

# Policing and Crime Bill

## Pre-Charge Bail

### Background

1. Pre-charge bail, also known as police bail, is granted by the police under Part 4<sup>1</sup> of the Police and Criminal Evidence Act 1984 (“PACE”) to individuals that have been arrested on suspicion of a criminal offence, but where there are no grounds to keep them in detention while the investigation continues.
2. Pre-charge bail can be made subject to conditions under the Bail Act 1976. Conditions may be necessary in order to ensure that the suspect:
  - surrenders to custody at the end of the bail period;
  - does not commit an offence while on bail;
  - does not interfere with witnesses; and
  - does not otherwise obstruct the course of justice.
3. Conditions may typically include:
  - a ban on leaving the country, including a requirement to surrender a passport;
  - not being allowed to enter a certain area, such as the home of the alleged victim;
  - a ban on using the internet;
  - not being allowed to communicate with certain people, e.g. victims, witnesses or known associates.

### The case for change

4. In recent years, a significant number of individuals have spent months, and in some cases years, on pre-charge bail and ended up not being charged or, if charged, found not guilty. While the complexity of some investigations means that it can take the police a significant period of time to assemble and analyse evidence and present it to the Crown Prosecution Service (“CPS”) and then the courts, it is often extremely stressful for individuals to be under suspicion for extended periods of time, particularly if onerous conditions are attached to their bail.

### Consultation

5. The then Home Secretary, Theresa May, announced in October 2014<sup>2</sup> the Government’s intention to reduce the number of individuals subject to, and the average duration of, pre-charge bail. A Home Office consultation to this end was published in December 2014. Three hundred individuals and organisations responded to the consultation. The Government response to the consultation was published on 23 March 2015<sup>3</sup>. This set out the Government’s proposals to ensure

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<sup>1</sup> Police officers can also grant bail away from a police station, known as ‘street bail’; these provisions are in Part 3 of PACE and are also covered by these reforms.

<sup>2</sup> <http://www.theguardian.com/uk-news/2014/oct/15/statutory-time-limit-police-bail-theresa-may>

<sup>3</sup> [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)

that individuals did not spend longer than necessary on pre-charge bail, as follows:

- Setting a limit so that pre-charge bail will not normally last longer than 28 days, with extensions permissible only under specific circumstances, and court oversight for any extension beyond three months;
- Creating a presumption of release without bail, with bail only being imposed when it is both necessary and proportionate;
- Establishing a framework for regular court review of pre-charge bail;
- Introducing a procedure for complex cases;
- Introducing formal guidance on the imposition of conditions; and
- Collecting consistent data on the use of pre-charge bail as part of the Annual Data Requirement process and publishing it.

### Solution

6. Chapter 1 of Part 4 of the Bill implements the model endorsed by the consultation, in which pre-charge bail is initially limited to 28 days, with one extension to three months able to be authorised by a senior police officer in complex cases. In cases under investigation by the Serious Fraud Office, the initial bail period will be three months because of the complexity in large fraud cases.
7. In exceptional circumstances, the police will have to apply to a magistrates' court for an extension beyond three months. This will introduce judicial oversight of the pre-charge bail process for the first time, increasing accountability and scrutiny, in a way that is manageable for the courts.
8. All decisions to impose or extend bail, taken by either the police or the magistrates' courts, will have to consider three conditions, namely that:
  - further time is needed to gather the evidence needed to make a charging decision;
  - the investigation is being carried out diligently and expeditiously; and
  - bail (including any conditions) continues to be both necessary and proportionate.
9. In exceptionally complex cases, such as those dealt with by the Serious Fraud Office, Financial Conduct Authority or the Central Casework Units of the CPS, it will be possible to extend bail administratively to a total of six months before seeking the approval of the courts; the same tests set out above will apply in such cases.

### Breach of pre-charge bail travel conditions in terrorism-related cases

10. A new offence of breach of pre-charge bail travel conditions has been created for terrorism-related cases, where a person is arrested on suspicion of committing a relevant terrorism offence, is then released on pre-charge bail and subsequently breaches conditions of that bail aimed at preventing them from leaving or attempting to leave the UK.

11. This offence will be available in cases where an individual is suspected of a terrorism offence listed in section 41 of the Counter-Terrorism Act 2008, which covers a range of situations including for example membership of a proscribed organisation, fundraising and encouragement of terrorism.
12. The bail conditions may include, for example, not leaving the UK, not entering any port, a requirement to surrender travel documents and a requirement not to be in possession of any travel documents – even if they belong to another individual.
13. The maximum penalty for the offence of breaching this pre-charge bail condition would be imprisonment for up to twelve months, a fine or both.

**Example case study:**

On 1 November 2013, it was reported that the radio and television presenter Paul Gambaccini had been arrested on suspicion of historical sexual offences as part of Operation Yewtree. He was released on bail. Some months later, it was announced that no charges would be brought against him. When giving evidence at the Home Affairs Select Committee on 3 March 2015, he “...said he suspected his bail was repeatedly extended until the end of high-profile cases involving other celebrities because police did not want juries to hear a former Radio 1 DJ had been cleared of sexual wrongdoing”.

The new measures on pre-charge bail will ensure that there is proper judicial oversight in such cases. If Mr Gambaccini had been arrested after these measures had been implemented, it would have meant that the initial bail period would be 28 days, extended up to three months (in total) by a senior police officer. After this period of time, the case would require the judicial oversight of a magistrates’ court, which would decide if further bail was both necessary and proportionate.

This would have ensured that Mr Gambaccini’s bail could only have been extended by the police for a maximum of three months before it received appropriate judicial overview and scrutiny. Mr Gambaccini was on extended bail for a year and has spoken about the great inconvenience and stress that this entailed. These new measures mean that in future, cases such as Mr Gambaccini’s will receive judicial scrutiny relatively early on.