

Immigration Act 2016

Factsheet – Immigration Bail: automatic referrals (Schedule 10)

What are we going to do?

- Guarantee independent judicial oversight for immigration detainees (other than deportation and national security cases) after at least four months in detention, and at future four-monthly intervals from their last bail consideration.

How will we do it?

- Create a duty for the Home Office to refer detainees to the Immigration Tribunal for consideration of release on immigration bail four months from the point of detention or their last bail hearing.
- We are developing systems to make sure that the referrals are made on time as part of a new approach to caseworking in detained cases.

Background

- The Government recognises the strength of feeling on the need to ensure that immigration detention is for the shortest period possible.
- The Home Office only seeks to detain and enforce the removal of those migrants, with no basis to remain in the UK, who are unwilling to depart of their own volition or are non-compliant.
- Most people detained under immigration powers spend only very short periods in detention. Published statistics for the year ending September 2015 show that the overwhelming majority of detainees – 92% - leave detention within 4 months
- This provision acts as a safeguard in cases in which an individual does not make an application for release on bail themselves, for whatever reason.
- This, alongside the overall package of reforms to how immigration detention is managed, including an enhanced gatekeeper role and a new system of quarterly case management reviews, means we expect to see fewer people detained in fewer instances and that, where detention becomes necessary, it will be for the shortest period necessary.

Immigration Minister James Brokenshire said:

“The Government accepts that there should be greater judicial oversight over immigration detention.

We believe that we can best provide this by automatically referring cases to the Tribunal four months from either the date of detention or the date of the Tribunal’s last consideration of release on bail.

This reflects the fact that the vast majority of persons are detained for fewer than four months.”

Key Questions and Answers

- **Why is this better than a time limit on detention?**

Any time limit on detention would lead to individuals seeking to frustrate the system in order to reach a point at which they had to be released, thereby having a significant impact on the Government's ability to enforce immigration controls and maintain public safety. Automatic bail referrals avoid this risk whilst providing an appropriate safeguard, allowing for independent judicial oversight of cases of extended detention.
- **Will the provision impact on an individual's ability to make a bail application?**

No. This will not affect the existing arrangements under which individuals can make a bail application. If an individual has a bail hearing then the Home Office will not refer their bail until four months after that hearing – if they are still detained at that point. But the individual can still make applications themselves.
- **Why is there a four month gap between referrals?**

This is a proportionate approach which means that there is a safeguard in place to protect individuals who have been detained for an extended period whilst not imposing unreasonable burdens on the Tribunal system and the Home Office.
- **Won't this be an additional burden on the tribunal system?**

The impact will not be significant. We estimate that there will be around 100 additional cases per month, in the context of the current Tribunal caseload of approximately 1,000 cases per month.
- **How much is this going to cost the taxpayer?**

There will be limited costs, which should be offset by lower volumes in detention resulting from the wider reform package.
- **Isn't it a conflict of interest for the Home Office to make the bail application and then to oppose the application in the tribunal?**

No. The role of the Home Office will simply be to refer a case to the Tribunal for a bail hearing. Then it will be for the individual, whether with a legal advisor or independently, to prepare their own case for release, without Home Office involvement. The Home Office will, of course, prepare its own case on whether it considers release on bail appropriate.
- **What sort of cases will still be detained after four months?**

The majority will be cases where a removal is realistic but they are being non-compliant with the returns process.

Home Office

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