

# Response, arrest and detention

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This section outlines the considerations required when making the decision to arrest and highlights the necessity for ongoing risk assessment at all stages of detention and custody.

## Changes following the Police, Crime, Sentencing and Courts Act 2022

The [\*\*Police, Crime, Sentencing and Courts Act 2022\*\*](#) changes the way in which police use and manage pre-charge bail – all other bail is unaffected. The major changes are as follows.

- The presumption against using pre-charge bail has been removed – it must be considered necessary and proportionate.
- A duty is introduced to seek the views of victims on pre-charge bail conditions.
- The lengths of bail periods are extended.
- The ranks of authorising officers for grant and extension of bail have been changed.

Please note that with the change in the law, the following sections of this APP will no longer be accurate for arrests made on or after 28 October 2022.

- [\*\*Release of a person prior to attending a police station/street bail\*\*](#)
- [\*\*Pre-charge bail management\*\*](#)

Detailed information on implementation is available in a [\*\*College Learn course\*\*](#), a [\*\*College Learn video\*\*](#) and on the [\*\*Knowledge Hub\*\*](#) in the peer support group (you will need to log in).

Statutory guidance will be issued by the College by the end of the year.

## Response

All staff who encounter an incident must make an immediate risk assessment of the situation. The time available to do this depends on the circumstances. In all cases the **national decision model** (NDM) can be used to guide decision making by focusing on available information and intelligence, legal powers and the available options. When responding to an incident, the risk assessment should begin with **gathering available information and intelligence** while travelling to the scene. Information from the scene may be available directly from the call handling operator and/or the command and control incident report.

A pre-planned operation incorporates a detailed risk assessment and **working strategy** that addresses the risks associated with the suspect(s). See **operational planning**.

An individualised response should be given in each situation, where possible reasonable adjustments should be made to accommodate individual needs. Dynamic risk and vulnerability assessments do not need to be recorded immediately. Information concerning the vulnerability of the individual at the point of arrest (or detention under **section 136 of the Mental Health Act 1983**) may, however, prove valuable for medical diagnoses and risk management. Where possible, officers should note this information and convey it to ambulance staff, healthcare professionals (HCPs) and/or police custody staff without delay.

## Vulnerability

Vulnerability assessment should take account of the appearance and behaviour of the detainee, any signs of illness or injury, their style and level of communication, collaborative information from all sources and the circumstances and environment in which they were found.

Forces may find it useful to refer to a vulnerability assessment tool as part of their training in decision making and personal safety. As an example, the University of Central Lancashire (UCLAN) has worked with Lancashire Police and the Metropolitan Police Service to develop and implement a simple and dynamic 'ABCDE' vulnerability assessment framework (VAF) that is used alongside the NDM.

For further information on the UCLAN VAF tool, see **Wright K and McGlen I (2012) Mental health emergencies: using a structured assessment framework. Emergency Nurse. 19, 10, pp 28-35** or contact Dr Karen Wright (kmwright1@uclan.ac.uk).

## Initial response risk assessment

Initial risk assessment should take account of:

- what is known or believed to have happened
- the number of persons involved or capable of becoming involved – see **condition of the detainee**
- details provided about named individuals, including all intelligence and any warning or information markers recorded on force or agency crime and/or intelligence systems
- potential or known risks about the location
- concealed weapons or access to weapons in the contact environment
- community sensitivities

## Police approach and decision making

### Conflict management

Although a warning is not expressly required in law, officers should, if practicable, consider issuing one. A warning can point out an individual's offending behaviour and explain why, if they do not stop, their arrest may be necessary. Such a warning might, if heeded, avoid the need to arrest, or if ignored, support the need to arrest. It may also help to prove the person's awareness or intent to commit a crime, or help to rebut a defence that they were acting reasonably if this was not the case.

Risk assessment and arrest decision making should be guided by the **NDM**.

### Lawful arrest

Under the **Police and Criminal Evidence Act 1984 (PACE)**, a lawful arrest by a police constable requires two elements:

- a person's involvement, suspected involvement or attempted involvement in the commission of a criminal offence
- reasonable grounds for believing that the person's arrest is necessary

Both elements must be satisfied.

Officers must always consider whether a person's arrest for an offence is lawful in accordance with **section 24 of PACE** and necessary under **paragraph 2.9** of Code G of PACE.

### De-arrest

Should further information come to light that indicates that a suspect is not responsible for the offence for which they were arrested, or the grounds for arrest otherwise cease to exist, officers must release the person. If the person is to be de-arrested at a police station, they must be brought before the custody officer.

Where a person has been arrested or detained solely to prevent a breach of the peace, the detainee must be released once the breach, or potential breach, has ended and is not likely to reoccur.

## Hospital

A detainee must be transported directly to hospital if they:

- are showing any symptoms of head injuries
- are, or have been, unconscious
- have suffered serious injury
- are drunk and incapable and treatment centres are not available
- are believed to have swallowed or packed drugs
- are believed to have taken a drugs overdose
- are suffering from any other medical condition requiring urgent attention
- are suffering from any condition that the arresting officer or transporting staff believes requires treatment prior to detention in custody

Where possible, the HCP who assessed the detainee should endorse and sign the person escort record form before the detainee leaves custody or hospital. This process means that ongoing risks to the individual's safety and their medical care can continue to be managed by those who inherit a duty of care.

Where a person is detained under **section 136** of the Mental Health Act 1983, they should be transported directly to a hospital as a place of safety. The use of police stations as a place of safety should be used in exceptional circumstances only. Officers must complete the section 136 forms and provide these to the hospital staff. They must hand over all relevant information, including information triggering police attendance, to healthcare staff.

## Release of a person prior to attending a police station/street bail

- The Police, Crime, Sentencing and Courts Act 2022 changes the way in which police use and manage pre-charge bail. All other bail is unaffected. Due to the change in the law, this section will no longer be accurate for arrests made on or after 28 October 2022. [Read more about the changes.](#)

Officers should use street bail reasonably, according to the nature of the offence, the victim, the suspect's circumstances and the needs of the investigation.

Officers should consider the impact of granting street bail. Vulnerable persons in particular may not have access to the same level of safeguards and support as quickly as if they were transferred directly to a police station. An example of this would be the provision of an appropriate adult.

The law on pre-charge bail has changed and new provisions have been added to PACE. See the [Policing and Crime Act 2017](#) for full details of the amendments. The new provisions apply to all arrests made from 3 April 2017. This includes release from arrest prior to attending a police station/street bail.

When considering the use of pre-charge bail, there is now an overriding presumption that the suspect will be released without bail in most cases. Where a person can be released from police detention prior to their arrival at a police station (Section 30A of PACE) there is still a presumption that they will be released without bail unless:

- the officer granting bail believes it is necessary and proportionate; and
- an inspector or above authorises the bail after considering any representations made by the arrested person

## Alcohol treatment centres

[Section 34 of the Criminal Justice Act 1972](#) gives a police officer the power to take a person to an alcohol treatment centre after they have been arrested for being drunk or drunk and disorderly. The arrested person is deemed to be in lawful custody if taken to such a place.

For further information, see APP on [Prosecution and case management](#).

## Arrival at the station

All detainees must be seen by the custody officer as soon as practicable after arrival at the police station. The police station is defined in [PACE Code C paragraph 2.1A](#).

Every detainee should be brought into the custody area on arrival at the police station and supervised in either a holding cell or another suitable and safe area until such time as they can be formally booked in. Forces should establish procedures for arrival at the custody suite to ensure that detainees are subject to an ongoing [risk assessment](#) where there is a delay in them seeing the custody officer. Where practicable, detainees should not be made to wait outside the police station in vehicles as a method of queuing. Appropriate supervision of the welfare of a detained person is paramount in such circumstances.

For further information see the following.

- APP on [Prosecution and case management](#).
- [Section 34 of the Criminal Justice Act 1972](#) gives a police officer the power to take a person to an alcohol treatment centre after they have been arrested for being drunk or drunk and disorderly. The arrested person is deemed to be in lawful custody if taken to such a place.

## Violent detainees

Officers transporting a violent detainee to the custody suite should inform custody staff of their impending arrival. Violent detainees should be prioritised in any queuing situation and brought into the station as quickly as possible. Other people should be removed from reception areas to prevent them being involved with or injured by the violent detainee. For further information, see [section 2](#) and [section 3](#) of the [Health and Safety at Work etc. Act 1974](#).

Officers and staff should be aware that there may be an underlying medical reason for violent behaviour. See [acute behavioural disturbance](#).

## Vulnerable detainees

Custody officers and staff should prioritise and triage vulnerable detainees as part of the booking-in process. Where practicable, officers should inform the custody suite of their impending arrival.

## Booking into custody

## Placement of detainees

Forces should have documented protocols and procedures for the safe, efficient and appropriate allocation of detainees. Protocols should ensure that detainees are transferred to custody promptly and safely and may require the use of alternative custody sites. These alternative sites may not necessarily be the nearest, and systems should mitigate against the build-up of demand in individual custody offices.

### Custody capacity

Cell capacity is based on single cell occupancy in accordance with PACE Code C paragraph 8.1. The safe operating capacity of a custody suite depends on a number of factors:

- the number of detainees currently being held
- the level of monitoring required for those detainees being held
- identified risks
- the number of trained and competent staff available on duty
- operational commitments of the area
- the actual number of cells in operation

Where the custody officer determines that level of risk within the custody suite cannot be sufficiently reduced and/or mitigated to a safe operating level, then the custody officer may decide not to accept any further detainees. This is to avoid compromising the safety and welfare of the detainees and staff, in accordance with their legislative responsibilities under PACE.

### When a detainee cannot be detained

When a detainee has arrived at a custody suite but cannot be detained owing to a lack of resources or cell availability, officers and staff should still open a custody record to document the reasons why they cannot be detained at that custody suite.

### Necessity to detain

The custody officer needs to consider:

- the grounds for detention
- whether to grant bail

- whether to authorise or refuse detention

Only the arresting officer is responsible for determining the need to arrest (**section 24 of PACE** and **PACE Code G**).

The custody officer must, therefore, concern themselves solely with the issue of the necessity to detain in light of all the information they have received.

Only the custody officer can authorise or refuse to authorise detention. This decision can only be made after the custody officer has personally listened to the grounds for arrest from the officer who has brought the detainee into custody.

The custody officer must ascertain from the officer if force has been used during the arrest. If so, this must be recorded. The custody officer must also ascertain whether the arresting officer is aware of any other issues which have arisen during arrest and transporting which may require immediate attention and need to be taken into account in any risk assessment.

Detention is always the last resort and custody officers should authorise detention only when it is **necessary** to detain rather than when it is convenient or expedient. The decision should not be seen as a rubber-stamping of the necessity to arrest but as a separate independent decision. This determination of necessity continues throughout the time in custody and should be regularly reviewed as per **PACE section 34 (2)**.

A custody record must be created for any detainee who is taken to a police station, even if they are subsequently de-arrested or detention is not authorised.

## Multi-occupancy

**PACE Code C, paragraph 8.1** states: 'So far as it is practicable, not more than one detainee should be detained in each cell.' However multi-occupancy of cells may be appropriate in some circumstances on an exceptional basis. It is not appropriate where:

- a detainee requires special provisions for any reason, for example disability or healthcare requirements
- there are diversity issues that would make cell sharing inappropriate, for example religion and the inability to meet religious obligations
- detainees are not the same gender

- the detainee is a child or young person

The decision to multi-occupy cells rests with the custody officer. If there is any dispute with the custody officer's decision, the matter must be referred to the superintendent responsible for the station, in accordance with **PACE**. Multi-occupancy should be justified and recorded, using a joint risk assessment, on the relevant custody records. A detainee should not share a cell with another person if any of the above risks apply to either of them.

Custody officers and staff should consider using a CCTV-equipped cell. They must make private toilet facilities available. Expecting detainees to share open toilet facilities may breach **Article 8** of the European Convention on Human Rights (the right to respect for private and family life).

When it has been deemed necessary to use multi-occupancy, there should be an organisational review of the circumstances to ascertain if this can be avoided in the future.

## Joint risk assessment

Forces must review monitoring regimes when cells are being shared.

Custody officers and staff must always consider the risk of one person harming another when sharing a cell. The custody officer should increase the frequency of checking detainees in multi-occupancy cells. Custody staff, including HCPs, must keep the custody officer informed of any noticeable changes in behaviour which could alter the risk assessment.

Officers and staff should consider the following:

- any warning markers that the detainees may have medical conditions
- demeanour on arrival
- current demeanour
- known or suspected racist or homophobic attitudes
- other discriminatory attitudes
- the views of both detainees on sharing a cell

## Detention not authorised

A custody record must be opened for all detainees who arrive at the police station. If the custody officer believes that there are insufficient grounds for detention, they must record the reasons and

release the detainee. Cases where detention is refused should be reviewed by the manager with responsibility for custody.

## Fitness for detention

The custody officer may decide that medical assessment and/or treatment is needed before a decision can be made about a person's fitness to be detained. This is irrespective of whether the person has already received treatment elsewhere, for example at a hospital.

## Medical attention

The custody officer must, in accordance with [\*\*PACE Code C paragraph 9.5\*\*](#), 9.5a, 9.5b, note 9c and the [\*\*Mental Health Act 1983\*\*](#), ensure that appropriate medical attention is given as soon as practicable to any detainee who:

- appears to be physically ill or injured
- appears to be, they suspect, or have been told may be, experiencing mental ill health (or disablement or difficulty that means that the detainee is likely to be vulnerable or require additional support)
- appears to have a drug or alcohol dependence or withdrawal likely to affect safety
- appears to need medical attention
- requests a medical examination

For further information, the [\*\*British Medical Association \(2009\) Healthcare of Detainees in Police Stations, Third Edition, paragraph 1.4\*\*](#) document specifies the issues to be addressed when assessing fitness for detention.

Other guidance is available in the following areas of APP.

- [\*\*Risk assessment\*\*](#)
- [\*\*Medical documentation\*\*](#)
- [\*\*Mental health\*\*](#)
- [\*\*Use of force recording\*\*](#)

## Health and any injuries

It is important to:

- visually assess the condition of the detainee, including their general health and any injuries, and to record and interpret their behaviour in the context of health and risk issues
- seek medical attention from an HCP where there are any medical concerns
- determine whether the person is fit to be detained and fit to be interviewed
- record and act on behaviour or information that may suggest a detainee is likely to harm themselves (risk of suicide and self-harm)
- establish a care plan for monitoring any risks to the detainee
- manage appropriate monitoring, observation and engagement

## Actions

The custody officer must ensure that all relevant information is made available to the HCP, and that the HCP reciprocates. Detained persons are not obliged to submit to an examination or to supply information.

The custody officer is responsible for initialising the ongoing risk assessment of all detainees, although this may be delegated by the custody officer to another appropriately trained member of custody staff. The initial risk assessment should consider the circumstances of the arrest and any relevant use of force, restraint and physical or mental health issues that the detainee may have.

Custody officers must ask whether each detainee wishes to speak in private with a member of custody staff about any matter concerning their personal needs relating to health, hygiene and welfare. If the detainee wishes, this member of staff may be of the same sex. These changes provide an opportunity for female detainees to raise issues about their menstrual needs and also for all detainees to raise issues relating to other health and hygiene needs such as products that may be required for incontinence and colostomy. If detainees wish to take this opportunity to raise health and hygiene needs, necessary arrangements should be provided/made as soon as practicable. Information about menstrual products must be provided for girls under 18 years of age by a woman whose care the detainee is under, as per **PACE Code C paragraph 3.20A**.

After examining a detainee, the HCP should record any clinical findings relevant to their custodial healthcare and directions in the custody record. If there is information that must remain confidential and is not relevant to the effective ongoing care and wellbeing of the detainee, the HCP should make an entry in the custody record indicating where the clinical findings are recorded.

Directions concerning the frequency of visits and any concerns must be clear and precise. The custody officer must ask the HCP for clarification if any oral or written clinical directions are unclear.

Where a custody officer has concerns about the clinical direction received, they are at liberty to escalate the matter to a senior member of healthcare staff or seek a second medical opinion.

As the thresholds for fitness for detention and fitness to plead are different, prosecution may still be appropriate if a person is assessed as not fit for detention.

## Welfare and safety of others

Custody officers should consider the overall risk assessment for the custody suite, taking into consideration the needs and safety of all those in the custody environment.

All visitors, including solicitors, HCPs, appropriate adults, custody visitors or interpreters, should be aware of their role and responsibilities prior to gaining access to custody. Only those with legitimate reasons should be present in custody. If an individual is denied access to a custody suite or particular cell, the reason for this must be noted in the custody record.

An overriding principle for the custody officer is that those detained in custody must be treated with dignity and respect, and that their individual welfare needs are paramount (subject to specific risk assessment) during their period of detention.

## Rights and entitlements

**PACE Code C, paragraph 3.1** states that when a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about their continuing rights. These rights may be exercised at any stage during the period in custody and comprise the following:

- the right to have someone informed of their arrest
- the right to consult privately with a solicitor and have access to free independent legal advice
- the right to consult the PACE codes of practice
- where applicable, the right to interpretation and translation
- where applicable, the right to communicate with their high commission, embassy or consulate

- the right to be informed about the offence and (as the case may be) any further offences for which they are arrested while in custody and why they have been arrested and detained

Under **PACE Code C, paragraph 3.2**, the detainee, and appropriate adult if applicable, must be given a written notice of rights and entitlements, which is available in 54 translations, in addition to the English language version. This written notice contains information on:

- their rights under PACE Code C, paragraphs 3.1, 3.12 and 3.12A
- obtaining legal advice
- obtaining a copy of the custody record
- their right to remain silent
- their right to materials and documents to challenge the lawfulness of the arrest and detention
- their right to medical assistance
- if prosecuted, their right to have access to evidence in the case before the trial
- provisions relating to the conduct of interviews while in custody
- circumstances in which an appropriate adult should be available
- their right to make representations whenever their detention is reviewed
- reasonable standards of physical comfort, for example food, drink, toilet and washing facilities, clothing
- their entitlement to speak in private to a member of the custody staff about their personal needs relating to health, hygiene and welfare (if the detainee wishes, this member of staff may be of the same sex)

(This list has been paraphrased from paragraph 3.2 of PACE Code C – please refer to the full legislative text.)

The detainee must be given an opportunity to read the notice and should be asked to sign the custody record to acknowledge its receipt. Any refusal must be recorded on the custody record.

Forces are required to facilitate the communication of a detainee's rights and entitlements under PACE to each detainee in a way that allows them to understand. Examples of methods of communication include audio recording or verbal explanation, use of a hearing loop, provision of foreign language or easy-to-read versions of the notice, or use of a two-way handset for translation.

Custody officers and staff must record any request by a detainee for an appropriate adult that is refused in the custody record.

## Persons attending a police station voluntarily who are not arrested

Where a person is interviewed as a suspect in a voluntary interview, is not arrested but is cautioned, the person giving the caution must tell them that if they agree to remain voluntarily, they may obtain free and independent legal advice.

The officer should give the person a copy of the written notice explaining arrangements for obtaining legal advice and specify that this includes the right to speak to a solicitor on the telephone. The officer should ask the person if they want advice and make appropriate arrangements if they do. No other written information needs to be provided.

The interviewing officer must ensure that they follow any other provisions of Codes C, E and F that can be applied to suspects who are not under arrest.

For further information, see [\*\*paragraph 3.21\(b\)\*\*](#) of PACE Code C.

The Police, Crime, Sentencing and Courts Act 2022 has amended powers in relation to the taking of fingerprints, samples and photographs. Changes to section 64A and schedule 2A of the Police and Criminal Evidence Act 1984 now allow the police to specify the date and time (or times) of attendance for the obtaining of fingerprints, DNA and photographs. These changes will have relevance for those that have been voluntarily interviewed. For further information see the [\*\*Police and Criminal Evidence Act 1984\*\*](#).

## Exemptions for the debriefing of offenders assisting investigations and prosecutions under the Serious Organised Crime and Police Act 2005

There may be occasions when a person is produced from a prison establishment to be held in police custody for interview by specialist debriefing teams. Persons produced from prison establishments for interview under the terms of [\*\*sections 71 to 74 of the Serious Organised Crime and Police Act 2005 \(SOCPA\)\*\*](#) have their conditions of detention dictated by the [\*\*Crime\*\*](#)

**(Sentences) Act 1997** and by the requirements of the relevant prison governor, not by **PACE**.

In such circumstances, the custody officers or custody manager should meet the senior debrief officer and agree a memorandum of understanding regarding the person's care and custody.

## The custody record

The following information must be recorded in the custody record:

- grounds for arrest
- grounds for authorising detention
- search (level of search and persons present) and property withheld from or kept by the detainee following search
- replacement clothing supplied to the detainee
- risks identified and control and/or support measures
- the level of observation required for a detainee (see **levels of observation**)
- medical questionnaire
- time placed in cell, cell number, cell searched
- that the **cell call system** in each cell has been checked to ensure it is fully operational for each detainee
- the reasons for a child or young person being placed in a particular cell
- medical treatment and care plan
- use of any force and/or restraints that have been used and the justification for doing so
- the fact that documents and materials essential to understanding their legal rights and entitlements have been made available to the detainee or their solicitor, in accordance with PACE
- other relevant information (such as details of the detainee's actions, mood and emotional state)

(Any controlled drugs which are legal property of the detainee must be carefully recorded and secured separately.)

There may be occasions where, for security reasons, information is recorded elsewhere. The custody record should detail where, if this is the case.

The detainee's solicitor and appropriate adult must be allowed to inspect the whole of the detainee's custody record as soon as practicable after their arrival at the station, and at any other time on request while the person is detained. This includes, in particular:

- the information about the circumstances and reasons for the detainee's arrest as recorded in the custody record
- the record of the grounds for each authorisation to keep the person in custody

The only exception is the content of any risk assessment/analysis of the level of risk, or information about a detainee's health. For more information, see [\*\*PACE Code C 3.8A and Note 9E\*\*](#).

For documentation of property a detained person has with them or has had taken away from them on arrest, see [\*\*PACE Code C paragraph 4.4\*\*](#).

## Fit to be interviewed

The custody officer must assess whether the detainee is fit to be interviewed. If there are doubts about their medical fitness for interview, an HCP must assess the detainee before the interview. Should a detainee's condition change, an HCP may need to review the detainee. Failure to do this may prejudice subsequent proceedings. The assessment should identify the risks to the detainee's physical and mental wellbeing, and determine safeguards that may be required during the interview process.

For further information see:

- [\*\*British Medical Association \(2009\) Healthcare of Detainees in Police Stations, Third Edition\*\*](#)
- [\*\*Faculty of Forensic and Legal Medicine\*\*](#)

## Considerations for decision making (urgent interviews)

Some groups of detainees may not be interviewed unless an officer of superintendent rank or above considers delay will lead to the following consequences:

- interference with, or harm to, evidence connected with an offence
- interference with, or physical harm to, other people
- serious loss of, or damage to, property
- alerting other people suspected of committing an offence but not yet arrested for it
- hindering the recovery of property obtained in consequence of the commission of an offence

Interviewing in any of these circumstances shall cease once the relevant risk has been averted (for example, additional suspects arrested) or the necessary questions have been put forward to

attempt to avert that risk.

For further information, see [\*\*PACE Code C, paragraph 11.18 and Code C 6.6.\(b\).\*\*](#)

## Record the decision

**PACE Code C paragraph 11.20** requires that a record must be made of the grounds for any decision to interview a person under paragraph 11.18. Also see [\*\*PACE Code C Annex G.\*\*](#)

Custody records should show whether officers and staff have assessed a person's fitness to be detained or interviewed, any reason for doubting a person's fitness for interview and the result of any HCP's assessment. Where this detail cannot be added in full to the custody record, officers and staff should enter a reference to its location.

These records should be made available to the Crown Prosecution Service (CPS) so that they are aware of any potential mental ill health and/or learning disability affecting the detainee.

## Pre-charge bail management

- The Police, Crime, Sentencing and Courts Act 2022 changes the way in which police use and manage pre-charge bail. All other bail is unaffected. Due to the change in the law, this section will no longer be accurate for arrests made on or after 28 October 2022. [\*\*Read more about the changes.\*\*](#)

The powers relating to the use of pre-charge bail which are set out in PACE have been amended by the Policing and Crime Act 2017. Pre-charge bail is a unique policing tool and should be tailored to the specific circumstances for which it is being granted. Bail is an alternative to custody – it allows for officers and staff to continue the investigation without the suspect being detained. Conditional bail allows officers to attach conditions to bail which can protect complainants or witnesses, preserve evidence and mitigate the risk of further criminality. However, bail can result in disadvantages for the suspect and therefore its use must be justified in all circumstances and subject to regular review. Police forces must ensure that rigorous, transparent processes exist which closely align bail management in each case to the developing investigative plan.

The following points are recognised as best practice for managing pre-charge bail.

## Forces should seek to finalise investigations during the first period of detention

It should always be the investigative officer's objective to complete the investigation in the first period of detention wherever possible. If further time is required then the presumption is to release without bail. Every bail decision must be capable of withstanding scrutiny, having due regard for any supporting evidence to justify its legality, proportionality and necessity in the circumstances.

Where bail is considered necessary and proportionate there must be an investigative plan and management regime to ensure that bail is for the minimum period required to complete the investigation, bearing in mind that the police rely on other agencies to provide, for example, forensic, medical or other technical analysis of exhibits.

## Pre-charge bail has been legislated for to increase police accountability and transparency in this area and applies to all arrests since 3 April 2017.

The main change is that there is now a **presumption of release without bail** in almost all cases (including those arrested for breach of bail), unless the necessity and proportionality criteria are met. These terms have not been specifically defined in the Act, however can be interpreted in line with Article 8(2) of the European Convention on Human Rights – right to respect for private and family life.

### Necessary

Authorisation may be considered necessary, if it is:

- in the interests of national security
- for the prevention of disorder or crime
- in the interests of the economic well-being of the United Kingdom
- in the interests of public safety
- for the purpose of protecting public health

### Proportionate

Authorisation may be considered proportionate if:

- what is being done is not arbitrary or unfair
- the restriction is strictly limited to what is required to achieve a legitimate public policy
- 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

## Applicable bail periods (ABP)

The changes to pre-charge bail introduce statutory and judicial safeguards, including time limits called applicable bail periods and a hierarchy for the decision making process.

Almost all releases from custody on pre-charge bail need to satisfy two pre-conditions. The custody officer must be satisfied:

- that bail and any conditions are necessary and proportionate, and
- that the release on bail has been authorised by an inspector or above

Upon initial release on bail, the inspector authorises a 28-day applicable bail period. This is a window of time within which bail can be granted and varied by a custody officer.

There are three main applicable bail periods that the police can authorise. These bail periods are:

1. Initial applicable bail period for 28 days authorised by an inspector.
2. An extension to the initial applicable bail period to three calendar months from the bail start date authorised by a superintendent.
3. A further extension to the applicable bail period of three calendar months for cases designated as being exceptionally complex, authorised by an assistant chief constable or commander.

All further extensions to the applicable bail period have to be authorised by a magistrates' court.

Whether a case is to be considered exceptionally complex will be decided on a case by case basis. Factors that may indicate exceptional complexity could include the number of suspects and victims involved, the number of offences under consideration and whether the case involves any investigation abroad. The CPS has produced criteria which will assist in establishing whether a case is to be considered exceptionally complex. This is due to be published shortly.

Before authorising bail or an extension to the applicable bail period, the authorising officer must be satisfied that the suspect or their legal representative has been given an opportunity to make representations, which they have to consider before making a determination.

## Conditions to satisfy before extending an applicable bail period

There are four statutory conditions that need to be considered by police before an extension to the applicable bail period can be granted.

Condition A – The decision maker has reasonable **grounds for suspecting** the person is guilty of the relevant offence.

Condition B – The decision maker has reasonable grounds for believing that either:

- further time is needed to make a police charging decision or
- that further investigation is needed of any matter in connection with the relevant offence

Condition C – The decision maker has reasonable grounds for believing that either:

- the police charging decision or
- the police investigation is being conducted diligently and expeditiously

Condition D – The decision maker has reasonable grounds for believing that bail is both necessary and proportionate in all the circumstances. This decision should have particular regard to any conditions being imposed.

The decision maker should record their rationale for their decision making.

In relation to extensions by a magistrates' court, only conditions B to D apply.

## Setting different bail return dates

The bail return date will normally fall on the same date as the applicable bail period end date, but an earlier time and date can be set for three reasons.

1. Firstly to align with another bail return date if the person is already on bail for another offence (PACE 47ZA(3)).
2. Secondly, if a custody officer feels an earlier charging decision is likely (PACE 47ZA(4)).
3. Lastly and probably the most widely used under section 47(4A) to (4D) PACE. The bail return date can be varied to an earlier date to accommodate any requests from the suspect or their legal representative or to accommodate any policing requirements such as demands on shift patterns or bail diaries.

Whenever a new time or date is set for the suspect to answer bail, the custody officer must provide the suspect with a **written notice** informing them of the use of section 47(4A) PACE to do this.

## **Bailing suspect for a CPS charging decision**

If the custody officer determines that they have sufficient evidence to charge, their only options under section 37(7)(a) of PACE are to either release the arrested person on bail or keep them in police detention to enable a CPS charging decision. The presumption to release without bail does not apply. The custody officer should set a bail return date to reflect a realistic time to allow the CPS to make their decision.

### **CPS request**

If the CPS requests further work before it can make a charging decision, a 28-day applicable bail period will start the day the CPS makes its request.

## **Conditions should be proportionate, legitimate and necessary to manage the risks posed by the suspect**

Conditions imposed with pre-charge bail can represent a substantial infringement on the rights and liberties of the suspected party. This may be the intention where there are substantial grounds to believe the suspect presents a bail risk. However, forces should consider the likely impact of the bail conditions on the suspect, alongside the length of bail granted. Conditions are imposed as an alternative to custody and must be strictly necessary. They must not be applied wholesale to any situation. Forces should review all conditions, as the perceived risk posed by the suspect may change.

## **While on bail, what happens when the police refer the case to the CPS for a charging decision?**

When a suspect has been bailed under section 37(7)(a) or section 37C(2) and the case is being considered by the CPS, the applicable bail period is suspended. The day the file is sent to the CPS does not count as an ABP day. This would be in cases, for example, where a person was initially released on bail for further enquiries then, during the ABP, the case was sent to the CPS for a charging decision.

Regardless of how much time remains of the ABP, the custody officer can set a new bail return date to reflect the time needed for the CPS to make a charging decision. This time could be beyond the existing ABP end date.

If the CPS requests further work, the ABP clock resumes running. In these circumstances, as the original bail date for the suspect may be beyond the ABP end date, care needs to be taken to ensure that a revised ABP is calculated to ensure that an ABP does not lapse. The suspect will need to be notified in writing of a revised bail date using section 47(4A). This date cannot be after the end of the ABP.

**Revised ABP = ABP + days with CPS** (total number of days between day sent to CPS and the day before file returned).

If on the day the CPS requests further work, there are less than seven days remaining of the revised ABP, the ABP will be suspended automatically to ensure a minimum of seven days ABP. During this time police need to make decisions as to how best to progress the required work.

## Monitoring and data collection

Police forces are encouraged to understand their bail profiles. During 2015/16 the College undertook a study working with nine forces over six months to gather evidence in respect of the use of pre-charge bail, involving more than 17,000 cases. See [evaluation document](#) for further detail.

National Policing encourages forces to capture a similar data set to that used in the study to enable the service to fully understand its application of bail from 3 April 2017. Forces may wish to record the following information:

- the total number arrested
- for all those arrested:

- the numbers of those released without bail pending further investigation
- the numbers of those released on bail
- for each instance of someone released on bail pending further investigation:
  - the length of bail in days
  - the reason for bail
  - the number of bail extensions
  - the Home Office offence code
  - the outcome

## Annual data return

An annual data return (ADR) ref: 712 will commence in 2017/18. It will be voluntary for forces to take part during the first year's data collection, but will become compulsory thereafter.

The collection will be **annual** and based on the **end date of the bail**. The ADR is intended to measure the length of pre-charge bail following arrests from 3 April 2017. As a result, time elapsed while a suspect is in breach of bail should not be counted.

## Tags

Detention and custody