
Proposed Changes to Pre-Charge Bail: An Improvement for Those Released Without Bail?

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Pre-charge bail, or police bail as it is commonly known, is a worrying and stigmatizing phase for individuals subject to investigation. However, it is routinely granted to suspects with little consideration given to the wider implications that it may have on that person's personal life. The recent [Home Office proposals](#) on pre-charge bail reform, which include setting a presumption for release without bail and a statutory limit on how long a person can be held on pre-charge bail, are therefore seen by many as a step in the right direction for those facing criminal proceedings. However, there is little to suggest that the proposals will improve the speed at which charging decisions are made in cases involving suspects released without bail, and they may even result in additional delays in such cases.

In summary, the Home Office proposes legislation to:

- Provide for a presumption to release without bail, with bail only being imposed when it is necessary (i.e. where there is a need for conditions) and proportionate (i.e. commensurate with the seriousness of the suspected offence).
- Set a clear expectation that pre-charge bail should not last longer than 28 days. A senior police officer will be able to authorise a single extension of bail to a maximum of 3 months in total. After that, any extension would generally only be possible with the authority of the courts. However, in SFO cases a Senior Civil Servant will be able to extend pre-charge bail beyond 3 months, up to a maximum of 6 months, before the courts become involved. Extensions up to 6 months can also be obtained from an Assistant Chief Constable (in consultation with a senior prosecutor) in complex cases involving the CPS.
- Set out the extenuating circumstances in which pre-charge bail can be extended, and who should make that decision.
- Establish a framework for the review by the courts of pre-charge bail.
- Make clear that, where an individual has been released without bail while analysis takes place of large volumes of material, the police can make a further arrest where key evidence is identified as a result of the analysis of that material that could not reasonably have been done while the suspect was in custody or on bail.
- Provide for rules of court for a Public Interest Immunity-type procedure to withhold sensitive

information from a suspect where its disclosure could harm the investigation, with a presumption of full disclosure at any subsequent trial.

Aside from recognizing that a longer period may be required before the courts become involved, it is unclear how these proposals will apply to the most complex cases. The Home Office recognises that a "lighter touch" process should be used in large and complex cases, but there is no consensus on how that might be achieved. The Home Office has discounted the possibility of separating such cases based on offence or value, as well as deciding against adopting a case-by-case approach (due to concerns over transparency). The Home Office has said that it will produce guidance on this subject in due course.

The proposals are intended to create a fairer system and to achieve more focussed police investigations, leading to speedier justice for the victim and accused. However, there is little to suggest that the aim of speedier justice will be achieved in the case of suspects released without bail.

For instance, cases involving those released without bail (which will likely be the majority of cases going forward given the presumption for release without bail) will continue to operate outside of any statutory limits, meaning that suspects can still remain under investigation for inordinate amounts of time. In addition, the proposals could also result in a situation where cases in which the suspect has been released on bail, and where the prosecution has the new statutory deadlines to consider, are prioritized over cases where the suspect is released without bail and where no such deadlines apply. This may cause delays for those who have been released without bail as their cases are kicked further into the "long grass".

Whilst the proposals do recognize that suspects released without bail should not have the threat of potential prosecution hanging over them indefinitely—by requiring that a suspect released without bail be notified if no further action is to be taken against them—it gives no reassurance that such a decision is going to be made any more quickly. In any event, such notification is likely to be of little consolation if a suspect has been made to wait months or even years (albeit without bail conditions) for a charging decision. The proposals also want to improve the speed at which the police can obtain evidence from other public authorities. However, whilst this may improve the speed at which evidence is collected, unless sufficient resources are allocated for reviewing that evidence, it will likely do little to improve the speed at which charging decisions are made.

In summary, the proposals offer very little to indicate that charging decisions in cases involving suspects released without bail will be made any more quickly. On the contrary, they may even result in further delays in such cases.

The proposals were made in March 2015 and are expected to be presented to parliament late 2015/early 2016.