

SECTION 2

PRE-CHARGE CONSULTATION BETWEEN INVESTIGATORS AND DUTY PROSECUTORS

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SECTION 2

PRE-CHARGE CONSULTATION BETWEEN INVESTIGATORS AND DUTY PROSECUTORS

2.1 INTRODUCTION

2.1.1 This section of the Manual provides an overview of the changes to the charging procedure following the implementation of the Criminal Justice Act 2003. It:

- explains the arrangements for obtaining pre-charge advice
- outlines the procedure to be followed for obtaining the charging decision
- specifies the MG forms and file types required for charging decisions, charging defendants and trial ready files.

2.1.2 Under the 2003 Act, responsibility for charging, in all but minor and straightforward cases, passes from the police to the CPS. As a result, the Police and Criminal Evidence Act (PACE) has been amended to allow the Director of Public Prosecutions (DPP) to issue guidance to custody officers on how they should deal with changes in the charging procedure.

2.1.3 The DPP's Guidance outlines how cases will be referred to Crown Prosecutors for charging decisions and implements pre-charge bail arrangements for offenders. The full Guidance is at Appendix A and can also be accessed on the PNLD database or the CPS website [www.cps.gov.uk].

2.1.4 To complement the Director's Guidance, ACPO has issued guidance to custody officers on the use of pre-charge bail with conditions (Appendix C). Consequently, amendments have been made to Code C of PACE and the Code for Crown Prosecutors.

2.1.5 To facilitate the new arrangements, CPS will deploy Duty Prosecutors to operational police units. They will provide guidance and advice to investigators and make charging decisions. In addition, an out-of-hours service will operate nationally through CPS Direct. As police forces/CPS areas migrate to the statutory scheme, the contact number for CPS Direct will be made available locally.

2.1.6 The CPS is responsible for making the charging decision in all indictable only, either way and summary offences, except those specifically excluded in the Guidance, which remain the responsibility of the police. The excluded offences include most motoring offences and certain street offences.

2.1.7 Police will continue to charge in those cases which the custody officer considers to be suitable for early disposal in the magistrates' court as guilty pleas. However, there are exceptions and the police will not be able to charge in certain cases. The DPP's Guidance gives full details, and Table 2 at Section 1 shows this in a simplified format.

2.1.8 Where statutory charging is in force, the DPP's Guidance is mandatory. Failure to follow the DPP's Guidance could result in the charges being judicially reviewed or may give rise to civil liability for malicious prosecution or misfeasance in public office.

2.1.9 Any CPS action on such unauthorised charging, without compliance with the Director's Guidance, may attract the same liability.

2.1.10 **Figure 2** shows the way the pre-charge consultation arrangements will operate.

2.2 OBTAINING ADVICE PRE-CHARGE

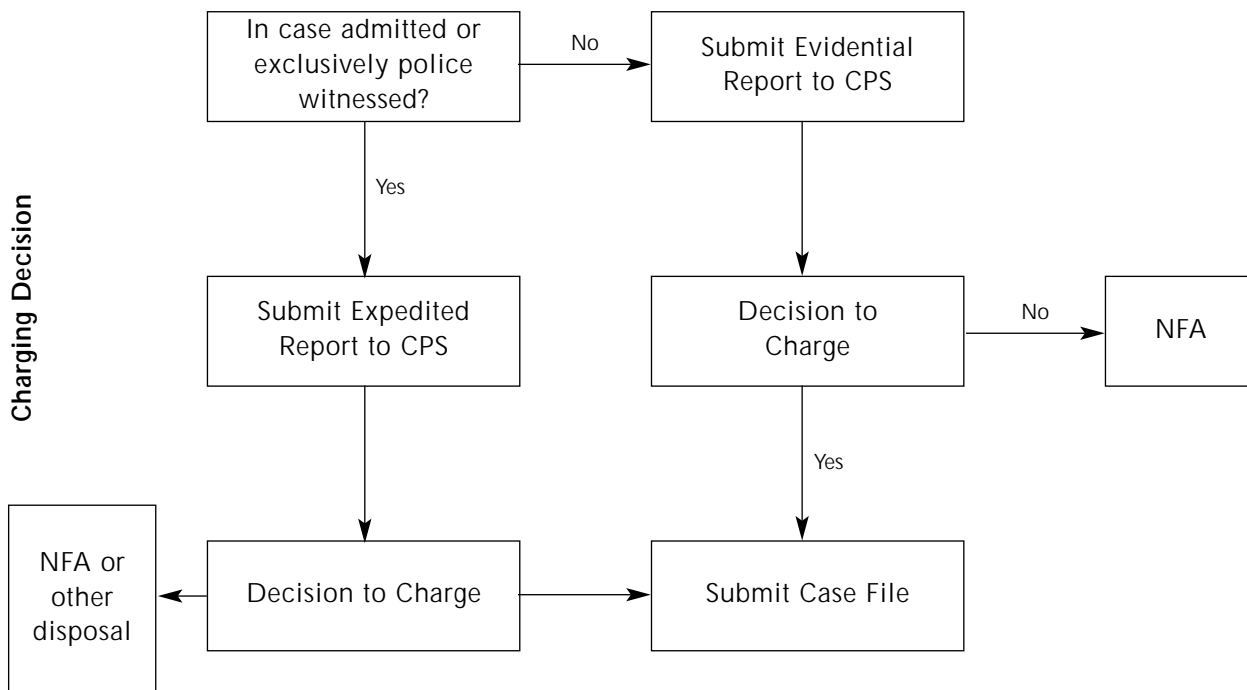
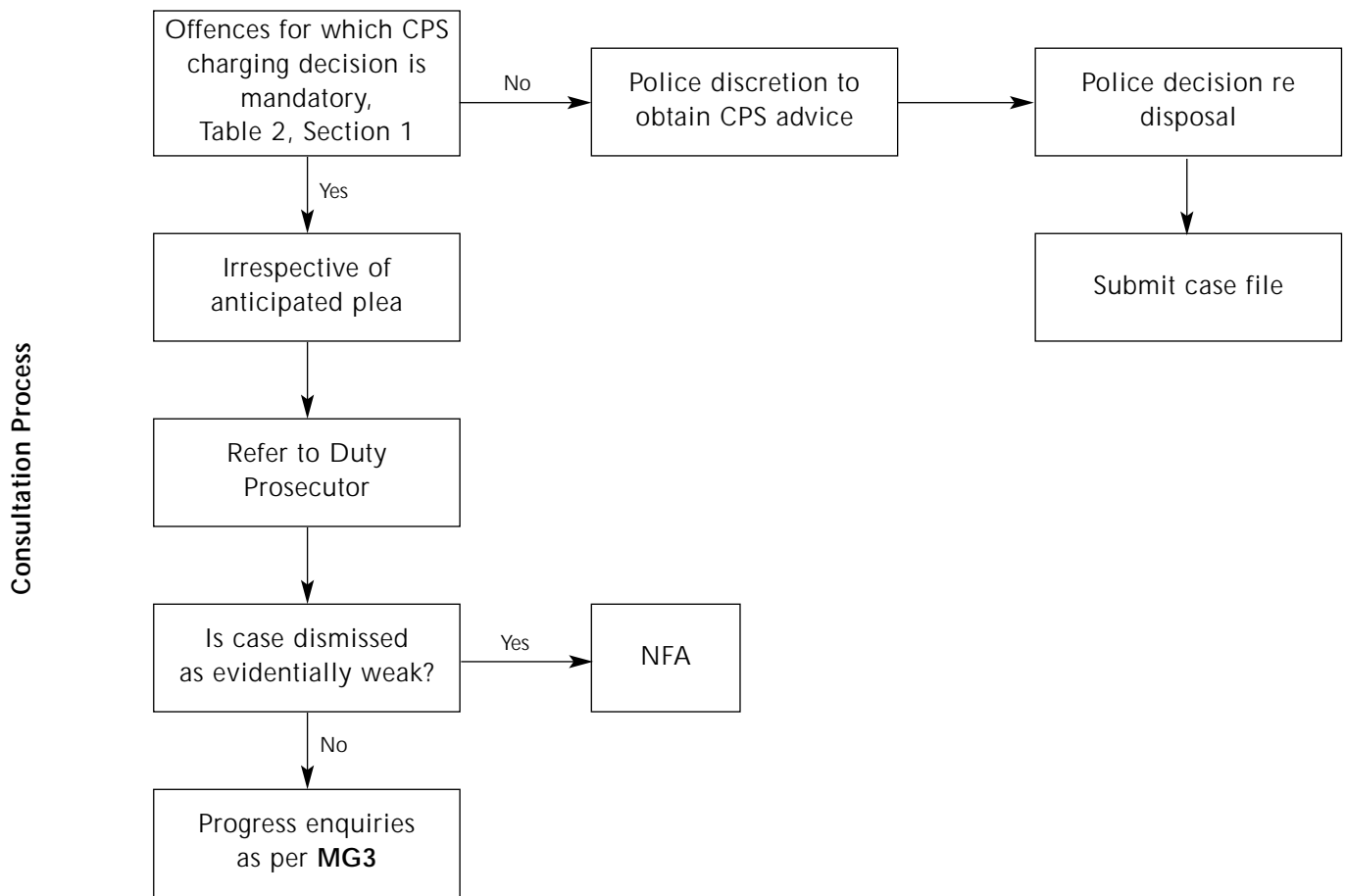
- 2.2.1 Investigators will be able to seek advice and guidance from Duty Prosecutors at any stage of any investigation.
- 2.2.2 Investigators may seek advice in relation to lines of enquiry and/or the evidential requirements of the case. However, it is not the role of the Duty Prosecutor to give supervisory direction to investigators.
- 2.2.3 Early consultation has many advantages:
- Cases that are evidentially weak can be identified early and eliminated, thus preventing unnecessary work by the investigator;
 - Actions may be identified which turn apparently evidentially weak cases into viable investigations;
 - The correct charges can be identified early and appropriate lines of enquiry identified to obtain the evidence to support them;
 - File requirements can be identified, thus ensuring that the preparation of full files by the police is kept to a minimum.
- 2.2.4 In straightforward cases the investigator may provide a verbal briefing to the Duty Prosecutor. However, in complex cases it will be necessary for the investigator to complete the **MG3**. The Duty Prosecutor will always make a written record of the advice given (on an **MG3**) even if the officer seeking advice does not supply one.
- 2.2.5 Where the **MG3** is used, investigators must ensure where possible that the URN is completed. This will allow cases to be tracked where more than one consultation is required.
- 2.2.6 During consultation, investigators must ensure that the Duty Prosecutor is fully briefed on the key points of the case, providing evidence and supporting documentary information where appropriate. The amount of information available to an investigator will vary, depending on the type of enquiry and the stage that the investigation has reached. The **MG3** contains a checklist of evidence and information that should be considered.
- 2.2.7 Failure to fully brief the Duty Prosecutor may result in incomplete advice being given or flawed decisions being made, leading to additional work later on. Investigators should reveal all of the circumstances of the investigation.
- 2.2.8 Early consultation with the Duty Prosecutor will determine the evidential requirements in each case, agree the action to be taken and the timescale for completion. The agreement will be recorded on the **MG3** and a copy supplied to the investigator. This must be attached to the case file.
- 2.2.9 The **MG3** is not disclosable as it is subject to legal privilege between the police and CPS.

2.3 OBTAINING A CHARGING DECISION

- 2.3.1 Depending on the circumstances of the case, the investigator will submit either a pre-charge Expedited Report or a pre-charge Evidential Report to obtain the charging decision.
- 2.3.2 The Duty Prosecutor or the custody officer will make the charging decision on the basis of these reports.
- 2.3.3 As a general rule, the pre-charge Expedited Report will be used in straightforward and guilty plea cases. The pre-charge Evidential Report will be used in contested or Crown Court cases.
- 2.3.4 Table 1 in Section 1 sets out the MG forms that are required to be submitted.
- 2.3.5 Duty Prosecutors should be consulted where the case requirements are unclear, or where the investigator is uncertain which report should be used.

Figure 2

PRE-CHARGE CONSULTATION ARRANGEMENTS



2.4 DELAYING THE CHARGING DECISION AND GATHERING FURTHER EVIDENCE

- 2.4.1 In circumstances where a charging decision cannot be made, the Duty Prosecutor and investigator will agree the action to be taken and the timescale for completion. The agreement will be recorded on the **MG3** and a copy supplied to the investigator. This must be attached to the case file.
- 2.4.2 In police cases where the custody officer is unable to give the charging decision, the custody officer should refer the investigator to a supervisor to ensure further action is taken to progress the case.
- 2.4.3 In cases where the agreed further action has been carried out and a charging decision is being sought, the **MG3A** should be used to update the Duty Prosecutor. The outcome should be recorded on the **MG3A** and a copy provided to the investigator and attached to the case file.

2.5 THE TEST TO BE APPLIED IN MAKING THE CHARGING DECISION

- 2.5.1 Custody officers and Duty Prosecutors will make respective charging decisions following a review of the evidence and by applying the full 'Code for Crown Prosecutors' test. This requires that the evidence provides a realistic prospect of conviction and that it is in the public interest to proceed. (This is a higher evidential standard than the 'sufficiency of evidence' test previously used by custody officers.)
- 2.5.2 There may be occasions when, in order to manage high-risk offenders, a remand in custody application is required. If the information required in the DPP's Guidance is available, the charging decision will be made at that time.
- 2.5.3 Where the evidence is still being gathered in those types of case, a two-stage test will be applied. Firstly, the case will be considered against a Threshold Test. The level of evidence that prosecutors will be seeking to identify at this early stage will at least satisfy this test and will be appropriate to justify the initial detention.

Application of the Threshold Test will require an overall assessment of whether, in all the circumstances of the case, there is a reasonable suspicion that the suspect has committed an offence and that 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
- the likelihood and nature of further evidence being obtained
- the reasonableness for believing that the 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.

Providing this test is satisfied, the detained person may be charged.

- 2.5.4 Secondly, an action plan will be agreed to enable the additional information to be obtained in order that a full 'Code' test can be carried out later.
- 2.5.5 After a reasonable period, which will depend on the circumstances of each case and will be agreed with the police, a Crown Prosecutor must continually review the case and the evidence then available in accordance with the full Code for Crown Prosecutors test.
- 2.5.6 An Expedited File should be submitted for the initial and subsequent remand hearings, until the completed Evidential Report can be submitted to the Crown Prosecutor.

2.6 EMERGENCY CASES – EXPIRY OF PACE TIME LIMITS

- 2.6.1 In cases where the charging decision lies with a Duty Prosecutor and it is proposed to withhold bail for the purposes of making an application for a remand in custody, or the imposition of

bail conditions by a court, and it has not proved possible to consult with the Duty Prosecutor before the expiry of the PACE time limit, a custody officer may charge on the authority of the Duty Inspector.

- 2.6.2 The Duty Inspector must endorse the custody record and the **MG3** to confirm that it is appropriate to charge under this provision. The case must be referred to a Crown Prosecutor as soon as is practicable for authority to proceed with the prosecution.

2.7 PRE-CHARGE CONDITIONAL BAIL

- 2.7.1 Once the custody officer is satisfied that the case has passed the Threshold Test, the custody officer may impose conditional bail, prior to charge, to enable a Duty Prosecutor to make charging decisions.
- 2.7.2 The decision to bail, with or without conditions, remains that of the custody officer.
- 2.7.3 The types of bail condition that may be applied will be the same as those that are currently available post-charge.
- 2.7.4 The custody officer will use the **MG4A** to record pre-charge bail conditions. The form should be completed in the same way as when conditions are imposed post-charge. Any references to appearances at court should be deleted and the details of the police station to which the defendant is bailed should be inserted.
- 2.7.5 Where bail conditions involve any form of surety or security, **MG4C** should also be completed. (See Section 3, **MG4C** guidance notes for further information.)

2.8 VARIATION OF BAIL CONDITIONS

- 2.8.1 Once pre-charge bail conditions have been imposed, there is no power for the police to vary these, unless requested to do so by the defendant. Where the police seek to impose additional or more stringent conditions, the police must consult with the Duty Prosecutor to decide whether the defendant may be charged with the original offence. This will allow the police the opportunity to impose alternative conditions post-charge, or to seek a remand in custody.

2.9 BREACH OF PRE-CHARGE BAIL CONDITIONS

- 2.9.1 The procedure for dealing with a breach of pre-charge conditional bail differs from the post-charge arrangements. Under pre-charge arrangements, the police must have evidence that an actual breach has taken place, rather than a suspicion that a breach is likely, as is the case post-charge. Where a breach has taken place, the police have a power of arrest although no offence is committed. A suspect does, however, commit an offence where they fail to surrender to bail.
- 2.9.2 Custody officers should ensure that cases in which the detained person has been re-arrested for:
- failure to comply with bail condition, or
 - failure to surrender to custody at the station

are brought to the attention of the Duty Prosecutor with a view to seeking an early charge and remand in custody, or imposing a further period of bail with conditions. When making such decisions, custody officers must ensure that risks to victims, witnesses and the public are properly managed.

- 2.9.3 Custody officers need to be alert to the fact that a decision not to prosecute may already have been taken and notified to the police.
- 2.9.4 Where a decision is taken to charge the offender with the original offence and seek a remand in custody, the original pre-charge Expedited or Evidential Report should be made available to

the Prosecutor at court. If this is not possible, as much information as possible should appear on the **MG8**.

2.9.5 Other forms and documents are required in addition to the **MG3** to produce a pre-charge report for a charging decision. The forms required differ depending on which type of report is being prepared. There is no requirement for the forms to be typed for pre-charge reports, but they must be legible.

2.10 FAILURE TO SURRENDER TO BAIL – PRE-CHARGE

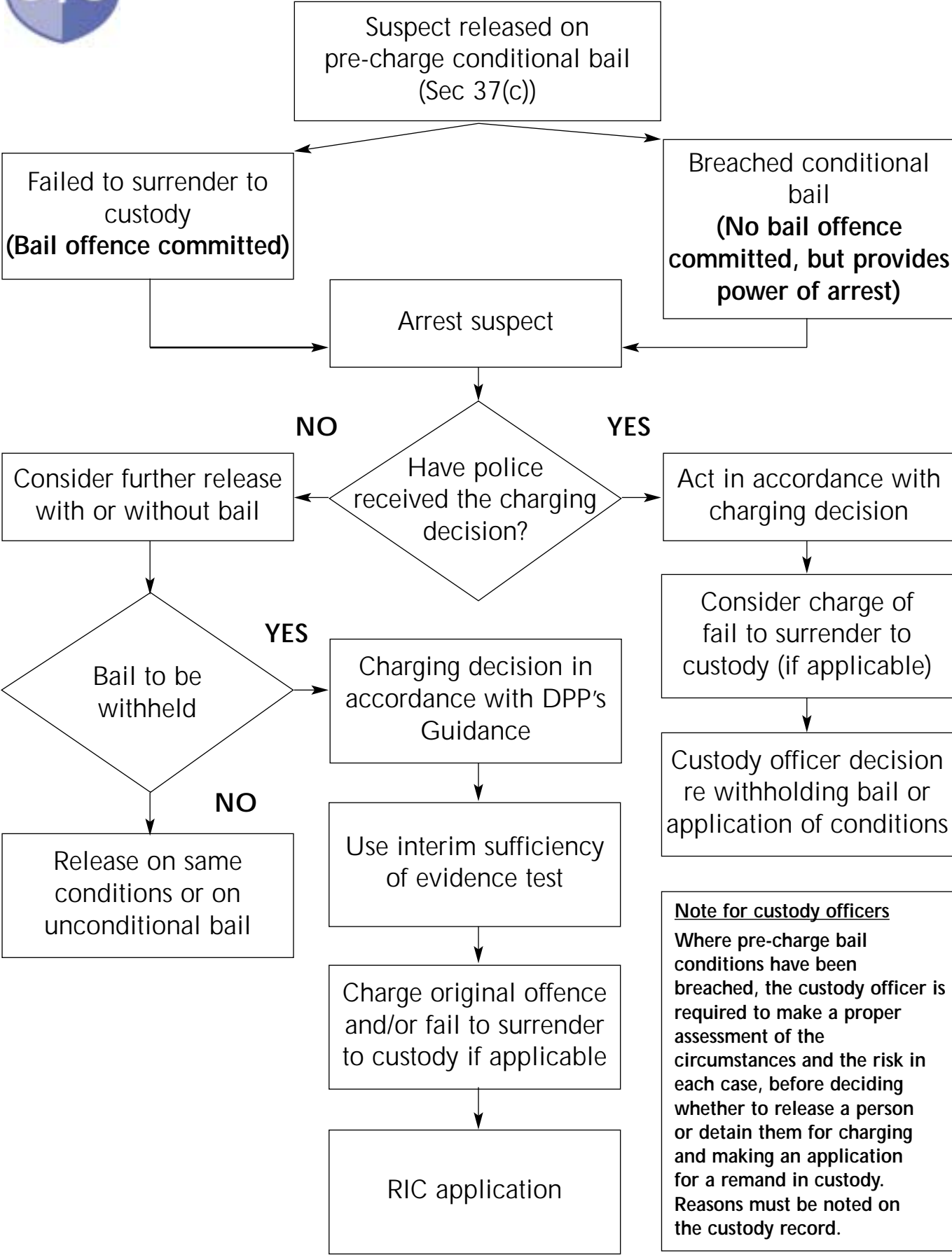
2.10.1 Whilst breach of bail conditions pre-charge is not an offence, failure to surrender to bail gives rise to a new offence for which the custody officer can make the charging decision. In cases where failing to surrender is the only offence charged, an Expedited File should be submitted, (see Table 1 in Section 1).

2.10.2 Guidance for custody officers in dealing with a breach of pre-charge bail conditions can be found at Figure 3 in Section 2.



Figure 3

GUIDANCE FOR DEALING WITH BREACH OF PRE-CHARGE CONDITIONAL BAIL
 (see DPP's Guidance, paragraph 47)



Note for custody officers
 Where pre-charge bail conditions have been breached, the custody officer is required to make a proper assessment of the circumstances and the risk in each case, before deciding whether to release a person or detain them for charging and making an application for a remand in custody. Reasons must be noted on the custody record.