



Police (Bail and Detention) Bill

**Briefing for all stages
House of Commons**

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Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.
2. The Police (Bail and Detention) Bill is being brought before Parliament as the result of the High Court's ruling in *R (Chief Constable of Greater Manchester Police) v Salford Magistrates Court and Hookway*.¹ Paul Hookway, a murder suspect, had been arrested and detained under PACE. As provided for by PACE, following an initial 24 hours' detention a further 12 hour period was authorised by a senior officer. Under the statutory scheme after 36 hours, judicial authorisation is required to extend detention (initially by up to a further 36 hours); 36 hours further detention was granted by the magistrate in this case. However, over seven hours before that latter 36 hour period expired, Mr Hookway was released on bail without charge. He continued on bail for some months and was then re-detained on the assumption, as has long been police practice, that over seven hours of lawful detention remained on the magistrate's warrant and that police could then go and ask for a further warrant [PACE provides that a further warrant may be issued to extend detention by the shorter of up to a further 36 hours or the remainder of the total maximum of 96 hours' detention].
3. However, on going to ask for that further warrant the police were refused on the grounds that the first warrant had expired 36 hours after it was granted, despite the fact that the suspect had been released after 29 hours or so. In other words, the 'detention clock' had continued to run while Mr Hookway was on bail.
4. The High Court's judgment was given on 19 May. An application for permission to appeal was made to the Supreme Court on 21 June and granted on 30 June. On 1 July the Supreme Court was also asked to grant a stay of execution of the High Court's judgment pending its hearing in the case, but on 5 July it declined to do so, stating that:

¹ [2011] EWHC 1578 (Admin).

This application is unusual and it is questionable whether it would be open to the Court to grant this relief. In any event, however, the judgment was given on 19 May and an application for permission to appeal was made on 21 June. The Government has announced its intention to introduce emergency legislation this Thursday, 7 July. In these circumstances, the Court has decided that the application should be dismissed.

5. In our view, the proper course would have been to apply to the High Court for a stay of execution of its judgment on 19 May when judgment was given and then apply immediately for permission to appeal to the Supreme Court. The Supreme Court could have carried out its task of interpreting PACE; if it upheld the High Court's ruling, Parliament could then have debated this or a similar Bill. In our view the wording of the Court's dismissal of the stay application, above, highlights the unusual situation in which it instead now finds itself. Its decision in *Hookway* will be rendered largely meaningless by the Bill, contrary to the doctrine of separation of the powers. The Bill as introduced by the government would reverse the ruling of the High Court, by inserting provisions into PACE to remove any ambiguity of interpretation and ensure that time spent on bail before charge did not count towards the 'detention clock' for the purposes of detention time limits. Further, the Bill is retrospective; it proposes that that detention that under the High Court's judgement would be unlawful would be deemed to have been lawful whensoever it occurred.

6. We are concerned that as a result of the delays in this case Parliament is being asked to consider legislation affecting the right to liberty of the citizen (in addition to other important rights affected by detention and conditional bail, including that to private and family life) at very short notice and with very little time for scrutiny. We question whether in the House of Commons at least there will be any opportunity for amendments to be put forward or debated. Further, Parliament does not have the advantage of a considered Supreme Court judgment to assist it in its considerations. The Bill does not even contain safeguards such as a sunset clause to go some small way to compensate for its expedited passage through Parliament.

7. We have previously criticised the use of ‘fast-track’ legislation² and believe that it should be avoided except in cases of genuine emergency. Retrospectivity in statute also offends against the principle of legal certainty and weakens the rule of law since citizens must be able to predict in advance when the act of a public authority will be lawful.
8. We await the Supreme Court’s judgment on the substantive issue in *Hookway*, namely whether the time periods for detention of a suspect prior to charge under PACE (the ‘detention clock’) stop when a suspect is bailed and start again when he is re-detained (in the absence of any new evidence in the case) or whether they continue to run while the suspect is on bail. Our own view is that police bail conditions must be capable of being enforced through detention up to the overall 96 hour maximum period and therefore that the High Court’s interpretation of PACE is incorrect.
9. However, we believe that any reform of PACE and/or its Codes of Practice should ensure that:
 - **Following release on police bail, new detention can only take place if justified at that time; suspects must not be re-detained simply because time remains on the ‘detention clock’;**
 - **Other than failure to answer bail/breach of bail conditions or the existence of new evidence (for which PACE already provides) there will only be narrow circumstances in which re-detention is justified. In particular, it should not take place merely to repeat questions that have already been put to the suspect.**
 - **Suspects should not spend excessive periods of time on police bail pre-charge (particularly where conditions are attached). Investigations should take place with all due diligence and expedition with a view to taking a decision as to charge as soon as is reasonably practicable.**
10. We would welcome ministerial assurances on the above points during the Bill’s passage through Parliament and believe that a sunset clause should be inserted into the Bill to enable proper Parliamentary consideration of the issue at a later date. We

² See for example our evidence to the House of Lords Select Committee on the Constitution’s enquiry on *Fast Track Legislation: Constitutional Implications and Safeguards* (2009-2010, Fifteenth Report, HL 116-I and II)

further believe that legislative restriction of the maximum period a person can spend on conditional pre-charge bail may be necessary.

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