

Research Briefing

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Police powers: pre-charge bail and release under investigation



Summary

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Summary

Outcomes of custody: pre-charge bail and release under investigation

When the police have arrested and detained a suspect but do not have the evidence to charge them, the suspect must be released. They can be released either on **pre-charge bail** (also known as police bail), “**under investigation**” (RUI) or with “**no further action**”.

Comparison of pre-charge bail and RUI		
	Pre-charge bail	Release under investigation (RUI)
Authorisation	Must be authorised by a custody officer.	No authorisation required.
Police monitoring	Suspects are required to report to the police.	Suspects may be asked to voluntarily attend further police interviews but are not required to.
Conditions	The police can impose conditions on suspects as part of pre-charge bail that can restrict their movement and who they associate with.	No power to attach conditions.
Time limits	Strict time limits. Pre-charge bail is initially set for three months. Police can internally authorise extensions of pre-charge bail for up to nine months.	No time limit.
Court oversight	Court approval required to extend pre-charge bail beyond nine months.	No court oversight.

Authorising pre-charge bail

A custody officer can authorise the release of suspects who the police haven't been able to charge on pre-charge bail. This can allow the police to continue their investigation or allow time for a charging decision from the Crown Prosecution Service (CPS). The custody officer should only authorise pre-charge bail if it is '**necessary and proportionate**' to:

- ensure the suspect surrenders to custody;
- prevent offending by the suspect;
- safeguard victims of crime and witnesses;
- safeguard the suspect; or
- manage risks to the public.

The amount of time that pre-charge bail can be granted for is referred to as the '**applicable bail period**'. The initial applicable bail period is three months. Internally the police can extend this twice by three months each time, first by an officer of at least the rank of inspector and then a superintendent. Any further extensions must be granted by a magistrates' court.

Suspects can be released on pre-charge bail with conditions that they are required to meet (also known as '**conditional bail**') or without any conditions attached. When considering whether to issue bail conditions, "[Any risks posed to the victim should be central](#)" (PDF) to the decision-making. Officers are advised that in domestic or sexual abuse cases, "[bail with conditions should always be considered](#)" (PDF). The police also have a **statutory duty to seek the victim's view on bail conditions** when practical to do so.

If the circumstances of a case do not pass the 'necessary and proportionate' test for pre-charge bail, then the suspect must be RUI.

Recent reforms to pre-charge bail

Pre-charge bail was reformed in 2022 by [schedule 4](#) of the Police, Crime, Sentencing and Courts (PCSC) Act. There were growing concerns that since 2017 – when pre-charge bail [had last been reformed](#) – police had been using [RUI to release a large number of suspects instead of pre-charge bail](#) including in cases involving serious offences such as domestic abuse, sexual offences, and offences against children.

Stakeholders [said this was putting victims at risk](#) because the police do not have the power to impose conditions on RUI suspects. Concern was also raised that [suspects were being left in 'limbo'](#) and that cases were allowed to

drag on for long periods without conclusion because there are no time limits on RUI.

To address this, the PCSC Act:

- removed a presumption against the use of pre-charge bail that had been in place since 2017;
- lowered the level of authority required to grant pre-charge bail and extended the length of pre-charge bail that could be authorised internally by the police before the need for court approval; and
- placed a series of risk factors into legislation that the police must have regard to when considering whether pre-charge bail is appropriate.

These reforms are expected to lead to a rise in the use of pre-charge bail.

The changes were met with broad support amongst most stakeholders, including [victim advocates](#) and [policing stakeholders](#). Some voices have been more cautious about the changes. The Law Society highlighted the importance of ensuring that suspects are not "[routinely](#)" put on bail for extended periods and the Magistrates' Association argued that the [underlying principles for all bail decisions should be a presumption for the least restrictive measures necessary](#).

1 Background: custody outcomes

1.1 Detention in police custody

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 considered 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 to determine whether a suspect should be charged with a criminal offence.

Individuals who have been arrested can normally only be detained for up to 24 hours without being charged.¹ 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.² Any detention beyond 36 hours requires authorisation from the courts.³ In exceptional circumstances the courts can warrant the detention of a suspect without charge for up to four days.⁴ The time period within which the police can legally detain a suspect is sometimes known as the '**PACE clock**' or the 'detention clock'.

1 Further reading

The Library paper [police powers: detention and custody](#) discusses police detention powers and the custody environment in more detail.

1.2 Possible outcomes of police custody

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

¹ [Section 41](#), Police and Criminal Evidence Act 1984

² [Section 42](#), Police and Criminal Evidence Act 1984

³ [Section 43](#), Police and Criminal Evidence Act 1984

⁴ [Section 44](#), Police and Criminal Evidence Act 1984

1. charged or issued an ‘out-of-court disposal’;
2. released on pre-charge bail;
3. released under investigation (RUI); or
4. released with no further action.

Charging and out-of-court disposals

The police have powers to charge individuals with an offence they were arrested for if there is “sufficient evidence”.⁵ They must collaborate with the Crown Prosecution Service (CPS) when issuing charges in certain cases (for example for the most serious offences). In cases involving the most serious offences, the CPS ultimately makes the charging decision.⁶ After arresting a suspect, officers **should** - as far as possible - finalise their investigation within the suspect’s ‘PACE Clock’ and decide whether to charge them whilst they are in detention.⁷

Once an individual has been charged it is up to the CPS to pursue a prosecution through the courts. Those who are formally charged with an offence are either released on **post-charge 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 in prison. Those charged with serious offences and those who have previous convictions for serious offences will normally be held on remand.⁸

2 Post-charge bail

There is a separate legislative framework and process for courts granting defendants release on bail after they have been charged with an offence (whilst they await trial).⁹ Post-charge bail is **not** discussed in this briefing. Throughout this briefing, unless specified otherwise, the term ‘bail’ is used to refer to **pre-charge** bail imposed by the police.

⁵ [Section 37\(7\)](#), Police and Criminal Evidence Act 1984

⁶ Crown Prosecution Service, [Charging \(The Director's Guidance\) 2013 - fifth edition, May 2013 \(revised arrangements\)](#), May 2013, para 15 and 16. **Note:** See para 20 for the exception.

⁷ College of Policing, [Authorised Professional Practice: Response, arrest, and detention](#), pre-charge bail management, updated 28 June 2022, [last accessed: 14 September 2022]

⁸ Gov.uk, [Being charged with a crime: Bail](#), [last accessed: 14 September 2022]

⁹ Several pieces of legislation govern bail in magistrate’s courts, including: [section 4](#) of the Bail Act 1976, [section 2](#) of the Criminal Justice Act 2003, the [Magistrates’ Courts Act 1980](#), and the [Powers of Criminal Courts \(Sentencing\) Act 2000](#). For more information on court-imposed bail and the rights of defendants, see the Crown’s Prosecution Service’s [legal advice on bail](#) (from the section ‘Right to Bail’ onwards).

Alternatively, the police can issue an out of court disposal when it is not in the public interest to charge a suspect and pursue a prosecution in the courts. For example, such disposals could include a caution (ie a formal warning) or a requirement to pay a fine through a Penalty Notice for Disorder or Fixed Penalty Notice.¹⁰

Pre-charge bail

When officers are not able to charge a suspect within the ‘PACE Clock’, the suspect may be released on bail without charge (pre-charge bail) when it is deemed ‘proportionate and necessary’¹¹ to allow the police to continue their investigation or await a charging decision from the CPS. This is also sometimes referred to as ‘**police bail**’.

The use of pre-charge bail is subject to strict time limits.¹² Custody officers can authorise suspects to be released on pre-charge bail for an **initial period of three months**. There is then a phased process for extending the amount of time someone can be on release on pre-charge bail. Pre-charge bail can be **extended to up to a total of nine months internally** by the police:

- **First extension:** an Inspector (or above) can authorise pre-charge bail to be extended by three months.
- **Second extension:** a Superintendent (or above) can authorise pre-charge bail to be extended by a further three months.

If the police wish to extend someone’s pre-charge bail beyond nine months while they continue to investigate a case, this requires judicial approval. A **magistrates’ court can grant further extensions to pre-charge bail**.

Conditional bail

Suspects released on pre-charge bail can be released either with conditions attached to their bail that they are required to meet (often referred to as ‘conditional bail’) or without any conditions.¹³ Conditions are generally there to ensure there are protective measures in place to safeguard victims and witnesses, prevent tampering with evidence or other interference with the investigation, prevent offending by suspects whilst on release, and to ensure that suspects surrender to custody. For example, conditions can involve restricting a suspect’s movements such as preventing them from going to certain places possibly at certain times, or from contacting certain people (eg other suspects, victims, or witnesses).

¹⁰ Section 4 of the Library briefing, [police powers: an introduction](#), provides further information on the police’s charging powers and out of court disposals.

¹¹ [Section 50\(a\)](#), Police and Criminal Evidence Act 1984

¹² Sections [47ZB-47ZG](#), Police and Criminal Evidence Act 1984

¹³ [Section 47\(1A\)](#), Police and Criminal Evidence Act 1984

Release under investigation

In 2017, powers were introduced to enable the police to release suspects from custody ‘under investigation’ (referred to as ‘**RUI**’).¹⁴

In this case, when RUI the suspect is free to go but the investigation remains open, and they may still be charged at a later date. Officers use RUI when the ‘PACE Clock’ expires and they want more time to gather evidence against the suspect but the ‘pre-conditions’ that officers must meet to impose pre-charge bail have not been met.¹⁵ RUI does not require authorisation from a custody /senior officer or court oversight.

There are **no time limits** within which officers must conclude their investigations against an RUI suspect and the police are under no obligation to keep an RUI suspect informed about the progress of their investigation.

3 Time limits for cases related to summary offences

Although RUI has no specific time limit, in practice prosecutions against RUI suspects that are in connection with a **summary-only offence** (the least serious category of criminal offence) would need to be commenced within six months of the offence allegedly occurring or the prosecution would fall altogether.¹⁶ This time limit **does not** apply for indictable offences or offences that are triable either way (the more serious categories of criminal offence).

The police also have **no powers to place conditions on RUI suspects**, which means they cannot restrict their movements or activities as they can for suspects released under pre-charge bail. There is also no requirement for RUI suspects to report to the police, though they may be asked to voluntarily attend further interviews.

¹⁴ [Section 56](#) of the Police and Crime Act 2017 amended PACE to allow for RUI.

¹⁵ Reforms were brought in through the Police, Crime, Sentencing and Courts Act 2022 to ‘balance out’ the use of RUI and pre-charge bail and encourage the police to use pre-charge bail over RUI where it is most appropriate. The reforms, which are expected to lead to a reduction in the use of RUI, are discussed in more detail in section 4.3 of this briefing.

¹⁶ Under [Section 127](#) of the Magistrates Court Act 1980, a magistrates’ court generally cannot try a ‘summary only’ offence¹⁶ unless the prosecution has been formally commenced within six calendar months of when the offence was committed. **Note:** this does not mean the trial or hearing must be completed within six months of the offence, rather that the prosecution proceedings should be initiated.

Comparison of pre-charge bail and RUI		
	Pre-charge bail	Release under investigation (RUI)
Authorisation	Requires authorisation from custody officers who can grant pre-charge bail when it is proportionate and necessary.	No authorisation required.
Police monitoring	Suspects are required to report to the police.	Suspects may be asked to voluntarily attend further police interviews but are not required to.
Conditions	Possibility of attaching pre-charge bail conditions 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.
Time limitations	Strict time limits. Pre-charge bail is initially set for three months.	No limit for how long suspects can be RUI.
Court oversight	Court approval required to keep suspects on pre-charge bail for more than nine months.	No court oversight.

Release with no further action

The police may release someone without further action. In this case, the police **must** give written notice to the person confirming that they are no longer suspected of a crime.¹⁷

¹⁷ [Section 34\(5C\)](#), Police and Criminal Evidence Act 1984

2 Pre-charge bail

2.1 Law and guidance on pre-charge bail

Parts [III](#) and [IV](#) of PACE provide the main legislative framework that regulates pre-charge bail.

This legislative framework has undergone two significant reforms in recent years. The Policing and Crime Act 2017 amended PACE on pre-charge bail and five years later, the Police, Crime, Sentencing and Courts (PCSC) Act 2022 made further amendments to the legislation. These two reforms are discussed in more detail in section 4 of this briefing.

The PCSC Act 2022 introduced a power for the College of Policing to issue statutory guidance to the police on pre-charge bail¹⁸ that would:

underpin the pre-charge bail regime and ensure consistency across forces in how the regime is applied in the standard of service for victims, witnesses and suspects.¹⁹

The police must have regard to this guidance when exercising functions related to pre-charge bail. Before issuing the guidance, the College of Policing are required to consult with the National Police Chief's Council (NPCC) - the co-ordinating body for UK police forces) - as well as representatives of local policing bodies such as Police and Crime Commissioners (PCCs) and equivalents, and any others the College believes to be relevant.

On 5 August 2022, the College published a draft version of the first statutory guidance on pre-charge bail and ran a public consultation on the draft. This closed on 16 September 2022.²⁰

The Crown Prosecution Service has also published [legal guidance on bail](#) which provides further information on 'police bail', the conditions of bail, and the rights of those who have been released on bail.²¹

¹⁸ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022

¹⁹ As above, p3

²⁰ College of Policing, [Pre-charge bail guidance - have your say](#), 5 August 2022. **Note:** at the time of writing this briefing the final version of the statutory guidance was not yet available. The guidance must be approved by the Home Secretary and laid before Parliament before it can be formally issued.

²¹ Note this guidance covers bail more broadly including post-charge bail granted by the police and the courts.

2.2

Imposing pre-charge bail

Why is pre-charge bail used?

PACE provides that pre-charge bail can be used:

1. under [section 37\(2\)](#) when the police have **insufficient evidence to charge** a suspect, but they wish to pursue the case and continue investigating to gather more evidence;
2. under [section 34\(5\)](#) when the police are not in a position to charge a suspect because there is **a need for further investigation of a matter that the suspect was detained for** but there are no grounds to justify the continued detention of a suspect²² (eg it is no longer necessary to detain the suspect to secure or preserve evidence or obtain it by questioning);
3. under [section 37\(7\)\(a\)](#) when the police consider that there is enough evidence to charge a suspect, but the matter must be **referred to the CPS for a charging decision**;²³ or
4. under [section 37\(7\)\(b\)](#) where there **is sufficient evidence** to charge a suspect, but the police wish to release the suspect on bail without charge for a reason other than awaiting a CPS decision. For example, if the suspect was arrested for multiple offences but the police don't have sufficient evidence to charge for all of them, to coordinate bail for multiple charges, or to allow time to seek a civil or protective order before the suspect gets charge.²⁴

Whilst release on bail under sections 37(2) and 34(5) – one and two above – technically provides two powers to release on bail, they are very similar. For example, if a custody officer determines there is not enough evidence to charge a suspect, part of the reason for releasing a suspect on bail is because further investigation is needed. The draft statutory guidance on pre-charge bail produced by the College of Policing notes that in practice this means there is very little difference between them. It states:

the circumstances when each should be used to bail the suspect are likely to be very similar ... in most, if not all, cases where the custody officer does not have sufficient evidence to charge and further investigation is required, either

²² [Section 34\(2\)](#), Police and Criminal Evidence Act 1984

²³ **Note:** in this case, the applicable bail period (the start of the person's time on pre-charge bail) does not begin on the day the person is released from police custody. It starts when the CPS returns the case file and reaches a charging decision. See para 4.24 of the College of Policing's [draft statutory guidance on pre-charge bail](#) (PDF) and 'Pre-Charge Bail' under Police Bail in the Crown Prosecution Service's [legal guidance](#).

²⁴ College of Policing, [draft statutory guidance on pre-charge bail](#) (PDF), 5 August 2022, p13, para 4.29

section 34(5) or 37(2) could be used to release a suspect on bail, provided the pre-conditions for bail are met.²⁵

When can pre-charge bail be imposed?

Pre-conditions of bail

Pre-charge bail can be an important police tool that allows officers to continue investigations without the suspect being detained whilst still managing the risks that may be posed (to others, themselves, or evidence) by release. However, it is also recognised that bail “can result in disadvantages for the suspect” and restrictions on their liberty.²⁶ Therefore, there are two ‘pre-conditions’ that must be met before pre-charge bail can be imposed to ensure its appropriate use. These are that the release of the suspect on bail:

1. is **necessary and proportionate** (taking into account any conditions of bail that are being proposed for the individual); and
2. is **authorised by a custody officer** who must also take into account any representations made by the suspect and/or their legal representative.²⁷

Legislation takes a neutral position towards releasing suspects on pre-charge bail. This means there is no presumption against or in favour of releasing people on pre-charge bail. Decisions should be based on whether the above pre-conditions have been satisfied.²⁸

Determining necessity and proportionality

To determine whether a case meets the pre-conditions for pre-charge bail, custody officers²⁹ **must** consider the following five factors set out in legislation. These are whether pre-charge bail is necessary and proportionate to:

- ensure the suspect surrenders to custody;
- prevent offending by the suspect;
- safeguard victims of crime and witnesses (taking into account their vulnerabilities and the offence the suspect was arrested for);
- safeguard the suspect (also taking into account any vulnerabilities); or
- manage risks to the public.³⁰

²⁵ As above, p10

²⁶ As above, p5

²⁷ [Section 50A](#), Police and Criminal Evidence Act 1984

²⁸ [Explanatory Notes: Police, Crime, Sentencing and Courts Act 2022](#) (PDF), p74, para 470

²⁹ Or other authorising officers who are granting extensions to pre-charge bail.

³⁰ Sections 30A(1B) and 50A(2), Police and Criminal Evidence Act 1984 as amended by [Schedule 4, Part 2](#) of the PCSC Act 2022

4 What is 'street bail'?

'Street bail' refers to the power that officers have to release people they've arrested on bail without taking them to a police station.³¹ This is intended to give officers greater flexibility in organising their time, allow them to remain on patrol for longer, and stop scenarios where suspects have to be taken to a police station only to be bailed on arrival.³²

Legally, when releasing someone on street bail, the officer **must** be satisfied that it is "necessary and proportionate" and it **must** be authorised by a custody officer. Officers also have the legal powers to attach conditions to street bail.³³ Officers **should** use street bail "reasonably" according to the nature of the offence, the victim, and the needs of the investigation.

When individuals are arrested somewhere other than a police station, they do not, in that moment, have the same access to legal advice, safeguards, and support as they would once transferred to a police station. Officers **should** therefore consider the impact of this on the individual and their ability to understand when street bail is imposed without this, eg if the person is vulnerable and should have access to an Appropriate Adult.³⁴

If a person is released on street bail, they **must** be given a written notice by the arresting officer stating the offence they have been arrested for and on what grounds. The notice must confirm whether the suspect has been released without bail or on bail and specify a police station they must attend.

2.3

Conditions of bail

Pre-charge bail can be imposed with conditions that the suspect is required to meet ('conditional bail') or without any conditions attached. Conditions

³¹ [Section 30A](#), Police and Criminal Evidence Act 1984

³² Essex police force, [EQ205 Procedure - Street Bail](#), 21 January 2020, [accessed 9 September 2022]

³³ [Section 30A\(3B\)](#), Police and Criminal Evidence Act 1984. **Note:** practice may vary locally. For example, Essex police force has published its [procedure for street bail](#) (which was last updated in January 2021) and it states: "Whilst the legislation has been amended to allow for conditions to be imposed upon 'street bail' this facility is not available within the Essex Police area and officers may not impose conditions on such bail."

³⁴ Appropriate Adults are there to safeguard the interests, rights and entitlement of children and vulnerable people who are suspected of a criminal offence by ensuring that they are treated fairly and able to participate in the process effectively. See: National Appropriate Adults Network, [About appropriate adults](#), [accessed 19 December 2022]; and Home Office, [PACE Code C 2019](#), 4 November 2020, para 1.7

can be imposed if the custody officer is satisfied that they are ‘necessary and proportionate’ by using the same test outlined above for the imposition of bail itself. **Note:** Under [section 3](#) of the Bail Act 1976, anyone granted bail has a **duty to surrender to custody** regardless of whether they have any conditions attached to their bail or not.

The draft statutory guidance by the College of Policing further states that “any risks posed to the victim should be central” to decision-making on bail conditions and specifies that in any **domestic or sexual abuse cases**, “Bail with conditions should always be considered.”³⁵ If there are indications of serious harm and risk to victims or witnesses, conditional bail can also be considered in conjunction with other (non-bail) protective measures such as a [Stalking Protection Order](#) or a [Domestic Violence Prevention Notice](#).³⁶

The draft statutory guidance states that pre-charge bail without conditions can still be a “useful tool in suspect management” where safeguarding victims or witnesses is not an issue but releasing them on bail would help ensure the suspect is required to answer on a specific time, date and location.³⁷ Officers have the power to arrest any suspect released under pre-charge bail for failing to attend the specified police station at the appointed time they are required to.³⁸

What conditions can be imposed

Conditions can only be imposed for a prescribed set of reasons, including:

- to prevent suspects from failing to surrender to custody; committing an offence while on bail; or interfering with witnesses or otherwise obstructing the course of justice; or
- for the suspect’s own protection and welfare.³⁹

However, there is no legally specified list of conditions that can be imposed with pre-charge bail to prevent or ensure these outcomes and there is very little central guidance on what conditions the police can or should impose.⁴⁰

Examples of conditions that could be imposed include:

- requirements to report to a police station to prevent a suspect from absconding;
- restrictions on where the individual can go, eg to prevent them from going to an area where they are suspected of having offended such as a

³⁵ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p18

³⁶ As above, p6.

³⁷ As above, p19

³⁸ Section 46A, Police and Criminal Evidence Act 1984

³⁹ [Sections 3](#) and [3A\(5\)](#), Bail Act 1976

⁴⁰ Furlong, S., Richardson, V., and Feist A., [Pre-charge bail: an overview of the evidence](#) (PDF), January 2021, p19.

shopping centre where they are suspecting of having committed theft in or a victim's home;

- restrictions on who the individual can interact with, eg the victim or if the alleged offence involves crimes against children, there could be restrictions from being alone with children;
- a curfew; or
- a ban on leaving the country with the suspect having to surrender their passport.⁴¹

The police will use their discretion to impose a specific and tailored set of conditions for each case. The exercise of this discretion will depend on risk assessments, the alleged offence, and the individual circumstances of the suspect, victim(s), and witnesses.

Police **do not** have the power to impose electronic monitoring on pre-charge suspects. Police also cannot require suspects that they have released on pre-charge bail to reside at a bail hostel. They also cannot impose conditions on pre-charge bail suspects that require the suspect to attend an interview with a legal advisor or require them to make themselves available for inquiries and reports.⁴²

Otherwise, there are very few restrictions on what conditions the police can impose. However, the draft statutory guidance on pre-charge bail states that – after taking account of any risks posed to victims – “the uncharged suspect is entitled to have the least restrictive conditions possible” imposed on them.⁴³ Conditions should also be practically workable for the suspect's existing commitments, such as employment or childcare. The draft guidance reiterates the importance of this because “the suspect is not charged with an offence at this stage. As such, conditions should not be unreasonable, overly restrictive, or punitive.”⁴⁴

Involving victims in decision-making

Police officers have a statutory duty to **seek the alleged victim's view on bail conditions**.⁴⁵

When officers are proposing to release a suspect on pre-charge bail, they must, where “reasonably practical to do so”, seek the alleged victim's views on whether ‘relevant’ conditions should be attached to the suspect's bail and if so, what conditions those should be. Relevant conditions that the police

⁴¹ Furlong, S., Richardson, V., and Feist A., [Pre-charge bail: an overview of the evidence](#) (PDF), January 2021, p19

⁴² [Section 3](#) Bail Act 1976; College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p19

⁴³ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p18

⁴⁴ As above

⁴⁵ Sections 30CA(4A)-(4D) and 47ZZA, PACE as introduced by [schedule 4, part 3](#) of the PCSC Act 2022.

should seek the victims' views on are those that relate to the safeguarding of the victim. The officer who consults the victim must then inform the custody officer of the victim's views. Officers are required - where reasonably practical - to do the same if a suspect's relevant bail conditions may be varied.

This duty was introduced in 2022 with the intention that it would help officers to fully consider safeguarding concerns when imposing pre-charge bail and better ensure that appropriate measures are in place to mitigate those. The intention is that in turn this will lead to victims feeling more confident in the protections that are put in place.⁴⁶

The draft statutory guidance by the College of the Policing states that the alleged victim's views, including their perception of the risk of harm towards them, must be "considered against the rights of the uncharged suspect, not to be treated punitively."⁴⁷

Note: the duty does **not** apply to police decisions on whether to impose bail, only the conditions that may be attached to it. The draft statutory guidance reiterates that the "decision whether to grant bail remains a decision for the custody officer"⁴⁸ and the need to safeguard victims of crime is one of the factors that will be considered as part of the decision.

Keeping victims informed

When suspects are released on bail and if any conditions are imposed on them or changed, the police have separate responsibilities to keep victims informed of this.

The [Victims' Code](#) – a code of practice for criminal justice agencies that sets out the minimum level of service victims can expect from them - provides victims with the right to be informed about key decisions regarding an investigation.⁴⁹ It states that all victims have the right to be informed about the release of a suspect on police bail or RUI within five working days. The same applies if bail conditions are changed or cancelled. They also have the right to have the reasons for this explained to them by the police.⁵⁰

Breach of bail conditions

Police officers can re-arrest individuals they reasonably believe have breached the conditions of their bail. However, breach of bail conditions is **not** a criminal offence.

The draft statutory guidance encourages officers to arrest those who have broken their bail conditions "wherever reasonable" to send "a positive

⁴⁶ As above

⁴⁷ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p14

⁴⁸ As above

⁴⁹ All criminal justice agencies should adhere to the Victims' Code.

⁵⁰ Ministry of Justice, [MoJ Victims Code 2020](#) (PDF), November 2020, p21, para 6.1

message to victims and witnesses of crime” and to create a deterrent effect so that suspects know certain “behaviour will not go unaddressed”.⁵¹

5 Detention for breaching bail conditions

As discussed in section 1.1 of this briefing, when someone is arrested and brought to a police station to be detained, this triggers their ‘PACE clock’, ie the countdown on the maximum amount of time they can be detained in police custody. Under PACE, individuals who have been arrested can normally only be detained for up to 24 hours without being charged but in serious cases this can be extended up to a maximum of 96 hours.

When someone is released on pre-charge bail this suspends their ‘PACE clock’. If they are then arrested again for breaching their bail conditions or for failing to attend a police station, their clock restarts, continuing from the point it left off when they were released on bail. In other words, in this situation where someone is re-arrested for breaking bail, the ‘PACE clock’ does not go back to zero.

In these cases, the PCSC Act 2022 has now enabled the restart of someone’s ‘PACE clock’ to be delayed by three hours from their arrival at a police station. The intention of this is to stop people’s PACE clocks running down where they repeatedly breach bail conditions and to ensure that the time taken to deal with their arrest does not impact the police’s investigation. For example, that it does not take away from future time that may be needed to interview the suspect at a later stage.⁵²

2.4

Authorisation and time-limits for pre-charge bail

The amount of time that pre-charge bail can be granted for is referred to as the ‘**applicable bail period**’.⁵³

⁵¹ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p34

⁵² [Part 5 of Schedule 4](#), Police, Crime, Sentencing and Courts Act 2022. See also: [Explanatory Notes](#) (PDF), p81, para 505

⁵³ The annex in this briefing provides a table outlining the applicable bail periods, extensions that can be made, and level of authorisation required. **Note:** PACE sets out different time limits for “non-standard” cases, which are those being investigated by non-police agencies such as HM Revenue and Customs. These are **not** covered in this briefing.

Initial bail period and police extensions

The initial applicable bail period is three months.⁵⁴ The police can extend this twice by three months each time.⁵⁵ To grant an extension, the authorising officer must be satisfied that:

- there are reasonable grounds for suspecting that the suspect is guilty of the offence;
- further time is needed for making a decision as to whether to charge the suspect with the offence, or otherwise, that further investigation is needed;
- the investigation is being conducted “diligently and expeditiously”; and
- bail is still necessary and proportionate.⁵⁶

6 ‘Exceptionally complex’ cases

The Director of Public Prosecutions can designate a case as ‘exceptionally complex’.⁵⁷ Where this happens, it allows the police to internally authorise extensions of the applicable bail period to up to 12 months from the bail start date (rather than nine) before the case has to go to a magistrates’ court for any further extensions. Extensions of up to 12 months by the police have to be authorised by a police officer of the rank of commander, assistant chief constable, or above.⁵⁸

First court extension

Further extension to the applicable bail period beyond nine months requires court approval. Applications for a first extension can be made to a magistrates’ court, which can extend the applicable bail period **up to 12** months from the bail start date.⁵⁹

In certain cases where pre-charge bail needs to be extended because further investigation is needed and this is unlikely to be completed in the usual extension time frame, applications can be made to the magistrates’ courts to instead grant a first extension of up to 18 months from the bail start date.⁶⁰

⁵⁴ [Section 477B](#), Police and Criminal Evidence Act 1984

⁵⁵ [Sections 477D](#) and [477DA](#), Police and Criminal Evidence Act 1984

⁵⁶ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p22

⁵⁷ [Section 477E](#), Police and Criminal Evidence Act 1984

⁵⁸ [Section 477E\(9\)](#), Police and Criminal Evidence Act 1984

⁵⁹ [Section 477E](#), Police and Criminal Evidence Act 1984

⁶⁰ As above

Further court extensions

A magistrates' court can grant further three-month extensions (running from the end of the current applicable bail period).⁶¹ There is technically no statutory limit to the number of pre-charge bail extensions that a magistrates' court can grant.⁶²

⁶¹ [Section 477G](#), Police and Criminal Evidence Act 1984

⁶² College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p20

3 Releasing suspects under investigation

There are no processes set out in legislation to regulate how RUI is used. However, it is generally acknowledged that being left RUI for a long time without conclusion can significantly affect a suspect's life. The decision to RUI can also impact victims. Therefore, the College of Policing states in its draft statutory guidance that forces should have an RUI process "capable of withstanding similar scrutiny to bail".⁶³

3.1 When should suspects be RUI?

The College of Policing states that "RUI should only be used in circumstances where the preconditions for bail are not met and there is little, or no, risk identified" by releasing the suspect.⁶⁴

As with pre-charge bail, the College of Policing also says that officers should have "due regard to the proportionality and necessity" of RUI.⁶⁵ However, unlike with pre-charge bail there are no set criteria or factors to consider in making this determination and no statutory requirements that RUI be authorised by a senior/ custody officer.

In domestic abuse and 'high harm' cases "where the offences incur significant adverse impacts ... upon individuals or the wider community"⁶⁶ officers should give serious consideration to conditional bail. The College of Policing advises that a detective inspector should be consulted and authorise RUI if it is being considered in these cases.⁶⁷

3.2 Managing RUI

There are no legally imposed limits on the length of time a suspect can be RUI. This means there are no legal obligations regulating how quickly the police must progress an RUI case. There are also no statutory requirements that state the police must keep parties informed of case progress when it concerns RUI. However, the College of Policing advises that regardless of whether a case is dealt with by RUI or pre-charge bail, victims, witnesses and

⁶³ As above, p32

⁶⁴ As above

⁶⁵ As above

⁶⁶ Home Office, [Police Powers, Pre Charge Bail Government Response](#) (PDF), 6 September 2021, p7

⁶⁷ College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p33

suspects **should** be entitled to a timely resolution of the investigation and regular updates.

Recommended practice

The College recommends that:

- polices forces establish a formal mechanism for notifying suspects that they have been RUI and explaining what this means for them (including a written notice);
- polices forces establish a process for keeping suspects regularly updated on an investigation's progress and informing them of likely update intervals;
- on release, investigators establish an initial expected finish date for the investigation and a corresponding plan to achieve it; and
- RUI investigations have a supervisory review at least every 30 days until the investigation has been completed and an outcome actioned.⁶⁸

⁶⁸ As above, pages 33-34

4 Recent history of pre-charge bail reform

Pre-charge bail has undergone two major reforms in the last decade, first in 2017 and then in 2022. The 2022 changes were introduced, in part, to reverse the impact of the 2017 reforms, following concern that the 2017 reforms had resulted in unintended consequences including pre-charge bail not being used when it should have been. Both sets of reforms generated significant debate about the appropriate use of pre-charge bail and its impact on both suspects and victims.

4.1 2011-2017: Concerns about the way pre-charge bail was being used

The length of time 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'.⁶⁹ In effect this judgment placed a restriction on police investigations. It meant that 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.⁷⁰

In response to this ruling, the Coalition Government at the time introduced emergency legislation to restore the police's powers to bail suspects without affecting their 'PACE clock'.⁷¹

However, the episode drew attention to the fact that many suspects were being kept on police bail for long periods of time, raising concerns that:

- this was detrimental to suspects' civil liberties because it meant suspects could have stringent conditions placed on their lives for long periods without being charged; and

⁶⁹ [Manchester Police, R \(On the Application Of\) v Hookway & Anor \[2011\] EWHC 1578 \(Admin\)](#)

⁷⁰ Since PACE had first come into force (1986), the police had always operated on the basis that only the time spent in police detention counted towards the application of the 96-hour limit (PACE clock) and that the PACE clock was paused when an individual is released on police bail.

⁷¹ [Police \(Detention and Bail\) Act 2011](#); and Nick Herbert at [HC Deb 30 June 2011 c1133-1141](#). For more information on the High Court's ruling, the impact of the judgment, and the emergency legislation in response, see the Library briefing: [Police \(Detention and Bail\) Bill - House of Commons Library](#).

- this was encouraging lethargic justice by leaving both suspects and victims waiting months (or possibly years) for a case to be resolved following an arrest.

4.2

2017 reforms: reducing the use of pre-charge bail

A new legislative framework

In response to the above concerns, the [Policing and Crime Act 2017](#) was introduced. This brought with it major changes to the way suspects were released from police custody, with the expressed purpose of reducing “both the numbers of individuals subject to, and the average duration of, pre-charge bail”.⁷² The Act:

- established a **presumption against the use of pre-charge bail** when suspects were released from custody, unless pre-charge bail was considered necessary and proportionate;
- set “**pre-conditions**” for when pre-charge bail could be imposed on suspects released from custody;⁷³ and
- established a **new time limit regime** for pre-charge bail that limited the length of time that the police could release suspects on pre-charge bail to just 28 days and with any extensions beyond three months requiring court approval.⁷⁴

Before the 2017 reforms, almost all suspects who couldn’t be charged within the ‘PACE clock’ were released on pre-charge bail. Following the 2017 reforms the intention was that instead most suspects who couldn’t be charged within the PACE clock would instead be RUI. 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.⁷⁵ The Government also hoped that tighter restrictions on the use of pre-charge bail would protect the human rights and civil liberties of un-convicted suspects.⁷⁶

⁷² Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#) (PDF), March 2015, p4

⁷³ See section 2.2 of this briefing for more information on the pre-conditions for pre-charge bail.

⁷⁴ **Note:** both the presumption against the use of pre-charge bail and the time limit regime that the 2017 Act established have now been superseded by reforms introduced through the PCSC Act 2022 discussed in section 3.3 of this briefing.

⁷⁵ Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#) (PDF), March 2015, p4

⁷⁶ Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#) (PDF), March 2015

Steep decline in the use of pre-charge bail

There are no official statistics available on the use of pre-charge bail and RUI from when the 2017 reforms came into place.⁷⁷ However, available local evidence gathered through FOI requests suggests that in the months following the introduction of the 2017 reforms the use of pre-charge bail fell rapidly with a simultaneous spike in RUI.

For example, in September 2019 the Law Society published analysis of data on the use of pre-charge bail and RUI from 30 forces. The data showed, across those forces, an 84% decrease in the number of people on pre-charge bail between 2016/17 and 2017/18.⁷⁸

Shortly after this, BBC Newsnight also obtained FOI data from 20 police forces which showed that the number of suspects RUI in sexual and violent cases had “ballooned” from 1,304 in 2016 to 27,852 in 2019. The programme noted that over this period this amounted to almost 100,000 suspects of serious crimes on RUI.⁷⁹

Whilst the intention of the 2017 reforms was to reduce the use of pre-charge bail, commentators were surprised by how far the police had decreased their use of the power following the reforms. The Law Society argued that the police had taken “the presumption against bail at its highest, despite the fact that pre-charge bail could still be used where necessary and proportionate”.⁸⁰

Policing stakeholders also believed that the 2017 pre-charge bail regime had “disincentivised the use of bail”.⁸¹ Academic commentators Professor Ed Cape and Professor Michael Zander QC both argued that a likely explanation for police officers having embraced RUI as an alternative to pre-charge bail was to manage their increasing workloads.⁸² For example, under the 2017 reforms, after the three-month mark officers had to regularly apply for extensions to pre-charge bail at a magistrates’ court, which could be an onerous and time intensive process. In comparison no such process applied to RUI cases to restrict the use of RUI or take away from officers’ time.

⁷⁷ The Government began to publish experimental statistics on the use of pre-charge bail and RUI in 2018 when the Home Office first began to collect this data from forces on a voluntary basis. Due to changes in data collection between some of the years over this period and its voluntary nature, the data is somewhat incomplete and does not cover all police forces. Therefore, it is difficult to make year on year comparisons. To access the data see Annexes B of [Police powers and procedures England and Wales statistics](#) years 2018-2020 and Annex A of year 2021.

⁷⁸ Law Society, [Release under investigation](#), November 2019; and cited in Home Office, [Police Powers: Pre-charge Bail. Government consultation](#) (PDF), February 2019, p27

⁷⁹ BBC Newsnight, [‘Scandal brewing’ as thousands of suspects released](#), 5 December 2019, 06.11 mins; and BBC News [‘Scandal brewing’ as thousands of suspects released](#), 4 December 2019

⁸⁰ The Law Society, [Pre-charge bail reforms announced](#), 14 January 2021

⁸¹ Home Office, [Police Powers: Pre-charge Bail. Government consultation](#) (PDF), 5 February 2020, p10

⁸² See: Cape, E., [Police bail without charge – leaving suspects in limbo](#), Centre for Crime and Justice Studies, 16 October 2019; and Zander, M., [Extraordinary shift in the way the police use bail](#), The Times, 28 September 2017

Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) raised similar concerns. The Inspectorate found that because some aspects of a police investigation take time (eg obtaining digital forensic evidence and evidence from third parties), "in far too many cases" suspects were RUI rather than released on bail. Investigators knew they would have to go through the courts to seek extensions to accommodate for such delays and would avoid having to do so.⁸³

HMICFRS argued that the 28-day initial applicable bail period (ie the initial period for pre-charge bail that the police themselves could authorise) had a "considerable influence on the increased use of RUI" and concluded this timeframe was "too short for an effective investigation to take place".⁸⁴

The impact

The sharp decline in bail raised concern about the impact on the safety of victims and witnesses. Stakeholders also argued that the use of RUI as an alternative to pre-charge bail failed to address concerns about the impact on the civil liberties of suspects and the length of time taken to conclude cases.

The safety of vulnerable victims

Policing stakeholders and victim support groups argued that vulnerable victims and witnesses - particularly victims of domestic abuse - were being put at risk when police increased their use of RUI and used it over pre-charge bail. They argued that because police could not attach conditions to RUI and were also not using bail to monitor suspects and place conditions on them, suspects were free to interact with their victims without consequences.⁸⁵

In 2020, HMICFRS reviewed the use of RUI and pre-charge bail in 140 charged cases. They found in 62 cases (44%) RUI was used where pre-charge bail would have been more appropriate. Some of these cases involved serious offences such as 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."⁸⁶

Women's Aid (a charity which supports domestic abuse victims) raised concerns that without bail conditions, domestic abuse suspects were able to return to the home that they shared with their victim. They said this meant victims and their children had been forced to leave their homes. However, because there were no bail conditions imposed, they found it difficult to prove

⁸³ HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#) (PDF), December 2020, p19

⁸⁴ As above

⁸⁵ NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), 27 May 2019; and HMICFRS, [The police response to domestic abuse: An update report](#) (PDF), February 2019, p40-41

⁸⁶ HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#) (PDF), December 2020, p11

they needed emergency housing and/or apply for a legal protection order against their abuser.⁸⁷

Overusing RUI: cases “left in limbo”

Respondents to the Government’s pre-legislative consultation on the 2017 reforms had raised concern that increased RUI might not lead to “speedier justice” for victims and suspects or “solve the underlying issue of an extended period of uncertainty for suspects between being arrested and the subsequent decision on charging”.⁸⁸ Some felt it could even exacerbate the issue, noting:

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.⁸⁹

There is some evidence that suggests the reforms did result in suspects being left on RUI for long periods of time. In 2020, HMICFRS estimated that the average time between arrest and charge was 128 days for pre-charge bail compared to 201 days for RUI.⁹⁰

The police are under no obligation to keep RUI suspects informed about the progress of their investigations. The Law Society argued that this meant using RUI over pre-charge bail simply moved “the point of uncertainty” for suspects and resulted in cases being “left in limbo”, with neither the victim nor the suspect having information about what was happening.⁹¹ The then Vice President of the London Criminal Courts Solicitors’ Association, Kerry Hudson, criticised the practice of keeping suspects on RUI for long periods as “making a mockery of justice”.⁹²

The Law Society also argued that the growing use of RUI 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 following up with the police for updates on RUI suspects, which they argued made:

... 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.⁹³

⁸⁷ HMICFRS, [The police response to domestic abuse: An update report](#) (PDF), 26 February 2019, p36

⁸⁸ Home Office, [Pre-Charge Bail – Summary of Consultation Responses and Proposals for Legislation](#) (PDF), March 2015, p7

⁸⁹ As above

⁹⁰ HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#) (PDF), December 2020, p19

⁹¹ The Law Society, [Justice on Trial 2019: Fixing our Criminal Justice system](#), 14 July 2019, p9

⁹² The Times, [Judges ‘should force police to justify leaving suspects in limbo’](#), 18 June 2019

⁹³ Law Society, [Release under investigation](#), September 2019, p5

4.3

2022 reforms: ‘rebalancing’ the use of pre-charge bail

Calls for further reform to pre-charge bail

In response to concerns about the impact of the 2017 reforms, policing bodies took steps to improve the use of pre-charge bail. For example, HMICFRS recommended that all forces review their use of RUI and pre-charge bail and implement any necessary changes.⁹⁴ The NPCC – the co-ordinating body for UK police forces – also introduced operational guidance in 2019 to advise the police on best practice and reinforce “pre-charge bail as a legitimate tool in investigating crime and protecting the public.”⁹⁵

This appeared to have some effect on increasing the use of pre-charge bail again as officers responded to criticisms of RUI. Experimental data (for 40 police forces) indicated that after the initial decline in pre-charge bail following the introduction of the 2017 reforms, it once again increased from 84,221 in 2018/19 to 153,527 in 2019/20.⁹⁶

However, despite this, there were calls for more to be done with some stakeholders saying that further legislative change was needed to reverse the impact of the 2017 reforms. For example, the Law Society published detailed recommendations for legislative reform to pre-charge bail.⁹⁷

Then in September 2018, a woman named Kay Richardson was murdered by her estranged husband when he was RUI after she reported him for rape.⁹⁸ Following this case, in June 2019, the Joint Committee on the then Draft Domestic Abuse Bill recommended that there should be legislation to create a presumption that suspects in domestic abuse cases should only be released from custody on pre-charge bail, unless it is clearly not necessary for the protection of the victim.⁹⁹

The Government acknowledged that the changes brought in by the Policing and Crime Act 2017 had “a number of knock-on effects within the criminal justice system”.¹⁰⁰ It consulted on proposals for further reform of pre-charge bail in 2020¹⁰¹ and then set out its intention to bring in new legislation –

⁹⁴ HMICFRS, [State of Policing: The Annual Assessment of Policing in England and Wales 2018](#) (PDF), July 2019, p103

⁹⁵ NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), May 2019

⁹⁶ Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2020](#), November 2020, Annex B

⁹⁷ The Law Society, [Campaign: Release under investigation and pre-charge bail](#), last updated 7 July 2021

⁹⁸ BBC News, [‘Scandal brewing’ as thousands of suspects released](#), 4 December 2019

⁹⁹ Joint Committee on the Draft Domestic Abuse Bill, [Draft Domestic Abuse Bill - Joint Committee on the Draft Domestic Abuse Bill](#), June 2019, para 131

¹⁰⁰ Home Office, [Police Powers: Pre Charge Bail Government Response](#) (PDF), 14 January 2021, p10

¹⁰¹ Home Office, [Police powers: pre-charge bail](#), 5 February 2020

referred to as ‘Kay’s Law’ in memory of Kay Richardson - that would reverse some of the 2017 changes and ensure that the system “prioritises the safety of victims and witnesses and the management of suspects.”¹⁰²

What changed? The Police, Crime, Sentencing and Courts Act 2022

The Government’s commitments to introduce Kay’s Law were incorporated into the PCSC Act 2022 which received Royal Assent on 28 April 2022.

The PCSC Act introduced [Schedule 4](#)¹⁰³ which amended provisions in PACE relating to pre-charge bail. Schedule 4 is split into several parts. The following table outlines the key parts and the changes it brought. These came into force on **28 October 2022**.¹⁰⁴

Reform of the pre-charge bail legislative framework		
Part	Change introduced (by the PCSC Act)	Policy aims
1	Established a neutral position in legislation towards the use of pre-charge bail (ie neither a presumption for or against it).	To remove “any suggestion that the default position” is to release a suspect without bail and to encourage greater use of pre-charge bail (providing the pre-conditions for it are met) so that more victims are afforded the protections that bail conditions can provide. ¹⁰⁵
2	Put into statute a series of risk factors officers must have regard to when deciding whether pre-charge bail is necessary and proportionate (where previously there was no single specified list to consider).	To “streamline the ... ‘necessary and proportionate’ test” and establish more consistency in bail decisions across the police. ¹⁰⁶
3	Placed a new statutory duty on officers to seek the victim’s view on bail conditions relevant to their safeguarding.	To give victims more of voice in what “their safeguarding look[s] like”, help ensure police consider all their safeguarding needs, and encourage more confidence by the victim in the protections that are put in place. ¹⁰⁷

¹⁰² HC WS, [Pre-charge bail](#), 5 November 2019, UIN HCWS94; Home Office, [Home Secretary to introduce ‘Kay’s Law’ reform to better protect victims](#), 14 January 2021

¹⁰³ [Section 45](#), Police, Crime, Sentencing and Courts Act 2022

¹⁰⁴ Six months after the PCSC Act received Royal Assent. See: [Pre-charge bail: Police, Crime, Sentencing and Courts Act 2022 factsheet](#)

¹⁰⁵ [Explanatory Notes: Police, Crime, Sentencing and Courts Act 2022](#) (PDF), p74, para 470

¹⁰⁶ As above

¹⁰⁷ Home Office, [Pre-charge bail: Police, Crime, Sentencing and Courts Act 2022 factsheet](#), 20 August 2022, [accessed 9 September 2022]

4	Lowered the ranks of officers who can authorise pre-charge (and corresponding extensions) and delayed the point at which pre-charge bail requires court authorisation. ¹⁰⁸	To address concerns that the complexity and time required to take cases to a magistrates' court for bail extensions was putting officers off from using it. The change also aims to "free up court resources ... for the lengthiest, most complex investigations." ¹⁰⁹
5	Enabled the restart of someone's 'PACE clock' when arrested for breaching bail to be delayed by three hours from their arrival at a police station.	To stop a suspect's PACE clock from running down if they repeatedly breach bail conditions and impacting the investigation, eg by reducing the available time that may be needed to interview the suspect at a later stage. ¹¹⁰
6	Introduced the requirement for statutory guidance on the use of pre-charge bail for the first time. ¹¹¹	To encourage greater consistency across forces in the use of bail. ¹¹²

What did not change?

Oversight of RUI

In its 2020 consultation on pre-charge bail, the Government invited views on introducing a statutory framework for RUI case management (that would be similar to that of pre-charge bail). Unlike pre-charge bail, this proposed RUI framework would not have required any oversight by the courts but would have been regulated by police procedure and included set review points for investigations of RUI suspects.¹¹³

However, in the end the Government decided not to introduce such a framework. It concluded that a specified framework would not be necessary because it expects "the use of RUI to decline" as a result of the wider changes brought to pre-charge bail by the PCSC Act 2022. The Government said this would mean that 'no further action' is likely to be "the most appropriate course" for the police to take in cases where pre-charge bail is not necessary or proportionate. The Government also said it would work with policing

¹⁰⁸ The time periods and authorisation required for pre-charge bail, as amended by the PCSC Act, are outlined in more detail in the Annex of this briefing.

¹⁰⁹ [Explanatory Notes: Police, Crime, Sentencing and Courts Act 2022](#) (PDF), p80, para 501

¹¹⁰ As above, p81, para 505

¹¹¹ **Note:** In May 2019 the NPCC had elected to put in place [interim operational guidance to advise the police on pre-charge bail](#) in response to concerns about its use and the protection for victims. However it was not a legal requirement to adhere to this guidance as it is for the statutory guidance.

¹¹² College of Policing, [Pre-charge bail - Statutory guidance consultation](#) (PDF), 5 August 2022, p3

¹¹³ Home Office, [Police Powers: Pre Charge Bail Government Response](#) (PDF), 14 January 2021, p17

partners on non-statutory guidance designed to help officers manage non-bail cases.¹¹⁴

Draft statutory guidance on pre-charge bail that has since been published by the College of Policing reiterates that use of RUI should be “fully justifiable” and decisions “should not be made on the basis of resources and/or administration.”¹¹⁵

Reactions to the latest reforms of bail

The latest reforms were met with broad support amongst most stakeholders. In response to the Government’s pre-legislative consultation, the Government said that:

There was generally high agreement across most categories for longer bail timeframes, removal of the presumption against bail and use of specific risk-based factors.¹¹⁶

As the PCSC Act 2022 was passing through Parliament, the provisions on pre-charge bail proved to be the least controversial. Members from all parties who spoke on the Bill’s measures supported them.¹¹⁷

Victim advocates were supportive of the measures. For example, Women’s Aid welcomed the reforms and said it had been “calling to reverse the pre-charge bail reforms since 2017”.¹¹⁸ John Apter, Chair of the Police Federation (the staff association for rank-and-file officers), said the changes were “much needed and long overdue”.¹¹⁹

However, the Government acknowledged that “Notably, members of the public who had been investigated and lawyers were less supportive of the longest timeframes of bail.”¹²⁰ The Law Society were also more cautious in their response, stating that it is “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.”¹²¹

The Magistrates’ Association disagreed with the removal of the presumption against the use of pre-charge bail unless there are clear risks identified which justify its use. It argued that if the issue is that police are not using pre-charge bail appropriately or are wrongfully using RUI, then there “is a need for further police training and guidance, rather than the removal of the presumption against pre-charge bail”. It said, “the underlying principles for

¹¹⁴ Home Office, [Police Powers: Pre Charge Bail Government Response](#) (PDF), 14 January 2021, p18

¹¹⁵ College of Policing, [Pre-charge bail - Statutory guidance consultation](#), 5 August 2022, p32

¹¹⁶ Home Office, [Police Powers, Pre Charge Bail Government Response](#) (PDF), 14 January 2021, p6

¹¹⁷ HC Deb, [Police, Crime, Sentencing and Courts Bill - Hansard - UK Parliament](#), 15 March 2021. See for example speeches by Gavin Robinson, Simon Clarke, Sarah Champion and Jane Hunt.

¹¹⁸ Women’s Aid, [Women’s Aid welcomes Kay’s Law to provide better protection for survivors](#), 14 January 2021

¹¹⁹ Police Federation, [National Chair supports pre-charge bail reform](#), 14 January 2021

¹²⁰ Home Office, [Police Powers, Pre Charge Bail Government Response](#) (PDF), 14 January 2021, p6

¹²¹ The Law Society, [Pre-charge bail reforms announced](#), 14 January 2021

all bail decisions should be a presumption for the least restrictive measures necessary”.¹²²

HMICFRS have been cautious about the implementation of the reforms. It warned that the 2017 reforms to pre-charge bail were implemented “extremely quickly” and that there was “a range of interpretations of the legislation throughout England and Wales”.¹²³ It has called on the Home Office and the College of Policing to ensure that this time around forces “have enough time and adequate resources to prepare” for the new changes.¹²⁴

HMICFRS have also said that to be effective the changes need to be accompanied by better monitoring systems. Having been critical of data recording on RUI and pre-charge bail in the past, the Inspectorate said that forces need to “develop processes and systems to clearly show whether suspects are on bail or RUI”.¹²⁵ It argues that otherwise, poor data will mean that “neither police forces nor the general public can properly understand how each police force deals with suspects after they are released from custody”.¹²⁶

¹²² The Magistrates’ Association, [Home Office consultation on pre-charge bail: MA response](#), 19 May 2020, p1; and the Magistrates’ Association, [Magistrates Association’s Written Evidence to the Public Bill Committee on the PCSC Bill](#), May 2021

¹²³ HMICFRS, [Pre-charge bail and released under investigation: Striking a balance](#), December 2020, p2

¹²⁴ As above p23

¹²⁵ As above

¹²⁶ As above, p4

5 Annex: Pre-charge bail time-limits and level of authorisation required

Month	Applicable bail period	Level of authorisation
1	Initial maximum bail period: three months	Custody officer
2		
3		
4	First extension: three months	Officer of at least the rank of inspector
5		
6		
7	Second extension: An additional three months	Officer of at least the rank of superintendent
8		
9		
10	Third extension: An additional three months	Magistrates' court
11		
12		
13	Fourth extension: An additional three months	Magistrates' court
14		
15		
16	Fifth extension: An additional three months	Magistrates' court
17		
18 +		

Source: [Explanatory Notes: Police, Crime, Sentencing and Courts Act 2022](#), Annex B



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