

POLICE AND JUSTICE ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Powers of police etc

Section 11: Power to detain pending DPP's decision about charging

146. The amendment made by *section 11* to section 37 of PACE is designed to enable a custody officer to detain a person, under section 37, whilst consideration is being given by the Director of Public Prosecutions (in practice the relevant Crown Prosecution Service lawyer) on whether the person should be charged.
147. As it stands, section 37(1) of PACE provides that the custody officer at each police station where a person is detained must determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested, and may detain him at the police station for such period as is necessary to enable him to do so. Section 37(7) of PACE provides that when the custody officer has determined that he does have before him sufficient evidence to charge the person with the offence for which he was arrested, the person must be (a) released without charge and on bail for the purpose of enabling the Director of Public Prosecutions to make a decision on charge; (b) released without charge and on bail but not for that purpose; (c) released without charge and without bail; or (d) charged.
148. The effect of the amendment made by section 11 is that, where the custody officer has determined that he has before him sufficient evidence to charge a person, that person may be detained at a police station pending the prosecutor's decision as to whether or not to bring a charge. It will be a matter for the custody officer to determine on an individual basis whether the person should be detained or granted bail whilst awaiting the outcome of the statutory charging process.