



## BRIEFING PAPER

Number 7469, 25 January 2021

# Police powers: pre-charge bail

By Jennifer Brown

**Inside:**

1. Custody outcomes
2. 2017 reforms
3. 2021 reforms



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Custody outcomes</b>	<b>5</b>
1.1 Charging	6
1.2 Pre-charge bail	6
1.3 Released under investigation	7
<b>2. 2017 reforms</b>	<b>9</b>
2.1 Why the reforms?	9
2.2 Are the police using pre-charge bail less frequently?	10
2.3 Impact	11
2.4 Policing response	13
<b>3. 2021 reforms</b>	<b>14</b>
3.1 Calls for reform	14
3.2 2020 consultation	14
3.3 Forthcoming legislation (Kay's Law)	18

## Summary

Suspects who cannot be charged whilst they are held in police custody are either released on [pre-charge bail](#) (also known as police bail), “under investigation” (RUI) or with “no further action”. At present there is a presumption against the use of pre-charge bail.

Pre-charge bail v RUI	
Pre-charge bail	RUI
<b>Requires authorisation.</b> Inspectors can authorise pre-charge bail when it is “necessary and proportionate”.	No authorisation required.
<b>Strict time limits.</b> Initially suspect’s pre-charge bail is set for 28 days.	No limit for how long suspects can be RUI
<b>Court oversight.</b> Investigators who need to keep suspects on pre-charge bail for more than three months must seek court approval. They must return to the courts at regular intervals thereafter if they need more time.	No court oversight.
<b>Suspects required to report to the police.</b>	Suspects may be asked to voluntarily attend further police interviews.
<b>Possibility of attaching pre-charge bail conditions.</b> Conditions may be attached to protect victims and witnesses and preserve evidence. Conditions can restrict a suspect’s movement and who they can associate with.	No ability to attach conditions.

## 2017 reforms

Reforms pursued by the Conservative Government 2015-2017 introduced the presumption against the use of pre-charge. These reforms also introduced strict time limits on the use of pre-charge bail.

The reforms were designed to “reduce both the [numbers of individuals subject to, and the average duration of, pre-charge bail](#)”. This was supposed to address concerns that un-convicted individuals were being subjected to pre-charge bail conditions for long periods of time.

There is no official data about who is released from police custody and how they are released. However, [data obtained from various freedom of information requests](#) suggest that the number of suspects released on pre-charge bail fell substantially following the 2017 reforms. Police use of RUI increased rapidly as a result. Data shows that RUI has been used in cases involving violent and sexual offences.

Stakeholders from across the criminal justice system have been critical of the 2017 reforms. They say the use of RUI (particularly in cases involving violent and sexual offences) puts vulnerable victims at risk because pre-charge bail conditions are not imposed on suspects. There are also

concerns that the rights of RUI suspects are being undermined. Investigations against RUI suspects [on average take longer](#) and the police are not required to inform suspects about their progress whilst they are ongoing.

## Kay's Law (2021)

The current Conservative Government acknowledges the 2017 reforms caused a "number of knock-on effects" which have negatively impacted both victims and suspects. The Government [consulted in 2020 on proposals to further reform pre-charge bail](#). It has now pledged to introduce legislation to address the problems. It refers to this as [Kay's Law](#), after Kay Richardson, who was murdered by her estranged husband following his release under investigation.

The Home Office says a forthcoming "major criminal justice bill" will seek to:

- **Remove the presumption against the use of pre-charge bail.** The Government expects the use of RUI to decline as a result. It says "no further action" is likely to be "the most appropriate course to take" in cases where pre-charge bail is not necessary or proportionate.
- **Introduce a new statutory framework for pre-charge bail time limits.** Under the new framework court approval will only be required to keep suspects on pre-charge bail for more than nine months. Government analysis estimates that pre-charge bail in 30% of sexual offences cases will require magistrate oversight under the proposed regime.
- **Introduce separate statutory rules for the use of pre-charge bail in non-police force investigations.** This will allow enforcement agencies like the National Crime Agency and Financial Conduct Authority to keep suspects on pre-charge bail for longer without court oversight. The Government says these agencies need lengthier bail time limits because their investigations are more complicated and take longer to complete.

Stakeholders have welcomed the proposals. Many (like [Women's Aid](#) and the [Police Federation](#)) argue the 2017 reforms were a mistake. The Law Society have been more cautious. They say it will be important to ensure the police "do not fall back into the [bad habits of the past](#) and routinely put suspects on bail for extended periods."

# 1. Custody outcomes

The police have powers, set out in [Part IV](#) and [Part V](#) of the *Police and Criminal Evidence Act 1984* (PACE), to detain those they have arrested on suspicion of a crime. The detention of a suspect is often crucial to a police investigation. Once detained, the police have powers to question the suspect and collect their biometric information. The information collected during detention helps the police determine whether a suspect should be charged with a criminal offence.

Suspects can normally only be detained for up to 24 hours without being charged.<sup>1</sup> However, if the offence they are suspected of is serious, a senior police officer (of the rank of superintendent or above) can authorise a suspect's continued detention for a further 12 hours.<sup>2</sup> Any detention beyond 36 hours requires authorisation from the courts.<sup>3</sup> In exceptional circumstances the courts can warrant the detention of a suspect without charge for up to four days.<sup>4</sup>

The time period within which the police can legally detain a suspect is known as the 'PACE clock'.

## Further reading

The Library paper [police powers: detention and custody](#) discusses police detention powers and police custody.

There are four possible outcomes once a person has been arrested and detained by the police. They can either be:

- 1 **Charged or issued an 'out of court disposal'**.<sup>5</sup>
- 2 **Released on pre-charge bail.**
- 3 **Released under investigation (RUI).**
- 4 **Released with no further action:** The police should give written notice to the person confirming that they are no longer suspected of a crime.<sup>6</sup>

Officers *should* finalise their investigation within the suspect's 'PACE clock' and decide whether to charge them whilst they are in detention. When officers are not able to issue a charge within the 'PACE clock' and want to continue their investigation there is a presumption **against** using pre-charge bail.<sup>7</sup>

---

<sup>1</sup> s41, *Police and Criminal Evidence Act 1984*

<sup>2</sup> s42, *Police and Criminal Evidence Act 1984*

<sup>3</sup> s43, *Police and Criminal Evidence Act 1984*

<sup>4</sup> s43 and s4, *Police and Criminal Evidence Act 1984*

<sup>5</sup> See section 4 of the Library's briefing [police powers: an introduction](#) for information on charging and out of court disposals

<sup>6</sup> s34(5C), *Police and Criminal Evidence Act 1984*

<sup>7</sup> s30A(1), *Police and Criminal Evidence Act 1984* and College of Policing, APP Detention and custody: [Response, arrest and detention](#), section 8 ([pre-charge bail management](#)), [last accessed 25/01/21]

## 1.1 Charging

The police have powers to charge individuals with an offence they were arrested for. They must collaborate with the Crown Prosecution Service (CPS) when issuing a charge in certain cases. Once an individual has been charged it is up to the CPS to pursue a prosecution through the courts.

The Library briefing [police powers: an introduction](#) provides further information on the charging powers of the police.

Those who are charged with an offence are either released on bail or detained in custody to await a court hearing. The court decides if they should be bailed before their trial or held on remand. Those charged with serious offences and repeat offenders will normally be held on remand.<sup>8</sup>

## 1.2 Pre-charge bail

Suspects may be released on bail without charge (pre-charge bail) when it is deemed proportionate and necessary.<sup>9</sup> The decision to release a suspect on pre-charge bail must be authorised by an officer of at least the rank of inspector.

The College of Policing APP on [detention and custody](#) explains some of the reasons the use of bail might be necessary and proportionate:

Authorisation may be considered necessary, if it is:

1. in the interests of national security
2. for the prevention of disorder or crime
3. in the interests of the economic well-being of the United Kingdom
4. in the interests of public safety
5. for the purpose of protecting public health.

...

Authorisation may be considered proportionate if:

1. what is being done is not arbitrary or unfair
2. the restriction is strictly limited to what is required to achieve a legitimate public policy
3. the severity of the effect of the restriction does not outweigh the benefit to the community that is being sought by the restriction. Any restriction must be proportionate to the legitimate aim being pursued.<sup>10</sup>

---

<sup>8</sup> GOV.UK, [Being charged with a crime](#) [last accessed]

<sup>9</sup> s50A, *Police and Criminal Evidence Act 1984*

<sup>10</sup> College of Policing, APP Detention and custody: [Response, arrest and detention](#), section 8 ([pre-charge bail management](#)) [last accessed]

## 7 Police powers: pre-charge bail

Suspects can only be on pre-charge bail for an initial 28 days. This is referred to as the 'Applicable Bail Period' (ABP).<sup>11</sup> Investigating officers should either charge, otherwise dispose of a case or rule the suspect out within the ABP. More senior officers can extend the ABP up to three months if necessary.<sup>12</sup> An extension of the ABP beyond three months must be approved by a magistrates' court.<sup>13</sup> Magistrates can extend the ABP by three months at a time.

Pre-charge bail extension	
Months	Authorisation
1	Initial bail period inspector
2	First extension superintendent
3	
4	
5	Second extension magistrate
6	
7	
8	Third extension magistrate
9	
10	
11	Fourth extension magistrate
12	
13	
14	Continuation of fourth extension magistrate
15	

### Conditional bail

Some people are released on 'conditional bail', which requires them to meet certain conditions. For example, they may have restrictions placed on their movements or they may be prevented from contacting other suspects, witnesses and victims. These conditions help the police protect victims and witnesses, preserve evidence and mitigate the risk that the suspects commit a crime whilst on bail.<sup>14</sup> Those who breach their bail conditions can be rearrested.<sup>15</sup>

The Crown Prosecution Service has published [legal guidance on bail](#) which provides further information on the conditions of bail and the rights of those who have been released on bail.

### 1.3 Released under investigation

[Section 56](#) of the *Police and Crime Act 2017* amended PACE to allow the police to release a suspect from custody 'under investigation' (RUI) rather than on pre-charge bail.

Officers use RUI when they want more time to gather evidence (following the expiration of the 'PACE Clock') and the 'pre-conditions' for pre-charge bail have not been met.<sup>16</sup>

<sup>11</sup> [s47ZB](#), *Police and Criminal Evidence Act 1984*

<sup>12</sup> [s47ZD](#) and [s47ZE](#), *Police and Criminal Evidence Act 1984*

<sup>13</sup> [s47ZF](#) and [s47ZG](#), *Police and Criminal Evidence Act 1984*

<sup>14</sup> NPCC, [Operational guidance for pre-charge bail and release under investigation](#), January 2019

<sup>15</sup> CPS, Bail: [breach of pre-charge bail conditions](#) [last accessed]

<sup>16</sup> [s37\(7\)\(b\)](#), *Police and Criminal Evidence Act 1984*

There is no requirement for RUI suspects to report to the police and the police have no power to place conditions on their movements or activities, though some RUI suspects will voluntarily attend further questioning at the request of the police. There are no time limits within which officers must conclude their investigations against RUI suspects and the police are under no obligation to keep them informed about the progress of their investigation.



## 2. 2017 reforms

[Part 4, Chapter 1](#) of the *Policing and Crime Act 2017* introduced major reforms to the way suspects are released from police custody. The reforms:

- established a presumption against the use of pre-charge bail when suspects are released from custody,<sup>17</sup>
- set “pre-conditions” for when pre-charge bail could be imposed on suspects released from custody<sup>18</sup>; and,
- established a new time limit regime for pre-charge bail that limited the length of time suspects can spend on bail to an initial 28 days.<sup>19</sup>

The purpose of the reforms was to “reduce both the numbers of individuals subject to, and the average duration of, pre-charge bail”.<sup>20</sup>

### 2.1 Why the reforms?

Before the 2017 reforms, almost all suspects that couldn't be charged within their 'PACE clock' were released on pre-charge bail. In 2011 the High Court unexpectedly ruled that time spent on pre-charge bail counted towards a suspect's 'PACE clock'.<sup>21</sup> In effect this judgment placed a restriction on police investigations. Suspects who couldn't be charged within their 'PACE clock' would have to be released without bail and the police would only be able to re-arrest them if they could demonstrate they had new evidence to warrant it.

In response to this ruling the Coalition Government introduced emergency legislation ([Police \(Detention and Bail\) Act 2011](#)) to restore the police's powers to bail suspects without affecting their 'PACE clock'.<sup>22</sup> However, the episode highlighted some serious problems with the existing pre-charge bail regime. It became clear that many suspects were being kept on police bail for long periods of time. This was seen as concerning for two reasons:

- It was detrimental to suspects' civil liberties. Suspects could have stringent conditions placed on their lives for long periods without being charged.
- It was encouraging lethargic justice. Both suspects and victims could be waiting months, possibly years, for a case to be resolved following an arrest.

It was hoped that by reducing the use and length of pre-charge bail police investigations would become “more focused”, resulting in “speedier justice” for victims and the accused. The Government also

---

<sup>17</sup> s58, *Police and Crime Act 2017*

<sup>18</sup> Ibid

<sup>19</sup> s47ZD and s47ZG, *Police and Criminal Evidence Act 1984*

<sup>20</sup> Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#), March 2015, p4

<sup>21</sup> *R (Chief Constable of Greater Manchester Police) v Salford Magistrates' Court and Hookway* [2011] EWHC 1578 (Admin) y

<sup>22</sup> See the Library research briefing [Police \(Detention and Bail\) Bill](#) for details.

hoped that tighter restrictions on the use of pre-charge bail would protect the human rights and civil liberties of un-convicted suspects.<sup>23</sup>

## 2.2 Are the police using pre-charge bail less frequently?

There are no official statistics on the use of pre-charge bail and RUI.<sup>24</sup> However, evidence suggests that the use of pre-charge bail fell rapidly in the months following the 2017 reforms as the police began to use RUI in most cases. It now seems the use of pre-charge bail is “recovering” as the police respond to criticism of the use of RUI.<sup>25</sup>

In September 2019 the Law Society published analysis of 30 force level FOI returns on their use of pre-charge bail and RUI.<sup>26</sup> The data showed an 84% decrease in the number of people on pre-charge bail between 2016/17 and 2017/18 across the 30 forces.<sup>27</sup>

*BBC Newsnight* obtained FOI data from 20 forces. It showed that the number of suspects released RUI in sexual and violent cases had “ballooned” after the 2017 reforms, from 1,304 in 2016 to 27,852 in 2019.<sup>28</sup>

Recent data published by the Home Office shows an increased use of pre-charge bail over the past year. Experimental data for 40 forces showed 153,527 suspects released on pre-charge bail between in 2019/20 up from 84,221 in 2018/19.<sup>29</sup>

### Why did the use pre-charge bail reduce so much?

Whilst the intention of the 2017 reforms was to reduce the use of pre-charge bail, commentators were surprised by how far the police have decreased their use of the power following the reforms. Professor Ed Cape (a professor of criminal law at the University of the West of England) and Professor Michael Zander QC (a professor of law at the London School of Economics) both argued that police officers have likely embraced RUI as an alternative to pre-charge bail to manage an

<sup>23</sup> Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#), March 2015

<sup>24</sup> Experimental statistics on the use of pre-charge bail have been published since 2018. However, these statistics are not comparable and do not cover all police forces. See: Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2018](#), October 2018, Annex B; Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2019](#), October 2019, Annex B; Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2020](#), November 2020, Annex B

<sup>25</sup> Home Office, [Police powers: pre-charge bail overview of the evidence](#), 14 January 2021, [section 6](#)

<sup>26</sup> Law Society, [Release under investigation](#), November 2019

<sup>27</sup> Home Office, [Police Powers: Pre-charge Bail, Government consultation](#), February 2019, p27

<sup>28</sup> *BBC Newsnight*, [‘Scandal brewing’ as thousands of suspects released](#), 5 December 2019; *BBC News*, [‘Scandal brewing’ as thousands of suspects released](#), 4 December 2019

<sup>29</sup> Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2020](#), November 2020, Annex B

increasing workload.<sup>30</sup> Under the 2017 reforms officers have to regularly apply for extensions to pre-charge bail at a magistrates court. Such conditions do not apply to RUI cases. The Government have confirmed that policing stakeholders think the new pre-charge bail regime has “disincentivised the use of bail”.<sup>31</sup>

Some aspects of a police investigation take time (for example; obtaining digital forensic evidence and evidence from third parties). Her Majesty’s Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) were “concerned to find” that “in far too many cases” suspects were RUI rather than on pre-charge bail because investigators knew they would need to seek extensions to the applicable bail period (ABP) to accommodate for digital forensic delays. HMICFRS say the initial ABP of 28 days is too short. They say this is having a “considerable influence on the increased use of RUI”.<sup>32</sup>

### 2.3 Impact

#### Victims

Policing stakeholders and victim support groups are concerned that vulnerable victims (particularly victims of domestic abuse) and witnesses are being put at risk because pre-charge bail is not being used to monitor and place conditions on suspects.<sup>33</sup>

HMICFRS reviewed the use of RUI/ pre-charge bail in 140 charged cases. They found 62 cases (44% of the total) in which RUI was used where pre-charge bail would have been more appropriate. Some of these cases involved serious offences (domestic abuse, sexual offences and offences against children). HMICFRS said it was “extremely worrying” that the victims in these cases “had no bail conditions in place to keep them safe.”<sup>34</sup>

Women’s Aid (a charity which supports domestic abuse victims) has raised concerns that without bail conditions domestic abuse suspects can return to the home they share with their victim. Victims and their children were therefore being forced to leave their homes. Without bail conditions, victims find it difficult to prove they need emergency housing or apply for a legal protection order against their abuser.<sup>35</sup>

There is at least one example of a domestic abuse suspect murdering his estranged partner whilst on RUI. Kay Richardson died after reporting her

---

<sup>30</sup> *Crime and Justice*, [Police bail without charge – leaving suspects in limbo](#), October 2019; *The Times*, [Extraordinary shift in the way the police use bail](#), 28 September 2017

<sup>31</sup> Home Office, [Police Powers: Pre-charge Bail Government consultation](#), p10

<sup>32</sup> HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p19

<sup>33</sup> NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), May 2019 and HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, p40- 41

<sup>34</sup> HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p11

<sup>35</sup> *Ibid*

husband for rape.<sup>36</sup> Her family have been lobbying the Government to reverse the 2017 reforms following her death.

## Suspects

There is evidence that suspects are being left on RUI for long periods of time. HMICFRS estimate that the average time between arrest and charge is 128 days for pre-charge bail and 201 days for RUI suspects.<sup>37</sup>

The police are under no obligation to keep RUI suspects informed about the progress of their investigations. The Law Society argue that RUI has therefore “simply moved the point of uncertainty [for suspects] to an earlier stage in the process”. They say that cases are being “left in limbo” with neither the victim or the suspect having information about what is happening.<sup>38</sup> The London Criminal Courts Solicitors’ Association’s Vice President said the practice of keeping suspects on RUI for long periods “is making a mockery of justice”.<sup>39</sup>

Responses to the Government’s pre-legislative consultation on the 2017 reforms did raise concern that releasing suspects under investigation might not lead to “speedier justice” for victims and suspects.

Consultation respondents

...expressed concern that enabling release under investigation would not solve the underlying issue of an extended period of uncertainty for suspects between being arrested and the subsequent decision on charging. Indeed, some respondents were concerned that, without even the minimal level of scrutiny brought by the current process of granting and extending bail, there would be the potential for non-bail cases to take even longer to resolve, with priority given to cases where bail would need to be justified to the courts.<sup>40</sup>

The Law Society have also argued that the use of RUI has increased the workload of criminal defence solicitors. Legal aid payments cover solicitors’ fees for advice at police stations, but they do not generally cover ongoing work such as requesting the police provide updates about investigations of RUI suspects. They have argued that the extra work presented by RUI cases makes

...the work of criminal defence practitioners even more uneconomic than it already is, and acts as a further disincentive for firms to provide legal aided services.<sup>41</sup>

<sup>36</sup> BBC News, [‘Scandal brewing’ as thousands of suspects released](#), December 2019

<sup>37</sup> HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p19

<sup>38</sup> The Law Society, [Justice on Trial 2019: Fixing our Criminal Justice system](#), p9

<sup>39</sup> *The Times*, [Judges ‘should force police to justify leaving suspects in limbo’](#), 18 June 2019

<sup>40</sup> Home Office, [Pre-Charge Bail – Summary of Consultation Responses and Proposals for Legislation](#), March 2015, p7

<sup>41</sup> Law Society, [Release under investigation](#), September 2019, p5

## 2.4 Policing response

HMICFRS and the National Police Chiefs Council (NPCC- the coordinating body for UK police forces) have taken steps to respond to concerns with the pre-charge bail reforms.

The NPCC introduced [interim operational guidance for pre-charge bail and RUI](#) in May 2019. The guidance reinforces “pre-charge bail as a legitimate tool in investigating crime and protecting the public”.<sup>42</sup>

HMICFRS recommended that all forces review their use of RUI and pre-charge bail by September 2018 and implement any necessary changes.<sup>43</sup>

HMICFRS established a working group consisting of representatives from the NPCC, local forces, and the Home Office to establish how reliable data on RUI and pre-charge bail could be collected. It was hoped that more reliable data would help the parties to better understand the impact of the reforms.<sup>44</sup>

---

<sup>42</sup> NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), May 2019

<sup>43</sup> HMICFRS, [State of Policing: The Annual Assessment of Policing in England and Wales 2018](#), July 2019, p103

<sup>44</sup> HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, p40

## 3. 2021 reforms

The current Conservative Government acknowledges the “changes brought in by the *Policing and Crime Act 2017*” had “a number of knock-on effects within the criminal justice system”. It consulted on proposals for further reform of pre-charge bail in 2020. It is now planning legislation which will reverse some of the 2017 reforms.

A forthcoming “major criminal justice bill” will seek to:<sup>45</sup>

- Remove the presumption against the use of pre-charge bail.
- Introduce a new statutory framework for pre-charge bail time limits.
- Introduce separate statutory rules for the use of pre-charge bail in non-police force investigations.

### 3.1 Calls for reform

The Law Society published detailed recommendations for legislative reform to pre-charge bail in September 2019. They argued that “strict time limits must be introduced to RUI with senior approval required to extend those time limits, mirroring bail requirements.”<sup>46</sup> They proposed an initial authorisation for RUI of 56 days, with extensions up to 6 months requiring the approval of a chief inspector or superintendent, and extensions up to 12 months requiring magistrate approval.<sup>47</sup> The Law Society have also called on the police to consistently use pre-charge bail when victims or the public could be at risk, more regularly inform RUI suspects about the progress of their case, and collect and publish better data on the use of RUI and pre-charge bail.<sup>48</sup>

The Joint Committee on the Draft Domestic Abuse Bill (the Bill that would become the *Domestic Abuse Bill 2017-19*<sup>49</sup>) recommended in June 2019 that there should be legislation to create a presumption that suspects in domestic abuse cases can only be released from custody on pre-charge bail, unless it is clearly not necessary for the protection of the victim.<sup>50</sup>

### 3.2 2020 consultation

On the 5 November 2019 the Government announced that it was conducting a review of pre-charge bail legislation to ensure the system

---

<sup>45</sup> Home Office, [Home Secretary to introduce 'Kay's Law' reform to better protect victims](#), 14 January 2021; Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021

<sup>46</sup> Law Society, [Release under investigation](#), September 2019, p6

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> This Bill fell at the 2019 General Election. A replacement Bill (Domestic Abuse Bill 2019-21) is currently in the House of Lords.

<sup>50</sup> House of Lords House of Commons Joint Committee on the Draft Domestic Abuse Bill, [Draft Domestic Abuse Bill: First Report of Session 2017-19](#), June 2019, paragraph 131

“prioritises the safety of victims and witnesses and the management of suspects.”<sup>51</sup>

On the 5 February 2020 the Home Office opened a [public consultation on pre-charge bail](#). This consultation asked for feedback on several specific proposals for further reform to pre-charge bail. The consultation closed on the 29 May 2020.

The Government asked for views on:

#### **Legislating to remove the presumption against pre-charge bail.**<sup>52</sup>

**Legislating to define when pre-charge bail is “necessary and proportionate”.** The Government were considering a ‘risk-based’ approach. They suggested pre-charge bail should be used when it is ‘necessary and proportionate’ to safeguard victims, witnesses and the public; prevent further offending; or where the offence in question has significant real or intended impacts.<sup>53</sup>

#### **Legislating to lower the rank of officer needed to authorise pre-charge bail from inspector to custody officer.**<sup>54</sup>

**Legislating to amend the current process for pre-charge bail time limits.** The Government asked consultees to provide their view on three different ‘models’ for a new time limit regime for pre-charge bail. Each model would extend the initial ‘applicable bail period’ and delay the point at which magistrate approval was needed. The models are outlined in the table below.<sup>55</sup>

Months	Current	Model A	Model B	Model C
1	Initial bail period <b>Inspector</b>	Initial bail period <b>Custody Officer</b>	Initial bail period <b>Custody Officer</b>	Initial bail period <b>Custody Officer</b>
2	First extension <b>Superintendent</b>	First extension <b>Inspector</b>	First extension <b>Inspector</b>	First extension <b>Inspector</b>
3	Second extension <b>Magistrate</b>	Second extension <b>Superintendent</b>	Second extension <b>Superintendent</b>	Second extension <b>Superintendent</b>
4	Third extension <b>Magistrate</b>	Third extension <b>Magistrate</b>	Second extension <b>Superintendent</b>	Second extension <b>Superintendent</b>
5				
6				
7				
8				
9				

<sup>51</sup> [HCWS94, Pre-charge bail: written statement](#), 5 November 2019

<sup>52</sup> *Ibid*, p8

<sup>53</sup> *Ibid*, p7

<sup>54</sup> *Ibid*, p11

<sup>55</sup> *Ibid*, p12

10				
11	Fourth extension <b>Magistrate</b>	Fourth extension <b>Magistrate</b>	Third extension <b>Magistrate</b>	Third extension <b>Superintendent</b>
12				
13				
14	Continuation of fourth extension <b>Magistrate</b>	Fifth extension <b>Magistrate</b>	Fifth extension <b>Magistrate</b>	Fourth extension <b>Magistrate</b>
15				

The Home Office estimated the potential impact of each model on police investigations. They concluded that ‘Model C’ would result in the fewest number of pre-charge bail cases requiring magistrate authorisation. However, they estimated under ‘Model C’ magistrate authorisation would be required in 36% of all rape investigations. Therefore, they concluded that even ‘Model C’ would not “significantly reduce the number of complex cases that require magistrate oversight”.<sup>56</sup>

**Amending statutory police guidance to include information about RUI case management.**

The Government proposed a framework for RUI cases that ‘mirrors’ the timescales for pre-charge bail. This proposed RUI framework would have been regulated by police procedure and the courts would play no formal oversight role.<sup>57</sup>

**Government response**

The Government published its [consultation response](#) on 14 January 2021. Alongside the response the Government published an [overview of evidence](#) regarding pre-charge bail/ RUI. Her Majesty’s Inspectorate of Constabulary & Fire and Rescue Services (HMICFRS) published a [Home Office commissioned inspection](#) of the use of pre-charge bail/ RUI in December 2020.

The Government’s response acknowledges the “changes brought in by the *Policing and Crime Act 2017*” had “a number of knock-on effects within the criminal justice system”. It says the 2017 reforms “achieved its aim of introducing safeguards for suspects who were being placed on bail for lengthy periods” but the use of RUI “has meant that there are suspects are still under investigation for lengthy periods, but not subject to the oversight and reporting requirements that they would have under pre-charge bail”. It acknowledges victims can feel “less protected by the police” when suspects are released from custody RUI.<sup>58</sup>

The Government’s response sets out how it will take forward the consultation’s proposals:

<sup>56</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p13  
<sup>57</sup> Ibid, p16  
<sup>58</sup> Ibid, p10



**The Government will reverse the presumption against pre-charge bail.** It says this will “create a neutral position within the legislation”.<sup>59</sup>

**The Government have decided *not* to legislate to define when pre-charge bail is “necessary and proportionate”.** It says pre-charge decisions should continue to be made on a “case by case basis”. It says it is now considering how best to incorporate “risk-based decision making” into the new pre-charge bail framework outside of legislation.

**The Government will lower the rank of officer who can authorise pre-charge bail to custody officer.** Custody officers hold the rank of sergeant (one rank below inspector- who currently authorise pre-charge bail).<sup>60</sup> The Government says these officers have “the necessary skills and experience” to authorise pre-charge bail as well as the appropriate “independence from the investigation itself”.<sup>61</sup>

**The Government have decided to implement ‘model B’ for a new time limit regime for pre-charge bail.** It says this model enjoyed the “broadest support amongst the widest variety of groups.”<sup>62</sup> It says the proposed time limit regime will “share out the administrative burden of extending bail periods” whilst maintaining “independent judicial oversight of the bail system through the Magistrates’ Court”. Previous Government analysis estimated that 30% of sexual offences cases would require magistrate approval under ‘model B’.<sup>63</sup>

Investigations conducted by non-police force enforcement agencies (Serious Fraud Office, Financial Conduct Authority, National Crime Agency and HMRC) sometimes require pre-charge bail. The Government notes these investigations “can be far lengthier and more complex than standard police cases”. **It has therefore decided to legislate to “create timescales... for these agencies that will reflect the nature of their investigations”.**<sup>64</sup>

**The Government have decided *not* to amend statutory police guidance to include information on RUI case management.** It says such guidance will not be necessary because it expects “the use of RUI to decline”. It says “no further action” is likely to be “the most appropriate course to take” in cases where pre-charge bail is not necessary or proportionate. The Government says it will work with policing partners on non-statutory guidance which helps officers manage non-bail cases.<sup>65</sup>

---

<sup>59</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p10

<sup>60</sup> College of Policing, Professional profiles: [custody sergeant](#) [last accessed 19/01/21]

<sup>61</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p15

<sup>62</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p13

<sup>63</sup> Home Office, [Police Powers: Pre-charge Bail: Government consultation](#), February 2020, p13

<sup>64</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p15

<sup>65</sup> *Ibid*, p18

### 3.3 Forthcoming legislation (Kay's Law)

The Government is now committed to introducing legislation to Parliament which seeks to:

- Amend section 47, *Police and Criminal Evidence Act 1984* (PACE) to remove the presumption against the use of pre-charge bail.<sup>66</sup>
- Amend section 47ZA- 47ZM, PACE to introduce a new statutory framework for the authorisation of pre-charge bail and pre-charge bail extension.<sup>67</sup>
- Further amend PACE to create separate time-limits on the use of pre-charge bail by non-police enforcement agencies.<sup>68</sup>

The Home Office says the legislation will be “brought before Parliament in a major criminal justice bill” to be introduced “as soon as parliamentary time allows.”<sup>69</sup>

The Government has coined the term “Kay’s Law” to describe the reforms (in memory of Kay Richardson, a woman murdered by her ex-partner following his release from police custody on RUI).<sup>70</sup>

#### Response

The legislative proposals have been met with broad support amongst most stakeholders.

Women’s Aid welcomes the reforms. It says it has been “calling to reverse the pre-charge bail reforms since 2017”.<sup>71</sup>

John Apter, Chair of the Police Federation (the staff association for rank and file officers), said the forthcoming legislation was “much needed and long overdue”. He said the 2017 reforms “arrogantly pushed through” by the Government had caused “predictable damage”.<sup>72</sup>

The Law Society have been more cautious about the proposals. It says it will be “important to ensure that the police do not fall back into bad habits of the past and routinely put suspects on bail for extended periods.”<sup>73</sup>

#### Implementation

HMICFRS say the 2017 reforms were implemented “extremely quickly”. They say a lack of guidance on how to implement them led to “a range of interpretations of the legislation throughout England and Wales”.<sup>74</sup>

<sup>66</sup> Home Office, [Police Powers: Pre-charge Bail Government response](#), January 2021, p10

<sup>67</sup> Ibid, p14

<sup>68</sup> Ibid, p15

<sup>69</sup> Home Office, [Home Secretary to introduce 'Kay's Law' reform to better protect victims](#), 14 January 2021

<sup>70</sup> Home Office, [Home Secretary to introduce 'Kay's Law' reform to better protect victims](#), 14 January 2021

<sup>71</sup> Women’s Aid, [Women's Aid welcomes Kay's Law to provide better protection for survivors](#), 14 January 2021

<sup>72</sup> Police Fed, [National Chair supports pre-charge bail reform](#), 14 January 2021

<sup>73</sup> The Law Society, [Pre-charge bail reforms announced](#), 14 January 2021

<sup>74</sup> HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p2

## 19 Police powers: pre-charge bail

They have called on the Home Office and the College of Policing to make sure forces “have enough time and adequate resources to prepare for future changes to the legislation”.<sup>75</sup>

HMICFRS have been critical of data recording on RUI/ pre-charge bail. They say poor data means “neither police forces nor the general public can properly understand how each police force deals with suspects after they are released from custody”.<sup>76</sup> HMICFRS recommends that forces “develop processes and systems to clearly show whether suspects are on bail or RUI”. They have also called on the Government to “develop and implement monitoring arrangements” to ensure the forthcoming changes “are effective”.<sup>77</sup>

---

<sup>75</sup> HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p23

<sup>76</sup> Ibid, p4

<sup>77</sup> Ibid, p23

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcinfo@parliament.uk](mailto:hcinfo@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).