

<b>Title:</b> Policing and Crime Bill – Reform of the Pre-Charge Bail System <b>IA No:</b> HO0230 <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> Ministry of Justice, HM Courts and Tribunals Service, Legal Aid Agency, Crown Prosecution Service, Serious Fraud Office	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 26/05/2016		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b>		
	<b>Type of measure:</b> Primary legislation		
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> 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 Business Measure qualifies as Impact Target?
-£152.7m	£0m	£0m	No   N/A

**What is the problem under consideration? Why is government intervention necessary?**  
A number of high-profile cases 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:** Implement the following changes to the pre-charge bail system:  
Set 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 each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations).  
**Option 2:** Implement the following changes to the pre-charge bail system:  
Set 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 each authorisation lasting for a maximum of 3 months 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 at an appropriate point after coming into force.

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

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

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# 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 2015	PV Base Year 2015	Time Period Years 10 (17/18 start)	Net Benefit (Present Value (PV)) (£m)		
			Low: -426.7	High: -274.8	Best Estimate: -347.1

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K	34.2	274.8
High	N/K	53.1	426.7
Best Estimate	N/K	43.2	347.1

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

This option is expected to result in 281,000 pre-charge bail extension hearings brought to magistrates' courts. This results in an estimated monetised cost of £17.2m 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 £26.0m 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 non-monetised cost. This option may also produce non-monetised costs for the Crown Prosecution Service due to a need to make charging decisions at an earlier stage. There may also be transition costs if the policy has no phase-in period, leading to a short-term increase in demands on the criminal justice system.

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

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

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

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

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail, who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times 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 75%-100% of cases will require legal aid, with a best estimate of 87.5%. We have assumed an increase in "release without bail" of 10%. The range of our assumptions is explored in sensitivity analysis in Section F.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of BIT?	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 2015	PV Base Year 2015	Time Period Years 10 (17/18 start)	Net Benefit (Present Value (PV)) (£m)		
			Low: -182.4	High: -124.5	Best Estimate: -152.7

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K	15.5	124.5
High	N/K	22.7	182.4
Best Estimate	N/K	19.0	152.7

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

This option is expected to result in 190,000 cases reviewed by Superintendents and 91,000 cases brought to magistrates' courts for extension, resulting in a monetised cost of £3.8m annually to the police and £5.8m annually to HMCTS. 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 £9.4m 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 could present a non-monetised cost. This option may also produce non-monetised costs for the Crown Prosecution Service due to a need to make charging decisions at an earlier stage. There may also be transition costs if the policy has no phase-in period, leading to a short-term increase in demands on the criminal justice system.

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

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

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

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

The primary benefits of this option would be increased accountability and scrutiny of the pre-charge bail process, resulting in potential benefits for suspects released on bail, who may enjoy greater certainty and, if charging decisions are made earlier, reduced bail times. 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 75%-100% of cases will require legal aid, with a best estimate of 87.5%. We have assumed an increase in "release without bail" of 10%. The range of our assumptions is explored in sensitivity analysis in Section F.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of BIT?	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 high-profile cases in recent years 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 published revised Authorised Professional Practice (APP) on Bail Management in July 2015. This will help bring greater consistency and sharing of best practice on the way pre-charge bail is used in criminal investigations. However, 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 published in July 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). For cases prior to 12 months this authorisation will be based on an “on the papers” consideration where a judgement will be made based only on written information<sup>1</sup>. For extensions beyond 12 months, authorisation will be based on an oral hearing. The police’s default position will now be to release suspects under investigation without bail, only imposing bail where it is both necessary and proportionate.

**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

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<sup>1</sup> This will involve a written representation from the investigator and the suspect.

for extensions from 3 months (with each authorisation lasting for a maximum of 3 months to give clear external scrutiny of investigations). For cases prior to 12 months this authorisation will be based on an “on the papers” consideration where a judgement will be made based only on written information<sup>2</sup>. For extensions beyond 12 months, authorisation will be based on an oral hearing. 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. The police’s default position will now be to release suspects under investigation without bail, only imposing bail where it is both necessary and proportionate.

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<sup>3</sup>;
- 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.<sup>4</sup>

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

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

Liberty, a civil liberties and human rights campaigning organisation, proposed<sup>5</sup> that “...a six-month statutory limit on pre-charge bail is the only effective way of ensuring diligent and efficient police investigations and justice for victims and suspects.” Liberty contends that “...six months would be more than adequate for police to gather and analyse evidence post arrest.”<sup>6</sup>

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.

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<sup>2</sup> This will involve a written representation from the investigator and the suspect.

<sup>3</sup> This will only be a consideration for senior police officers; it would be inappropriate to ask a magistrate to take a view on this before trial.

<sup>4</sup> As set out section 3(6)(a)-(ca) of the Bail Act 1976

<sup>5</sup> Liberty’s Response to the College of Policing Consultation on Pre-Charge Bail, June 2014, paragraph 3

<sup>6</sup> *Ibid.*, paragraph 23

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 17<sup>th</sup> December 2014 and 8<sup>th</sup> February 2015<sup>7</sup> and a consultation stage impact assessment was produced. 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. 51% 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, 42% thought that a senior police officer was the appropriate level of authorisation for extending pre-charge bail in the first instance. 49% 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, 30% 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.

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, 58% 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

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<sup>7</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418226/150323\\_Pre-Charge\\_Bail\\_-\\_Responses\\_\\_\\_Proposals.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418226/150323_Pre-Charge_Bail_-_Responses___Proposals.pdf)

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 where necessary. 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.

To note, the numbers in this Impact Assessment are subject to change. We will get further data and information before the reforms are introduced which we will use to refine the costs and impacts,

### 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 Superintendent<sup>8</sup> 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 forces<sup>9</sup> 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 nationally<sup>10</sup> as to represent the number of pre-charge bail cases finalised, across a range of bail durations, nationally per annum.

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<sup>8</sup> 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.

<sup>9</sup> The 12 forces are Cheshire, Dorset, Essex, Gloucestershire, Gwent, Lancashire, Metropolitan Police, Northamptonshire, North Yorkshire, Warwickshire, West Mercia and West Midlands.

<sup>10</sup> 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 38% of all arrests made.

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 <sup>11</sup>
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 <sup>12</sup>
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

<sup>11</sup> This figure was not provided by the sample, but has been inferred from the subsequent numbers in each period subtracted from the starting volume.

<sup>12</sup> 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.*

<b>Duration of case</b>	<b>Number of reviews by Police per case annually</b>	<b>Number of hearings by magistrates' courts annually</b>	<b>Total number of extensions</b>
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 central 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 have required 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 E4a and E5a respectively.

Table E4a. *Unadjusted volume of pre-charge bail hearings under Model 1*<sup>13</sup>

Duration of case	Volume of magistrates' court hearings
Over 28 days up to 3 months	151,600*
Over 3 months up to 6 months	83,100*
Over 6 months up to 9 months	31,950*
Over 9 months up to 12 months	28,800*
Over 12 months up to 15 months	8,000
Over 15 months up to 18 months	6,600
Over 18 months	2,600
<b>Total</b>	<b>312,650</b>
*These hearings will be paper-based only.	

Table E5a. *Unadjusted volume of pre-charge bail hearings under Model 2*

Duration of case	Volume of superintendent reviews	Volume of magistrates' court hearings
Over 28 days up to 3 months	151,600	-
Over 3 months up to 6 months	41,550	41,550
Over 6 months up to 9 months	10,650	21,300
Over 9 months up to 12 months	7,200	21,600
Over 12 months up to 15 months	-	8,000
Over 15 months up to 18 months	-	6,600
Over 18 months	-	2,600
<b>Total</b>	<b>211,000</b>	<b>101,650</b>
*These hearings will be paper-based only.		

### Increase in "Release Without Bail"

There is a further factor which will affect the volume of pre-charge bail hearings. The police's default position will now be to release suspects under investigation without bail, only imposing bail where it is 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 a significant amount.

Early indications from a pilot study coordinated by the College of Policing into pre-charge bail suggest that 10% of pre-charge bail cases could be eliminated. This is based on the proportions that are currently on 'unconditional bail' – those who are most likely to be in a position for release without bail due to no attached conditions. Such a reduction would reduce the costs of extension reviews by the police and extension hearings by magistrates' courts and the associated legal aid costs.

<sup>13</sup> The term "unadjusted" is used as the figures do not take into account the impact of increased "release without bail" – see next section.

Based on this assumption, we present this scenario below in order to demonstrate the impact of a 10% reduction in pre-charge bail cases on the costs of Model 1 and 2. Under this scenario, we maintain our best estimate assumptions that 35% of cases will be heard earlier, and that some cases will require multiple hearings dependent on their duration.

This leads to the following estimates of the volume of bail hearings under Model 1 and Model 2 respectively.

Table E4b. *Volume of pre-charge bail hearings under Model 1 (Central Estimate)*<sup>14</sup>

Duration of case	Volume of magistrates' court hearings
Over 28 days up to 3 months	136,000*
Over 3 months up to 6 months	75,000*
Over 6 months up to 9 months	29,000*
Over 9 months up to 12 months	26,000*
Over 12 months up to 15 months	7,000
Over 15 months up to 18 months	6,000
Over 18 months	2,000
<b>Total</b>	<b>281,000</b>
*These hearings will be paper-based only.	

Table E5b. *Volume of pre-charge bail hearings under Model 2 (Central Estimate)*<sup>15</sup>

Duration of case	Volume of superintendent reviews	Volume of magistrates' court hearings
Over 28 days up to 3 months	136,000	-
Over 3 months up to 6 months	37,000	37,000*
Over 6 months up to 9 months	10,000	19,000*
Over 9 months up to 12 months	6,000	19,000*
Over 12 months up to 15 months	-	7,000
Over 15 months up to 18 months	-	6,000
Over 18 months	-	2,000
<b>Total</b>	<b>190,000</b>	<b>91,000</b>
*These hearings will be paper-based only.		

### 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 bail<sup>16</sup>. We estimate the hourly cost of a senior police officer to be around £59<sup>17</sup>. This figure takes into account standard data on pay,

<sup>14</sup> Figures rounded to the nearest thousand.

<sup>15</sup> Figures rounded to the nearest thousand.

<sup>16</sup> 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.

<sup>17</sup> Senior police officer includes Inspector, Chief Inspector, Superintendent and Chief Superintendent. This figure is therefore likely to be an underestimate for the cost of a Superintendent.

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, the case is dealt with via an "on the papers" hearing up until 12 months. We estimate that the average cost to HMCTS of an "on the papers" hearing is £60. This is based on the following assumptions:

- Dealing with a case on paper will take on average 15 minutes.
- Dealing with a case on paper is comparable to other similar applications.

Extensions beyond 12 months must be dealt with via an oral hearing. We estimate that the average cost per hearing in the magistrates' courts would be approximately £80 (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 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<sup>18</sup>.

On this basis, the cost per hearing at a magistrate's court is estimated to be £80.

We were unable to obtain figures for non-staff and non-judicial court costs, such as running costs and maintenance costs, during the consultation period due to insufficient data.

### Legal Aid Costs

There is also a cost for the provision of criminal legal aid at a pre-charge bail oral hearing, which is assumed to be £200 per hearing for a magistrates' court<sup>19</sup>. The cost of legal aid for a written document for an "on the papers" hearing is estimated to be £100, based on 2-3 hours work per case at an hourly rate of £40. 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, but also unlikely that every individual subject to a pre-charge bail hearing will require it.

Typically only 50% of magistrate court cases are assumed to require legal aid as they are means tested<sup>20</sup>. However when looking at pre-charge bail extension cases, due to the fact that the individual has not been charged, the cases fall into the "investigations" class of legal

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<sup>18</sup> See Annex 1 for full explanation of cost assumptions.

<sup>19</sup> Figures provided by the Ministry of Justice in February, 2015. Based on 5 hours of work per case at an hourly rate of £40.

<sup>20</sup> See Annex 1 for standard cost assumptions.

aid work which is not means tested. Despite this lack of means testing, many people do not take up pre-charge legal aid. In the case of bail extension beyond 3 months however, the cases are likely to be more complex in nature and therefore the fraction of cases which require legal aid will be closer to 100%.

We therefore adopt a wide range of estimates, assuming that somewhere between 75% and 100% of bail cases across magistrates' court hearings will require legal aid services. Our central estimate is that 87.5% of pre-charge bail hearings will require legal aid. The 75 to 100% 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 281,000<sup>21</sup> cases for extension would be brought to the magistrates' courts for hearing per annum. Of these, an estimated 266,000 will be for extensions prior to 12 months and so will be dealt with "on the papers" and the remaining 15,000 will be for extensions beyond 12 months and so will be dealt with via an oral hearing. 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 £17.2m per year<sup>22</sup>. We have only been able to monetise the staff and judicial cost of this option to courts. Any increase in running costs and capital costs is expected to present a 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.

The cost of legal aid is estimated to be £100 per case which is dealt with "on the papers", and £200 per case which is dealt with via an oral hearing. Based on 266,000 cases dealt with "on the papers" and 15,000 dealt with orally, of which 87.5% will require legal aid leads to estimated costs to the Legal Aid Agency of £26.0m 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 **£43.2m** 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 should

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<sup>21</sup> Total of 'Volume of magistrates' court hearings' column in Table E4b.

<sup>22</sup> This is based on 266,000 cases at £60 and 15,000 cases at £80.

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% 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 monetised cost of Option 1 is expected to be **£43.2m** per year. 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 190,000<sup>23</sup> cases for extension will be reviewed by Superintendents per annum and 91,000<sup>24</sup> will be brought to the magistrates' courts for hearing per annum. Of these, an estimated 76,000 will be for extensions prior to 12 months and so will be dealt with "on the papers" and the remaining 15,000 will be for extensions beyond 12 months and so will be dealt with via an oral hearing.

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 £3.8m<sup>25</sup> per year and to magistrates' courts is £5.8m<sup>26</sup> 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 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).

The cost of legal aid is estimated to be £100 per case which is dealt with "on the papers", and £200 per case which is dealt with via an oral hearing. Based on 76,000 cases dealt with "on the papers" and 15,000 dealt with orally, of which 87.5% will require legal aid leads to estimated costs to the Legal Aid Agency of £9.4m per year.

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<sup>23</sup> Total of 'Volume of superintendent reviews' column in Table E5b.

<sup>24</sup> Total of 'Volume of magistrates' court hearings' column in Table E5b.

<sup>25</sup> This is based on the number of cases to be reviewed by Chief Superintendents (190,000) and the estimated cost per case (£20).

<sup>26</sup> This is based on 76,000 cases at £60 and 15,000 cases at £80.

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 **£19.0m** 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, 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% 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, 58% 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 cost of Option 2 is currently expected to be **£19.0m** per year. 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 others 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*

	<b>Upper Bound</b>	<b>Best Estimate</b>	<b>Lower bound</b>
<b>Percentage of cases charged one stage earlier</b>	<b>20%</b>	<b>35%</b>	<b>50%</b>
Magistrates' Court Costs	£19.5m	£17.2m	£14.9m
Legal Aid Costs	£29.4m	£26.0m	£22.6m
<b>Overall CJS Costs<sup>27</sup></b>	<b>£48.9m</b>	<b>£43.2m</b>	<b>£37.5m</b>

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

	<b>Upper Bound</b>	<b>Best Estimate</b>	<b>Lower bound</b>
<b>Percentage of cases charged one stage earlier</b>	<b>20%</b>	<b>35%</b>	<b>50%</b>
Superintendent Costs	£4.3m	£3.8m	£3.3m
Magistrates' Court Costs	£6.5m	£5.8m	£5.1m
Legal Aid Costs	£10.4m	£9.4m	£8.3m
<b>Overall CJS &amp; Police Costs<sup>28</sup></b>	<b>£21.2m</b>	<b>£19.0m</b>	<b>£16.7m</b>

<sup>27</sup> Total values may not add to sum of individual values due to rounding.

<sup>28</sup> Total values may not add to sum of individual values due to rounding.



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 87.5% 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 75% to 100%, 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.

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

	<b>Upper Bound</b>	<b>Best Estimate</b>	<b>Lower bound</b>
<b>Percentage of cases receiving legal aid</b>	<b>100%</b>	<b>87.5%</b>	<b>75%</b>
Magistrates' Court Legal Aid Costs	£29.7m	£26.0m	£22.3m

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

	<b>Upper Bound</b>	<b>Best Estimate</b>	<b>Lower bound</b>
<b>Percentage of cases receiving legal aid</b>	<b>100%</b>	<b>87.5%</b>	<b>75%</b>
Magistrates' Court Legal Aid Costs	£10.7m	£9.4m	£8.0m

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
<b>Average annual net impact</b>	<b>-£43.2m</b>	<b>-£53.1m</b>	<b>-£34.2m</b>
<b>Net Present Value (Over 10 Years)</b>	<b>-£347.1m</b>	<b>-£426.7m</b>	<b>-£274.8</b>

Table F6. *Cumulative sensitivity analysis of Option 2*

	Best Estimate	Lower Bound	Upper Bound
<b>Average annual net impact</b>	<b>-£19.0m</b>	<b>-£22.7m</b>	<b>-£15.5m</b>
<b>Net Present Value (Over 10 Years)</b>	<b>-£152.7m</b>	<b>-£182.4m</b>	<b>-£124.5m</b>

### Further reforms

As was discussed in Section E, we assume a greater prevalence of “release without bail” decisions (10%). Here we examine the impact on our costs if this assumption changes so that the percentage increase of “release without bail” varies between 0% to 20%.

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, and that some cases will require multiple hearings dependent on their duration.

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 0% and 20% fewer initial cases.*

Reduction	0%		20%	
	Option 1	Option 2	Option 1	Option 2
Superintendent Review costs	-	£4.2m	-	£3.4m
Magistrates’ court hearing costs	£19.1m	£6.4m	£15.3m	£5.2m
Magistrates’ court legal aid	£32.4m	£10.4m	£23.1m	£8.4m

<b>Total Annual</b>	£48.0m	£21.1m	£38.4m	£16.9m
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## **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 -£347.1m over 10 years, Option 2 is expected to have a net present value of -£152.7m. 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, 58% 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 requires 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 has requested HM Inspectorate of Constabulary 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.

The Home Office and Ministry of Justice will monitor the costs of this policy, as it is unlikely that the behavioural changes we have estimated will be exactly the same in reality and that therefore the actual costs will be different to those we have estimated in this Impact Assessment.

## Annex 1: Ministry of Justice Standard Magistrates Court Cost Assumptions

<p><b>HMCTS costs (magistrates' court):</b></p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,150 per sitting day in 2014/15 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2014-15. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> <li>• The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.</li> <li>• Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.</li> <li>• The timings are collection of data from February 2009. Any difference in these timings could influence costings.</li> <li>• The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.</li> <li>• Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</li> </ul> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p><b>HMCTS costs (Crown Court):</b></p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This is added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2014/15 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2014-15.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> <li>• The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>• Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>• The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</li> <li>• Committals for sentence exclude committals after breach, 'bring backs' and deferred</li> </ul>

	<p>sentences.</p> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p><b>Legal Aid Costs:</b></p> <p><i>Cases in the magistrates' court</i></p> <ul style="list-style-type: none"> <li>• It is assumed for the majority of the summary only and triable either way offences listed above that the eligibility rate for legal aid in the magistrates' court is 50%. The only exception is the offence of non-compliance with a notice to owner where the eligibility is assumed to be 5%.</li> <li>• The average cost per case is £500 and assumes that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a> (Main tables, table 2.3).</li> </ul> <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> <li>• It is assumed for the new offence that the eligibility rate for legal aid in the Crown Court is 100%.</li> <li>• We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2014/15 data as a proxy for the cost per defendant.</li> </ul> <p>Source: <a href="https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014">https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</a></p>	<p><i>Magistrates' court</i></p> <ul style="list-style-type: none"> <li>• Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>• More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul> <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> <li>• Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</li> <li>• There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> </ul>