the National Health Service and with umbrella bodies representing local authority services, or more directive steps could be taken, such as an increasing reliance on production orders. Views are welcomed on the appropriate course of action in this area.

### Question

**Q11:** To what extent do you agree or disagree that the police should seek to agree memoranda of understanding for the provision of evidence from other public bodies rather than seeking production orders from the Crown Court?

*Strongly agree that memoranda should be agreed / Agree that memoranda should be agreed / Don't know / Agree that the police should seek production orders / Strongly agree that the police should seek production orders*

## Enabling the courts to review the duration and/or conditions of pre-charge bail

The law already provides for a person released on conditional pre-charge bail to seek a variation of those conditions from either the custody officer that imposed them or from a magistrates' court<sup>12</sup>. However, anecdotal evidence suggests that challenges to bail conditions are rare, possibly because, as noted by Liberty, "there is little in the way of statutory guidance as to when a Magistrate should adjust the conditions<sup>13</sup>". If the end result of this consultation is a change in the statutory basis underlying pre-charge bail, as part of those statutory changes, we could create a power to issue statutory guidance for both custody officers and magistrates on

<sup>11</sup> i.e. those involving multiple defendants

<sup>12</sup> See section 47(1E) of PACE and section 3(8) (as modified by section 3A(4)) of the Bail Act 1976

<sup>13</sup> *Ibid.* 5, paragraph 14

the circumstances in which particular conditions would be appropriate. Views would be welcome as to the appropriate body to provide that guidance.

### Questions

**Q12:** To what extent do you agree or disagree that individuals who are the subject of pre-charge bail should be able to challenge the duration as well as the conditions in the courts?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q13:** Do you think there should be statutory guidance to custody officers and magistrates as to the appropriateness of particular bail conditions? If yes, who should provide it?

*College of Policing / Judicial College / Both Colleges, jointly / Other*

In terms of reviewing the duration of pre-charge bail, the only potential challenge at present is in the Divisional Court by way of judicial review. However, this is expensive for both the suspect and the police and therefore fails to provide an effective route of challenge in the majority of cases. A composite review system, where increasingly senior police officers review the decision up to a certain point, with judicial decision-making thereafter, already applies in the pre-charge detention review process in Part IV of PACE. The potential models set out in the next chapter sets out proposed systems for the review of pre-charge bail.

### Questions

**Q14:** To what extent do you agree or disagree that the extension of pre-charge bail should only be available in certain types of case, such as fraud or tax evasion, or those involving international inquiries, or should it be available in all cases where there are exceptional reasons for an extended investigation?

*All cases where there are exceptional reasons / Only cases involving international inquiries / fraud / tax evasion / multiple suspects / historic cases / Other types of case (please specify)*

## Exceptional Cases

There are a small number of cases, often dealt with by specialist agencies such as the Serious Fraud Office or the National Crime Agency rather than the police, where experience shows that investigations take a long time due to the large volume of evidence that needs to be analysed. In such cases, we believe there may be a case for a longer initial period of pre-charge bail, given that cases are unlikely to significantly progress in 28 days, or even in three months.

To mitigate this, we could incorporate in the proposed reforms a limited exemption from the review process for such cases. We would envisage such cases to be exceptional when compared to the generality of criminal investigations, although they may not be exceptional when compared to other cases of their type. The exemption could apply in cases where specific offences are being investigated. Equally, an exemption might be sought in any case where there are truly exceptional circumstances. An application to the magistrates' court would be required for the exemption to apply, although where it were sought because an investigation

was of a listed offence, it should be capable of being dealt with on the papers (i.e. without an oral hearing).

## Questions

**Q15:** To what extent do you agree or disagree that there are certain types or characteristics of cases where the 28 day/3 month limit (depending on the model adopted) should not apply?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q16:** What alternative arrangements do you think should apply in those types or characteristics of case?

*Review process starts later / Reviews less frequent / Both / Same review process as other cases*

# Potential Models for Periodic Review

The models for reviewing the necessity of continued bail need to meet a number of tests, namely:

- Accountability;
- Transparency;
- Freedom from bureaucracy; and
- Appropriate senior oversight, including from the judiciary where appropriate.

The proposed models combine a number of the options set out in the previous chapter but vary in terms of authorising seniority:

- Both have a set limit for pre-charge bail from the date of arrest, save in extenuating circumstances;
- Both set this limit at 28 days, as recommended in the College of Policing’s pre-charge bail consultation;
- Both include a period of internal management challenge to and oversight of the progress of an investigation;
- Both set out a clear expectation of judicial authorisation, taking into account the higher cost impact incurred by magistrate authorisation;
- Beyond an initial period of internal authorisation, both models require regular judicial reviews at three-month intervals to give clear external scrutiny of police investigations.

The proposed models are:

Cumulative Total Period from ‘Relevant Time’	Model 1 Bail Authoriser/Reviewer	Model 2 Bail Authoriser/Reviewer
First Bail period of 28 Days	Inspector	
Extension up to 3 Months	Magistrates’ Court <sup>14</sup>	Chief Superintendent
Extension up to 12 months (3 months per extension)		Magistrates’ Court <sup>13</sup>
Beyond 12 months (3 months per extension)	Crown Court	

In model 1, police officers would only be able to authorise bail up to 28 days; in model 2, that extends to 3 months.

<sup>14</sup> Given the role of the Crown Court in managing the pre-trial process, it could be appropriate for certain types of case, such as complex frauds and historical enquiries, to go into the Crown Court earlier, either bypassing the magistrates’ court altogether or at a point before 12 months.

## Supporting Information

- For both models, the total period of detention would be calculated from the ‘relevant time’<sup>15</sup>, rather than the point of first release on bail, to avoid the need for the police to do complex calculations to remove one or more periods spent in detention from the bail period. Given the maximum period of detention is 96 hours, this would only have a material effect on the first (28-day) bail period, and only then in a very small number of cases – in 2012/13, 1.1 million people were arrested by the police and only 457 warrants of further detention (to extend the period of detention beyond 36 hours) were applied for.<sup>16</sup>
- These reviews would be solely concerned with the duration of pre-charge bail, not any conditions attached. The existing mechanism for variation of conditions, where a person on bail can apply to the custody officer or the magistrates’ court, would be unaffected, although both could be considered by the same bench of magistrates where they were both disputed.
- Statutory guidance could be provided to decision makers on the appropriateness of particular conditions to make the process around the imposition and review of conditions more meaningful. We would welcome views on the appropriate body to provide that guidance.
- Time limits would apply only until the point described in section 37(7) of PACE when “the custody officer determines that he has before him sufficient evidence to charge the person” and it is then referred to the Crown Prosecution Service for a charging decision. Any bail period spent waiting for the CPS to reach a charging decision would not be subject to the time limits and review process described in this document in order to protect the independence of the prosecutorial decision-making process.
- As with the roles of Inspectors and Superintendents in the review of detention before charge, there would be a requirement that senior police officers making bail authorisation decisions should not be involved in the management of the investigation and should act independently of the investigation.
- In order to keep the system simple and reduce the costs of potential challenge for both defendants and the police, there would be no appeals by either the police or the suspect against the grant or refusal of further bail (except by way of judicial review).
- The refusal of a bail extension would not preclude the investigation continuing and the suspect being either rearrested (should new evidence become available) or charged by post.
- Where bail needs to be extended to obtain particular evidence and the reviewing officer or court agrees with the investigating officer that it could harm the investigation to disclose details to the suspect, such as where disclosure might enable the suspect to dispose of or tamper with evidence, it should be possible to withhold the sensitive details from the suspect and their legal representative. Appropriate procedural safeguards would need to be incorporated to ensure such a system operates fairly.

---

<sup>15</sup> The ‘relevant time’ is defined in section 41(2) of PACE as the time at which an arrested person first arrives at a police station after arrest; it is used to calculate detention time. There are certain qualifications to the definition, but we consider that they are sufficiently well understood by custody officers and legal practitioners to form a basis for calculating bail periods as well as detention time.

<sup>16</sup> National Statistics on Police Powers and Procedures, England and Wales, 2012 to 2013, April 2014: <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-2012-to-2013/police-powers-and-procedures-england-and-wales-2012-to-2013>

- Given the role of the Crown Court in managing the pre-trial process, particularly in complex cases, it could be appropriate for certain types of case, such as large-scale frauds and historical enquiries, to go directly to the Crown Court, either bypassing the magistrates' court altogether or at a point before 12 months. Views are sought as to whether this would be appropriate and, if so, what types of case these arrangements should apply to.

## Question

**Q17:** To what extent do you agree or disagree that, where the reviewing officer or court agrees with the investigating officer that it could harm the interests of justice to disclose sensitive details of the investigation to the suspect, such as where it might enable the suspect to dispose of or tamper with evidence, it should be possible to withhold the details from the suspect and their legal representative?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q18:** If sensitive details were to be withheld from a suspect so as to not jeopardise an investigation, what procedural safeguards should be incorporated to ensure the system operates fairly?

*Please specify*

**Q19:** To what extent do you agree or disagree that the Crown Court should take responsibility for certain types of case at an earlier point?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q20:** If the Crown Court were to take responsibility for certain types of case at an earlier point, when and what types or characteristics of case should these arrangements apply to?

*Please specify*

**Q21:** To what extent do you agree or disagree that the introduction of these changes would be likely to influence the speed with which investigations are dealt with?

*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

**Q22:** For your organisation, what would be the resource implications of each model set out above?

*Please specify, including any views on the methodologies or assumptions used in the impact assessment appraisal*

**Q23:** Do you have a preference between the two models? If you do, why?

*Model 1 / Model 2*

*Please specify why*

# Impact of Proposals

## Impact Assessment

In accordance with the Better Regulation Framework Manual issued by the Department for Business, Innovation and Skills (BIS)<sup>17</sup>, a full consultation-stage impact assessment has been carried out and is set out at the end of this section.

## Equalities Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and Departments, when exercising their functions, to have 'due regard' to the need to eliminate conduct which is unlawful under the 2010 Act, advance equality of opportunity between different groups and foster good relationships between different groups.

In accordance with these duties, we have considered the impact of the proposed clauses on those sharing protected characteristics in order to give due regard to the matters mentioned above.

### Eliminating unlawful discrimination

In general, young people (16-25 years old), people from black and minority ethnic (BME) backgrounds and those with mental health problems and learning disabilities are more likely to be involved with the criminal justice system, and are therefore more likely to be placed on pre-charge bail. As the intent of these changes is to reduce both the number of individuals subject to, and the average duration of, pre-charge bail, the impact on these groups should be positive.

We do not consider that any other groups with protected characteristics are over-represented among those who are placed on pre-charge bail by the police. The public generally could benefit from these reforms if they improve the efficiency of pre-charge bail and therefore the public's confidence in the police.

We do not consider that these proposals will have any impact on instances of harassment or victimisation; the police will remain able to use pre-charge bail and appropriate conditions in such cases.

### Advancing equality of opportunity between different groups

We do not consider that these proposals would have any particular impact on the achievement of this objective.

### Fostering good relationships between different groups

We do not consider that these proposals would have any particular impact on the achievement of this objective.

---

<sup>17</sup> See: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

<b>Title:</b> Pre-Charge Bail – a consultation on the introduction of statutory time limits and related changes  IA No: HO0154  <b>Lead department or agency:</b> Police Integrity and Powers Unit, Home Office  <b>Other departments or agencies:</b> Ministry of Justice, HM Courts and Tribunals Service, Crown Prosecution Service	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 18/12/2014		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b>		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Andrew Alexander, 020 7035 0877 andrew.alexander@homeoffice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
--	-------------------------

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
£30.86m	£0m	£0m	No
			N/A

**What is the problem under consideration? Why is government intervention necessary?**  
A number of recent high-profile cases have resulted in individuals under investigation being subject to pre-charge bail for many months and even years, yet ultimately no charges being brought against them. These individuals have reported a strong feeling of injustice as a result of the lack of transparency or opportunity for representation or appeal in the process. This has led to calls for a fundamental re-examination of the way pre-charge bail is used and its duration. These changes can only be achieved through government intervention, including changes to legislation.

**What are the policy objectives and the intended effects?**  
The objective of the policy is to increase the accountability and transparency associated with the pre-charge bail process and to limit the duration of pre-charge bail in all but exceptional cases.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0:** Do nothing.

**Option 1:** Sets a limit for pre-charge bail of 28 days and the requirement for judicial authorisation if an extension is required in extenuating circumstances. Magistrate authorisation is required for extensions from 28 days to 12 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations) and Crown Court authorisation if it is considered necessary to extend the total period of bail beyond 12 months in exceptional circumstances.

**Option 2:** Sets a limit for pre-charge bail of 28 days and the requirement for Chief Superintendent authorisation if an extension up to 3 months is required in extenuating circumstances. Magistrate authorisation is required for extensions from 3 to 12 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations) and Crown Court authorisation if it is considered necessary to extend the total period of bail beyond 12 months in exceptional circumstances.

**The Government does not have a preferred option** at this stage; we will take the responses to this consultation into account in deciding which option to take forward.

**Will the policy be reviewed?** It will be reviewed following public consultation in February 2015

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Date: 18/12/2014

# Summary: Analysis & Evidence

# Policy Option 1

Description: 28 day limit for pre-charge bail with judicial authorisation required for any extension in extenuating circumstances

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -56.75	High: -28.37	Best Estimate: -42.56

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K	6.59	56.75
High	N/K	3.30	28.37
Best Estimate	N/K	4.94	42.56

### Description and scale of key monetised costs by 'main affected groups'

This option is expected to result in 30,000-59,000 cases brought to magistrates' courts and 375-750 brought to Crown Court for extension, resulting in a monetised cost of £3.30m to £6.59m per year to the criminal justice system, with a best estimate of £4.94m.

### Other key non-monetised costs by 'main affected groups'

At this stage, we have only been able to monetise the staff and judicial cost of this option to courts. Any increase in running costs and capital costs is expected to present a substantial non-monetised cost. This option may also produce non-monetised costs for the Crown Prosecution Service due to a need to make charging decisions at an earlier stage. There may also be transition costs if the policy has no phase-in period, leading to a short-term increase in demands on the criminal justice system.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/K	N/K	N/K
High	N/K	N/K	N/K
Best Estimate	N/K	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

We are not able to monetise any of the benefits associated with this policy.

### Other key non-monetised benefits by 'main affected groups'

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail, who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. We will seek to explore during the consultation the scale and nature of these benefits.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The key assumption for these estimates relates to the proportion of cases where charging decisions are made earlier due to the statutory bail limits, thereby reducing bail duration and presenting no extra cost to the courts. We have assumed that 0%-50% of cases have charging decisions made earlier and have explored this assumption in the sensitivity analysis section below.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

# Summary: Analysis & Evidence

# Policy Option 2

Description: 28 day limit for pre-charge bail with senior police authorisation required for extensions up to 3 months in extenuating circumstances and judicial authorisation thereafter.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -41.14	High: -20.57	Best Estimate: -30.86

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K	4.78	41.14
High	N/K	2.39	20.57
Best Estimate	N/K	3.58	30.86

### Description and scale of key monetised costs by 'main affected groups'

This option is expected to result in 18,000-35,000 cases reviewed by Chief Superintendents, 12,000-24,000 cases brought to magistrates' courts and 375-750 brought to Crown Court for extension, resulting in a monetised cost of £1.04m-£2.08m annually to the police (best estimate £1.56m) and £1.35m-£2.70m annually to the criminal justice system (best estimate £2.02m).

### Other key non-monetised costs by 'main affected groups'

We have only been able to monetise the staff and judicial cost of this option to courts. Any increase in running costs and capital costs is expected to present a substantial non-monetised cost. This option may also produce non-monetised costs for the Crown Prosecution Service due to a need to make charging decisions at an earlier stage. There may also be transition costs if the policy has no phase-in period, leading to a short-term increase in demands on the criminal justice system.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/K	N/K	N/K
High	N/K	N/K	N/K
Best Estimate	N/K	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

We are not able to monetise any of the benefits associated with this policy.

### Other key non-monetised benefits by 'main affected groups'

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail, who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. We will seek to explore during the consultation the scale and nature of these benefits. Any increase in accountability and scrutiny under this option is expected to be lower than under Option 1 due to the use of police rather than courts at an early stage.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The key assumption for these estimates relates to the proportion of cases where charging decisions are made earlier due to the statutory bail limits, thereby reducing bail duration and presenting no extra cost to the police and courts. We have assumed that 0%-50% of cases have charging decisions made earlier and have explored this assumption in the sensitivity analysis section below.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

# Evidence Base

## Problem under consideration and rationale for intervention

A number of recent high-profile cases have resulted in individuals under investigation being subject to pre-charge bail for many months and even years, yet ultimately no charges being brought against them. These individuals have reported a strong feeling of injustice as a result of the lack of transparency or opportunity for representation or appeal in the process. This has led to calls for a fundamental re-examination of the way pre-charge bail is used, including looking at statutory time limits for pre-charge bail.

The College of Policing consulted this summer on the principles of pre-charge bail management and aims to publish revised Authorised Professional Practice (APP) on Bail Management early in 2015. This will help bring greater consistency and sharing of best practice on the way pre-charge bail is used in criminal investigations, some issues can only be addressed through legislation, including placing a limit on pre-charge bail and enabling the courts to review the duration and/or conditions of pre-charge bail.

These changes can only be achieved through government intervention, including changes to legislation.

## Policy objective

The objective of the policy is to increase the accountability and transparency associated with the pre-charge bail process and to limit the duration of pre-charge bail in all but exceptional cases.

## Options

The following options have been considered:

**Option 0:** Do nothing. Bail continues to be granted by the police with no statutory limits on duration, albeit strengthened by the Authorised Professional Practice on Bail Management which the College of Policing is due to publish in early 2015.

**Option 1:** Sets a limit for pre-charge bail of 28 days and the requirement for judicial authorisation if an extension is required in extenuating circumstances (for example during complex fraud cases, historic cases of child sexual abuse or cases with multiple suspects or international elements). Magistrate authorisation is required at 3-month intervals for extensions from 28 days to 12 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations), and Crown Court authorisation if it is considered necessary to extend the total period of bail beyond 12 months in exceptional circumstances.

**Option 2:** Sets a limit for pre-charge bail of 28 days and the requirement for senior police authorisation if an extension up to 3 months is required in extenuating circumstances (for example during complex fraud cases, historic cases of child sexual abuse or cases with multiple offenders or international elements). Magistrate authorisation is required at 3-month intervals for extensions from 3 to 12 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations) and Crown Court authorisation beyond 12 months.

For both Options 1 and 2, as with the roles of Inspectors and Superintendents in the review of detention before charge, there would be a requirement that senior police officers making bail authorisation decisions should not be involved in the management of the investigation and should act independently of the investigation.

As with detention reviews under sections 40 and 42 of PACE, and consideration of warrants of further detention under sections 43 and 44, the reviewing officer, magistrate or judge will need to consider whether:

- there remain reasonable grounds to suspect the person on bail of committing the offence for which he or she was originally arrested or subsequently suspected;
- there is a need for further investigation of any matter in connection with which he or she was originally arrested or subsequently suspected;

- the investigation is being conducted diligently and expeditiously; and
- where bail conditions have been imposed, that bail remains necessary to ensure i) that i) the suspect surrenders to custody, ii) that the suspect does not commit an offence while on bail, iii) that the suspect does not interfere with witnesses or otherwise obstruct the course of justice, iv) the person's own protection, or v) if they are a child or a young person, for their own welfare or in their own interests.<sup>18</sup>

In order to keep the system simple and reduce the costs of potential challenge for both defendants and the police, there would be no appeals by either the police or the suspect against the grant or refusal of further bail (except by way of judicial review).

The option of setting the statutory limit for pre-charge bail at six months was also considered but has not been taken forward.

Liberty, a civil liberties and human rights campaigning organisation, proposed<sup>19</sup> that "...a six-month statutory limit on pre-charge bail is the only effective way of ensuring diligent and efficient police investigations and justice for victims and suspects." Liberty contends that "...six months would be more than adequate for police to gather and analyse evidence post arrest."<sup>20</sup>

Imposing a six-month maximum without a mechanism to extend in extenuating circumstances may not enable the police to investigate thoroughly those complex cases such as those involving historic inquiries or large amounts of financial evidence or where, for example, mutual legal assistance processes need to be used to obtain evidence from overseas. These often take longer than six months to bring to the point of charge, and we should not allow those who perpetrate complex crimes to escape justice.

Placing a 'hard' limit on the period of pre-charge bail could also produce a disincentive for suspects to co-operate with police investigations, in the belief that if they can prolong the investigation beyond six months, they may be able to defeat the time limit.

## Appraisal

The following appraisal considers the costs and benefits associated with the implementation of Options 1 and 2 in comparison with the baseline 'do nothing' option.

This policy has no impact on business and so is not in scope for One-In-Two-Out.

All costs are expected to be borne by the public sector through increased demands on the police, courts and Crown Prosecution Service (CPS). There will also be impacts on other investigation and prosecution agencies such as HM Revenue and Customs (HMRC) and the Serious Fraud Office (SFO). All potential benefits are expected to be realised by people whose bail duration would exceed the proposed statutory limits in the absence of intervention.

## General assumptions and data

Under each option, the costs that we are able to monetise at this stage are expected to result from those bail cases that exceed the statutory limits and must be extended after intervention by a Chief Superintendent or the courts. The scale of this cost depends on the number of people whose bail would be expected to exceed the statutory limits. We assume for the purposes of this IA that the number of people currently on bail and the durations of their bail periods are good indicators of these same figures over the full appraisal period.

We are aware of a study done in October 2014 by BBC Radio 5 Live on the basis of Freedom of Information (FOI) requests to the 44 police forces in England, Wales and Northern Ireland<sup>21</sup> in 2013 and

<sup>18</sup> As set out section 3(6)(a)-(ca) of the Bail Act 1976

<sup>19</sup> Liberty's Response to the College of Policing's Consultation on Pre-charge Bail, June 2014, paragraph 3

<sup>20</sup> *Ibid.*, paragraph 23

<sup>21</sup> <http://www.bbc.co.uk/news/uk-29624498>. We have not been able to separate out the figures for just England and Wales at this stage but will seek to do so for the final stage IA. By scaling it up to 44 forces, rather than 43, we are more likely to be slightly overestimating rather than underestimating the total potential impact of the options at this stage.

2014<sup>22</sup>. The BBC reported that 71,526 people were on pre-charge bail, including 5,480 (8% of the total) who had been on bail for six months or more. Based on the police forces' responses to the FOI requests, we estimate that 55% of cases are dealt with in the first 28 days of bail. We also estimate that around 85% of cases are dealt with in the first three months. We do not know the number of cases not dealt with in the first 12 months, but the FOI responses imply this number is very small – the average longest case is under 2 years and many forces had no one on bail for longer than 6 months. Interpolating this trend over time, we assume that around 300 people were on bail beyond 12 months. We assume that those on bail beyond 3 months decrease uniformly to 300 people at 12 months. We assume that those on bail beyond 12 months decrease uniformly to no people at 2 years. The BBC figures were based on 40 responses out of a total of 44 forces – we have scaled these up to account for the 4 missing forces to obtain the following estimates:

**Table 1:**

<b>1</b>	Total number on bail	78,679	BBC figures scaled up
<b>2</b>	On bail beyond 28 days	35,405	BBC figures scaled up
<b>3</b>	On bail beyond 3 months	11,802	BBC figures scaled up
<b>4</b>	On bail beyond 6 months	6,294	BBC figures scaled up
<b>5</b>	On bail beyond 9 months	3,297	Home Office interpolation from BBC figures
<b>6</b>	On bail beyond 12 months	300	Home Office interpolation from BBC figures
<b>7</b>	On bail beyond 15 months	225	Home Office interpolation from BBC figures
<b>8</b>	On bail beyond 18 months	150	Home Office interpolation from BBC figures
<b>9</b>	On bail beyond 21 months	75	Home Office interpolation from BBC figures
<b>10</b>	On bail beyond 24 months	0	Home Office assumption based on BBC figures

These volume figures are indicative only as we have had to make assumptions based on the data available. We will seek to obtain more robust figures during the consultation.

Based on the existing bail process, we estimate that it would require around 20 minutes of a senior police officer's time to grant bail. We estimate the hourly cost of a senior police officer to be around £59<sup>23</sup>. This figure takes into account standard data on pay, hours, expenses, pensions, National Insurance contributions and police workforce statistics. The cost per case to the police would therefore be around £20.

The Ministry of Justice and HM Courts and Tribunals Service have provided estimates for the cost of each case to the magistrates' courts and Crown Court. For those cases where the police apply to extend a suspect's pre-charge bail beyond 28 days, we estimate that the average cost per case in the magistrates' courts would be approximately £110 (rounded to the nearest £10). For those cases where the police apply to the Crown Court to extend a suspect's pre-charge bail beyond 12 months, we estimate that the average cost per case in the Crown Court would be approximately £460 (rounded to the nearest £10). These estimates are based on the following assumptions:

- Each bail hearing in the magistrates' courts is estimated to be 20 minutes on average.
- Each bail hearing in the Crown Court is estimated to be 60 minutes on average. This is based on the assumption that cases heard in the Crown Court are likely to be more complex and are therefore likely to take longer in comparison to those cases heard in the magistrates' courts.
- On the premise that some cases may require more than one hearing, we have introduced a further assumption that there will be an average of 1.5 hearings per case (single defendant) for both the magistrates' courts and Crown Court.
- The costs above reflect staff and judicial costs only. We would expect actual costs to be significantly higher once overheads are taken into account.

<sup>22</sup> Policing and justice matters are devolved to Northern Ireland; figures for pre-charge bail in Northern Ireland are only included in these calculations because they are included in the data collected by the BBC.

<sup>23</sup> Senior police officer includes Inspector, Chief Inspector, Superintendent and Chief Superintendent. This figure is therefore likely to be an underestimate for the cost of a Chief Superintendent.

- Cost of a sitting day in both the magistrates' courts and Crown Court is taken from the 2013/14 annual HMCTS Report<sup>24</sup>
- The above costs also assume that a sitting day in both the magistrates' courts and Crown Court lasts approximately 5 hours on average.

We have been unable at this stage to obtain figures for non-staff and judicial court costs, such as running costs and maintenance costs. We will work with the Ministry of Justice and HM Courts and Tribunals Service to estimate these costs during the consultation.

The number of cases that proceed to each stage would depend on whether the policy results in charges brought earlier, and therefore shorter bail times, or brings no change in bail time and simply greater scrutiny in extending bail. We currently have no data on which to base predictions regarding this effect. We therefore adopt a wide range for our estimates: we estimate that the intervention will result in somewhere between 0% and 50% of bail cases having charges brought one stage earlier in the process (i.e. before 28 days for those on bail for up to 3 months, before 3 months for those on bail for up to 6 months, etc.). Our best estimate is that 25% of bail cases will have charges brought earlier than under the 'do nothing' option; we will seek better data as part of the consultation process in order to inform our decision as to how to proceed, including views on the methodologies and assumptions used in this impact assessment appraisal. Our assumptions are explored in greater detail in the sensitivity analysis below. We will seek to obtain more evidence on this from stakeholders during the consultation.

Costs and benefits of Option 1: Set a limit for pre-charge bail of 28 days, magistrate authorisation is required for extensions from 28 days to 12 months and Crown court authorisation for extensions beyond 12 months. Each authorisation is for a maximum of 3 months.

Under the assumptions in Table 1, this option would imply that, with no change in bail duration, around 59,000<sup>25</sup> cases for extension would be brought to the magistrates' courts and 750<sup>26</sup> would be brought to the Crown Court. Since we are assuming that 0%-50% of cases will be charged earlier due to the statutory limits, we assume that 30,000-59,000 cases will be brought to the Magistrates' courts and 375-750 cases will be brought to the Crown Court.

The cost is for all cases brought to the magistrates' courts and Crown Court. The initial grant of bail would still occur in the absence of intervention, so incurs no additional cost. Based on the above cost estimates, this would imply that Option 1 would present a cost of £3.30m-£6.59m annually to the criminal justice system<sup>27</sup>. We have only been able to monetise the staff and judicial cost of this option to courts. Any increase in running costs and capital costs is expected to present a substantial non-monetised cost. There may be additional costs resulting from any charging decisions that have to be made earlier by the CPS, and any resulting spike in demand on the criminal justice system (though this would depend on how the policy is to be phased in). We will seek to establish the scale of these costs during the consultation.

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. We will seek to explore during the consultation the scale and nature of these benefits.

The net present value of this option is expected to be **-£56.75 to -£28.37m** over 10 years, with a best estimate of **-£42.56m**. There will also be non-monetised costs to the criminal justice system and CPS from increased demands and non-monetised benefits to those on bail from increased transparency and scrutiny of bail decisions.

<sup>24</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323112/hmcts-annual-report-2013-14.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323112/hmcts-annual-report-2013-14.PDF), page 7

<sup>25</sup> Sum of rows 2, 3, 4 and 5 from Table 1.

<sup>26</sup> Sum of rows 6, 7, 8 and 9 from Table 1.

<sup>27</sup> This is based on the number of cases brought to courts and the estimated cost per case.

## Costs and benefits of Option 2: Limit for pre-charge bail of 28 days, senior police authorisation is required for extensions up to 3 months, magistrate authorisation for extensions from 3 to 12 months and Crown court authorisation for extensions beyond 12 months.

Under the above assumptions, this option would imply that, with no change in bail duration, around 35,000<sup>28</sup> cases for extension would be reviewed by Chief Superintendents, 24,000<sup>29</sup> would be brought to the magistrates' courts and 750<sup>30</sup> would be brought to the Crown Court. Since we are assuming that charging decisions will be made earlier in 0%-50% of cases due to the statutory limits, we assume that 18,000-35,000 cases will be reviewed by Chief Superintendents, 12,000-24,000 cases will be brought to the Magistrates' courts and 375-750 cases will be brought to the Crown Court.

The cost is from all cases reviewed by Chief Superintendents, cases brought to the magistrates' courts and cases brought to the Crown Court. The initial grant of bail would still occur in the absence of intervention so incurs no additional cost. Based on the above cost estimates, this would imply that Option 2 would present a cost of £1.04m-£2.08m<sup>31</sup> annually to the police and £1.35m-£2.70m<sup>32</sup> annually to the criminal justice system. We have only been able to monetise the staff and judicial cost of this option to courts. Any increase in running costs and capital costs is expected to present a substantial non-monetised cost. There may be additional costs resulting from any charging decisions that have to be made earlier by the CPS, and any resulting spike in demand on the criminal justice system (though this would depend on how the policy is to be phased in). We will seek to establish the scale of these costs during the consultation.

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. We will seek to explore during the consultation the scale and nature of these benefits. The increase in accountability and scrutiny under this option may arguably be lower than under Option 1, as extension up to 3 months can be granted by a senior police officer rather than the courts.

The net present value of this option is expected to be **-£20.57m to -£41.14m** over 10 years, with a best estimate of **-£30.86m**. There will also be non-monetised costs to the criminal justice system and CPS from increased demands and non-monetised benefits to those on bail from increased transparency and scrutiny of bail decisions.

### Sensitivity analysis

The impact of both options is highly sensitive to assumptions about whether intervention will result in charges being brought earlier rather than bail durations extended beyond statutory limits. Chart 1 below shows how the annual cost varies for each option according to the proportion of cases where charging decisions are made one stage earlier in the process, resulting in the need for police or courts to grant bail extensions:

---

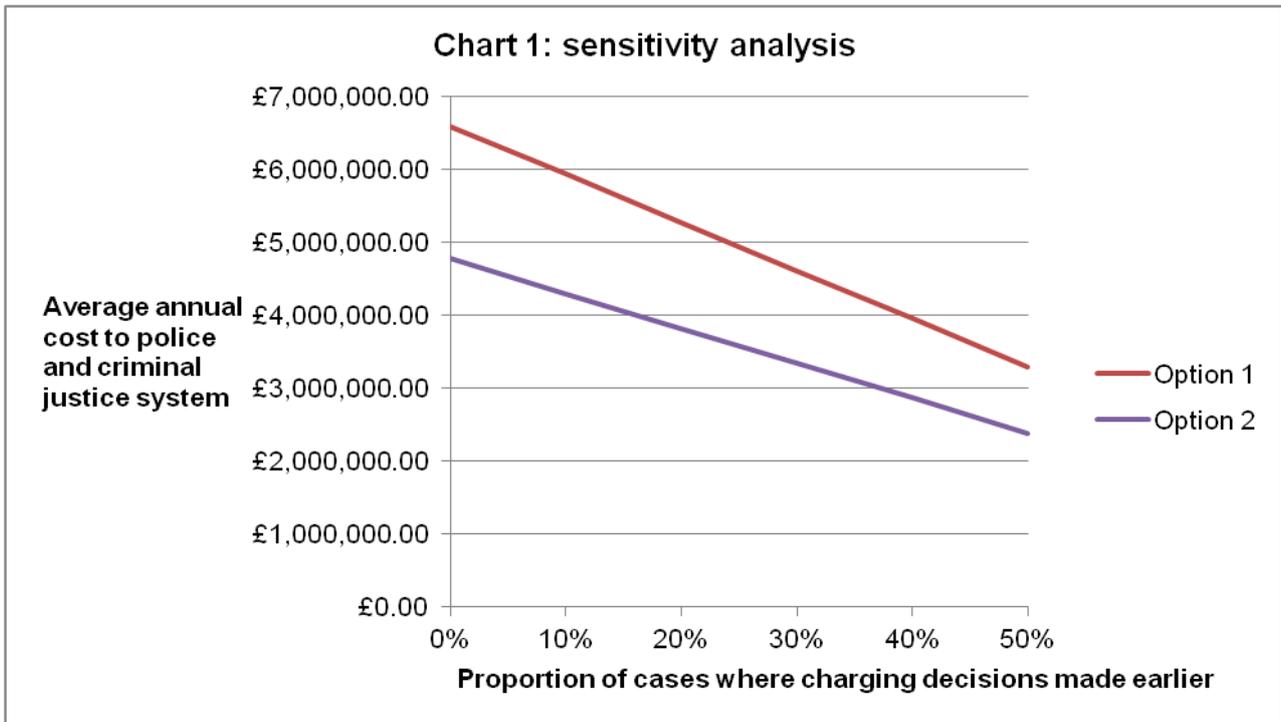
<sup>28</sup> From row 2 in Table 1.

<sup>29</sup> Sum of rows 3, 4 and 5 in Table 1. Row 2 is not included as these cases are reviewed by Chief Superintendents under Option 2.

<sup>30</sup> Sum of rows 6, 7, 8 and 9 in Table 1.

<sup>31</sup> This is based on the number of cases to be reviewed by Chief Superintendents and the estimated cost per case.

<sup>32</sup> This is based on the number of cases brought to courts and the estimated cost per case.



Furthermore, if charging decisions are made earlier we expect the benefits to increase as bail durations would be reduced.

We currently have no data on which to base estimates of the proportion of cases where charging decisions will be made earlier, but we consider 25% to be a reasonable best estimate. We will seek to gather more detailed information both before and after implementation to understand the impact of the policy on bail durations.

**Summary and recommendations**

Both Option 1 and Option 2 may present non-monetised benefits from increased accountability and scrutiny. Option 1 provides a higher level of scrutiny in bail extensions. However, the use of the courts to extend bail provides a greater cost. While Option 1 is expected to have a net present value of -£42.56m over 10 years, Option 2 is expected to have a net present value of -£30.86m. Both of these estimates are highly sensitive to assumptions regarding the proportion of charges brought earlier due to the statutory bail limitations – if more charges are brought earlier, we expect the costs to increase and the benefits to decrease.

We do not have a preferred option at this stage; we will take the responses to this consultation into account in deciding which option to take forward.

**Implementation, monitoring, evaluation and feedback**

Implementation would require primary legislation to amend existing legislation on bail set out in the Bail Act 1976 and in PACE. Following implementation, the legislation would be monitored in the normal way through the post-legislative scrutiny system every five years. In addition, the Government is considering whether it would be appropriate and proportionate to ask HMIC to assess the impact of the policy in reducing the number of individuals subject to, and the average duration of, pre-charge bail as part of their rolling programme of inspecting the custody management functions of each police force.

# Consultation Questions

- Q1. To what extent do you agree or disagree that the Police and Criminal Evidence Act should be amended to enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q2. To what extent do you agree or disagree that it would be appropriate to change the definition of 'new evidence' (on the basis of which a fresh arrest could be made) to include material that was in the police's possession but which it was not reasonable to have expected them to analyse while the suspect was previously in detention or on bail?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q3. Do you think there should be an absolute maximum period of pre-charge bail?  
*Yes / No / Don't know*
- Q4. If yes, how long should that period be?  
*28 days / 3 months / 6 months / 12 months / No maximum / Other*
- Q5. What do you think the benefits of introducing statutory limits for pre-charge bail durations would be?  
*Please specify/quantify (if possible)*
- Q6. Should there be different periods for different types of case? If yes, which types?  
*All cases where there are exceptional reasons / Only cases involving international inquiries / fraud / tax evasion / multiple suspects / historic cases / Other types of case (please specify)*
- Q7. To what extent do you agree or disagree that it should be possible to extend the period of pre-charge bail?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q8. If pre-charge bail could be extended, who should be able to authorise that?  
*Senior police officer / Magistrate / Judge / Home Secretary / Other (please state)*
- Q9. To what extent do you agree or disagree that the criteria set out above for the authorising of a bail extension are the right ones?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q10. Are there other criteria that should be added or substituted?  
*If yes, please specify.*
- Q11. To what extent do you agree or disagree that the police should seek to agree memoranda of understanding for the provision of evidence from other public bodies rather than seeking production orders from the Crown Court?  
*Strongly agree that memoranda should be agreed/ Agree that memoranda should be agreed / Don't know / Agree that the police should seek production orders/ Strongly agree that the police should seek production orders*

- Q12. To what extent do you agree or disagree that individuals who are the subject of pre-charge bail should be able to challenge the duration as well as the conditions in the courts?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q13. Do you think there should be statutory guidance to custody officers and magistrates as to the appropriateness of particular bail conditions? If yes, who should provide it?  
*College of Policing / Judicial College / Both Colleges, jointly / Other (please specify)*
- Q14. To what extent do you agree or disagree that the extension of pre-charge bail should only be available in certain types of case, such as fraud or tax evasion, or those involving international inquiries, or should it be available in all cases where there are exceptional reasons for an extended investigation?  
*All cases where there are exceptional reasons / Only cases involving international inquiries / fraud / tax evasion / multiple suspects / historic cases / Other types of case (please specify)*
- Q15: To what extent do you agree or disagree that there are certain types or characteristics of cases where the 28 day/3 month limit (depending on the model adopted) should not apply?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q16. What alternative arrangements do you think should apply in those types or characteristics of case?  
*Review process starts later / Reviews less frequent / Both / Same review process as other cases*
- Q17. To what extent do you agree or disagree that, where the reviewing officer or court agrees with the investigating officer that it could harm the interests of justice to disclose sensitive details of the investigation to the suspect, such as where it might enable the suspect to dispose of or tamper with evidence, it should be possible to withhold the details from the suspect and their legal representative?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q18. If sensitive details were to be withheld from a suspect as to not jeopardise an investigation, what procedural safeguards should be incorporated to ensure the system operates fairly?  
*Please specify*
- Q19. To what extent do you agree or disagree that the Crown Court should take responsibility for certain types of case at an earlier point?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*
- Q20. If the Crown Court were to take responsibility for certain types of case at an earlier point, when and what types or characteristics of case should these arrangements apply to?  
*Please specify*
- Q21. To what extent do you agree or disagree that the introduction of these changes would be likely to influence the speed with which investigations are dealt with?  
*Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree*

Q22. For your organisation, what would be the resource implications of each model set out above?

*Please specify, including any views on the methodologies or assumptions used in the impact assessment appraisal*

Q23. Do you have a preference between the two models? If you do, why?

*Model 1 / Model 2*

*Please specify why*

## About You:

**Which of the following best describes your organisation or the professional interest?  
Please select one option:**

- a. Police force
- b. Police and Crime Commissioner (PCC)
- c. Victims group
- d. Voluntary sector / community organisation
- e. Government department or agency
- f. Academic institution or think tank
- g. Representative body
- h. None – I am responding as a member of the public
- i. Prefer not to say
- j. Other (please specify)

**Which organisation do you represent?**

.....

**In which of the following areas are you based? Please select one option:**

- a. East Midlands
- b. East of England
- c. Greater London
- d. North East England
- e. North West England
- f. South East England
- g. South West England
- h. Wales
- i. West Midlands
- j. Yorkshire and the Humber
- k. Prefer not to say
- l. Other (please specify)

# How to Respond

The Home Office would welcome any comments on the policies proposed in this document. If you have any further suggestions or proposals for consideration, please outline them in your response.

You can respond to the consultation online at the following link:

<http://tinyurl.com/hocons>

You can also e-mail your response to the following e-mail address:

[pacereview@homeoffice.gsi.gov.uk](mailto:pacereview@homeoffice.gsi.gov.uk)

Or send it by post to:

Pre-Charge Bail Review  
Police Integrity and Powers Unit  
6<sup>th</sup> Floor NW, Fry Building  
Home Office  
2 Marsham Street  
LONDON  
SW1P 4DF

If you have any queries regarding the consultation or your proposed response, please contact the Police Integrity and Powers Unit at the e-mail address above.

**Comments must be received by 8 February 2015;** we cannot undertake to consider any responses received after that date.

## Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.

In case we would like to follow up on any of the issues or ideas you have raised, it would be very helpful if you are able to provide your contact details below.

Providing your personal information is voluntary; if you do provide personal information it will:

- Only be used to contact you for further analysis of your response;
- Be kept for a maximum of up to 1 year from the closing date of this survey and then securely destroyed;
- Not be shared with any other third parties; and
- Be stored on a secure Government IT system.

If you want certain information you provide as part of your response to be treated as confidential, please be aware that, under the Freedom of Information Act 2000 (FOIA), there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

# Glossary

## Acronyms

<b>APP</b>	Authorised Professional Practice
<b>PACE</b>	Police and Criminal Evidence Act 1984

## Terms

<b>Custody Clock</b>	The 'custody clock' counts down to the overall maximum period of pre-charge detention set by PACE, which is 36 hours (or 96 hours with the authorisation of a magistrates' court). The clock 'pauses' when an individual is released on bail and resumes when they answer bail at a police station.
<b>Custody Officer</b>	The police officer, normally of the rank of Sergeant, responsible under Part IV of PACE for authorising the detention and release of those arrested and for the welfare of those detained.
<b>Indictable Offences</b>	Indictable offences are those which can be tried in the Crown Court. They are subdivided into two groups; either-way offences, which can be tried in either magistrates' courts or the Crown Court, and indictable-only cases, which are the most serious cases and can only be tried in the Crown Court. See also <i>summary offences</i> below.
<b>Relevant Time</b>	<p>Section 41(2) of PACE defines this as:</p> <p>(a) in the case of a person to whom this paragraph applies, shall be—</p> <ul style="list-style-type: none"><li>(i) the time at which that person arrives at the relevant police station; or</li><li>(ii) the time 24 hours after the time of that person's arrest,</li></ul> <p>whichever is the earlier;</p> <p>(b) in the case of a person arrested outside England and Wales, shall be—</p> <ul style="list-style-type: none"><li>(i) the time at which that person arrives at the first police station to which he is taken in the police area in England or Wales in which the offence for which he was arrested is being investigated; or</li><li>(ii) the time 24 hours after the time of that person's entry into England and Wales,</li></ul> <p>whichever is the earlier;</p> <p>(c) in the case of a person who—</p> <ul style="list-style-type: none"><li>(i) attends voluntarily at a police station; or</li><li>(ii) accompanies a constable to a police station without having been arrested,</li></ul> <p>and is arrested at the police station, the time of his arrest;</p> <p>(ca) in the case of a person who attends a police station to answer to bail granted under section 30A, the time when he arrives at the police station;</p> <p>(d) in any other case, except where subsection (5) below applies, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.</p>
<b>Summary offences</b>	Summary offences, also referred to as summary-only offences, are those which can only be tried in magistrates' courts. See also <i>indictable offences</i> above.





© Crown copyright 2014

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at [pacereview@homeoffice.gsi.gov.uk](mailto:pacereview@homeoffice.gsi.gov.uk) or write to the Pre-Charge Bail Review, Police Integrity and Powers Unit, 6<sup>th</sup> Floor NW, Fry Building, Home Office, 2 Marsham Street, LONDON SW1P 4DF.

**ISBN: 978-1-78246-673-4**