

Title: Pre-charge Bail – a consultation on changes to the criteria and statutory time limits and related changes IA No: HO0364 RPC Reference No: Lead department or agency: The Home Office Other departments or agencies: Ministry of Justice, HM Courts and Tribunals Service, Crown Prosecution Service	Impact Assessment (IA)			
	Date: 17/02/2020			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Kawan Patel, 020 7035 0482,				

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option (in 2020 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
-£75.9m	N/A	N/A	

What is the problem under consideration? Why is government intervention necessary?
 The Policing and Crime Act 2017 was reformed in April 2017 to address concerns that pre-charge bail (PCB) suspects were spending too long under restrictive conditions and to allow for low-risk suspects to be released under investigation (RUI). The use of PCB has fallen, with a corresponding increase in those RUI. The Government wants to ensure PCB and RUI are used appropriately, safeguarding victims and witnesses. Government intervention is required to lay primary legislation to rectify this situation.

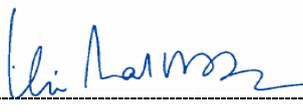
What are the policy objectives and the intended effects?
 The Government launched a review of the PCB legislative framework in November 2019 to address the concerns over RUI. The objective is to ensure a system that: prioritises the safety of victims and witnesses, supports the effective management and timely progression of investigations, respects the rights of suspects, witnesses and victims to timely decisions and updates and ensures PCB supports the timely progression of cases to courts. The intention is that this new regime will increase the use of PCB and help police reduce the average time individuals are spending under investigation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: The ‘do-nothing’ option is to maintain the current position with no changes to the current time limits and conditions of PCB.
Option 1: The Government is proposing to increase the use of PCB. This option considers the percentage of arrests that result in PCB under the baseline option and increases these to levels previously seen before the reforms.
 The Government does not have a preferred option at this stage; we will take into account the responses to this consultation in deciding which option to take forward.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** October 2021

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	No			
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large 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: 30 January 2020

Summary: Analysis & Evidence

Policy Option 1

Description: PCB – a consultation on changes to the criteria and statutory time limits and related changes

FULL ECONOMIC ASSESSMENT

Price Base Year 2020	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
		10	Low: -£32.1	High: -£110.8	Best Estimate: -£75.9

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	1	4.4	37.4
High	0.0		15.0	128.3
Best Estimate	0.0		10.3	88.1

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

The main costs are the staff and judicial costs to the courts. This includes PCB extension paper hearings, oral hearings and police superintendent extension of PCB beyond three months. There are also familiarisation costs associated with officers, solicitors and HMCTS staff reading and becoming familiar with the changes.

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

Any increase in running and capital costs is non-monetised at this time. This option may also produce non-monetised costs for the Crown Prosecution Service (CPS) due to a need to make charging decisions at an earlier stage. There may be transition costs if the policy has no phase-in period, leading to a short-term increase in demands on the criminal justice system (CJS)

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	1	0.6	5.3
High	0.0		2.1	17.6
Best Estimate	0.0		1.4	12.2

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

Total RUI reduction benefit: as the use of PCB increases, the volume of RUI is expected to fall. This will result in a cost saving to HMCTS of court time and to the police as time spent issuing these warrants decreases. The benefit is the total cost savings that occur as RUI volume falls.

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

The main affected groups are suspects, victims and witnesses. Shorter investigations (increased likelihood of prosecution and stronger sentences) and fewer investigations into summary only offences collapsing. If not prosecuted within six months, reduced delays and costs to courts plus increased safeguarding for victims and witnesses (more bail, more bail with conditions).

Main assumptions/sensitivities/risks	Discount rate (%)	3.5
<ol style="list-style-type: none"> 1. The percentage of arrests that result in PCB for all arrests and by crime type. 2. The arrest rate over the appraisal period for all arrests and by crime type. 3. The percentage of voluntary attendances that become arrests. 4. The percentage of arrests that result in RUI. 		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:				Score for Business Impact Target (qualifying provisions only) £m:	
Costs:	N/A	Benefits:	N/A	Net:	N/A
					N/A

Evidence Base (for summary sheets)

A. Strategic Overview

Background

An individual who has been arrested by the police but who has not yet been charged can be released on pre-charge bail or released without bail while the investigation continues. Pre-charge bail means the individual under investigation is released from police custody, with or without conditions, while officers continue their investigation.

Individuals on pre-charge bail are required to return to the police station at a specified date and time, known as 'answering bail', to either be informed of a final decision on their case or to be given an update on the progress of the investigation.

Conditions may be imposed upon the individual if they are deemed necessary to: prevent someone from failing to surrender to custody, prevent further offending, prevent someone from interfering with witnesses, or otherwise obstructing the course of justice. Conditions may also be imposed for the individuals' own protection or, if aged under 18 years, for their own welfare and interests.

The Government legislated through the Policing and Crime Act 2017 to address concerns that individuals were being kept on pre-charge bail for long periods, sometimes with strict conditions. The reforms introduced:

- A presumption against pre-charge bail unless necessary and proportionate.
- Clear statutory timescales and processes for the initial imposition and extension of bail, including the introduction of judicial oversight for the extension of pre-charge bail beyond 3 months.

Since the reforms came into force, we have been working closely with partners across the criminal justice system to track implementation and monitor impacts. The use of pre-charge bail has fallen significantly, mirrored by an increasing number of individuals released without bail, commonly known as 'released under investigation' or RUI. This change has raised concerns that bail is not always being used where appropriate, including to prevent individuals from committing an offence whilst on bail or interfering with witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and adverse impacts on the courts.

Groups affected

Victims and witnesses of crimes and suspects under investigation.

Public Consultation

The consultation sets out issues raised by wide range of stakeholders across policing and law enforcement, relevant government agencies and external organisations, alongside a corresponding set of initial proposals on which views are sought.

B. Rationale for intervention.

The Policing and Crime Act 2017 introduced reforms to pre-charge bail to address legitimate concerns that suspects were spending too long under restrictive conditions with no oversight or redress and to allow for low-risk suspects to be released under investigation (RUI). Since reforms came into force in April 2017, the use of PCB has dropped significantly, with a corresponding increase in those RUI. The use of pre-charge bail has fallen significantly, mirrored by an increasing number of individuals released without bail, commonly known as 'released under investigation' or RUI. This change has raised concerns that bail is not always being used where appropriate, including to prevent individuals from committing an offence whilst on bail or interfering with witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and adverse impacts on the courts.

Since reforms came into force in April 2017, the use of PCB has fallen significantly, mirrored by an increasing number of individuals released without bail, commonly known as 'released under investigation' or RUI. This change has raised concerns that bail is not always being used where appropriate, including to prevent individuals from committing an offence whilst on bail or interfering with witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and adverse impacts on the courts.

C. Policy objective

On 5 November the Government announced a review of the PCB legislative framework to address the concerns as stated above.

The objective of the review is to make sure we have a system that:

- **prioritises** the safety of victims and witnesses,
- **supports** the effective management and timely progression of investigations,
- **respects** the rights of suspects, victims and witnesses to timely decisions and updates and
- **ensures** PCB supports the timely progression of cases to courts.

The intention is that this new regime will increase the use pre-charge bail and help police reduce the average time individuals are spending under investigation.

D. Description of options considered.

Option: 0: The 'do-nothing' option is to maintain the current position with no changes to the current conditions of pre-charge bail

Option 1: The Government is proposing to increase the use of PCB. This option considers the percentage of arrests that result in PCB under the baseline option and increases these to levels previously seen before the reforms.

For the purpose of this IA, the analysis centres around a main outcome about an increase in the use of PCB compared to a baseline option continuing the current usages. It has not been possible to cost options 2, 3 and 4, below, which are considered in this consultation. The analysis shows that the increased use of PCB is expected to result in a level of annual costs that will increase as the usage increases.

Option 2:

- Criteria: Removing negative presumption against pre-charge bail and replacing with a neutral presumption applied based on risk factors.
- Timescales and authorisation/ investigatory review points: Pre-charge bail could be authorised for: 0 – 2 months by a Custody Sergeant, 2 – 4 months by an Inspector, 4 – 6 months by a Superintendent and 6 months+ by a Magistrate (for three-month intervals in perpetuity).
- Applying investigatory review points to all other non-bail investigations (RUI and Voluntary Attendance 'VA').

Option 3:

- Criteria: Removing negative presumption against PCB and replacing with a neutral presumption applied based on risk factors.
- Timescales and authorisation/ investigatory review points PCB could be authorised for: 0 – 3 months by a Custody Sergeant, 3 – 6 months by an Inspector, 6 – 9 months by a Superintendent and 9 months+ by a Magistrate (for three-month intervals in perpetuity).
- Applying investigatory review points to all other non-bail investigations (RUI and VA).

Option 4:

- Criteria: Removing negative presumption against PCB and replacing with a neutral presumption applied based on risk factors.
- Timescales and authorisation/ investigatory review points PCB could be authorised for: 0 – 3 months by a Custody Sergeant, 3 – 6 months by an Inspector, 6 – 9 months by a Superintendent, 9 – 12 months by a Superintendent and 12 months+ by a Magistrate (for three-month intervals in perpetuity).
- Applying investigatory review points to all other non-bail investigations (RUI and VA).

Options 2, 3 and 4 all propose:

- restoring the initial bail authorisation to custody sergeants, given both their independence from investigations and their experience in making risk-based decisions,
- maintaining an initial bail period, but increasing its length,
- maintaining judicial oversight but changing the point at which judicial oversight of authorisations is introduced,
- introducing additional points at which the investigation (including the application of PCB) will be reviewed,
- applying these review points to all investigations (such as those RUI, or who voluntarily attend a police interview) and
- removing the negative presumption against PCB.

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

E. Appraisal.

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

This policy has no impact on business and does not count towards the Business Impact Target (BIT).

All costs are expected to be borne by the public sector through increased demands on the police, courts and Crown Prosecution Service (CPS). There will also be impacts on other investigation and prosecution agencies such as HM Revenue and Customs (HMRC) and the Serious Fraud Office (SFO).

General assumptions and data

1. Under each option, the costs that are monetised at this stage are expected to result from those bail cases that exceed the statutory limits and must be extended after intervention by a Chief Superintendent or the courts. The scale of this cost depends on the number of people whose bail would be expected to exceed the statutory limits. It is assumed for the purposes of this IA that the number of people currently on bail and the durations of their bail periods are good indicators of these same figures over the full appraisal period. The benefits of a reduction in RUI cases that is likely to happen as PCB increases, is also estimated.

Figure 1 – The percentage of arrests that result in PCB, by select crime types,

User Adjustments	
Percentage of other arrests resulting in PCB	17%
Percentage of DA arrests resulting in PCB	23%
Percentage of SO arrests resulting in PCB	23%
Percentage of VO arrests resulting in PCB	23%

2. To estimate the number of arrests, linear trends were used for total arrests and all other crime types.
3. The quantity of arrests that result in PCB had limited data. Therefore, using HMICFRS and legal society data several assumptions were made around what these rates may be. To account for the uncertainty, a range of low to high of figures has been provided.
4. The number of cases that proceed to each stage would depend on whether the policy results in charges brought earlier, and therefore shorter bail times, or brings no change in bail time and simply greater scrutiny in extending bail. Currently there is no data on which to base predictions regarding this effect. Therefore a wide range has been adopted for the estimates.
5. The Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS) have provided estimates for the cost of each case to the magistrates' courts and Crown Court. For those cases where the police apply to extend a suspect's PCB beyond 28 days, it is estimated that the average cost per case in the magistrates' courts would be approximately £110 (rounded to the nearest £10). For those cases where the police apply to the Crown Court to extend a suspect's PCB beyond 12 months, it is estimated that the average cost per case in the Crown Court would be approximately

£460 (rounded to the nearest £10). These estimates are based on the following assumptions:

- Each bail hearing in the magistrates' courts is estimated to be 20 minutes on average.
 - Each bail hearing in the Crown Court is estimated to be 60 minutes on average. This is based on the assumption that cases heard in the Crown Court are likely to be more complex and are therefore likely to take longer in comparison to those cases heard in the magistrates' courts.
 - On the premise that some cases may require more than one hearing, a further assumption that there will be an average of 1.5 hearings per case (single defendant) for both the magistrates' courts and Crown Court has been introduced.
 - The costs above reflect staff and judicial costs only. It is expected that actual costs may be significantly higher once overheads are taken into account.
 - The cost of a sitting day in both the magistrates' courts and Crown Court is taken from the 2013/14 annual HMCTS Report.
 - The above costs also assume that a sitting day in both the magistrates' courts and Crown Court lasts approximately five hours on average.
6. It has not been possible, at this stage to obtain figures for non-staff and judicial court costs, such as running costs and maintenance costs. Further work with the MoJ and HMCTS will be conducted to estimate these costs during the consultation.
7. The appraisal period is over 10 years in line with HM treasury Green Book (2018) guidance. The discount rate used is 3.5 per cent.

COSTS

Familiarisation costs

There will be familiarisation costs to the police, HMCTS staff and for solicitors.

The central estimate of police time in doing this has been estimated as £0.19 million, the cost to HMCTS staff as £0.01 million and cost to solicitors as £0.05 million. This results in a total of £0.24 million.

Courts

The main costs are the staff and judicial costs to the courts. This includes PCB extension paper and oral hearings, and police superintendent extension of PCB beyond three months. These were then applied to the volumes found using arrest data, PCB assumptions and IA volumes. These estimates were adjusted to account for the increase in PCB.

The initial grant of bail would still occur in the absence of intervention, so incurs no additional cost. The annual cost and benefit estimates in Figure 2 represents the value of the central estimate. These represent economic costs above the baseline of £87.9 million (PV) across the 10-year period.

It has only been possible to monetise the staff and judicial cost of this option for the courts. Any increase in running costs and capital costs that are expected to incur, has not been monetised at this stage. There may be additional costs resulting from any changes to charging decisions and any resulting spike in demand on the CJS (though this would depend on how the policy is to be phased in). Further work will be done to establish the scale of these costs during the consultation.

BENEFITS

The courts and the police

As the use of PCB increases, the volumes of RUIs are expected to fall. This will result in a cost saving to HMCTS of court time and a cost saving to the police as time spent issuing these warrants decreases. The benefit is the total of these cost savings that occur as the amount of RUI's falls. This represents economic benefits of £12.2 million (PV) across the 10-year period.

There are also expected non-monetised benefits from having a more efficient investigation length and more contact points with the police to be updated on the investigation process.

Benefits to the police include a greater public confidence, better structure to their investigation and more confidence in their ability to protect victims. Police will be able to monitor those on bail more closely with fewer investigations and suspects disappearing.

Range of estimates

The impact of all options is highly sensitive to assumptions about the quantity of arrests that result in PCB. Sensitivity analysis has been carried out using a low and

high set of assumptions around the central (see Figure 3) to provide a range of where the costs and benefits are likely to fall.

Figure 3, The range of arrest quantity resulting in PCB used

User Adjustments	Low	High
Percentage of other arrests resulting in PCB	4%	25%
Percentage of DA arrests resulting in PCB	7%	30%
Percentage of SO arrests resulting in PCB	7%	30%
Percentage of VO arrests resulting in PCB	7%	30%

These produce a range of costs from £37.4 to £128.3 million (PV) over 10 years and a range of benefits from £5.3 to £17.6 million (PV) over the same period. Over a 10-year appraisal period this produces a range around the NPV of -£32.1 to -£110.8 million, with a central estimate of -£75.9 million. This is a large range of estimates and represents the uncertainty around the main assumption.

Summary and recommendations

The cost and benefit analysis produces a best estimate NPV of -£75.9 million over a 10-year period for the proposal. The appraised option also has several key non-monetised benefits to suspects, victims and witnesses.

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

F. Proportionality.

The analysis has identified the main costs and benefits that are likely to result from the policy options. These have been quantified where data is available and a qualitative assessment has been applied where there is a lack of quantitative data. Given the data available and the scope of the proposals, at this stage (consultation) the effort and resource applied to the analysis is proportionate.

G. Risks.

The main risk to the analysis centres around the main assumptions being inaccurate. Different sources of data and peer-review exercises have been carried out to ensure these are as accurate as possible.

The estimated costs are sensitive to assumptions around the quantity of future arrests and the quantity of those that result in PCB. A linear trend has been used, extrapolating the average increase over the last five years of arrest data forward. If this number was to be higher the costs would be greater than estimated. Evidence supporting the quantity of arrests that result in PCB is limited. Therefore, two different sources have been used to make assumptions around what the future levels might look like. If the quantity of arrests that result in PCB is higher than estimated, the costs would be greater. To account for the sensitivity around these two assumptions, the estimates have been presented within a large range.

There are expected non-monetised benefits to the police that include a greater public confidence, better structure to their investigations and more confidence in their ability

to protect victims. Victims and witnesses are expected to have greater feelings of safety and be more likely to support an investigation leading to fewer cases collapsing. Due to a lack of evidence, these benefits are not monetised resulting in a large negative NPV. These will be developed following consultation outcomes.

Sensitivity and break-even analysis will be carried out following consultation, when central assumptions have been strengthened and main benefits monetised.

H. Total costs and benefits NPV, BNPV and EANDCB

The total cost is £88.1 million (PV) and the total benefit is estimated to be £12.2 million (PV) over 10 years. The NPV (benefits minus the costs) is estimated to be - £75.9 million.

There are no direct or indirect costs to business therefore the Business Net Present Value (BNPV) equals zero as does the Equivalent Annual Net Direct Cost to Business (EANDCB).

I. Wider impacts

The main affected groups are suspects, victims and witnesses.

Victims and witnesses are expected to have greater feelings of safety and be more likely to support an investigation leading to fewer cases collapsing. Victims/witnesses will also be better informed of the investigation process which will improve police-victim/witness relations. Overall it will lead to more transparency over investigations for both suspects, victims and witnesses.

It is likely to result in shorter investigations with an increased likelihood of prosecution and stronger sentences.

Shorter, more efficient investigations will likely have less disruption on the suspect's life (for example, mental health, family life, employment status). One of the reasons that PCB was first reformed was due to the impact on suspects being bailed for long periods with onerous conditions only to not be subsequently charged. Police will be able to monitor those on bail more closely with fewer investigations and suspects getting disappearing.

J. Trade Impact.

This policy has no impact upon trade

K. Implementation date, monitoring and evaluation (PIR if necessary), enforcement principles.

We intend to implement final proposals by legislating through the upcoming Police Protection and Powers Bill later in the current session. A commencement date will be decided in due course and will take into account the time required for police forces and others to prepare for any changes. We will continue to collect data from police forces on the use of pre-charge bail through the Annual Data Requirement and we will consider how changes may be monitored going forward.

L. Annexes

<p>Justice Impact Test The justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. [Justice Impact Test Guidance]</p> <p>A Policy Equality Statement will be provided prior to introduction of the new policy.</p>	Yes
<p>Statutory Equalities Duties The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [Equality Duty Toolkit]</p> <p>A Policy Equality Statement will be provided prior to introduction of the new policy.</p>	Yes