



Home Office

Pre-Charge Bail

Summary of Consultation Responses and Proposals for Legislation

March 2015

Pre-Charge Bail – Summary of Consultation Responses and Proposals for Legislation

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Foreword by the Home Secretary



Pre-charge bail, or police bail as it is often referred to, remains of particular public interest as a significant 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 rightly take the police a significant period of time to assemble and analyse 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 published a consultation on this issue at the end of 2014, setting out a number of options for reform, which sought to ensure swifter justice and increase the efficiency of the police, prosecutors and the courts, as well as some more general questions.

The police have recently taken steps to improve the way they manage bail, with improvements in the consistency and practice of bail management, following work by the College of Policing. This is of course welcome but, in order to realise fully these improvements, the law needs to be changed. In order to both make these changes and continue to drive down the inappropriate use of bail, the Government is still looking to set in statute time limits on pre-charge bail. Only a change in the law can prevent people spending months or even years on bail at a time that they have not even been charged with an offence.

This document sets out a summary of the responses to the consultation and the Government's proposals to reform the law in this area, which would of course need to be taken forward in the next Parliament.

Rt Hon Theresa May MP
Home Secretary

Executive Summary

The Government consulted¹ on a series of measures whose intended impact was to reduce both the number of individuals subject to, and the average duration of, pre-charge bail. This consultation was open from 18 December 2014 until 8 February 2015 and was complementary to that carried out by the College of Policing between 27 March and 21 July 2014², the responses to which were published on 11 December 2014³.

The Government published proposals to reform the statutory framework for pre-charge bail on 18 December 2014 and the consultation period closed on 8 February 2015. Exactly 300 responses were received; a statistical breakdown and list of respondents are at the end of this document. The key themes emerging from the responses were:

The main benefit of introducing statutory limits for pre-charge bail durations that people expected to see was a more focussed police investigation leading to speedier justice for the victim and accused.

Other commonly raised benefits were that it would be a fairer system, protecting suspects' human rights and civil liberties; that there would be a reduction in the negative effects for individuals on bail and their families, including emotional or mental trauma and financial implications. 62 respondents (including 50 from police forces) also said that they perceived no benefits from introducing a statutory limit for pre-charge bail.

While 62.3% of respondents did not respond to Question 10, which asked if any other criteria should be added or substituted for the authorising of a bail extension, the most commonly raised suggestion was that matters outside of police control should be taken into account, for example Crown Prosecution Service timescales, forensic examinations (including digital) and international enquiries. Other common suggestions included consideration of the needs of victims of crime, including safeguarding requirements and where there are special interview requirements. Also raised were the need to safeguard complex investigations, and introducing a proportionality and necessity test to releasing people on pre-charge bail.

Of the 119 people (40%) who provided a response highlighting resource implications of each model, the most commonly raised issues were around the need for increased resources, including greater staff numbers. A number of respondents raised the increase in time and cost that would result from the proposals, and also raised concern around safeguarding of victims and witnesses, that the proposals would reduce the ability to investigate crime and lead to more cases being marked for "no further action" resulting in a potential lack of justice. Other themes included an increased court workload, and increase in officer time spent at court.

Having considered the volume data compiled on the basis of the police's data collection, the Ministry of Justice was concerned that the number of cases that would fall to be considered in the Crown Court would exceed the available capacity in Crown Court centres. Given that the overwhelming majority of cases where pre-charge bail exceeds twelve months are dealt with in large urban centres, where District Judges (Magistrates Courts) sit regularly, it would be possible for applications to be considered by professional judges in the magistrates' courts and we will work with HM Courts & Tribunals Service and the judiciary to ensure there is a presumption that this should happen with these cases. On that basis, the Government has decided to have all pre-charge bail hearings dealt with in the magistrates' courts.

Responses were received from across the country, the highest response rates were received from the South East of England (27.3% of responses), Greater London (15%) and the West

¹ <https://www.gov.uk/government/consultations/pre-charge-bail-consultation-on-statutory-time-limits-and-related-changes>

² http://www.college.police.uk/en/docs/Pre_charge_bail_consultation_Jul_2014.pdf

³ http://www.college.police.uk/en/docs/Pre_charge_bail_consultation.pdf

Midlands (11.3%). The lowest levels of response were from Wales (3.7% of responses), North East England (1.7%) and Yorkshire and the Humber (1.3%).

Two thirds of respondents favoured tightening of pre-charge bail and agreed to the principle of judicial oversight. Of the 135 respondents who expressed a preference, 78 favoured Model 2 (58%). Reasons for this included the cost implications of early court hearings, given the high volumes of cases at the earliest stage, and noted that many straightforward investigations require a degree of forensic analysis that will not be completed within 28 days, but would be within three months. Concern was also expressed that, particularly with a 28-day 'limit', investigations might be rushed inappropriately to the potential detriment of victims. A number of respondents argued for the 28-day review to be done by a Superintendent rather than a Chief Superintendent, as this rank is being phased out in a number of forces; we will change this.

Taking account of the consultation responses and the various factors set out above, we propose to legislate to provide for Model 2 as the Government's preferred approach to the reform of pre-charge bail. However, in their response to the consultation, the police proposed a third model, which retains pre-charge bail authorisation within police forces for six months (judicial oversight thereafter) but with clear necessity and proportionality tests at 28 days and three months and with strong senior oversight. While, in the absence of legislative change, we would support all voluntary steps that police forces take to improve scrutiny and accountability for pre-charge bail decisions, the Government is clear that the police's proposed model does not go far enough.

The Government also proposes to legislate to:

- Enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary;
- Provide for a presumption to release without bail, with bail only being imposed when it is both 'necessary' (e.g. where there is a need for conditions) and 'proportionate' (for example, bail with onerous conditions is unlikely to be proportionate in a case where a low level non-custodial sentence would be the likely outcome, even if convicted);
- Set 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;
- Set the extenuating circumstances in which that period might be extended further, and who should make that decision;
- Establish a framework for the review by the courts of pre-charge bail;
- Make clear that, where an individual has been released without bail while analysis takes place of large volumes of material, the police can make a further arrest where key evidence is identified as a result of the analysis of that material that could not reasonably have been done while the suspect was in custody or on bail; and
- Provide in rules of court for a Public Interest Immunity-type procedure to withhold sensitive information from a suspect where its disclosure could harm the investigation, such as where disclosure might enable the suspect to dispose of or tamper with evidence, with a presumption of full disclosure at any subsequent trial.

Legislation to give effect to these proposals would need to be taken forward in the next Parliament.

As well as these changes in legislation, we will begin work immediately with the College of Policing and other bodies across the public sector to put in place memoranda of understanding to enable the police to access material required as part of a criminal investigation in a timely and efficient manner. We will also explore with the senior judiciary and the College of Policing what guidance might be given to custody officers and magistrates on the appropriate conditions of bail in particular circumstances.

Introduction and Background

There have been a number of 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 carried out a consultation on the principles of pre-charge bail management between 27 March and 21 July 2014. The College published the responses to that consultation on 11 December 2014, along with a set of standards for the police to adopt. The College intends to incorporate those standards shortly into revised Authorised Professional Practice (APP) on Bail Management.

The Government published proposals to reform the statutory framework for pre-charge bail on 18 December 2014 and the consultation period closed on 8 February 2015. A total of 300 responses were received; 269 via the online portal, 29 by e-mail and two responses by letter. An analysis of the answers to the consultation questions and a list of respondents are at the end of this document; a breakdown of the number of respondents giving answers to the individual question will be provided on the gov.uk website.

Legislation to give effect to the proposals set out in this document would need to be taken forward in the next Parliament. We will begin work immediately on those measures that do not require legislation.

Summary of Consultation Responses

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

At present, section 34(5) of PACE⁴ 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) of PACE 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*⁵. There was widespread support in the consultation responses for the proposal to reduce the number of individuals on bail by clarifying the law to make clear that a suspect can be released without bail while an investigation continues.

Where an investigation concludes with a decision that there should be no further action (NFA), a suspect must be formally released from bail. A number of consultation responses stated that, if release without bail were to be available, there should still be a requirement to notify a suspect of that decision. We agree and will include that requirement in the legislation.

Other respondents expressed concern that enabling release without bail would not solve the underlying issue of an extended period of uncertainty for suspects between being arrested and the subsequent decision on charging. Indeed, some respondents were concerned that, without even the minimal level of scrutiny brought by the current process of granting and extending bail, there would be the potential for non-bail cases to take even longer to resolve, with priority given to cases where bail would need to be justified to the courts.

The National Policing Leads' response to the consultation proposed that, in deciding whether to release an individual from police custody, there should be a presumption that releases should be made without bail, with bail only being imposed where it is both necessary and proportionate in all the circumstances of the case. This would also address an issue of police culture raised by the Howard League for Penal Reform, in that bail would be 'imposed' rather than 'granted' – an important shift in emphasis for the decision-maker, i.e. the police officer making the decision to release from custody. Ten other responses called for the introduction of tests of necessity and proportionality to decision-making for pre-charge bail.

This will require careful consideration of the relationship between PACE and the Bail Act 1976; section 4 of the Bail Act currently provides for a "General right to bail of accused persons...", although this also includes those who have been charged with an offence as well as those on pre-charge bail. We will explore this further with the Ministry of Justice, who are responsible for bail post-charge, to see how best we might make this change.

We will therefore amend the law to:

- 1. Make the presumption of a release from custody to be without bail, unless bail is both 'necessary' and 'proportionate' in all the circumstances of the case.**
- 2. Remove the requirement for all releases from custody while an investigation continues to be on bail.**

⁴ The Police and Criminal Evidence Act 1984

⁵ R (Torres) vs. The Commissioner of Police of the Metropolis, [2007] EWHC 3212 (Admin)

3. Require the notification of suspects by the police (whether or not they are on bail) where a decision is made to take no further action (NFA) in their case.

4. Remove the contradictions between sections 34(5) and 37(2), enabling police bail in all circumstances to be issued with conditions when it is both 'necessary' and 'proportionate'.

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

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

There was almost universal support among the responses to placing some sort of statutory limit on pre-charge bail; indeed, the police (both the National Policing Lead and the College of Policing) recognise that change to the way bail is managed is necessary. 44% of responses favoured an absolute limit, although there was no clear consensus as to what that limit should be. We will revisit this issue, once the impact of these reforms has bedded in, to see whether it would be possible to introduce a hard limit in the future. 70.7% of responses favoured a limit that could be extended by some combination of senior police officers and the courts⁶.

In addition to the responses to the consultation questions, a number of responses set out examples of extended periods of bail and the consequences they can have, especially where the person on bail is a child.

The following three case studies were submitted as part of consultation responses:

Case Study 1

The details in this response relate to a still current investigation by the Metropolitan Police Service (MPS) Sapphire Unit involving a male 13-year-old child suspect. He has now been on pre charge bail for 300 days and has been rebailed 6 times. In their consultation response, the family wrote the following:

"The actions of the MPS in relation to the prolonged period of police bail have been devastating on him and our family.

Prior to his arrest, he was attending mainstream education, and was progressing well and was projected high grades. He had a wide group of friends, was actively involved in school life, had no attendance or behavioural issues at school. He, and his family, were not known to the police, Social Services and had no Mental Health issues.

Following an allegation by an 8 year old girl relating to an incident that was alleged to have happened some 20 hours previously, he was arrested at home. Officers removed items of clothing without incident and no electronic items (tablets, computers, mobile phones, etc) were requested or removed. Upon attendance at the Police Station, intimate and non-intimate samples were taken, again without incident and with the agreement of the child and his father.

The arrest, removal of clothing items from his house and intimate and non-intimate samples taken at the police station were all completed on 22 March 2014 without incident. No further items were removed or requested.

He was interviewed on 22 March 2014 and 1 July 2014. No evidence was put to him and his solicitor on either occasion, nor at any other time.

⁶ These figures do not total 100% as they are the answers to two different questions (Questions 3 and 8).

During the now 300 days on police bail he has been rebailed 6 times. With the exception of the first rebail which was 6 days, the majority of the rebails have been 60 or 90 days.

The reason given by officers for 4 of the rebails was that they were still waiting for the results of forensic tests.

The reason for the 4th rebail was that the officers would be sending the file to the CPS, that they were aware that the CPS were busy and that an answer would not be available from the CPS until 8 September 2014. Upon answering bail on 8 September 2014, the officers said the file had not been submitted to the CPS and they were still waiting for forensic results and he was rebailed until 17 November.

Upon answering bail on 17 November 2014 he was rebailed again until 12 February 2015 with reason given that officers were waiting for forensic tests to be completed.

As previously stated the impact on him and the family has been devastating.

He was removed from mainstream education following activity on social media. The source of the website postings and messages on BlackBerry Messenger was identified as originating from another family. Our family member was named, along with the name of the complainant, and full details of her allegation.

This social media activity was reported by the school to the police but no action was taken.

As a result, the local authority placed him in a wholly unsuitable Interim Education Centre for children with needs significantly different from those of his own. The Interim Education Centre is for children who have a history of significant repeat offending. The focus of the Interim Education Centre is to provide "interim" education for anything up to 3 months. To date my family member has been there in excess of 8 months.

In terms of health, prior to the allegation he had no mental health issues. As a result of the allegation, the protracted investigation, and totally unsuitable education he is now being treated by a Child and Adolescent Psychiatric Consultant for depression.

In addition, important medical treatment has been delayed to the pattern of constant police rebail. The need for regular medical visits and examinations, coupled with the treatment and recovery time would be stressful enough. But added to this would be additional anxiety around bail dates and uncertainty as to a result of those bail dates.

The reasons given by officers for rebailing and bail conditions too need to be looked at as part of this review. With what we have experienced these can vary widely.

As previously mentioned 5 of the 6 rebails were due to officers still awaiting forensic reports from items taken on 22 March. One of the reasons for rebailing was awaiting a decision from the CPS, but as we subsequently learned at the next rebail date the file was not sent to the CPS.

Reasons given for bail conditions in our situation again varied considerably from bail date to bail date. One example included "to prevent reoffending". In our situation there had been no prior contact with the police, and no charging decision has been made. Four of the six rebails have been undertaken over the telephone with no follow up of copies of the bail conditions provided afterwards.

In summary I would welcome the proposals to review the arrangements around police bail and have the judiciary play their role in calling the police to account for their wish to continue bail.

It is scandalous that a 13 year old child can be rebailed six times and be placed on police bail now for 300 days (which is over 10 times the proposal of the Home Office).

His education, health and life chances are being significantly eroded by the actions of the Metropolitan Police in their decision to not make a decision on charging.

It is shameful that the position that we are in, if the Metropolitan Police are to be believed, is due to forensic reports being unavailable and this has been the reason for 6 rebails and subjecting a child to 300+ days of police bail."

Case Study 2

"I am responding to this consultation because only a little notice has been taken of the "injustice" which can occur when an individual is put on police bail, who is completely ignorant of the police/justice system having never had the likelihood of such an experience. I speak from the experience of my family.

My son was given a "harassment warning" which he vehemently rejected. The police dealt with him with no sensitivity or care for his health. They mixed up evidence and failed miserably to listen to his concrete tangible and failed to investigate the matter, showing a very marked partiality for the girl who accused him on fanciful and incorrectly documented evidence. While a very low-key "crime", he felt accused, and devastated. It totally affected his health, his job, losing his high-flying career in the process and therefore his financial situation.

Three months after the original "warning", my son had become very depressed; on two occasions I was extremely concerned of suicidal tendencies. He responded to his situation of feeling totally neglected by the police procedures by trying to justify himself against the threats to his well-being; he posted a home-made video on You-tube. This caused his arrest and bail (The girl involved persuaded the police it was an attack against her). The girl's evidence was fanciful; my son was happy to explain his actions. Nevertheless he was kept on bail, unable to be heard (he was told he could complain at the end of the bail). He was kept on bail for over 6 months, during which time his health, physical and mental, collapsed, mainly due to the fact that at no time was he able to find out what was happening, and the police simply told him the investigation into his case was ongoing. He was released from bail suddenly, with no information provided, and told to get on with his life which had been destroyed; all people on bail have their lives put on hold.

The complaints procedure was rubbish – very slow, uncooperative and obstructive. The police refused to take my son's evidence, or even note the mistakes in their own log, which showed my son was correct. Recourse to the IPCC had the same result; they took the attitude and "evidence" of the police and dismissed my son's factual and tangible evidence, causing my son, and my whole family to completely mistrust the police and the public institutions which are supposed to be independent. We will be very wary of any contact in the future. We are a law-abiding honest Christian family, the kind I am sure the state needs to keep on its side.

My son therefore was on bail over 6 months, not charged, but suffered tremendously. The family suffered mentally in trying to support our son. From the initial "warning" the police knew how distressed he was, recommending him to see a doctor, yet at no time during the following months was there any continuity of police action, no explanation, and no chance to complain. Police actions were totally unaccountable, even reckless. So, it is not only that bail should be limited, and investigations made quickly, but also, a particular individual ought to be respected. The mindset of the police seems to be that all those they come into contact with are frauds; the police need to be intelligent enough to judge a person. Bail is police procedure, but it is against a human being.

I totally support the restrictions on police bail. The one thing missing from this consultation however is that no compensation is awarded to one who has been bailed and then released from bail without charge, despite the effect the bail has had on that person. Bail is a necessary tool, but if wrongly used there should be a process of compensation. I don't even think that the police records of a person released without charge are destroyed, even after a given period."

Case Study 3

"I am 67, I am a successful property investor, I have run public companies and set up my own companies – I have lived in this country for the last 50 years. I should be fully supportive of the police.

At one time I had respect for the police – that has now dissipated. If that is how I feel, imagine how disadvantaged and disaffected ethnic groups must feel.

The behaviour of the police in the last few years, where people have been bailed on the flimsiest of evidence – and in some cases acquitted without even an apology – goes against our democratic traditions. For the police to be able to publicly – and that is because of the excessively unhealthy close links between the press and the police – break into someone's home on the flimsiest of evidence, confiscate computers, disrupt family life with no explanation – is unacceptable.

I think the police have lost the trust of many citizens of this country through their boorish behaviour and their incompetence in dealing with sensitive crimes.

I would like to propose:

1. There be an absolute limit on the bail period – call it 30 days, if necessary
2. There should be anonymity until the "accused" has been charged
3. The police should be held accountable – and should be liable for damages, disruption to family life and loss of income

I know from talking to many friends of mine that my view is not alone. You should not underestimate the widespread disillusionment that exists amongst large swathes of the population."

The data collected by the police suggests an average bail period under the existing system of just over 60 days. There is no clear consensus from the consultation responses as to where the limit should be set, with one response suggesting a limit as low as 24 hours, while just over half of all responses said there should be no absolute limit, with each case determined and reviewed on its own merits.

As set out above, we consider that the presumption should be that those under investigation should be released without bail, unless it can be shown that bail is both necessary and proportionate. Where those tests are met, the initial bail period should be 28 days, as recommended by the College of Policing, with a further review of the necessity and proportionality of bail taking place towards the end of that period and being conducted by a senior police officer, who can then extend bail to a maximum of three months.

A number of respondents to the consultation raised concerns about the level of authorisation suggested for Model 2, arguing that the review be done by a lower rank, for example Superintendent rather than a Chief Superintendent, as the latter rank is being phased out in a number of forces as part of workforce reforms. The Government considers this to be a reasonable change, giving appropriately senior scrutiny while retaining operational flexibility.

Any extension of pre-charge bail beyond that point would only be possible with the authority of the courts.

We will therefore amend the law to:

5. Set the initial bail period at 28 days, where the test for bail set out above is met;

6. Allow a senior police officer (Superintendent rank or above) to authorise a single extension of bail to a maximum of three months in total;

7. Require any further extensions of bail to be authorised by the courts.

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

There was widespread acknowledgement in responses that many of the delays in investigating cases are due to the time taken to secure evidence (particularly statements) from other public sector agencies, such as the NHS or local authority social services departments. However, there was a clear majority in favour (65.7% agree or strongly agree) of the agreement of memoranda of understanding between the police and umbrella bodies representing public sector agencies, rather than legislating to enable or require the production of material.

We will therefore begin work immediately to:

8. Discuss with the National Policing Lead, College of Policing and umbrella bodies (such as NHS England and the Local Government Association) how we can improve the provision of evidence in a timely fashion, including potential for memoranda of understanding.

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

There was widespread consensus that the courts should be able to review the duration of bail as well as the conditions. The model set out in the next section will enable that to happen, although in order to reduce costs, we propose that each decision should not be subject to appeal. The first opportunity for an individual to challenge the duration of their pre-charge bail would therefore be after three months under Model 2. The existing process to challenge bail conditions at any time would remain, although it is hoped that the improved guidance in this area would reduce the already small number of challenges to conditions even further.

Guidance on the Use of Bail Conditions

Almost two thirds of respondents welcomed the proposal to provide clear and consistent guidance to custody officers and magistrates, with 10.7% suggesting it should be produced by the College of Policing, 13% favouring the Judicial College and 39% in favour of joint guidance. A number of formats for this guidance were suggested as part of the consultation, including adding material into the PACE Codes of Practice or the issuing of a practice direction by the senior judiciary. In addition, 20.6% of respondents replied that guidance was unnecessary.

In the light of these responses, the Government considers that guidance is appropriate, although more work is needed to decide on its format. We will begin work now with the Colleges and the senior judiciary to consider this and if, as a result of this work, statutory guidance is

considered appropriate, legislation to enable it would be taken forward as part of the measures set out elsewhere in this document.

We will therefore begin work immediately to:

9. Discuss with the College of Policing, the Judicial College and the senior judiciary how best to produce clear and consistent guidance on the use of bail conditions.

Hearings in the Crown Court

The proposal in the consultation document to hold some pre-charge bail hearings in the Crown Court received a mixed response in the consultation, with 39% agreeing or strongly agreeing and 40% disagreeing or strongly disagreeing. Some respondents considered that involving the Crown Court would lead to unnecessary cost and complexity, while others considered that, in the type of cases that would be tried by specialist judges in the Crown Court, there could be advantages to involving them at the pre-trial stage, particularly where the measures set out below for exceptional cases were used.

For example, the Council of HM District Judges (Magistrates' Courts) considered that "...production orders for special procedure material pursuant to Schedule 1 of the Police and Crime Evidence Act 1984 are already sought at this level. The Crown Court plays a role in furthering the proper investigation of serious cases. It would amount to early case management. Continuity of judge would be beneficial and time efficient." The London Criminal Courts Solicitors' Association stated in their response that "...Beyond 12 months on police bail is probably the right stage to involve the Crown Court but even that might be an unwelcome addition to their workload."

Other bodies considered that the process was entirely suitable for the magistrates' courts and that the involvement of the Crown Court was unnecessary. For example, the Law Society said in their response that "We are not convinced that the Crown Court should have a role in the granting of extensions of bail in certain types of case. It would be a simpler and cheaper procedure if such applications were kept at the magistrates' court level. It is likely to be a procedure that raises very similar issues to applications for warrants of further detention, which magistrates' courts are very familiar with. We are confident that even in a serious and/or complex investigation magistrates would be well equipped and able to make such decisions."

Having considered the volume data compiled on the basis of the police's data collection, the Ministry of Justice was concerned that the number of cases that would fall to be considered in the Crown Court would exceed the available capacity in Crown Court centres. Given that the overwhelming majority of cases where pre-charge bail exceeds twelve months are dealt with in large urban centres, where District Judges (Magistrates Courts) sit regularly, it would be possible for applications to be considered by professional judges in the magistrates' courts and we will work with HM Courts & Tribunals Service and the judiciary to ensure there is a presumption that this should happen with these cases. On that basis, the Government has decided to have all pre-charge bail hearings dealt with in the magistrates' courts.

Exceptional Cases

There was considerable support from the various criminal justice agencies for a 'lighter touch' process to be used in large and complex cases, although there was no clear consensus as to how that might be achieved. We have taken these responses into account in considering how best to achieve this 'lighter touch' process and have discounted the following possibilities for these reasons:

- List of offences: not specific enough (for example, an offence under the Fraud Act 2006 could cover a single instance of obtaining money by deception or an organised multi-million pound case); others thought it could be too specific and restrictive (i.e. could not cater for an exceptional case not contained in the list of offences).
- Value: while many large and complex cases are financial, not all are (e.g. investigations into historical allegations of child abuse).
- Decision on a case-by-case basis by investigator or prosecutor: not sufficiently transparent, not least because reducing the level of scrutiny will reduce the work for investigators and prosecutors.

We will work to produce guidance to define the most complex cases, where prosecutors will be involved from the pre-arrest stage, for example according to the agency that will (in due course) prosecute them, as the most complex cases will be handled by the Serious Fraud Office, as well as by the CPS' Central Casework Divisions⁷ and Complex Casework Units⁸. In such exceptionally complex cases, a decision to extend bail beyond three months would be taken by a Senior Civil Servant for SFO cases; in CPS cases, the decision would be taken by an assistant chief constable in consultation with a senior prosecutor, with the courts not becoming involved until six months after arrest.

In addition, in all cases, no matter who the prosecuting agency might in due course be, we will give investigators or prosecutors the option to make an application to the court to 'skip' the next hearing, where they can make a case that an investigation is being progressed with due speed but the enquiries being undertaken are unlikely to show results before the next hearing is due. Such a process would meet the key requirement of placing the decision-making in the hands of the courts, while meeting the concerns of law enforcement that the process should not be overly bureaucratic by halving the number of hearings over the course of a lengthy investigation. This would reduce the administrative burden on investigators of complex cases, but would ensure that the courts have oversight of all cases, removing any possible accusation that a case is not being progressed in a timely manner.

We will therefore amend the law to:

11. Place the decision to extend bail beyond three months in the hands of a Senior Civil Servant, where the case is being dealt with by the Serious Fraud Office, or an assistant chief constable, where the case is being dealt with by the CPS' Central Casework Divisions or Complex Casework Units. Such cases would be dealt with by the courts from the six-month point in the same way as other cases.

12. Enable investigators or prosecutors to apply to a magistrates' court to 'skip' the next hearing where they can make a case that an investigation is being progressed with due speed but the enquiries being undertaken are unlikely to show results before the next hearing is due.

⁷ The Specialist Fraud, Organised Crime and Special Crime and Counter Terrorism Divisions.

⁸ The specialist units within each of the CPS' 13 Areas dealing with the most serious cases in that Area.

Additional Issues Raised in Consultation Responses

1. Anonymity of Arrested Persons

A number of the responses to the consultation expressed the opinion that the perceived injustice of extensive pre-charge bail can be magnified in cases where the suspect has been identified. Particular contrast was drawn between a rape complainant, who has indefinite statutory anonymity, and a rape suspect who is named on arrest and subsequently not charged. This Government has been clear that transparency and consistency should be at the heart of the criminal justice system. There is a difficult balance to strike between the operational advantages of naming suspects in criminal investigations and respecting their right to privacy. The Government believes that there should, in general, be a right to anonymity before the point of charge, but there will be circumstances in which the public interest means that an arrested suspect should be named.

What information is disclosed in a given instance will need to be assessed on a case-by-case basis. Police forces should follow the College of Policing's Authorised Professional Practice "Guidance on Relationship with the Media", published in May 2013⁹. Section 3.5 of that document sets out the criteria the police should use in deciding when it would be appropriate to identify an individual before the point of charge¹⁰.

2. Compensation

A small number of respondents expressed the view that those who are kept on bail for a long period, whether pre- or post-charge, and who are ultimately not proceeded against or acquitted in court should receive compensation or damages for the inconvenience they have been subject to.

The current position is that, where a defendant is acquitted, they can apply to the court for their legal costs to be reimbursed from central funds, up to the amount of legal aid that would have been provided¹¹. While those who have grounds for an action for unlawful arrest or malicious prosecution have a remedy in the civil courts against the person or authority responsible, there is no general right to compensation for time spent in detention or on remand in a case resulting in acquittal. Indeed, compensation is only available in limited cases where an individual is wrongly convicted and subsequently acquitted on appeal (see sections 133-133B of the Criminal Justice Act 1988).

3. Forensic Capabilities

25 respondents (8.3%) noted that delays can often be caused by waiting for the outcome of forensic tests, including the examination of hard drives and other digital media. Individual Police forces, or in some cases groups of forces acting in collaboration, contract with the private sector for the provision of forensic services, under the auspices of the National Forensic Framework – Next Generation (NFFNG). It is for police forces to organise its forensic submissions with appropriate priority to ensure that inappropriate delays are not caused in individual cases; if excessive delays were to occur, a court would have to consider whether it would be appropriate to extend a suspect's bail.

⁹ <http://www.college.police.uk/en/20394.htm>

¹⁰ These "...circumstances include a threat to life, the prevention or detection of crime or a matter of public interest and confidence."

¹¹ See the Costs in Criminal Cases (General) (Amendment) Regulations 2009, SI 2009/2720

4. CPS Delays

The proposed time periods set out in the consultation document specifically excluded the time taken for the CPS to reach a charging decision, although the ‘bail clock’ would resume if a case was returned to the police by the CPS for further enquiries to be made. A number of respondents, including the Law Society, objected to this; the Law Society response says that:

“We do not agree that bail periods spent awaiting a CPS charging decision should not be subject to the time limits and review processes; we submit that such bail periods should be subject to such limits. If the period between referral to the CPS and charge is not included it will defeat the object of the reform. Complainants and witnesses will still be awaiting the charging decision; suspects will still be on bail, with the uncertainty and restriction on liberty that entails. We do not agree that subjecting the decision to charge by the CPS to the same time limits would adversely affect their independence from the police; they are as much a part of the State in the context of a prosecution of the suspect/defendant as the police, albeit that they perform a different function.”

While it is apparent from a number of responses that significant time can elapse while waiting for a charging decision, this is normally proportionate to the length of time taken to investigate the case and, while any delay at the end of a long investigation is regrettable, it is unlikely to materially extend the total period of bail. As the CPS says in its response:

“We also welcome the fact that the proposal acknowledges that the bail time limits that are introduced will not apply once the police file is sent to the CPS for review and a charging decision. It is important to retain the distinction between a police investigation and a prosecutorial assessment of the evidence and charging decision. This serves to preserve the independence of the prosecution function.”

Having considered the consultation responses, the Government does not consider that it would be appropriate to apply the proposed time limits to the period spent waiting for a prosecution decision, as it will normally be only a small proportion of the total time spent on pre-charge bail.

Proposed Model for Pre-Charge Bail

The consultation document proposed two models for the duration and level of authorisation of pre-charge bail:

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	Chief Superintendent
Extension up to 12 months (3 months per extension)		Magistrates' Court
Beyond 12 months (3 months per extension)	Crown Court	

The consultation document made clear that it was constructed upon a limited evidence base, as data on the number of individuals on bail and the duration of that bail is not recorded routinely. As part of their response to the consultation, the police have provided us with data gathered from their custody and bail management systems which now gives us a clearer picture of the numbers involved over the course of a year. The data provided by the police forms the basis of the Impact Assessment in the next section of this document.

Taking into account the consultation responses and the data gathered during the consultation, it is apparent that Model 1, where only the initial bail authorisation would be done by the police, with all extensions past 28 days done in court, would be unviable, given serious questions as to whether there would be sufficient capacity in the magistrates' courts to deal with the estimated 270,000 bail hearings required per annum (of which 195,000 would be required at the 28-day stage).

While Model 2 still has a significant cost, as set out in the Impact Assessment, the Government considers that it represents a better balance between accountability and affordability. Model 2 is therefore our preferred approach to the reform of pre-charge bail, with two changes. Firstly, to alter the authorising rank of police officer at the 28-day review point from Chief Superintendent to Superintendent, to reflect the issue raised in the consultation that the former rank is being phased out in a number of forces as part of workforce reforms. Secondly, to have all pre-charge bail hearings dealt with in the magistrates' courts, in response to concerns that the number of cases would exceed the available capacity in Crown Court centres and given that most cases where pre-charge bail exceeds twelve months are dealt with in large urban centres, where District Judges (Magistrates Courts) sit regularly.

The resulting Model 2A is set out below, together with the proportion of those on pre-charge bail in each 'slice' of the model.

Model 2A		
Cumulative Total Period from 'Relevant Time'	Bail Authoriser/Reviewer	Proportion of all bail cases ¹²
First Bail period – 28 Days	Inspector	29%
Extension up to 3 Months	Superintendent	50%
Extension up to 6 months	Magistrates' Court	14%
Extension up to 9 months	Magistrates' Court	2.7%
Extension up to 12 months	Magistrates' Court	2.5%
Extension up to 15 months	Magistrates' Court	0.5%
Extension up to 18 months	Magistrates' Court	0.5%
Extension beyond 18 months (3/6 months per extension)	Magistrates' Court	0.002%

In their response to the consultation, the police proposed an alternative model, which retains pre-charge bail authorisation within police forces for longer but with clear necessity and proportionality tests at 28 days and three months and stronger senior oversight. After six months, review by magistrates would be needed to authorise pre-charge bail.

While, in the absence of legislative change, we would support all voluntary steps that police forces take to improve scrutiny and accountability for pre-charge bail decisions, the Government is clear that the police's proposed model does not go far enough.

¹² According to 2014 data produced by the College of Policing in response to the consultation exercise. Total values may not add to sum of individual values due to rounding

Impact of Proposals

Title: Pre-Charge Bail: Introduction of statutory time limits and related changes. IA No: HO0181 Lead department or agency: Police Integrity and Powers Unit, Home Office Other departments or agencies: Ministry of Justice, HM Courts and Tribunals Service, Legal Aid Agency, Crown Prosecution Service, Serious Fraud Office	Impact Assessment (IA)	
	Date: 23/03/2015	
	Stage: Final	
	Source of intervention:	
	Type of measure: Primary legislation	
	Contact for enquiries: Andrew Alexander, 020 7035 0877 andrew.alexander@homeoffice.gsi.gov.uk	

Summary: Intervention and Options	RPC Opinion: N/A
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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?
£187.2m	£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 (with <u>each authorisation lasting for a maximum of 3 months</u> to give clear external scrutiny of investigations). Option 2: Sets a limit for pre-charge bail of 28 days and the requirement for Superintendent authorisation if an extension up to 3 months is required in extenuating circumstances. Magistrate authorisation is required for extensions from 3 months (with <u>each authorisation lasting for a maximum of 3 months</u> to give clear external scrutiny of investigations). The Government's preferred option is Option 2, as it represents the best balance between transparency, accountability and affordability. The majority of consultation respondents preferred Option 2.

Will the policy be reviewed? It will be reviewed before legislation is introduced to Parliament.					
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.		Micro No	< 20 No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: 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: 23/3/2015

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: -675.6	High: -281.4	Best Estimate: -460.3

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K		32.7	281.4
High	N/K		78.5	675.6
Best Estimate	N/K		53.5	460.3

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

This option is expected to result in 315,000 pre-charge bail extension hearings brought to magistrates' courts. This results in an estimated monetised cost of £22.0m per year. There are expected to be costs to the Legal Aid Agency in providing legal aid for a proportion of these pre-charge bail hearings, with an estimated monetised cost of £31.5m per year.

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. Further key non-monetised costs are to the Police in officers attending court for pre-charge bail hearings, and to the Crown Prosecution of potentially making charging decisions earlier.

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 and speedier justice.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Cost assumptions are set out in the appraisal in Section E. It is assumed that in a proportion of cases 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 20%-50% of cases have charging decisions made earlier, with a best estimate of 35%. It is assumed that in a proportion of cases legal aid will be required for pre-charge bail hearings. We have assumed that 25%-75% of cases will require legal aid, with a best estimate of 50%. The range of our assumptions is explored in sensitivity analysis in Section F. We further explore the scenario of 10% and 20% fewer cases through future policy changes in Section 7.

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: -260.0	High: -164.1	Best Estimate: -187.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K	19.1	164.1
High	N/K	30.2	260.0
Best Estimate	N/K	21.8	187.2

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

This option is expected to result in 210,000 cases reviewed by Superintendents and 104,000 cases brought to magistrates' courts for extension, resulting in a monetised cost of £4.2m annually to the police and £7.2m annually to the criminal justice system.

There are expected to be costs to the Legal Aid Agency in providing legal aid for a proportion of these pre-charge bail hearings, with an estimated monetised cost of £10.4m per year.

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.

Further key non-monetised costs are to the Police in officers attending court for pre-charge bail hearings, and to the Crown Prosecution of potentially making charging decisions earlier.

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. 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

Cost assumptions are set out in the appraisal in Section E. It is assumed that in a proportion of cases 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 20%-50% of cases have charging decisions made earlier, with a best estimate of 35%. It is assumed that in a proportion of cases legal aid will be required for pre-charge bail hearings. We have assumed that 25%-75% of cases will require legal aid, with a best estimate of 50%. The range of our assumptions is explored in sensitivity analysis in Section F. We further explore the scenario of 10% and 20% fewer cases through future policy changes in Section 7.

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

A. 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. There have also been a number of examples with damaging restrictive bail conditions imposed for a significant period of time. This has led to calls for a fundamental re-examination of the way pre-charge bail is used and why the police incur such delays, including looking at statutory time limits for pre-charge bail.

The College of Policing consulted in summer 2014 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.

B. 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.

C. 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 (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations).

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 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations).

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 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.¹³

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, proposed¹⁴ 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."¹⁵

Imposing a six-month maximum without a mechanism to extend in extenuating circumstances may not enable the police and other law enforcement agencies 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. The responses to the consultation of the National Crime Agency, Serious Fraud Office and Crown Prosecution Service support this view.

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 and escape facing justice.

D. Consultation

A public consultation was carried out between 17th December 2014 and 8th February 2015. In total, 300 responses were received. 146 were from those describing their organisation or the professional interest as "Police Force". Members of the public made up a further 101 responses and the remainder were from a range of organisations, including Government departments, academic bodies and universities, and representative bodies. A number of other responses which did not answer any specific consultation questions were received.

247 consultation responses gave views on proposals for statutory time limits on pre charge bail. 50.7% of respondents did not think there should be an absolute maximum of pre-charge bail without extension, 44% of respondents thought there should be. Of those who thought there should be an absolute maximum period, 45% thought this period should be 28 days.

78% of respondents agreed or strongly agreed that it should be possible to extend bail periods. Of those who responded, 41.9% thought that a senior police officer was the appropriate level of authorisation for extending pre-charge bail in the first instance. 49.3% of respondents agreed or strongly agreed that the proposed changes to pre-charge bail would be likely to influence the speed with which investigations are dealt with, 29.7% disagreed or strongly disagreed.

33% of respondents said that, of the benefit of introducing statutory time limits, they expected to see a more focused police investigation, leading to speedier justice for the victim and accused. Of those 99 responses, 38 declared themselves as being from a police background.

¹³ As set out section 3(6)(a)-(ca) of the Bail Act 1976

¹⁴ Liberty's Response to the College of Policing Consultation on Pre-Charge Bail, June 2014, paragraph 3

¹⁵ *Ibid.*, paragraph 23

A number of respondents raised the increase in time and cost that would result from the proposals, and also raised concern around safeguarding, and that the proposals would reduce the ability to investigate crime, lead to more cases being for “no further action” resulting in a potential lack of justice for victims. Other themes included an increased court workload, and increase in officer time spent at court.

Of the 135 respondents who expressed a preference, 57.8% preferred the pre-charge bail review model presented in Option 2. The main reason was a greater belief in the feasibility, due to lower court costs relative to Option 1 while still providing the necessary level of scrutiny.

The consultation exercise also provided further data. The College of Policing provide a 12 force sample of data on the annual number of pre-charge bail cases, and the Ministry of Justice provide updated magistrates’ and Crown Court costs and associated legal aid costs. Insufficient data was obtained to allow monetisation in others areas or further refine certain assumptions.

Having considered the volume data compiled on the basis of the police’s data collection, the Ministry of Justice was concerned that the number of cases that would fall to be considered in the Crown Court would exceed the available capacity in Crown Court centres. Given that the overwhelming majority of cases where pre-charge bail exceeds twelve months are dealt with in large urban centres, where District Judges (Magistrates Courts) sit regularly, it would be possible for applications to be considered by professional judges in the magistrates’ courts and we will work with HM Courts & Tribunals Service and the judiciary to ensure there is a presumption that this should happen with these cases. On that basis, the Government has decided to have all pre-charge bail hearings dealt with in the magistrates’ courts.

E. 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. Throughout this appraisal Options 1 and 2 are also referred to as Model 1 and Model 2 respectively.

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

Costs are expected to be borne by the public sector through increased demands on the police, courts and Crown Prosecution Service (CPS) and subsequent legal aid costs to the Legal Aid Agency. There will also be impacts on other investigation and prosecution agencies such as HM Revenue and Customs (HMRC), the National Crime Agency (NCA), 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

Volumes

Under each option, the costs that we are able to monetise are expected to result from those bail cases that exceed the statutory limits and must be extended after intervention by a Superintendent¹⁶ or by the courts, and the legal aid costs associated with pre-charge bail court hearings. The scale of this cost depends on the number of people whose bail would be expected to exceed the statutory limits, the subsequent number who would proceed to hearing and the number who would require legal aid.

As part of the consultation exercise, the College of Policing provided data from a sample of twelve forces¹⁷ which detailed the number of individuals released on pre-charge bail for the one year period from April 2013 to March 2014. This sample included those on pre-charge bail who had their bail finalised at a number of intervals, as detailed below. These volume figures have been scaled nationally¹⁸ as to

¹⁶ Following the consultation process, the required rank to authorise an extension from 28 days to three months has been reduced from Chief Superintendent to Superintendent to reflect the phasing out of the rank of Chief Superintendent in some forces as part of their workforce restructuring.

¹⁷ The 12 forces are Cheshire, Dorset, Essex, Gloucestershire, Gwent, Lancashire, Metropolitan Police, Northamptonshire, North Yorkshire, Warwickshire, West Mercia and West Midlands.

¹⁸ Figures have been scaled nationally through the number of arrests for notifiable offences per force, according to the Police Powers and Procedures E& W 2012/13 publication. The 12 forces in the sample represent 37.8% of all arrests made.

represent the number of pre-charge bail cases finalised, across a range of bail durations, nationally per annum.

Table E1. *The estimated number of pre-charge bail cases nationally per annum.*

1	Total number on pre-charge bail	404,000
2	On bail up to 28 days	118,000 ¹⁹
3	On bail beyond 28 days up to 3 months	202,000
4	On bail beyond 3 months up to 6 months	58,000
5	On bail beyond 6 months up to 9 months	11,000
6	On bail beyond 9 months up to 12 months	10,000
7	On bail beyond 12 months up to 15 months	2,000
8	On bail beyond 15 months up to 18 months	2,000 ²⁰
9	On bail beyond 18 months	1,000

We assume for the purposes of this Impact Assessment that the total number of people on pre-charge bail over the starting point one-year period above is a good indicator of the annual case figure over the full appraisal period under the 'do nothing' approach.

Each case will have multiple hearings dependent on its duration; a pre-charge bail case which is finalised after 9 months will have required three extensions up to the point at which it is finalised. Initial extensions may have been granted in previous years and similarly some extensions may be given in this year while the case will in fact be finalised in a subsequent year. In order to reflect the fact there will be multiple hearings per case, we have assumed that there will be a maximum of four hearings per case in any given year. Although some of the hearings of any given finalised case may have fallen outside of the current year, we assume that this flow occurs equally across years. For instance, a case finalised in the next year which is not counted above may have also had extension hearings in the current year, but a case finalised in the current year may have had extension hearings in the previous year and so on. The number of hearings assumed per pre-charge bail case under Model 1 is shown in Table E2 and under Model 2 in Table E3.

Table E2. *Number of hearings by type assumed per bail case under Model 1.*

Duration of case	Number of magistrates' court hearings over bail period	Total number of extensions
Over 28 days up to 3 months	1	1
Over 3 months up to 6 months	2	2
Over 6 months up to 9 months	3	3
Over 9 months up to 12 months	4	4
Over 12 months up to 15 months	4	4
Over 15 months up to 18 months	4	4
Over 18 months	4	4

¹⁹ This figure was not provided by the sample, but has been inferred from the subsequent numbers in each period subtracted from the starting volume.

²⁰ As we do not have data for the '15 to 18 month' period or the '12 to 15 month' 3 month period, we have assumed both values are an equal split of the '12 to 18 month' 6 month period; for which we have a rounded figure of 4,000.

Table E3. *Number of hearings by type assumed per bail case under Model 2.*

Duration of case	Number of reviews by Police per case annually	Number of hearings by magistrates' courts annually	Total number of extensions
Over 28 days up to 3 months	1	0	1
Over 3 months up to 6 months	1	1	2
Over 6 months up to 9 months	1	2	3
Over 9 months up to 12 months	1	3	4
Over 12 months up to 15 months	0	4	4
Over 15 months up to 18 months	0	4	4
Over 18 months	0	4	4

The number of cases that actually proceed to each stage would depend on whether the policy results in charges brought earlier by police, and therefore shorter bail times, or brings no change in bail time and simply greater scrutiny in extending bail. The policy should lead to charges being brought earlier because the police would be incentivised to finish off the work needed in a particular case ahead of a bail hearing, rather than defer that work and have to prepare the case for hearing. Under the current system, there are no strong incentives to resolve cases before particular points in time, which the Government's proposals would address by introducing a series of milestone dates in the life of an investigation.

In the consultation document, we assumed a wide 0-50% range on cases which might be heard earlier due to a lack of information regarding the potential for this effect. During consultation 99 of 300 respondents, including 38 from a police background, stated that the benefits of introducing statutory limits for pre-charge bail durations are likely to be more focused police investigations, leading to speedier justice for the victim and accused. Due to this significant indication that it is unlikely zero pre-charge bail cases will be heard earlier, we have altered our assumption, and predict that in 20-50% of pre-charge cases charges will be heard earlier.

We therefore estimate that the intervention will result in somewhere between 20% 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 35% of bail cases will have charges brought earlier than under the 'do nothing' option. The 20% - 50% range is explored further in sensitivity analysis in Section F, with the cost implications of these upper and lower bound estimates also explored.

The estimated volume of pre-charge bail hearings after implementation of Option 1 and Option 2 is based on this central 35% estimate. These volumes are calculated by assuming that each bail extension stage will see a 35% reduction in cases as they are now heard in the preceding stage, but they will also receive 35% of the cases from the subsequent stage. We have then further factored in that, dependent on duration, some cases will require multiple hearings. The number of hearings that a case finalised in each stage has had in the current year is based on Table E2 and Table E3.

On this basis, the volumes of pre-charge bail hearings at each bail extension stage under Model 1 and Model 2 are presented below in Table E4 and E5 respectively.

Table E4. *Volume of pre-charge bail hearings under Model 1 (Central Estimate)*

Hearing stage	Volume of magistrates' court hearings
At 28 days	151,000
At 3 months	83,000
At 6 months	32,000
At 9 months	30,000
At 12 months	8,000
At 15 months	7,000
At 18 months +	4,000
Total	315,000

Table E5. *Volume of pre-charge bail hearings under Model 2 (Central Estimate)*

Hearing stage	Volume of superintendent reviews	Volume of magistrates' court hearings
As 28 days	151,000	-
At 3 months	41,000	42,000
At 6 months	11,000	21,000
At 9 months	7,000	22,000
At 12 months	-	8,000
At 15 months	-	7,000
At 18 months +	-	4,000
Total	210,000	104,000

Police and Court Costs

Based on the existing bail process, we estimate that it would require around 20 minutes of a senior police officer's time to extend pre-charge bail²¹. We estimate the hourly cost of a senior police officer to be around £59²². 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 hearing to the magistrates' courts. 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 hearing in the magistrates' courts would be approximately £70 (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.
- The costs above reflect staff and judicial costs only. We would expect actual costs to be significantly higher once overheads are taken into account.
- The above costs also assume that a sitting day in the magistrates' courts lasts approximately 5 hours on average.

On this basis, the cost per hearing at a magistrate's court is estimated to be £70.

²¹ This is based evidence of the time currently taken for a superintendent to carry out a detention review under section 42 of PACE, which is a comparable process.

²² 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 Superintendent.

We have been unable to obtain figures for non-staff and judicial court costs, such as running costs and maintenance costs, during the consultation period due to insufficient data. Because of this, the magistrates' court costs presented in this Impact Assessment might be underestimates.

Legal Aid Costs

There is also a cost for the provision of criminal legal aid at a pre-charge bail hearing, which is assumed to be £200 per hearing for a magistrates' court²³. These costs are borne by the Legal Aid Agency.

We have not been able to obtain any relevant data on which to base predictions regarding the volume of the identified pre-charge bail cases which might be eligible for legal aid. Eligibility for receipt of criminal legal aid is based on a number of factors. These include age, levels of pre-tax employment income, any partner's income, care of any dependent children and whether certain means of state support are received. As a result, factors such as a high income will eliminate a substantial number of individuals from eligibility, while factors such as being under eighteen will make a substantial number of individuals automatically eligible. It is thus unlikely that there will only be few individuals subject to a pre-charge bail hearing who require legal aid, and further unlikely that every individual subject to a pre-charge bail hearing will require it.

We therefore adopt a wide range of estimates, assuming that somewhere between 25% and 75% of bail cases across magistrates' court hearings will require legal aid services. Our central estimate is that 50% of pre-charge bail hearings will require legal aid. The 25 to 75% lower and upper range is explored in greater detail in the sensitivity analysis in Section F.

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

Costs

This option would imply that, under our best estimate of 35% of cases charged one stage earlier, around 315,000²⁴ cases for extension would be brought to the magistrates' courts for hearing per annum. This is based on the assumption that each current stage will have 35% fewer cases but will also receive 35% of the cases from the next time period which are now heard earlier, and that depending on its duration, each case will have had multiple hearings across the current year.

The cost is for all hearings brought to the magistrates' courts. The initial grant of bail would still occur in the absence of intervention, so incurs no additional cost. Based on the above cost estimates, our best estimate of the staff and judicial court costs to magistrates' courts of pre-charge bail cases is £22.0m per year²⁵. 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 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 have not been able to obtain sufficient data on these costs to allow further monetisation of these additional costs.

We are further assuming that 50% of hearings across magistrates' courts will require legal aid. Therefore, based on our central estimate of cases heard one stage earlier, it is expected that around 157,000 cases would be eligible for legal aid for pre-charge bail hearings at magistrates' courts per year. Based on the above cost estimates, our best estimate of legal aid costs to the Legal Aid Agency is £31.5m per year.

There are likely to be further non-monetised costs to the Police and to the Crown Prosecution Service (CPS). The CPS would need to make charging decisions at an earlier stage and the Police are likely to need to attend court for pre-charge bail hearings, with a cost to officer time.

The overall monetised cost of Option 1 is therefore expected to be **£53.5m** per year.

²³ Figures provided by the Ministry of Justice in February, 2015.

²⁴ Total of 'Volume of magistrates' court hearings' column in Table E4.

²⁵ This is based on the number of cases brought to courts and the estimated cost per case.

Benefits

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 should enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. This would occur through the independent review of pre-charge bail.

There should also be the benefit of speedier justice through a more focused police investigation in light of the new statutory limits. During consultation, two hundred and forty seven respondents (82%) provided feedback on what they believed the main benefits of introducing statutory limits for pre-charge bail durations would be. The most common response was a more focused police investigation leading to speedier justice for the victim and accused; 49.3% of respondents agreed or strongly agreed that the proposed changes to pre-charge bail would do this.

Other commonly-raised benefits were that it would be a fairer system protecting the individuals' human rights and civil liberties.

Net Effect

The net present value of Option 1 is expected to be **£460.3m** over ten years. This value does not include non-staff and non-judicial costs to magistrates' courts. 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.

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 beyond 3 months.

Costs

This option would imply that, under our best estimate of 35% of cases charged one stage earlier, around 210,000²⁶ cases for extension will be reviewed by Superintendents per annum and 104,000²⁷ will be brought to the magistrates' courts for hearing per annum.

The cost is from all cases reviewed by Superintendents and cases brought to the magistrates' courts. The initial grant of bail under 28 days would still occur in the absence of intervention so incurs no additional cost. Based on the above cost estimates, our best estimate of costs to the police is £4.2m²⁸ per year and to magistrates' courts is £7.2m²⁹ per year. 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.

We are further assuming that 50% of hearings across magistrates' courts will require legal aid services. Therefore around 52,000 cases will require legal aid at magistrates' court level. Based on the above cost estimates, our best estimate of legal aid costs to the Legal Aid Agency is £10.4m per year.

There are likely to be further non-monetised costs to the Police and to the CPS. The CPS would need to make charging decisions at an earlier stage and the Police are likely to need to attend court for pre-charge bail hearings. Both of these represent a potential time burden. The overall monetised cost of Option 2 is therefore expected to be **£21.8m** per year.

Benefits

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,

²⁶ Total of 'Volume of superintendent reviews' column in Table E5.

²⁷ Total of 'Volume of magistrates' court hearings' column in Table E5.

²⁸ This is based on the number of cases to be reviewed by Chief Superintendents and the estimated cost per case.

²⁹ This is based on the number of cases brought to courts and the estimated cost per case.

if charging decisions are made earlier, reduced bail times. This would occur through the independent review of pre-charge bail.

There could also be the benefit of speedier justice through a more focused police investigation in light of the new statutory limits. During consultation, two hundred and forty seven (82%) respondents provided feedback on what they believed the main benefits of introducing statutory limits for pre-charge bail durations would be. The most common response was a more focused police investigation leading to speedier justice for the victim and accused; 49.3% of respondents agreed or strongly agreed that the proposed changes to pre-charge bail would do this. Other commonly raised benefits were that it would be a fairer system protecting the individuals' human rights and civil liberties. 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. However, of the 135 respondents who expressed a preference, 57.8% preferred the pre-charge bail review model presented in Option 2. The main reason was a greater belief in the feasibility, due to lower court costs relative to Option 1 while still providing the necessary level of scrutiny.

Net Effect

The net present value of Option 2 is expected to be **£187.2m** over ten years. This value does not include non-staff and non-judicial costs to magistrates' courts. 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.

F. Risks and Sensitivities

There is an overall assumption that the introduction of statutory time limits will increase accountability and scrutiny of the bail system.

There is some uncertainty over the underlying assumptions behind the cost of pre-charge bail hearings under the imposition of statutory time limits. In order to demonstrate scale and direction of potential errors in these assumptions, this section features sensitivity analysis of potential changes from the central estimate. The assumptions are considered separately for their effect on average annual net cost and net present value over 10 years, holding all other variables constant at their best estimates. They are finally examined in conjunction to establish headline upper and lower bound estimates.

Sensitivity Analysis

The number of cases charged one stage earlier

In our central estimate, we assumed that 35% of cases might be charged one stage earlier due to the introduction of statutory time limits, as the police would be incentivised to finish off the work needed in a particular case ahead of a bail hearing, rather than defer that work and have to prepare the case for hearing. Under the current system, there are no incentives to resolve cases before particular points in time, which the Government's proposals would address by introducing a series of milestone dates in the life of an investigation.

Variance could occur because this was based on a wide ranged estimate of 20 to 50%. If there are fewer or more pre-charge bail cases charged earlier than we have assumed, then the monetised costs would increase or decrease respectively. Table F1 and F2 set out the high, low and best estimates of costs under Option 1 and 2 respectively.

Table F1. *Cost of cases heard earlier under Option 1*

	Upper Bound	Best Estimate	Lower bound
Percentage of cases charged one stage earlier	20%	35%	50%
Magistrates' Court Costs (excluding Legal Aid)	£25.0m	£22.0m	£19.1m
Overall CJS Costs³⁰ (excluding legal aid)	£27.0m	£23.9m	£20.8m

Table F2. *Cost of cases heard earlier under Option 2*

	Upper Bound	Best Estimate	Lower bound
Percentage of cases charged one stage earlier	20%	35%	50%
Superintendent Costs	£4.7m	£4.2m	£3.6m
Magistrates' Court Costs (excluding Legal Aid)	£8.1m	£7.2m	£6.4m
Overall CJS & Police Costs (excluding legal aid)³¹	£12.8m	£11.4m	£10.0m

The above tables demonstrate how a change in the assumed volume of pre-charge bail cases which will be charged one stage earlier can change the cost of both policy options significantly. Whilst we have not set out how the change in this assumption affects the legal aid costs here, the effect of that is incorporated into the cumulative sensitivity analysis below.

The proportion of cases receiving legal aid

In our central estimate, we have assumed that 50% of cases might be eligible for legal aid at pre-charge bail hearings. Variance could occur because this was based on a wide ranged estimate of 25% to 75%, determined through the significant numbers likely to have automatic eligibility and automatic ineligibility. This is due to qualification for legal aid being based on factors such as age, income and dependent children.

If there are fewer or more pre-charge bail cases eligible for than we have assumed or if the criteria for receiving legal aid differ when statutory pre-charge bail limits are established, then the monetised costs to the Legal Aid Agency would decrease or increase respectively. Table F3 and F4 sets out the high, low and best estimates of costs under Option 1 and 2 respectively.

³⁰ Totals may not equal sum of individual costs due to rounding.

³¹ Total values may not add to sum of individual values due to rounding

Table F3. *Legal aid cost estimates under Option 1*

	Upper Bound	Best Estimate	Lower bound
Percentage of cases receiving legal aid	75%	50%	25%
Magistrates' Court Legal Aid Costs	£47.2m	£31.5m	£15.7m

Table F4. *Legal aid cost estimates under Option 2*

	Upper Bound	Best Estimate	Lower bound
Percentage of cases receiving legal aid	75%	50%	25%
Magistrates' Court Legal Aid Costs	£15.5m	£10.4m	£5.2m

The above tables demonstrate how a change in the assumed proportion of pre-charge bail cases which receive legal aid could change the cost of both policy options significantly.

Overall upper and lower bound sensitivity estimates

Tables F5 and F6 summarise these estimates and show the cumulative effect of upper and lower bound estimates in the variables described above on average annual net cost of both Option 1 and 2.

In this table, **the lower bound estimate represents the lowest Net Present Value of the policy.** This is as opposed to the previous analysis, where estimates were considered in absolute terms.

Table F5. *Cumulative sensitivity analysis of Option 1*

	Best Estimate	Lower Bound	Upper Bound
Average annual net impact	-£53.5m	-£78.5m	-£32.7m
Net Present Value (Over 10 Years)	-£460.3m	-£675.6m	-£281.4m

Table F6. *Cumulative sensitivity analysis of Option 2*

	Best Estimate	Lower Bound	Upper Bound
Average annual net impact	-£21.8m	-£30.2m	-£19.1m
Net Present Value (Over 10 Years)	-£187.2m	-£260.0m	-£164.1m

Opportunities

There are two potential factors which may reduce the cost of this policy across both options.

An increase in the prevalence of 'release without bail'

Within the consultation document on statutory time limits for pre-charge bail, other thematic proposals were discussed. One of these was the potential to allow for release without bail, potentially followed by a charge by post or a re-arrest in light of new evidence, in order to limit the numbers on pre-charge bail. Eleven consultation responses – including the national policing leads – suggested the law should be changed so that the police's default position would be to release suspects under investigation without bail, only imposing bail where it was both necessary and proportionate.

Where further evidence comes to light in such cases, the police would be able to make a further arrest; where an investigation is concluded, a charge could be served by post. If the police did utilise this ability on a frequent basis, then the number of individuals on pre-charge bail could fall by significant amount.

Anecdotal evidence from the Police suggests that 10-20% of pre-charge bail cases could be eliminated, based on the proportions that might currently be on 'unconditional bail' – those who are most likely to in a position for release without bail due to no attached conditions. These cases are typically shorter in length, as any case which has the potential for 'release without bail' as a result of current 'unconditional bail' is less likely to be serious or complex. Such a reduction would reduce the costs of extension reviews by either police, of extension hearings by magistrates' courts and of the legal aid costs attached to this.

Based on this assumption, we present this scenario below in order to demonstrate the impact of a 10-20% reduction in pre-charge bail cases on the costs of Model 1 and 2. In recognition of the likelihood that this will only effect less serious cases, we have only applied the 10-20% reduction in the first two pre-charge bail periods, 'under 28 days' and '28 days to 3 months'. Only the latter will require extension under either model.

Under this scenario, we maintain our best estimate assumptions as outlined in '**General assumptions and data**' of **Section E**; that 35% of cases will be heard earlier, that some cases will require multiple hearings dependent on their duration, and that 50% of hearings will require legal aid.

The costs of each Option under this scenario are outlined in Table F7.

Table F7. *Costs of Option 1 and Option 2 under the scenario of 10 and 20% fewer initial cases.*

Reduction	10%		20%	
Options	Option 1	Option 2	Option 1	Option 2
Superintendent Review costs	-	£3.9m	-	£3.6m
Magistrates' court hearing costs	£21.1m	£7.2m	£20.2m	£7.2m
Magistrates' court legal aid	£30.1m	£9.5m	£28.8m	£10.4m
Total Annual	£51.2m	£21.5m	£49.0m	£21.2m
Total NPV	£441.1m	£185.0m	£421.9m	£182.8m

If implemented in the future, this could reduce the costs of the policy options presented in this Impact Assessment. Option 1 has a higher number of cases going to magistrates' court for the first stage of extension. This represents a greater cost; the saving brought about by a 10% and 20% reduction is therefore greater than in comparison to Option 2. Option 2 has a higher number of cases going to review by a superintendent, as this is the first stage of extension under that model. This is the least expensive stage, particularly as it attracts no legal aid as under a hearing, and therefore the saving from a 10% and 20% reduction is lower than under Option 1.

Written representations

The potential for pre-charge bail decisions to be made 'on the papers' (i.e. on the basis of written representations from the investigator and suspect) may reduce the number of oral hearings which take place. The cost of the policy could therefore be reduced.

This may occur in magistrates' courts, where pre-charge bail hearings will take place. Given no direct precedent, it has not been possible to obtain data on the number of cases will be dealt with in this way. In any case, there is still expected to be a cost in staff and judicial time of the paper-based decision process. This process is entirely dependent on the complexity of cases and whether magistrates deem it appropriate to make a decision in this way.

As a result of a lack of information regarding this potential change, its likelihood and the number of cases that would be affected, we have not attempted to quantify the effect in this sensitivity analysis. Instead, it is noted as an opportunity for significant reduction in costs across the proposed options where court hearings take place.

G. 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 than Option 2. However, the use of the courts to extend bail from an earlier stage presents a greater cost. While Option 1 is expected to have a net present value of -£460.3m over 10 years, Option 2 is expected to have a net present value of £187.2m. 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 decrease and the benefits to increase.

Taking into account the consultation responses and the data gathered during the consultation, it is apparent that the model where only the initial bail authorisation would be done by the police, with all extensions past 28 days done in court, would be unviable, given serious questions as to whether there would be sufficient capacity in the magistrates' courts to deal with the estimated number of bail hearings required per annum (the majority of which would be required at the 28-day stage).

Of the 135 consultation respondents who expressed a preference, 57.8% preferred the pre-charge bail review model presented in Option 2. The main reason was a greater belief in its feasibility, with many citing the lower court costs relative to Option 1, while still providing an appropriate level of scrutiny.

The consultation endorsed the model in which police may authorise bail up to three months, with a review by a Superintendent at 28-days (changed from Chief Superintendent in the consultation, as some forces are phasing out this rank). The Government considers that this is a more affordable option at the present time than Option 1, whilst recognising that it still carries a significant cost. The Government's preferred Option is therefore Option 2.

H. 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.

Summary of Responses

Respondents

The Home Office received 300 responses to the consultation on Pre-Charge Bail; 269 via the online portal, 29 by e-mail and two responses by post. Of these responses, the largest group (146) were from those describing their organisation or professional interest as “Police Force”. Members of the public made up a further 101 responses and the remainder were from a range of organisations, including government departments, academic bodies and universities, and representative bodies. Geographically, responses were received from across the country, the highest response levels were from the South East of England (27.3%), Greater London (15%) and the West Midlands (11.3%). The lowest proportions of responses were from Yorkshire and the Humber (1.3%), North East England (1.7%) and Wales (3.7%).

Free Text Responses

In addition to the standardised consultation responses, 19 letters were received during the consultation period, which did not respond to specific consultation questions, but did raise themes and issues on which we were consulting. The majority of these free text responses voiced general agreement for the proposals or highlighted concerns about the current handling of pre-charge bail (including details of specific cases, some of which are quoted as case studies). Other common responses included concerns about the impact on police bail/investigation timescales, of matters outside of police control (including forensic evidence, both scientific and digital), medical evidence and CPS timescales.

Consultation – Results

Release Without Bail

65.7% of respondents agreed or strongly agreed with the proposal to amend PACE to enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary.

Bail Periods and Conditions

247 respondents provided feedback on what they believed the main benefits of introducing statutory limits for pre-charge bail durations would be. The most common response was a more focussed police investigation, leading to speedier justice for the victim and accused. Other commonly raised benefits were that it would be a fairer system, protecting the individuals’ human rights and civil liberties, that there would be a reduction in the negative effects, including emotional or mental trauma and financial implications for individuals on bail and their families. A significant number of respondents (20.7%) also said that they perceived no benefits from introducing a statutory limit for pre-charge bail.

50.7% of respondents did not think there should be an absolute maximum of pre-charge bail, while 44% of respondents thought there should be. Of those who thought there should be an absolute maximum period, the largest group (21.7% of all respondents) thought this period should be 28 days.

47% of respondents did not think that there should be different periods for different types of case. However, 25% of respondents thought there should be different bail periods for all cases where there are exceptional reasons, 4.7% thought there should be different periods for cases involving international enquiries, 17% thought fraud cases should have different bail periods, 11.7% for tax evasion cases, 9% for cases involving multiple suspects and 8% of respondents thought that historic cases should have different bail periods. 26% of respondents made

alternative suggestions for types of cases where there should be different bail periods. The most common response was that the period set for bail should be down to the specifics of an individual case, and set on a case-by-case basis. However, other common themes included those who suggested that cases requiring forensic evidence (including digital forensics) and sexual offences should have different (i.e. longer) bail periods.

69.3% of respondents agreed or strongly agreed 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, with only 21% disagreeing or strongly disagreeing.

Of those who thought that there should be statutory guidance to custody officers and magistrates as to the appropriateness of particular bail conditions, 40.9% thought that this guidance should be issued jointly by the Judicial College and the College of Policing.

Evidence

60.3% of respondents agreed or strongly agreed 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.

65.7% of respondents agreed or strongly agreed that the police should seek to agree memoranda of understanding for the provision of evidence from other public bodies, with only 14% agreeing or strongly agreeing that the police should seek production orders.

72% of respondents agreed or strongly agreed with the proposal that there should be a mechanism to withhold sensitive details of an investigation from the suspect and their legal representative in cases where its disclosure could harm the investigation, such as where disclosure might enable the suspect to dispose of or tamper with evidence. One hundred and seventy nine respondents suggested procedural safeguards; the most common suggestion was receiving magistrate or court approval for withholding information from a suspect, requiring senior police approval for withholding information, and recording in line with RIPA principles for disclosure post-charge. 20% of respondents disagreed with withholding information from suspects under any circumstances.

Extending Pre-Charge Bail

78% of respondents agreed or strongly agreed that it should be possible to extend bail periods. Of those who responded, 41.9% thought that a senior police officer was the appropriate level of authorisation for extending pre-charge bail. Of the 24.3% of respondents who suggested alternative models of authorisation for bail extensions, the most common suggestion was an escalation of seniority through the options provided at Question 8. Other common suggestions included Inspector and Sergeant level police officers.

A number of respondents to the consultation raised concerns about the level of authorisation suggested for Model 2; including the National Policing Leads. They argued that the review be done by a lower rank, for example Superintendent rather than a Chief Superintendent, as the latter rank is being phased out in a number of forces as part of workforce reforms.

A small majority (34.7%) agreed or strongly agreed that the criteria set out in the consultation document for the authorising of a bail extension were the right ones (30.7% disagreed or strongly disagreed). 27.3% of respondents suggested other criteria that should be added or substituted. The most commonly raised suggestion was that matters outside of police control should be taken into account, for example CPS timescales, forensic examinations (including digital) and international enquiries. Other common suggestions included consideration of the

needs of victims of crime, including safeguarding requirements, and where there are special interview requirements. A number of respondents also raised the need for further consideration to safeguard complex investigations, and introducing a proportionality and necessity test to releasing people on pre-charge bail.

61% of respondents believed that the extension of pre-charge bail should be available in all cases where there are exceptional reasons. 9.6% of respondents believed that the extension of pre-charge bail should be available only in cases involving international enquiries, 15.3% thought the extension of pre-charge bail should be available in fraud cases, 13% in tax evasion, 7% in cases involving multiple suspects and 5.7% of respondents believed that the extension of pre-charge bail should be available in historic cases. 25% of respondents made alternative suggestions of cases where the extension of pre-charge bail should be available. Of the suggestions made, the most common response was that extensions should be available for all cases and extensions should be made on a case-by-case basis, where necessary and justifiable. Where respondents made specific case type suggestions, the most common response was for sexual offences, including paedophilia and child abuse.

52.7% of respondents agreed or strongly agreed that there were certain types or characteristics of cases where the 28 day/3 month limit (depending on the model adopted) should not apply. However, only 38% of respondents thought that there should be a different review process for these cases, of whom 41.2% (15.6% of all respondents) thought the review process should start later, 14.9% (6% of all respondents) thought the reviews should be less frequent and 43.9% (16.7% of all respondents) thought both of these changes should apply.

40.3% disagreed or strongly disagreed that the Crown Court should take responsibility for certain types of case at an earlier point, while 38.7% agreed or strongly agreed. 169 people responded to the question "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?" The most common theme was that cases which were indictable-only offences, or those either-way cases that would ordinarily be heard in the Crown Court, should be heard by the Crown Court at an earlier stage. Other suggestions included serious offences, fraud and tax evasion, historical abuse and child abuse.

Implications/Outcomes

49.3% of respondents agreed or strongly agreed that the proposed changes to pre-charge bail would be likely to influence the speed with which investigations are dealt with, 29.7% disagreed or strongly disagreed.

Of the 40% of respondents who answered Question 22 (For your organisation, what would be the resource implications of each model set out above?), the most commonly raised issues were around the need for increased resources including greater staff numbers. A number of respondents raised the increase in time and cost that would result from the proposals, and also raised concern around safeguarding, and that the proposals would reduce the ability to investigate crime, lead to more cases being for "no further action" resulting in a potential lack of justice for victims. Other themes included an increased court workload, and increase in officer time spent at court.

Models

Of the 45% of respondents who expressed a preference, 57.8% (26% of all respondents) preferred Model 2. The main reasons given by those who preferred Model 2 were the reduced court expense and time, greater cost efficiency while providing the necessary scrutiny, and a view that, of the two models, Model 2 was the most workable.

List of Organisations Responding

Association of Policing and Crime Chief Executives (APACE)
Birmingham Law Society
Cellmark Forensic Services
Centre for Crime and Justice Studies
Chartered Institute of Legal Executives
City College Norwich – Sixth Form Centre
City of London Police
College of Policing
Crown Prosecution Service
Dyfed-Powys Police Force
FACT (Falsely Accused Carers and Teachers)
False Allegations Support Agency
Financial Conduct Authority
Greenwich Inclusion Project
HM Council of District Judges (Magistrates' Courts)
Justice Delayed, Justice Denied
Legal Committee of HM District Judges (Magistrates' Courts)
Liberty
London Criminal Courts Solicitors' Association
Lord Chief Justice (on behalf of the Judiciary)
Metropolitan Police Service
National Crime Agency
News Media Association
NHS Protect
Police Federation of England and Wales
Serious Fraud Office
Society of Editors
The Howard League for Penal Reform
The Law Society
The Magistrates' Association
The National Casino Security Association
The Police Foundation
University of Leeds (Centre for Criminal Justice Studies, School of Law)
West Mercia Police and Crime Commissioner
Wiltshire Police Federation
Youth Justice Board
A Youth Offending Team in North-West England



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