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Response to            **Pre-Charge Bail: A Consultation on the Introduction of  
Statutory Time Limits and Related Changes**

Issued by               **Home Office**

Link to consultation   **[https://www.gov.uk/government/uploads/system/uploads/attach  
ment\\_data/file/388946/141218\\_Bail\\_Consultation\\_Document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388946/141218_Bail_Consultation_Document.pdf)**

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**1. To what extent do you agree or disagree that the Police and Criminal Evidence Act should be amended to enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary?**

The MA has no objection to the principle of allowing release without bail in these circumstances. It would, however, mention that the impact of being under investigation does not solely relate to being on bail with or without conditions: the knowledge of being under investigation in and of itself and its psychological impact are also important. The MA would suggest that the appropriate authorisation and scrutiny of prolonged investigation would, as with police bail, need to be carefully considered.

**2. To what extent do you agree or disagree that it would be appropriate to change the definition of ‘new evidence’ (on the basis of which a fresh arrest could be made) to include material that was in the police’s possession but which it was not reasonable to have expected them to analyse while the suspect was previously in detention or on bail?**

The consultation document refers to clarifying the definition of ‘new evidence’ as applied by the courts. The MA sees no objection to clarifying and codifying new developments in recent years. It is difficult, however, to give a view on any further changes without details of what exactly that might mean. If this were to be taken forward, the question of appropriate authorisation should also be considered.

**3. Do you think there should be an absolute maximum period of pre-charge bail?**

The MA has no comment on the question of an absolute maximum period. More generally, though, it notes the widespread consensus across government and police that, unless circumstances are exceptional, a person should not be on police bail for longer than 28 days in all cases, and agrees with it.

There will be cases that are identified at the outset as being complicated, whether this is due to the volume of evidence or legal issues, which require longer than 28 days. However, this should be exceptional, and cases significantly longer than that should be very rare indeed.

**4. If yes, how long should that period be?**

See the MA’s answer to question 3.

**5. What do you think the benefits of introducing statutory limits for pre-charge bail durations would be?**

While the MA has no comment on the question of an absolute maximum period, imposing limits beyond which the courts would need to authorise continued bail would provide an important safeguard for suspects, ensure greater scrutiny of the need for and appropriateness of prolonged bail and enhance public confidence in the use of police bail powers.

**6. Should there be different periods for different types of case? If yes, which?**

The MA would argue that the framework for authorising police bail should apply the appropriate criteria to each individual case on its merits, with due regard to proportionality. There should be no need for any type of case to have longer initial limits: 28 days should provide ample time to provide the reasons for any extension which might be required from the court.

**7. To what extent do you agree or disagree that it should be possible to extend the period of pre-charge bail?**

It is not for the MA to comment on whether bail should be able to be extended. However, if police, CPS and other agencies feel they need to have this option, they can make that case. The MA's interest here is in the appropriate system for granting or rejecting such extensions.

**8. If pre-charge bail could be extended, who should be able to authorise that?**

The MA supports placing the power to authorise bail extensions beyond 28 days in the hands of the courts. Magistrates already deal with almost all court bail cases and are used to most of the criteria which will be used in making decisions in respect of police bail. If new systems for authorising police bail are to be credible, especially given that everyone agrees bail beyond 28 days should be exceptional, they should be independent.

The MA therefore supports Model 1 for any bail extensions beyond 28 days, with the power of authorisation lying with the magistrates' courts up until 12 months and then with the Crown Court.

**9. To what extent do you agree or disagree that the criteria set out above for the authorising of a bail extension are the right ones?**

The MA agrees with the bail extension criteria as set out in the consultation, but would clarify that these criteria should apply to the conditions of bail as well as the principle of continued bail, as would be the case with court bail under the Bail Acts.

**10. Are there other criteria that should be added or substituted?**

No.

**11. To what extent do you agree or disagree that the police should seek to agree memoranda of understanding for the provision of evidence from other public bodies rather than seeking production orders from the Crown Court?**

The MA has no comment.

**12. To what extent do you agree or disagree that individuals who are the subject of pre-charge bail should be able to challenge the duration as well as the conditions in the courts?**

The ability to challenge bail conditions is, of course, directly linked to the impact of those conditions upon suspects. The MA is aware of the negative impact which long-term police bail can have on individuals, even where there are no conditions. If there is not to be a fixed limit of 28 days, beyond which bail has to be authorised, then it would be appropriate to create a more general right to challenge bail.

**13. Do you think there should be statutory guidance to custody officers and magistrates as to the appropriateness of particular bail conditions? If yes, who should provide it?**

The MA has no comment on whether guidance should be statutory, though it would seem consistent with other aspects of the PACE framework for it to be so. Appropriate guidance should be provided to custody officers and to magistrates (and Crown Court judges) by the College of Policing and the Judicial College respectively. It would be inappropriate, and inconsistent with the independence of the judiciary, for guidance for the judiciary to be issued by an institution which is ultimately linked to an arm of the executive. However, both Colleges should discuss the contents of their guidance and ensure there is mutual understanding of the criteria which the police and judiciary will each be applying.

**14. To what extent do you agree or disagree that the extension of pre-charge bail should only be available in certain types of case, such as fraud or tax evasion, or those involving international inquiries, or should it be available in all cases where there are exceptional reasons for an extended investigation?**

As with question 6, the MA would argue that individual cases should be judged on their merits. The case for bail extensions should be considered according to the same criteria. However, the MA does not argue for any relaxation of the six-month limit on charging summary offences. Clearly, legislative amendments to police bail would need to be framed with that point in mind.

**15. To what extent do you agree or disagree that there are certain types or characteristics of cases where the 28-day/three-month limit (depending on the model adopted) should not apply?**

See above.

**16. What alternative arrangements do you think should apply in those types or characteristics of case?**

The MA has no comment.

**17. To what extent do you agree or disagree that, where the reviewing officer or court agrees with the investigating officer that it could harm the interests of justice to disclose sensitive details of the investigation to the suspect, such as where it might enable the suspect to dispose of or tamper with evidence, it should be possible to withhold the details from the suspect and their legal representative?**

The MA would be concerned to see a situation where a suspect and their legal representative were unable to see or challenge evidence which concerned them and was being put before a magistrates' court. It is not for the MA to say whether or not this question

would arise – but if so, it would suggest that a different process would need to be adopted in such cases.

**18. If sensitive details were to be withheld from a suspect so as to not jeopardise an investigation, what procedural safeguards should be incorporated to ensure the system operates fairly?**

The MA has no comment.

**19. To what extent do you agree or disagree that the Crown Court should take responsibility for certain types of case at an earlier point?**

The MA has no comment.

**20. If the Crown Court were to take responsibility for certain types of case at an earlier point, when and what types or characteristics of case should these arrangements apply to?**

The MA has no comment.

**21. To what extent do you agree or disagree that the introduction of these changes would be likely to influence the speed with which investigations are dealt with?**

The MA has no comment.

**22. For your organisation, what would be the resource implications of each model set out above?**

The MA has no comment.

**23. Do you have a preference between the two models? If you do, why?**

The MA supports Model 1 for any bail extensions beyond 28 days, with the power of authorisation lying with the magistrates' courts up until 12 months and then with the Crown Court.

If new systems for authorising police bail are to be credible, especially given that everyone agrees bail beyond 28 days should be exceptional, they should be independent and seen to be independent. The MA believes that a magistrates' court can perform this role more effectively and transparently than a Chief Superintendent. Furthermore, magistrates already deal with almost all court bail cases and are used to most of the criteria which will be used in making decisions in respect of police bail.