

## Pre-charge bail limit comes into effect

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**From 3 April 2017, the police will no longer be able to hold people on pre-charge bail for more than 28 days, without an extension. The government said the limit is designed to rebalance the police's use of bail in the interests of fairness. It will still be possible for police to extend bail beyond the 28-day limit to three months, if authorised by a senior police officer at superintendent level or above. Legal experts say the presumption that pre-charge bail will only be used when necessary is more significant for corporate crime lawyers than the limit, as it may allow clients a higher degree of freedom during police investigations. There is concern, however, that the low test for prosecutors applying for a non-disclosure order will make it difficult for representatives attempting to challenge a bail extension. The Police Federation claim the changes will 'challenge' custody staff and be a massive change in custody culture.**

Pre-charge bail enables those under investigation to be released from custody, potentially subject to conditions, while officers continue their enquiries.

Home Secretary Amber Rudd has said: 'Pre-charge bail is a useful and necessary tool but in many cases it is being imposed on people for many months, or even years, without any judicial oversight.'

Ms Rudd believes the reforms will see fewer people placed on bail, and for shorter periods.

### Changes

Under the new measures it will still be possible for police to secure an extension beyond the initial 28-day bail period in complex cases:

- one extension of up to three months can be authorised by a senior police officer at superintendent level or above
- in exceptional circumstances where police need to keep an individual on bail for longer, they will have to apply to a magistrate for further bail

In addition, bail will now only be used when it is necessary and proportionate. Where it is not, there will be a presumption that people will be released without bail.

Barrister Ben Keith from 5 St Andrew's Hill says for those accused of a serious corporate offence, the new measures will mean that unless the police judge them to be at risk of tampering with evidence or fleeing the country they should not be placed on bail at all. This means that during the investigation, there will be fewer restrictions on clients and there will be less of an impact on their reputation.

Mr Keith points out that the reforms do widen the criteria the police can use to 're-arrest' a suspect. It will mean that if new evidence comes to light or if an examination of existing evidence yields new information a suspect may be arrested for a second time. Mr Keith says: 'In a fraud case police could seize a computer, but if it takes

four or five months to retrieve the evidence which surpasses the bail deadline...they could then re-arrest a suspect and start again.'

Mr Keith adds: 'That will be a challenge for corporate crime lawyers, to make sure these clauses are not being abused by the police.'

### **Non-disclosure applications**

23 Essex Street barrister Sam Trefgarne argues that legal representatives attempting to challenge an application by the prosecution to extend bail may be hampered by the non-disclosure of material information. The newly inserted section 47ZH Police and Criminal Evidence Act 1984 allows the prosecution to apply to the magistrates' court to withhold information from the accused if there are reasonable grounds for believing:

- evidence would be harmed
- a person interfered with
- a suspect tipped off
- property recovery hindered

Mr Trefgarne says this is a low test which, in practical reality, will not be hard for the prosecution to meet. He says: 'The new limits, therefore, are likely to increase uncertainty and not diminish it. Real change would come from increased spending on investigative agencies and pre-charge anonymity of suspects.'

### **'Massive and challenging change'**

The Police Federation of England and Wales (PFEW) has said the reform is the biggest overhaul of bail arrangements in the entire history of the Police and Criminal Evidence Act 1984. PFEW Deputy General Secretary Andy Ward said: 'One problem is that the Home Office does not spell out what is "proportionate". It will be a massive change in custody culture and be a considerable challenge.'

Mr Ward argues the limit is not practical in complex cases like cyber-crime, which require computers to be seized and equipment to be interrogated to gain evidence. He believes: 'Pre-charge bail protected victims and witnesses and also helped to prevent further offending.'

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*



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