

Guidance to Police Officers and Crown Prosecutors
Issued by the Director of Public Prosecution under
S37A of the Police and Criminal Evidence Act 1984.



First Edition: May 2004

GUIDANCE TO POLICE OFFICERS AND CROWN PROSECUTORS IN RESPECT OF THE MAKING OF CHARGING DECISIONS

Introduction

What this Guidance is for, where it applies and when it comes into effect.

1. This Guidance¹ is to enable Custody Officers to decide how a person should be dealt with when:
 - The Custody Officer determines there is sufficient evidence to charge a person with an offence², or
 - A person has been arrested for breach of bail who had previously been released on bail for a charging decision³
2. This Guidance also specifies what information must be sent to a Crown Prosecutor to enable a charging or other decision to be made.⁴
3. This Guidance applies to those cases the Director of Public Prosecutions is required to take over in accordance with Section 3 of the Prosecution of Offences Act 1985.
4. This Guidance will come into effect in those Local Criminal Justice Board Areas and on the dates specified in the schedule hereto.

Key Provisions and Principles of this Guidance

Statutory provisions and key principles that underpin this Guidance.

- Crown Prosecutors will determine whether a person is to be charged in all indictable only, either way or summary offences subject to those cases specified in this Guidance which the police may continue to charge.
- Charging decisions by Crown Prosecutors will be made following a review of evidence in cases and will be in accordance with this Guidance.
- Custody Officers will have regard to this Guidance in deciding how a person is to be dealt with in accordance with Section 37(7) PACE, as amended by Schedule 2 to the Criminal Justice Act 2003.
- Early consultations with Crown Prosecutors will provide an opportunity for advice to be obtained on the charges likely to proceed in any case and the evidence that will be required to support those charges, as well as enabling evidentially weak cases to be identified and concluded early.

¹ Issued by the Director of Public Prosecutions under Section 37(A)(1)(a) of the Police and Criminal Evidence Act 1984, as inserted by the Criminal Justice Act 2003.

² PACE, Section 37(7) as amended.

³ PACE, Section 37C.

⁴ PACE, Section 37A(1)(b).

- Crown Prosecutors will only require ‘evidential reports’ (see Paragraph 30 (iii) below) where it is clear that the case will proceed to the Crown Court for trial or is likely to be a contested summary trial or where it appears to the Crown Prosecutor that the case is so complex or sensitive that a decision to charge cannot be made without an evidential report.
- Crown Prosecutors will seek to identify and resolve cases that are clearly not appropriate for prosecution at the earliest opportunity on consideration of whatever material is available.
- Where it is appropriate, pre-charge bail arrangements will be utilised to facilitate the gathering of evidence, including, in appropriate cases, all the key evidence on which the prosecution will rely, prior to the charging decision being taken (Section 37 (7)(a) and Section 47 (1A) PACE).
- Crown Prosecutors will notify an officer involved in the investigation of any advice and charging or other decision in writing using the form MG3 (Section 37B (4) PACE).
- Persons may be charged whilst in police detention, or in accordance with Section 29 of the Criminal Justice Act 2003 (*charging by post*) when it is brought into force. [The summons procedure may be used until that change in the process arrangements.]
- Where Crown Prosecutors decide that there is insufficient evidence to charge, or that though there is sufficient evidence to charge, a person should not be charged or given a caution, a Custody Officer shall give notice in writing to that person that he is not to be prosecuted (Section 37B(5) PACE).
- Where Crown Prosecutors decide that a person should be charged with an offence or given a caution, conditional caution, a reprimand or final warning in respect of an offence, the person shall be charged or cautioned, or conditionally cautioned, or given a reprimand or final warning accordingly (Section 37B(6) PACE).
- Where Crown Prosecutors decide that a person should be cautioned but it proves not to be possible to give the person such a caution, the person shall instead be charged with the offence (Section 37B (7) PACE.)
- In order to facilitate efficient and effective early consultations and make charging decisions in prosecution cases, Crown Prosecutors will be deployed as Duty Prosecutors for such hours as shall be agreed locally to provide guidance and make charging decisions. This service will be complemented by a centrally managed out of hours duty prosecutor arrangement to ensure a continuous 24 hour service.

Responsibility for determining charges

Duty of Crown Prosecutors to determine charge cases.

5. Charging by Crown Prosecutors – the principle

- (i) Crown Prosecutors will be responsible for the decision to charge and the specifying or drafting of the charges in all indictable only, either way or summary offences where a Custody Officer determines that there is sufficient evidence to charge a person, except for those offences specified in this Guidance which may be charged or cautioned by the police without reference to a Crown Prosecutor.

Charging by Crown Prosecutors – transitional arrangements

Transitional arrangements for charging some likely guilty plea cases

- (ii) Establishment of the principle set out in paragraph 5 (i) above will be achieved incrementally and will be notified by further editions of this Guidance.
- (iii) Until such notification, the police may determine the charge in any either way or summary offences where it appears to the Custody Officer that a guilty plea is likely and that the case is suitable for sentencing in the magistrates' court, but excluding those specified in Annex A to this Guidance
- (iv) Where the Custody Officer is uncertain whether a case falls under 5(iii) above, early consultation with a Duty Prosecutor should be undertaken to clarify whether the charging decision is one that should be made by a Crown Prosecutor

Details, with exceptions, of cases the police may charge

6. The Police

The Police may determine the charge in the following cases:

- (i) Any offence under the Road Traffic Acts or any other offence arising from the presence of a motor vehicle, trailer, or pedal cycle on a road or other public place,

except where (and the charge must therefore determined by a Crown Prosecutor):

- The circumstances have resulted in the death of any person; or
- There is an allegation of dangerous driving; or
- The statutory defence to being in charge of a motor vehicle (unfit drink or drugs or excess alcohol) may be raised under Section 4(3) or 5(2) of the Road Traffic Act 1988; or
- There is an allegation of the unlawful taking of a motor vehicle or the aggravated unlawful taking of a motor vehicle (unless the case is suitable for disposal as an early guilty plea in the magistrates' court).

- (ii) Any offence of absconding under the Bail Act 1976 and any offence contrary to Section 5 of the Public Order Act 1986 and any offence under the Town Police Clauses Act 1847, the Metropolitan Police Act 1839, the Vagrancy Act 1824, the Street Offences Act 1959, under Section 91 of the Criminal Justice Act 1967, Section 12 of the Licensing Act 1872, any offence under any bylaw and any summary offence punishable on conviction with a term of imprisonment of 3 months or less except where (and the charge must therefore be determined by a Crown Prosecutor):

- The Director of Public Prosecutions publishes other arrangements for the charging and prosecution of these offences.

Cases charged by the police to be reviewed by a Crown Prosecutor.

7. Review by Crown Prosecutors Under Section 10 of the Prosecution of Offences Act 1985

Where by virtue of this Guidance the police determine the charge, that determination and the charge will be subject to a review by a Crown Prosecutor acting under Section 10 of the Prosecution of Offences Act 1985 and under Section 37B of the Police and Criminal Evidence Act 1984 (as amended).

CPS to charge cases delegated to police in certain circumstances.

8. Combinations of offenders and offences

Where the charges or joint charges to be preferred against one or more persons include a combination of offences, some of which may be determined by the police, and others that must be determined by a Crown Prosecutor, the Custody Officer shall refer all charges to a Crown Prosecutor for determination.

Application of Code for Crown Prosecutors to Custody Officers.

9. The application of the Code for Crown Prosecutors to Charging Decisions

When determining charges, Crown Prosecutors and Custody Officers will apply the principles contained in the Code for Crown Prosecutors.

Charge selection, range and number of charges.

10. Number and seriousness of charge(s)

In determining the totality of charges to proceed, the selection of charges should seek to reflect the seriousness and the extent of the offending. It should also provide the court with adequate sentencing powers, and enable the case to be presented in a clear and simple way. Where appropriate, a schedule of other admitted offences may be listed on an MG18 for the charged person to ask the Court to take into consideration.

General application of full Code test.

11. Where the evidence under Paragraph 30 is available

In any case where the charging decision is to be made, and the information required to be considered under Paragraph 30 (below) of this Guidance is available for review, the standard to be applied in reaching the charging decision will be the full test under the Code for Crown Prosecutors: namely (following a review of the evidential material provided) that there is enough evidence to provide a realistic

prospect of conviction and that it is in the public interest for the case to proceed.

12. Where the suspect is not to be released on bail after charge and the evidence gathering is not complete.

In cases where it is determined that it would not be appropriate for the suspect to be released on bail after charge and where the information referred to in Paragraph 30 (below) of this Guidance is not available at the time the charging decision has to be taken, a two-stage approach will then apply:

The threshold test for charging in custody cases where an evidential file is unavailable.

(i) Where the required evidential material under Paragraph 30 (below) is not available, the Crown Prosecutor (or Custody Officer) will assess the case against the Threshold Test set out below (paragraph 14). This should be noted on the MG3 and a review date for a full Code test agreed as part of the action plan.

When to apply a full Code for Crown Prosecutors test in custody cases.

(ii) Subsequently, upon receipt of a Report to Crown Prosecutor for a Charging Decision (MG3) accompanied by the information required in accordance with Paragraph 30 of this Guidance, the Crown Prosecutor will review the case in accordance with the full test under the Code for Crown Prosecutors before deciding whether it is appropriate or not to continue with the offences charged or prefer additional or alternative charges.

Where however the information specified in paragraph 30 is available at the time that the initial Report to Crown Prosecutor is made, the full Code for Crown Prosecutors test will be applied.

Application of the above tests to police charged cases.

13. Where in accordance with this Guidance Custody Officers make the charging decision without referral to Crown Prosecutors, Custody Officers will have regard to the full test in the Code for Crown Prosecutors. Where the case is one in which it is not proposed to release the suspect on bail after charge and the evidential material required to apply the full Code test is not available, the custody officer will proceed in accordance with paragraph 12 above.

The Threshold Test

14. The Threshold Test

Application of the Threshold Test will require an overall assessment of whether in all the circumstances of the case there is reasonable suspicion against the suspect of having committed an offence (in accordance with Article 5 of the European Convention on Human Rights) and that at that stage it is in the public interest to proceed. The decision in each case will require consideration of a number of factors including: the evidence available at the time and the likelihood and nature of further evidence being obtained; the reasonableness for believing that evidence will become available, the time that will take and the steps being taken to gather it; the impact of the expected evidence on the case and the charges the totality of the evidence will support.

Emergency charging by the police of CPS cases.

15. Emergency Cases – Expiry of PACE Time Limits
In cases where the charging responsibility lies with a Crown Prosecutor in accordance with this Guidance and it is proposed to withhold bail for the purposes of making an application to a court for a remand in custody (or for bail conditions that may only be applied by a court) but it proves not to be possible to consult with a Crown Prosecutor in person or by telephone before the expiry of any PACE custody time limit applicable before charge, a Custody Officer may only charge on the authority of a Duty Inspector. The Duty Inspector shall note the custody record and MG3 to confirm that it is appropriate to charge under this emergency provision. The case must be referred to a Crown Prosecutor as soon as is practicable for authority to proceed with the prosecution.

Decisions ancillary to the charging decision

Consultations prior to applications to withhold bail at court and short remands to police custody

16. Consultations where it is proposed to withhold bail or impose conditions
Where it appears to a Custody Officer that a person in police detention should not be released and should be detained for the purposes of an application being made to a court for a remand in custody, including short periods in police custody for the purpose of enquiries into other offences, the Custody Officer may wish to consult with a Duty Prosecutor to confirm that any proposed application for a remand in custody or the imposition of bail conditions which can only be imposed by a court is justified in accordance with the Bail Act 1976, is proportionate, is likely to be ordered by the court and that sufficient detail to support any such application is recorded on the MG7.

Court selection

17. Determination of the court for first appearance
When Crown Prosecutors make charging decisions concerning cases that may be bailed directly to an initial hearing, the Crown Prosecutor will determine whether the case is appropriate for an Early First Hearing Court or an Early Administrative Hearing Court. This will be indicated on the form MG3 with the charge decision.

Special provisions for PYO cases

18. Special procedure for Persistent Youth Offenders
Where it appears to an Investigating or Custody Officer that the person in detention may be a Persistent Youth Offender, early consultation will be undertaken with the Duty Prosecutor to confirm the likely charges to proceed and file requirements in the case. Where it appears that the case will be contested, the Duty Prosecutor and Investigating Officer will agree on the evidential requirements in the case and on a date for the completion of the agreed work taking into account the 71 day target for concluding such cases.

Deployment of and role of Duty Prosecutor

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| Deployment and duty of Crown Prosecutors | <p>19. <u>Deployment</u>
 Chief Crown Prosecutors will make arrangements for the deployment of Crown Prosecutors to act as Duty Prosecutor in locally agreed locations having regard to the local business and wherever possible on a face-to-face basis, or to be otherwise available for the purposes of fulfilling the CPS's statutory duty. Duty Prosecutors will be available for consultation and will render such early legal advice and guidance, including where appropriate the making of charging decisions as will facilitate the efficient and effective preparation and disposal of criminal prosecutions.</p> |
| When early advice may be sought by the police | <p>20. <u>Early Consultations</u>
 Early consultation and advice may be sought and given in any case (including those in which the police may themselves determine the charge) and may include lines of enquiry and/or any evidential requirements or any pre-charge procedures. In exercising this function, the Duty Prosecutor will seek where possible to identify those cases that can proceed to court for an early guilty plea and in which an expedited report will suffice.</p> |
| Stopping weak cases early | <p>21. Early consultation should also seek to identify evidentially weak cases which cannot be rectified by further investigation, either at that stage or at all, so that these investigations may, where appropriate, be brought to an early conclusion.</p> |
| Duty Prosecutor's action on receipt of a case | <p>22. <u>Reviewing the Report to Crown Prosecutor for a Charging Decision (MG3) and evidence.</u>
 Where Crown Prosecutors receive a 'Report to Crown Prosecutor for a Charging Decision' (MG3) accompanied by the information specified in Paragraph 30 below, it is the duty of the Crown Prosecutor to review the evidence as soon as is practicable, having regard to any bail return dates, and decide whether it is appropriate or not, at that stage, to charge the person with an offence or divert them from prosecution.</p> |
| Written notice of charging or other decision | <p>23. Once a charging decision has been made, Crown Prosecutors will give written notice of the decision by completing the second part of the Report to Crown Prosecutor for a Charging Decision (MG3) which will be provided to an officer involved in the investigation of the offence. A copy will be retained by the Crown Prosecutor.</p> |
| Agreeing an action plan to build a case file | <p>24. Where during the course of a consultation or following receipt of the Report to Crown Prosecutor for a Charging Decision (MG3) it is clear that a charging decision in the case cannot be reached at that stage, the Crown Prosecutor consulted will advise on the further steps to be taken before the decision can be reached and will agree with the investigating officer the action to be taken and the time in which that is to be achieved. This agreement will be recorded on the MG3 and a copy will be provided to an officer involved in the investigation. A copy will be retained by the Crown Prosecutor. Suspects will not be charged until all</p> |

agreed actions have been completed.

Referrals of cases in special circumstances

25. Where it appears at an early consultation that the case is of such complexity or sensitivity that it is more appropriate for referral to a specialist unit or prosecutor, or for an individual prosecutor to be allocated to the case from the outset, the Duty Prosecutor, or any Crown Prosecutor consulted, will contact the appropriate Area Unit Head forthwith to make the necessary arrangements.

Building evidential files: use of police pre-charge bail

26. In cases identified as likely to be contested or to be sent to the Crown Court, Crown Prosecutors will require the preparation of an evidential report where that information is not immediately available before a full charging decision can be taken. Where the offender is suitable for release on bail the Custody Officer will then bail the person for such a period as is sufficient to allow any agreed action to be completed and the case to be reported to a Crown Prosecutor for a charging decision.

Decisions not to prosecute

Written notice by Custody Officer of no prosecution

27. Insufficient evidence or not in the public interest to charge
Where the decision of the Crown Prosecutor is that there is not sufficient evidence to charge the person with an offence or that there is sufficient evidence but the public interest does not require the person to be charged or given a caution in respect of an offence, the Custody Officer will notify the person in writing to that effect.

Written notice by Custody Officer of no prosecution, but possible further action

28. Where however it appears to the Crown Prosecutor that should further evidence or information come to light in the future the case may be re-considered under the Code for Crown Prosecutors, the Crown Prosecutor taking that decision will notify the Custody Officer to that effect who will notify the person in writing accordingly.

Information to be sent to Crown Prosecutors for charging decisions

Evidence needed to make a charging decision

29. In making charging decisions, Crown Prosecutors will examine and assess the evidence available before reaching a decision. Wherever possible, Crown Prosecutors will seek to make the decision on the evidence presented to them by the investigator. Where however this is not possible, Custody Officers will arrange for persons to be released on bail, if it is necessary and appropriate to do so, to permit the required information to be provided as soon as is practicable.
30. The information to be provided by an officer involved in the investigation to a Crown Prosecutor to determine charges will be in the form of the 'Report to a Crown Prosecutor for a Charging Decision' (MG3) and must be accompanied by the following:

Form of reports	(i)	<u>Clear admission by an offender or other compelling evidence - expedited report.</u> In any case in which a person has fully admitted an offence, or where other compelling evidence exists ⁵ , key witness statements, with relevant exhibits, and an oral summary of any interview together with brief details of any previous convictions or cautions of the suspect must accompany the Report to Crown Prosecutor for a Charging Decision (MG3). It may be necessary to produce a brief summary of the interview, at the discretion of the Duty Prosecutor concerned.
Clear admission of offence		
Offences witnessed by police	(ii)	<u>Police witnessed offences – with no admissions: expedited report.</u> Where the offence has been witnessed by no more than four police officers, the Report to Crown Prosecutor for a Charging Decision (MG3) may consist of a key witness statement and an oral report or summary of the other evidence that may be available. The investigating officer should report on any other information that may have a bearing on the evidential or public interest test in deciding whether to prosecute, including brief details of any previous convictions or cautions of the suspect.
Crown Court and likely not guilty cases	(iii)	<u>Crown Court or contested case - evidential report.</u> Where it is clear that the case will proceed to the Crown Court for trial or will be contested, the Report to Crown Prosecutor for a Charging Decision (MG3) must be accompanied by an evidential report containing the key evidence upon which the prosecution will rely together with any unused material which may undermine the prosecution case (including crime reports, initial descriptions and any previous convictions of witnesses). The Report must also be accompanied by the suggested charge(s), a record of convictions and cautions of the suspect, and any observations of the reporting officer.
File information in custody cases	31.	<u>Custody cases - Threshold Test – expedited report</u> Where in accordance with this Guidance and in order to facilitate the making of an application to a court for a remand in custody, a charging decision is to be taken in accordance with paragraph 12 (i) above, the Report to Crown Prosecutor (MG3) must be accompanied by sufficient material then available and brief details of any previous convictions or cautions of the suspect to allow the Threshold Test to be applied. The Manual of Guidance remand file will be provided for the first and subsequent interim hearings, until the completed Report to Crown Prosecutor referred to in paragraph 12 (ii) above is submitted

⁵ For example, visually recorded evidence of the crime taking place from which it is possible to clearly identify the offender

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| Early consultation in evidential report cases | 32. Early consultation with a Duty Prosecutor should be undertaken to identify those cases in which an evidential file will be required and to agree the timescales for the completion and submission of the Report to Crown Prosecutor for a Charging Decision (MG3). An officer involved in the investigation must submit the completed Report to Crown Prosecutor for a Charging Decision (MG3) within the agreed timescale together with the evidential material referred to in paragraph 30 (iii) above. |
| Complex or sensitive cases | 33. <u>Complex or sensitive cases - evidential report</u>
In any case where it appears to a Duty Prosecutor that the case is so complex or sensitive that a decision to charge, or not as the case may be, cannot be made without fuller information, the Report to Crown Prosecutor for a Charging Decision (MG3) must be accompanied by an evidential file and the material mentioned in paragraph 30 (iii) above. |
| When police uncertain about the information required | 34. <u>Case requirements unclear – consult with a Duty Prosecutor</u>
Where an Investigating Officer considers that a defence may have been raised by a suspect in interview, or is uncertain whether a person has fully admitted an offence and requires clarification of the information required to accompany the report for a charging decision, early consultation with a Duty Prosecutor should occur to determine whether the case is likely to proceed and to establish the report requirements to facilitate the making of the charging decision. |

Roles and Responsibilities of Custody Officers under Section 37(7) (a) to (d) PACE, as amended by Schedule 2 to the Criminal Justice Act 2003

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| Early consultation where offence to be charged by CPS | 35. <u>Early consultations</u>
Where it appears likely that a charge will be determined by Crown Prosecutors, Custody Officers will direct investigating officers to consult a Duty Prosecutor as soon as is practicable after a person is taken into custody. This will permit early agreement to be reached as to the evidential requirements and, where appropriate, for any period of bail to be determined to permit submission of the Report to the Crown Prosecutor for a Charging Decision (MG3). |
| Early elimination of weak cases | 36. Early consultation with a Duty Prosecutor will allow the early identification of weak cases and those where the charging decision may be made upon consideration of limited information. |
| Referrals where police do not wish to prosecute where sufficient to charge | 37. <u>Referrals where the police do not wish to proceed</u>
In any indictable only case in which an investigating or supervisory officer decides that he does not wish to proceed with a prosecution where it appears that the Threshold Test is met, the case must be referred to a Duty Prosecutor to confirm whether or not the case is to proceed. Early consultation in such a case may allow the investigation and preparation of case papers to be curtailed unless the complexity or sensitivity of the case determines otherwise. |

38. Delaying the charging decision and releasing offenders suitable for release on bail

In determining whether the provisions of S37(7) PACE apply, Custody Officers will assess cases in accordance with the Threshold Test set out in paragraph 14 above. In any case where this Guidance requires charges to be determined by Crown Prosecutors and a Custody Officer concludes that there is sufficient to charge in accordance with S37(7) the Custody Officer will ensure that the case is referred to a Crown Prosecutor as soon as is practicable, or, where the person is suitable for bail, release the person detained on pre-charge bail, with or without conditions, in accordance with S37(7)(a).

Length of police pre-charge bail

39. In any case where this Guidance requires charging decisions to be made by Crown Prosecutors and the required information is not then available, Custody Officers will release those persons suitable for bail (with or without conditions as appropriate) to allow for consultation with a Crown Prosecutor and the submission of an evidential report for a Charging Decision (MG3) in accordance with this Guidance.

40. The period of bail should be such as to allow the completion of the investigation, submission of a Report to a Crown Prosecutor for a Charging Decision (MG3), for the person to be charged and for the information specified in accordance with paragraph 30 (iii) above to be provided to the defence prior to the first appearance.

Delayed charges – other reasons

41. Where a Custody Officer determines that there is sufficient evidence to charge a person but concludes that it is not appropriate at that stage to charge the person with an offence or to seek a charging decision from a Crown Prosecutor and proposes to release the person from police custody in accordance with Section 37 (7)(b) PACE, the person may only be released on unconditional bail. The Custody Officer should record the reasons for so acting.

Cautions, reprimands and final warnings

Diversion from prosecution, police to caution, reprimand etc

42. Where the police consider that there is sufficient evidence to charge a suspect with any offence, not being an indictable only offence, and determine that it is in the public interest instead to administer a caution (not being a conditional caution), or to administer a reprimand or final warning in the case of a youth, the police may issue that caution, reprimand or final warning as appropriate, without further reference to a Crown Prosecutor.

Consultation on decision to caution

43. Notwithstanding the above, an investigating officer may wish to consult with a Crown Prosecutor in respect of any case in which it is proposed to deal with an offender by way of a caution, conditional caution, reprimand or final warning.

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| Actions on conditional caution cases | 44. Where a conditional cautioning scheme is in force locally and the police wish to conditionally caution any suspect for an offence, the Custody Officer must refer the case to a Crown Prosecutor for decision. |
| Review by Crown Prosecutors | 45. Where in accordance with this Guidance, the police have determined to initiate proceedings against a suspect by way of a charge, and a Crown Prosecutor, acting under Section 10 of the Prosecution of Offences Act 1985 and Section 37B of the Police and Criminal Evidence Act 1984 (as amended) determines that it is more appropriate in accordance with the public interest test to proceed by way of a caution, a conditional caution (if a scheme is in force locally), a reprimand or final warning, the person shall be given a caution, or conditional caution, or reprimand or final warning as appropriate. |
| Decisions to caution by Crown Prosecutors | 46. Crown Prosecutors, when conducting a charging review under this Guidance may instead of charging determine that a caution, conditional caution (if a scheme is in force locally), reprimand or final warning is appropriate. Written notice should be given to the police of this decision on the MG3. Where it subsequently proves impossible to give the person such a caution, conditional caution (if this scheme is enforced locally), reprimand, or final warning, the person shall instead be charged with the offence. |

Breach of Pre-Charge Bail Conditions

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| Action on breach of bail conditions pending CPS charging decision | 47. Where a suspect is released on bail under Section 37(7)(a) or 37C(2)(b) PACE, [<i>release pending a CPS decision on charge or a re-release following a breach of condition of bail for that purpose</i>] and that suspect is subsequently arrested under Section 46A (1A) PACE on reasonable grounds of having broken any of the conditions of bail, or for failing to surrender to bail at the police station, and a Custody Officer concludes that the offender should be detained in custody for the purpose of an application to the court for a remand in custody, the Custody Officer will consult a Crown Prosecutor for a decision as to whether the suspect may be charged with the offence for which the person had previously been released on bail or with any other offence or be released without charge either on bail or without bail. |
| Charging breach of bail – emergency situations | 48. In any such case where it has not proved possible to consult with a Crown Prosecutor in person or by telephone and it is proposed to withhold bail for the purposes of an application for a remand into custody (or for bail conditions that may only be applied by the court) a Custody Officer may only proceed to charge on the authority of a Duty Inspector. The Duty Inspector shall note the custody record and MG3 to confirm that it is appropriate to charge under the emergency provisions. The case must be referred to a Crown Prosecutor as soon as is practicable for authority to proceed with the prosecution. |

Securing agreement over charging decisions

Escalation procedure

49. Where in any case an Investigating or Custody Officer is not in agreement with the charging decision, the report requirements or any diversion proposal and wishes to have the case referred for further review, the case must be referred to the BCU Crime Manager (normally Detective Chief Inspector), or appointed Deputy, for consultation with a CPS Unit Head, or appointed Deputy for resolution. If further escalation is required, the involvement of the Divisional Commander and the Level E Unit Head or Chief Crown Prosecutor should be obtained. Procedures should be in place for this review to be conducted speedily.

Form of Report to Crown Prosecutor for a Charging Decision (MG3)

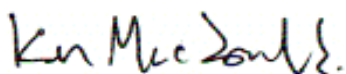
Form of MG3

50. The Report to Crown Prosecutor for a Charging Decision to be used will be the form MG3, a copy of which is attached at Annex B to this Guidance. The Manual of Guidance Editorial Board may vary this form from time to time.

Requirements to Comply with the Manual of Guidance Provisions

Compliance with Manual of Guidance

51. All consultation arrangements and procedures for the preparation, processing and submission of prosecution files and the disclosure of unused material will be carried out in accordance with the provisions of the latest edition of the Manual of Guidance as agreed between the Home Office, Association of Chief Police Officers and the Crown Prosecution Service.



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DIRECTOR OF PUBLIC PROSECUTIONS

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OFFENCES OR CIRCUMSTANCES, WHICH MUST ALWAYS BE REFERRED TO A CROWN PROSECUTOR FOR EARLY CONSULTATION AND CHARGING DECISION – WHETHER ADMITTED OR NOT

- Offences requiring the Attorney General's or Director of Public Prosecution's consent⁶.
- Any indictable only offence⁶.
- Any either way offence triable only on indictment due to the surrounding circumstances of the commission of the offence or the previous convictions of the offender⁶.

In so far as not covered by the above:

- Offences under the Terrorism Act 2000 or any other offence linked with terrorist activity.
- Offences under the Anti-Terrorism, Crime and Security Act 2001.
- Offences under the Explosive Substances Act 1883.
- Offences under any of the Official Secrets Acts.
- Offences involving any racial, religious or homophobic aggravation.
- Offences under the Sexual Offences Act 2003 committed by or upon persons under the age of 18 years.
- The following specific offences⁷:
 - Wounding or inflicting grievous bodily harm, contrary to Section 20 of the Offences Against the Person Act 1861
 - Assault occasioning actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861
 - Violent Disorder contrary to Section 2 of the Public Order Act 1986.
 - Affray, contrary to Section 3 of the Public Order Act 1986
 - Offences involving deception, contrary to the Theft Acts 1968 & 1978
 - Handling stolen goods, contrary to Section 22 of the Theft Act 1968.

⁶ Copies of these offences accompany this Guidance for information, but do not form part of it.

⁷ File requirements for these cases will be in accordance with the Manual of Guidance expedited file, to include key witness statements or other compelling evidence and a short descriptive note of any interview conducted.

REPORT TO CROWN PROSECUTOR FOR CHARGING DECISION
DECISION LOG & ACTION PLAN
Not Disclosable

Not Disclosable

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Suspect 1: PO/PYO/YO♦ M/F♦ Surname:..... Forename(s):..... D.O.B: Custody Ref: Ethnicity code (self-defined):		Proposed charge(s): 	
Suspect 2: PO/PYO/YO♦ M/F♦ Surname:..... Forename(s):..... D.O.B: Custody Ref: Ethnicity code (self-defined):		Proposed charge(s): 	
Officer seeking advice: Supervisor's name: Consulted Y / N♦			
Material provided to CPS (indicate if attached)			
	Date of item		Date of item
Statement of:		Pocket note book/Incident report book:	
Statement of:		Police incident log:	
Statement of:		Video/photographs:	
Interview record:		Previous convictions/disposals:	
Forensic/expert evidence:		Other:	
Outline of circumstances and decision/advice sought (unless verbal report given) <i>(Consider: time limit on proceedings (if applicable); strengths and weaknesses of case; possible lines of defence; witness assessment; public safety/bail issues; disclosure; any Proceeds of Crime Act issues; orders on conviction; public interest.)</i>			
<i>Continue on separate sheet if necessary</i>			
Officer completing: Rank & No./Job title: Date:			
Contact details (station, tel, mobile, e-mail): Signature:.....			

Continue on separate sheet if necessary

CHARGING DECISION/ADVICE & CASE ACTION PLAN (FOR CPS COMPLETION) URN:**Charging decision and advice, specifying or attaching charges** (*refer to documents/evidence seen, decision on offences*)*Continue on separate sheet if necessary***Prosecutor to indicate general nature of decision and advice** (*Tick one box only*)

Code	Advice	Suspect 1	Suspect 2	Code	Advice	Suspect 1	Suspect 2
A	Charge + request full file			H	Request evidential file		
B	Charge + request expedited file			I	Request expedited file		
C	Simple caution			J	Further investigation - resubmit		
D	Conditional caution			K	NFA – Evidential		
E	Reprimand			L	NFA – Public interest		
F	Final warning			M	Other (<i>please specify</i>)		
G	TIC						
If 'K', enter Evidential code:				If 'C, D, E, F or L', enter Public Interest code:			

Further action agreed:**Action date by:**

1.

1.

2.

2.

3.

3.

4.

4.

PYO Provisional trial date:

Charging review/action date:

Return bail date:

Further consultation needed pre-charge: Y /N♦ (*If further consultation necessary, use continuation sheet MG3 A*)Prosecutor name (*print*):Contact details:Date:

Investigation stage at which advice sought:

Pre arrest ☐ Post Arrest ☐ Post Interview ☐ Post bail for further enqs ☐ Bail for charging decision ☐

How advice delivered:

Face to Face ☐ Video Conferencing ☐ Telephone ☐ CPS Direct ☐ Written ☐

Schedule to DPP Guidance First Edition: Implementation Arrangements

Local Criminal Justice Board Area	Date of coming into effect	Authorisation of Director of Public Prosecutions
West Yorkshire	17 th May 2004	Ken Mac Donal.
Kent	17 th May 2004	Ken Mac Donal.
South Yorkshire	24 th May 2004	Ken Mac Donal.
Cleveland	4 th June 2004	Ken Mac Donal.
Avon & Somerset	5 th July 2004	Ken Mac Donal.
Lancashire	15 th June 2004	Ken Mac Donal.
Humberside	31 st August 2004	Ken Mac Donal.
Northumbria	28 th June 2004	Ken Mac Donal.
Nottinghamshire	5 th July 2004	Ken Mac Donal.
London South	1 st November 2004	Ken Mac Donal.
London North	1 st November 2004	Ken Mac Donal.
London West	1 st November 2004	Ken Mac Donal.
Greater Manchester	6 th September 2004	Ken Mac Donal.
Thames Valley	14 th November 2004	Ken Mac Donal.
West Midlands		
Merseyside	4 th October 2004	Ken Mac Donal.