



Home Office

# Immigration bail- interim guidance

Version 2.0

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# About this guidance

Following the judgement of OH A and WP 2020 this interim guidance tells decision makers about access to accommodation as provided for under [Schedule 10 to the Immigration Act 2016](#). Reference to decision makers in this guidance means all persons acting on behalf of the Secretary of State on immigration bail matters; this includes immigration officers.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email Immigration Bail Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **09 July 2021**

## Changes from last version of this guidance

Adjustments to:

- [Provision of accommodation](#)

### Related content

[Contents](#)

### Related external links

[Schedule 10 to the Immigration Act 2016](#)

Border Force Immigration Bail risk assessment form

# Informing detainees of their immigration bail rights

This page tells you about making detainees aware of their bail rights, including the documents that must be given to detainees and when they must be given.

Information on immigration bail rights is contained in the reasons for detention form (IS91R or equivalent) issued to every detainee on detention.

The information in the form must be explained to the detainee, using an interpreter if necessary. Information on immigration bail rights is also included in the monthly progress update to detainees (IS151F or equivalent).

Detainees must also be given BAIL 403 during their induction to detention. This contains information on:

- when they can apply for immigration bail
- how to make immigration bail applications to the Secretary of State (using form BAIL 401)
- how to make immigration bail applications to the First-tier Tribunal (using form B1)
- how to apply for immigration bail accommodation (using form BAIL 409)
- when they will be automatically referred for consideration for immigration bail (see Automatic referral for consideration of immigration bail)
- where they can obtain further information

For prisoners, the decision maker will send a bail prison pack and covering letter (BAIL 404) to the relevant prison team. This pack contains the following notices:

- BAIL 403
- form B1
- BAIL 401
- BAIL 306 (if a financial condition is likely to be considered appropriate)
- BAIL 409

There must be evidence to demonstrate that information about bail has been provided in the following situations:

- detaining team, including ICE teams, Border Force and Reporting and Offender Management – during encounter or detention on reporting – record service on CID notes and/or port file
- Criminal Casework / Nexus High Harm – send Bail Prison Pack with covering letter (BAIL 404) to the relevant HM Prisons' team and record signed confirmation of conveyance on CID

## Related content

[Contents](#)

# Meeting bail conditions: Secretary of State support

This page tells you about measures in place that you may use to help a person meet immigration bail conditions in specified circumstances.

## Accommodation

There may be circumstances where a person is granted immigration bail **subject to a residence condition requiring them to live at a specified address, and the person would not be able to support himself or herself at that address** without the assistance of the Secretary of State. Under paragraph 9 of Schedule 10, the Secretary of State may provide, or arrange for the provision of, facilities for the person's accommodation at that address to enable the bail condition to be met, but only in exceptional circumstances.

## Exceptional circumstances

The power may be exercised only if the Secretary of State thinks that there are exceptional circumstances to justify doing so. The types of cases where exceptional circumstances will normally justify providing accommodation under paragraph 9 of Schedule 10 are SIAC cases, Harm cases and European Convention on Human Rights: Article 3 cases but are not limited to these types of cases.

## SIAC cases

These are cases involving people granted bail by the Special Immigration Appeals commission (SIAC), where exceptionally strict bail conditions, including a residence condition, are imposed to control the risk posed by the individual.

## Harm cases

Cases involving:

- people – including Foreign National Offenders (FNOs) – who are granted bail and who are currently assessed by HM Prison and Probation Service (HMPPS) as being at a high or very high risk of causing serious harm to the public
- FNOs at high risk of harmful reoffending against an individual – for example, offences of domestic burglary, robbery, sexual assaults and violence – who are assessed using the Offender Group Reconviction Scale (OGRS) with a minimum score of 70%

where that person has nowhere suitable to live in accordance with their probation licence and/or multi-agency public protection arrangements (MAPPA), for a [limited](#)

[period](#), or otherwise at the discretion of the Home Secretary in the interest of public protection.

## Serious Harm: definition

For the purpose of [Harm Cases](#) in this section, the expression “serious harm” is defined as:

"An event, which is life-threatening and/or traumatic, from which recovery, whether physical or psychological, can be expected to be difficult or impossible."

The level of risk of serious harm is the likelihood of this event happening. The levels are:

- **low**: current evidence does not indicate a likelihood of causing serious harm
- **medium**: there are identifiable indicators of serious harm – the offender has the potential to cause such harm but is unlikely to do so unless there is a change in circumstances, for example failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse
- **high**: there are identifiable indicators of risk of serious harm – the potential event could happen at any time and the impact would be serious
- **very high**: there is an imminent risk of serious harm – the potential event is more likely than not to happen imminently and the impact would be serious

The categorisation of risk is refined by reference to those who may be the subject of that harm; they include:

- **the public**, either generally or a specific group such as the elderly, vulnerable adults – for example, those with a learning disability – women or a minority ethnic group
- **known adult** such as a previous victim or partner
- **children**, who may be vulnerable to harm of various kinds, including violent or sexual behaviour, emotional harm or neglect
- **staff**, anyone working with the offender whether from Probation, the Prison Service, the police or any other agency – this relates to all forms of abuse, threats and assaults that arise out of their employment

## European Convention on Human Rights: Article 3 cases

It may be appropriate to consider using the power to provide accommodation under paragraph 9 to accommodate individuals who are not [SIAC](#) or [harm](#) cases, but only usually where both of the following circumstances apply:

- they do not have adequate accommodation or the means of obtaining it
- the provision of accommodation is necessary in order to avoid a breach of their human rights (usually rights under Article 3 ECHR)

The following categories of migrant will in practice be able to obtain adequate accommodation from another source. It will therefore not usually be necessary to

provide accommodation under the paragraph 9 power for the purposes of preventing a breach of their Article 3 ECHR rights:

- **asylum seekers:** they may be provided with accommodation under the powers set out in sections 95 or 98 of the Immigration and Asylum Act 1999 if they do not have adequate accommodation or the means of obtaining it - if an asylum seeker being released from immigration detention on bail does not appear to have adequate accommodation or the means of obtaining it and is not a [SIAC](#) or [Harm](#) case it will usually be appropriate to arrange accommodation under section 98 of the 1999 Act
- **failed asylum seekers:** they may be provided with accommodation under the powers set out in section 4(2) of the 1999 Act if they do not have adequate accommodation or the means of obtaining it
- **other migrants who have dependent children:** if the family cannot obtain adequate accommodation it will usually be available through the duties local authorities have to safeguard and promote the welfare of children under Section 17 of the Children Act 1989, or the equivalent in the devolved administrations
- **migrants accommodated under the provisions of the Care Act 2014,** or the equivalent in the devolved administrations – generally, they will have been accommodated because they have a serious disability, exceptionally, however, accommodation may be arranged temporarily under the power in paragraph 9 whilst the case is referred to a local authority and pending a decision by that local authority as to whether the duty to provide accommodation under the Care Act 2014 (or equivalent) applies

## Undertaking a Human Rights Assessment

The consideration of whether the provision of accommodation is necessary to avoid a breach of the person's human rights will usually require an assessment of whether they are likely to suffer inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights (ECHR) if they are not provided with accommodation and other assistance to meet their daily living needs while they are in the UK. However, decision makers should only provide accommodation for these reasons if it is clear that the person cannot reasonably be expected to leave the United Kingdom. Otherwise, individuals can avoid a breach of their human rights by leaving the UK.

Article 3 of the European Convention on Human Rights (ECHR) is the prohibition on torture or inhuman or degrading treatment or punishment.

When it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life, this is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR (see: *R (Limbuella) v Secretary of State* [2005] UKHL 66).

The decision maker will therefore need to assess whether the consequences of a decision to deny a person accommodation would result in a person suffering such treatment. To make that assessment it may be necessary to consider if the person can obtain accommodation and support from charitable or community sources or through the lawful endeavours of their families or friends.

Where the decision maker concludes that there is no support from any of these sources then there will be a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR.

However, if the person is able to return to their country of origin, including using support available under the [Voluntary Returns Service](#), and thus avoid the consequences of being left without shelter or funds, the situation outlined above is changed. This is because of the following:

- there is no duty under the European Convention on Human Rights to support foreign nationals who are freely able to return home (see: *R(Kimani) v Lambeth LBC* [2003] EWCA Civ 1150)
- if there are no legal or practical obstacles to return home, the denial of support by a local authority does not constitute a breach of Human Rights (see: *R (W) v Croydon LBC* [2007] EWCA Civ 266)

A genuine obstacle would only usually exist if either:

- the person is unable to leave the UK because of a physical impediment, or other medical reason:
  - the test here is usually whether the person is physically able to travel by air to their country of origin or another country where they may be admitted
  - a person who claims to be unfit to travel will usually need to provide supporting evidence from a medical practitioner
- the person is unable to leave the UK because they do not have the necessary travel documentation but are taking reasonable steps to obtain one:
  - reasonable steps should usually be taken to mean that they have applied for the necessary travel document from their national embassy, but may include where they are complying with Home Offices processes to obtain an emergency travel document to facilitate their return

Unwillingness to return is not the same as inability to return, so where there is a genuine obstacle to return the person can be expected to take steps to resolve the obstacle where it is reasonable to do so (for example by applying for a travel document through the national embassy or high commission).

If there are no legal or practical obstacles preventing the person leaving the United Kingdom, it will usually be difficult for a person to establish that the Secretary of State is required to provide support in order to avoid breaching their human rights.

Clearly, however, if there are obstacles in place that mean the person cannot leave the United Kingdom, or they are taking reasonable steps to put themselves in a position whereby they can leave the United Kingdom but there is likely to be an unavoidable delay in those steps reaching fruition, then it may be necessary to



continue to provide accommodation support to avoid the inhuman treatment and breach of Article 3 rights described above.

If a decision maker is unsure as to whether it would be appropriate to provide, or continue to provide, support in any given case, a senior caseworker should be consulted as part of your decision-making process.

## Other categories of migrant likely meet the Article 3 test

There are a small number of migrants who are likely to require accommodation under paragraph 9 to avoid a breach of their Article 3 rights, if they do not have accommodation or the means of obtaining it. They will have at one time claimed asylum but are not eligible to receive accommodation under sections 95, 98 or 4(2) of the 1999 Act. These are:

- people who have withdrawn their asylum claim, including where the claim has been treated as impliedly withdrawn under paragraph 333C of the Immigration Rules, but have since made further submissions and the submissions are still outstanding – if it is decided to treat the further submissions as a fresh claim for asylum the person will be eligible to receive support under section 95 or 98 of the 1999 Act
- people who have withdrawn their asylum claim but are taking reasonable steps to leave the UK or are temporarily unable to take those steps because of a physical impediment or some other medical reason
- people who were refused asylum and exhausted their appeal rights before they reached 18 years of age and who are not eligible to receive support under the Children Act 1989 or equivalent legislation in Scotland, Wales and Northern Ireland

## Limited period: definition

Accommodation support is provided for a limited period only, whilst the supported person makes arrangements either to leave the UK or to move to alternative accommodation. This period is expected to be no longer than three months, unless there are exceptional circumstances to justify continuing it, for example:

- [European Convention on Human Rights – Article 3 cases](#)
- public protection issues
- the person is compliant with the returns process and is likely to be returned within a reasonable timescale

## Other exceptional circumstances

If the migrant or foreign national offender does not fall within any of the previous categories (SIAC, Harm, Art 3 ECHR) of exceptional circumstances, you should proceed to consider whether there are any other exceptional circumstances in their case which might nonetheless warrant the grant of Schedule 10 accommodation. This discretion should be used sparingly where there are specific factors that make it

appropriate for the person to be provided with accommodation notwithstanding that they are not a SIAC case, a Harm case or an article 3 case as set out above.

Each individual case should be assessed on its own merit, with regards to all available evidence and contents of any applications carefully considered to ensure matters which might be considered exceptional have been identified. If the decision is taken not to grant accommodation, reasons should be provided to the individual as to why their circumstances have not been considered exceptional.

## Right to Rent

People who have been granted immigration bail by the Tribunal subject to a residence condition and/or electronic monitoring condition are exempt from Right to Rent requirements and CID must be updated with permission to rent. These people therefore have the option to secure accommodation at their own expense.

## Provision of accommodation

Where a person applies for bail to the Tribunal and the Home Office considers that a residence condition is necessary were bail to be granted, the decision maker must note this in the bail summary (BAIL 505), along with information as to the type of accommodation required and the reasons why this is necessary.

FNOs granted bail whilst still under prison licence will need to have their proposed bail address approved by HMPPS (or devolved equivalents in Scotland and Northern Ireland). The agreed timeframe for HMPPS to consider an address is approximately 9 weeks. The police and other related partners may also have an interest in approving addresses for those who are not under licence.

## Types of bail accommodation:

There are 3 different levels of bail accommodation as follows:

- level 1 – initial accommodation – high, multiple-occupancy accommodation, this:
  - accommodates females as well as single persons of either gender and lone parents
  - contains shared accommodation spaces used by families and individuals
  - is located in high-density urban residential areas
  - is unlikely to be suitable for FNOs who meet the exceptional criteria for accommodation provision
- level 2 – standard dispersal accommodation, mostly high multiple-occupancy accommodation, individual accommodation but often with shared common spaces, lone adult males do not share accommodation with families or lone females
- level 3 – complex bail dispersal accommodation, increased liaison with local authorities in sourcing appropriate accommodation, accommodation provider's staff have specialist training and increased risk awareness, the authority can request specific location or specify how far the service user should be from

local amenities, schools and so on, lone adult males do not share accommodation with families or lone females

FNOs receiving support because they meet the [harm criteria](#) will require Level 3 accommodation (Complex Bail Dispersal Accommodation). For vulnerable persons who are not FNOs, the suitable accommodation level will vary according to the individual's needs.

Paragraph 3(8) of Schedule 10 provides that the commencement of a grant of bail may be specified to be conditional on arrangements specified in the grant of bail notice being in place to ensure that the person is able to comply with the bail conditions. The authority granting bail (First-tier Tribunal or Secretary of State) may use the provision to postpone the start of a grant of immigration bail until appropriate accommodation is available, if it is anticipated that there will be a delay.

## Requests for accommodation

Detained individuals who are [SIAC](#) cases or detained foreign national offenders are not required to make a separate request for accommodation under paragraph 9 of Schedule 10. They should set out their needs in the bail application form or BAIL 409 as appropriate, and these will be assessed as part of the bail consideration process. Consideration of SIAC and harm criteria will be made by caseworkers as part of an internal referral procedure to CCAT. When considering SIAC and harm criteria caseworkers must provide notification to the individuals on form BAIL 411 that their eligibility for Schedule 10 accommodation is being considered and to provide the individual an opportunity to raise any exceptional circumstances on form BAIL 409.

Asylum seekers or failed asylum seekers can make a request for [Asylum accommodation](#).

All other individuals who are not asylum seekers or failed asylum seekers will need to set out the reasons why they consider that accommodation should be provided under paragraph 9 of Schedule 10 on form BAIL 409, in addition to their application for bail. This applies to those in immigration detention and those on immigration bail in the community.

The forms are made available in the immigration bail pack given to detainees on induction to detention and is also available on GOV.UK for all who need to use it. The completed BAIL 409 must be sent to the address shown on the form.

Generally, decisions on BAIL 409 applications from **non-detained** people should be made within 5 working days, but decision makers must give careful consideration to any additional factors that call for the case to be given higher priority and make the decision more quickly.

If any of the following circumstances apply, the decision maker must make reasonable efforts to decide the application within 2 working days (the list is not exhaustive):

- people who are street homeless
- families with children under the age of 18
- people with disabilities (physical and/or mental)
- elderly people
- pregnant women
- people who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence
- potential victims of trafficking

## Refusal of accommodation

Where a person requests bail accommodation but the decision maker considers that they do not meet the criteria for accommodation under paragraph 9 of Schedule 10, the request must be rejected using the appropriate response in the Refusal to Provide Accommodation form (BAIL 203), setting out the reasons for the decision. This should be done regardless of whether the person has been granted bail in principle.

## Asylum accommodation

Asylum seekers and failed asylum seekers who are detained under immigration powers and who are not SIAC cases or foreign national offenders may be considered for accommodation provided under section 98, 95 or section 4(2) of the Immigration and Asylum Act 1999 and should contact Migration Help on 0808 8000 631 for advice and assistance on how to make an application. Any agreement to provide accommodation under the powers will be subject to the person subsequently being granted bail. Accommodation will normally be provided to asylum seekers under section 98 of the 1999 Act unless there are reasons why they are unsuitable for this form of support.

## Accommodation provisions: quick guide on usage

This must not be used as a stand-alone guide and use must be in conjunction with the detailed guidance on the accommodation condition and provisions above.

<b>Status</b>	<b>Provision for accommodation</b>	<b>Application process</b>
Asylum Seeker	Accommodation provided under section 95 Immigration and Asylum Act 1999.	Contact migrant help on 0808 8000 631 for advice and assistance on how to make an application.
Failed Asylum Seeker	Accommodation provided under section 4(2) Immigration and Asylum Act 1999.	Contact migrant help on 0808 8000 631 for advice and assistance on how to make an application.
Non-detained foreign national offender	Accommodation can be provided under paragraph 9 of Schedule 10 where there are exceptional	Any exceptional circumstances should be set out in bail variation

Status	Provision for accommodation	Application process
	circumstances including: SIAC cases; Harm cases; ECHR: Article 3 cases; but are not limited to these types of cases.	form B2 or Bail 409.
Detained foreign national offender	Accommodation can be provided under paragraph 9 of Schedule 10 where there are exceptional circumstances including: SIAC cases; Harm cases; ECHR: Article 3 cases; but are not limited to these types of cases.	Any exceptional circumstances should be set out in bail application form or Bail 409. Where consideration of accommodation is in process, notification should be provided by the caseworker using Bail 411.
Detained non foreign national offender/ non asylum seeker.	Accommodation can be provided under paragraph 9 of Schedule 10 where there are exceptional circumstances including: SIAC cases; Harm cases; ECHR: Article 3 cases; but are not limited to these types of cases.	Any exceptional circumstances should be set out in bail application form or Bail 409.
Special Immigration Appeals Commission (SIAC) cases	Accommodation can be provided under paragraph 9 of Schedule 10 where there are exceptional circumstances including: SIAC cases; Harm cases; ECHR: Article 3 cases; but are not limited to these types of cases.	Any exceptional circumstances should be set out in bail application form or Bail 409. Where consideration of accommodation is in process, notification should be provided by the caseworker using Bail 411.
All other individuals	Accommodation can be provided under paragraph 9 of Schedule 10 where there are exceptional circumstances including: SIAC cases; Harm cases; ECHR: Article 3 cases; but are not limited to these types of cases.	Any exceptional circumstances should be set out in bail variation form B2 or Bail 409.

## Related content

[Contents](#)

# Immigration bail notices

Current bail notices/forms are listed below:

## Forms used by the First-tier Tribunal

B1	Immigration bail application
B2	Request to vary immigration bail conditions
B3	Variation of bail conditions and transfer request

## Forms used by the Secretary of State

BAIL 201	Notification of grant/variation of immigration bail
BAIL 202(SCI)	Self check-in notice (to carrier)
BAIL 203	Refusal of accommodation
BAIL 204	Notification of breach of immigration bail condition
BAIL 205	Notice to police of immigration bail reporting condition/variation of reporting condition/end of reporting condition
BAIL 206	Notification to contractor of new (or variation to existing) electronic monitoring condition
BAIL 208	Information request following breach of bail condition
BAIL 209	Immigration bail form where a decision is being withdrawn and is being reconsidered
BAIL 301	Financial Condition Supporter's agreement to immigration bail financial condition
BAIL 302	Requirement to pay financial condition
BAIL 303	Breach of bail condition summary to First-tier Tribunal
BAIL 304	Bail variation consent letter
BAIL 305	Information for a Financial Condition Supporter
BAIL 306	Financial condition – standing as a Financial Condition Supporter
BAIL 307	Financial penalty recovery following breach of bail conditions
BAIL 401	Application for Secretary of State immigration bail
BAIL 402	Refusal of Secretary of State bail
BAIL 403	Immigration bail information
BAIL 404	Bail information cover letter
BAIL 405	Rejection of invalid Secretary of State bail application
BAIL 406	Notification of refusal to vary bail conditions
BAIL 407	Referral of case suitable for Secretary of State bail
BAIL 408	Secretary of State bail – grant consideration
BAIL 409	Application for immigration bail accommodation (exceptional circumstances – Article 3 ECHR)
BAIL 411	Notification of consideration for bail accommodation
BAIL 501	Automatic bail referral opt-out/opt in form
BAIL 502	Automatic bail referral
BAIL 503	Automatic bail referral (with no bail application)
BAIL 505	Bail summary
ILL EN 101	Notification of liability to detention