

# **POLICE (DETENTION AND BAIL) ACT 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Police (Detention and Bail) Act 2011 which received Royal Assent on 12 July 2011. They have been prepared by the Home Office in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act.

### **BACKGROUND AND SUMMARY**

3. Part 4 of the Police and Criminal Evidence Act 1984 (PACE) makes provision in respect of the duration and conditions of detention of persons arrested under that Act on suspicion of committing a criminal offence. Amongst other things, PACE places a limit of 96 hours on the period someone may be detained by the police before they have to be either charged or released. PACE also makes provision for the police to release suspects on bail pending further enquiries. Since the provisions of PACE came into force on 1 January 1986, the police have operated the detention provisions on the basis that only the time spent in police detention counts towards the application of the 96-hour limit and that the ‘detention clock’ is paused when an individual is released on police bail.
4. This interpretation of the way the detention provisions of PACE operated was challenged in the case of Paul Hookway who was arrested by Greater Manchester Police in November 2010 on suspicion of murder and subsequently bailed. On 5 April 2011, a District Judge refused a routine application by Greater Manchester Police for a warrant of further detention of Mr Hookway on the grounds that the maximum detention limit had expired while the suspect was on bail. In effect, the District Judge held that time spent on police bail counted towards the 96-hour limit on detention under PACE. The decision of the District Judge was upheld by an oral ruling of the High Court on 19 May 2011 following an application for judicial review by Greater Manchester Police. The written judgment in the case, *R (Chief Constable of Greater Manchester Police) v. Salford Magistrates’ Court and Paul Hookway*, was published on 17 June 2011. On 30 June 2011 in an oral statement in the House of Commons (Official Report, column 1133 to 1141) the Minister for Policing and Criminal Justice (Rt. Hon. Nick Herbert MP) announced that, in view of the serious impact of the judgment on the police’s ability to investigate crime and protect the public, the Government intended to bring forward fast-track legislation to reverse the effects of the judgment.

## **TERRITORIAL EXTENT**

5. The provisions of the Act extend to England and Wales only. In relation to Wales the provisions of the Act do not relate to devolved matters or confer functions on the Welsh Ministers.

## **COMMENTARY ON SECTIONS**

### **Section 1: Amendment of Police and Criminal Evidence Act 1984**

6. Section 1 amends provisions in Part 4 of PACE which relate to the detention of suspects prior to charge and after charging. Sections 34 to 45A of PACE, which set out the rules governing detention and bail prior to charge, provide that once a person is arrested and brought to a police station that person must not be detained for longer than 96 hours without being charged with an offence (separate rules, as set out in section 46 of PACE, govern continued detention post-charge). The detention of a person within the overall maximum permitted 96-hour period is subject to various safeguards which require an on-going detention to be subject to periodic review and for continued detention to be subject to a further authorisation, by a police officer of at least the rank of superintendent after the initial 24 hours, and by a magistrate after the initial 36 hours.

7. The way the relevant time limits on detention operate under PACE, including the application of the safeguards set out in that Act, may be best explained by reference to the following example.

8. If a person were arrested by the police at 11:00 on 1 June and taken to a police station where his detention was authorised at 11:30 the same day, the ‘detention clock’ would begin at 11:30, which is referred to as the ‘relevant time’ (section 41(2) of PACE). Pre-charge detention can only be authorised where there is insufficient evidence to charge a person and “the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him” (section 37(2) of PACE).

9. Continuing the example, no later than 17:30, that is six hours after detention was first authorised, the arrested person’s detention must be reviewed by a police officer of at least the rank of inspector (section 40(3)(a) of PACE). Subsequent reviews are required no later than nine hours after the first review and then at intervals of no more than nine hours throughout the period of detention (section 40(3)(b) and (c) of PACE).

10. Assuming that reviews have been carried out and detention continues to be authorised, then before 11:30 on 2 June, that is 24 hours total time in custody, a police officer of at least the rank of superintendent may authorise further detention until 23:30 that day, that is up to a maximum of 36 hours (section 42(1) of PACE), still subject to reviews at intervals of no more than nine hours by an inspector.

11. If the police still consider that detention is necessary after 23:30 on 2 June, the 36-hour point, a warrant of further detention must be sought from a magistrates' court. In order to facilitate the making of applications at a reasonable hour, an application may be made at any time before 36 hours has elapsed or up to 6 hours afterwards (section 43(5) of the PACE). If the court is satisfied by a police officer under oath that there are "reasonable grounds for believing that the further detention of the person to whom the application relates is justified", then a warrant of further detention may be issued for a period of no more than 36 further hours (section 43(1) and (12) of PACE). Applications may be made and granted for further warrants of up to 36 hours each, up to a maximum total time of 96 hours' detention, in this case 11:30 on 5 June (section 44(3) of PACE).

12. However, in order to continue to detain a person until the 96-hour limit is reached, it must remain necessary at all times to detain them under the test in section 37(2) of PACE, as set out in paragraph 8 above. If detention is not necessary, the custody officer (who is independent of the investigation) must release the detainee, and has the choice of doing so either on bail or without bail. If the release is on bail, the custody officer may only impose conditions where they appear to be "necessary... for the purpose of preventing [the released person] from (a) failing to surrender to custody, (b) committing an offence while on bail, or (c) interfering with witnesses or otherwise obstructing the course of justice..." (section 3A(5) of the Bail Act 1976).

13. Where a person is released from pre-charge detention on bail, they may be arrested under section 46A of PACE if they fail to answer bail at the appointed police station and time (section 46A(1)) or if they breach any conditions imposed (section 46A(1A)). Where a person is arrested under section 46A of PACE, or they return to the police station in accordance with their bail, they are treated as having been arrested for the original offence (section 34(7)). Both the detention clock and the review clock resume at the point they were 'paused' at on the person's release; as part of the detention clock, the clock that governs the time limits for authorising an extension of the period of detention or applying for a warrant of further detention was also paused when the person was released on bail and resumes when the person comes back into detention. The time limits in question are those in sections 42(4)(a) and 43(5)(a). So, in this example, if the detainee had been released on bail at 21:30 on 1 June, after 10 hours' detention, and reported to the police station to answer his bail at 09:00 on 8 June, there would be 14 hours' further detention available before a superintendent's review was required under section 42 and the next review would be due at 14:00, after 15 hours' total detention (and 9 hours' detention after the first review).

14. *Subsection (1)* is the key provision of the Act and seeks to reverse the effect of the High Court's ruling. It amends section 47(6) of PACE to make it explicit that, in calculating any period (whether a time limit or a period of pre-charge detention) under Part 4 of PACE, any period(s) spent on bail shall be disregarded. Section 47(6) as amended reads:

"(6) Where a person who has been granted bail under this Part and either has attended at the police station in accordance with the grant of bail or has been arrested under section 46A above is detained at a police station, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act *and any time during which he was on bail shall not be so included.*"

15. *Subsection (2)* amends section 34(7) of PACE to make it clear that that provision is not to be read as displacing the rule that the Act reinforces in section 47(6), that periods of police detention before and after a period of bail are to be treated as if they formed a single continuous period. Section 34(7) as amended reads:

“(7) For the purposes of this Part a person who—

- (a) attends a police station to answer to bail granted under section 30A,
- (b) returns to a police station to answer to bail granted under this Part, or
- (c) is arrested under section 30D or 46A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

*But this subsection is subject to section 47(6) (which provides for the calculation of certain periods, where a person has been granted bail under this Part, by reference to time when the person is in police detention only).”*

16. *Subsection (3)* provides that the amendments to PACE made by subsections (1) and (2) have retrospective effect, that is, they are deemed always to have had effect notwithstanding the High Court’s judgment in the *Hookway* case.

## **Section 2: Extent and short title**

17. This section provides that the provisions of the Act extend to England and Wales only. It also sets out the short title of the Act.

## **COMMENCEMENT**

18. The Act makes no provision in respect of commencement. Accordingly, by virtue of paragraph (b) of section 4 of the Interpretation Act 1978, the Act came into force at the beginning of the day on which it received Royal Assent, namely on 12 July 2011.

**HANSARD REFERENCES**

19. The following table sets out the dates and Hansard references for each stage of the Act’s passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard Reference</b>
<b>House of Commons</b>		
Introduction	5 July 2011	Vol 530 Col 1375
Second Reading	7 July 2011	Vol 530 Col 1681-1718
Committee		Vol 530 Col 1719-1726
Report and Third Reading		Vol 530 Col 1726-1727
<b>House of Lords</b>		
Introduction	7 July 2011	Vol 729 Col 464
Second Reading	12 July 2011	Vol 729 Col 607-631
Committee		
Report and Third Reading		
Royal Assent	12 July 2011	Vol 729 Col 711 (Lords) Vol 531 Col 211 (Commons)

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