Home Office

Immigration bail

Version 5.0

Contents

About this guidance

This guidance tells decision makers about immigration bail 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 **5.0**
- published for Home Office staff on **28 February 2020**

Changes from last version of this guidance

Adjustments to: ‘Introduction’; ‘Immigration bail conditions: general’; Immigration bail conditions: restrictions on work, occupation or studies; ‘Level of authority to grant immigration bail’; Varying immigration bail conditions’ and ‘Requests for accommodation’.

Related content
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Related external links
Schedule 10 to the Immigration Act 2016
Border Force Immigration Bail risk assessment form

Introduction

This page introduces you to the single power of immigration bail.

It is published policy that detention will only be used sparingly and as a last resort. There is a presumption in favour of not detaining and, wherever possible, alternatives to detention must be used.

Schedule 10 has replaced the various pre-existing alternatives to detention (temporary admission, temporary release on bail and release on restrictions) by a single power to grant immigration bail.

This guidance applies to the use of immigration bail in cases managed by Border Force, UK Visas and Immigration, and Immigration Enforcement. It replaces all previous guidance on:

- temporary admission
- temporary release on bail
- release on restrictions

Further information on detention can be found in the Detention guidance. As an alternative to detention, the purpose of immigration bail is aligned to the purpose of detention, which is to facilitate return of individuals who have no legal basis to remain in the UK.

Transitional provisions

Following commencement of the provisions in Schedule 10, any person in the community on the basis of one of the previous alternatives to detention provisions is now to be treated as having been granted immigration bail, subject to the same conditions, under the single bail power.

Further information can be found under Transitional arrangements.

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Eligibility for immigration bail

This page tells you about people who are eligible for immigration bail.

Any person detained, or liable to be detained, under any of the following provisions is eligible to be granted immigration bail by the Secretary of State:

- paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention by immigration officers of persons liable to examination or removal)
- paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation)
- section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State of persons liable to examination or removal)
- section 36(1) of the UK Borders Act 2007 (detention pending automatic deportation)

A person who is liable to be detained under any of the above provisions can be granted, and remain on, immigration bail even if that person can no longer be lawfully detained (for example, because there is no realistic prospect of the person's removal taking place within a reasonable time).

A person against whom the Secretary of State is considering making a deportation order under section 5(1) of the Immigration Act 1971 can remain on immigration bail even if that person is no longer liable to be detained.

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Power to grant immigration bail

This page tells you about the legal powers to grant immigration bail. It also tells you when a grant of immigration bail begins and when it ends.

See also: Level of authority to grant or refuse immigration bail.

The statutory power to grant immigration bail is in paragraph 1 of Schedule 10.

The power to grant immigration bail is available to the Secretary of State (in practice, a person acting on behalf of the Secretary of State, including an immigration officer) if a person is:

- detained under any of the detention powers listed in the bullet points in Eligibility for immigration bail
- liable to be detained under any of the detention powers listed in the bullet points in Eligibility for immigration bail

The Secretary of State may consider granting immigration bail to a person if the Secretary of State thinks this is appropriate, whether or not the person has submitted an application for immigration bail. If a detained person wishes to apply to the Secretary of State for a grant of immigration bail, the person must do so using the official immigration bail application form - BAIL 401 (which can be found on DocGen on CID). In most cases, bail will be granted using the notification of grant/variation of immigration bail form - BAIL 201 (which can be found on DocGen on CID). However, some casework refusal notices also contain the option for granting immigration bail.

The power to grant immigration bail is available to the First-tier Tribunal if a person is already detained under any of the powers in paragraph 1(1) of Schedule 10 (for further information see: Eligibility for immigration bail). The Tribunal has no power to grant immigration bail to a person who is liable to detention but not detained. For further information, see Statutory limitations on First-tier Tribunal power to grant immigration bail.

A detained person who wishes to be granted bail by the Tribunal must submit an application in writing to the Tribunal using Form B1.

The fact that a person has been granted immigration bail does not prevent the person's possible arrest and subsequent detention under one of the provisions mentioned in Eligibility for immigration bail. This allows a person on immigration bail to be detained pending an enforced removal, for example, where the person has been granted bail whilst waiting for a travel document which then becomes available.

Duration of immigration bail

A person is on immigration bail from when a grant of immigration bail starts to when it ends. These events are defined in paragraphs 1 and 3 of Schedule 10.

A grant of immigration bail starts from the time that is stated on the notice granting it. The notice may state that bail is conditional on certain arrangements being in place, and that it starts once those arrangements have been made.

A grant of immigration bail ends when the person to whom it is granted is:

- no longer liable to be detained and the Secretary of State is not considering whether to make a deportation order against the person
- granted leave to enter or remain in the UK
- detained under one of the provisions mentioned in Eligibility for immigration bail
- removed from, or otherwise leaves, the UK

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Conditions of immigration bail

This page tells you about the conditions that must be attached to a grant of immigration bail.

Immigration bail conditions: general

See also:

- Persons detained pending deportation action
- Varying immigration bail conditions

The grant of immigration bail to a person must be subject to at least one of the following:

- a condition requiring the person to appear before the Secretary of State or the First-tier Tribunal at a specified time and place
- a condition restricting the person's work, occupation or studies in the UK
- a condition about the person's residence
- a condition requiring the person to report to the Secretary of State or other person specified
- an electronic monitoring condition
- such other condition as the person granting the immigration bail sees fit (for example: curfew; requirement to notify the Home Office of change in circumstances)

Decision makers may also impose a financial condition, but this must be in addition to – and attached to – one or more of the above conditions.

When setting a condition of immigration bail, the Secretary of State must be satisfied that the individual will be able to comply with that condition from the start of a grant of immigration bail.

The number and type of immigration bail conditions to impose will vary depending on the circumstances of the individual case. For example, a person being granted immigration bail from detention while barriers to removal are resolved may require more stringent bail conditions than a person being granted immigration bail from a position of liberty (for example, on arrival at a port of entry or on submission of an in-country application) while an outstanding application is considered. This is because, at their respective stages of the process, the latter would generally have more of an incentive to cooperate with the authorities than the former. In reaching a decision on appropriate bail conditions, decision makers must have regard to the matters listed under Exercising the power to grant immigration bail.

The conditions imposed must:

- take into account the facts of the individual case

- enable the Home Office to maintain appropriate levels of contact with the individual
- reduce the risk of non-compliance, including absconding
- minimise potential delay in the Home Office becoming aware of any non-compliance
- be in furtherance of facilitating the individual's return

Decision makers should be aware that breach of bail conditions gives rise to the possibility of criminal proceedings and a fine or imprisonment (for further information, see Non-compliance with immigration bail: criminal penalties). Decision makers must therefore keep this in mind when setting conditions, particularly "other" conditions (the gravity of the breach should be such that prosecution could be a proportionate outcome).

Immigration bail conditions: appearance before Secretary of State or Tribunal

This is for a one-off event and not for a regular reporting condition, which is separate (for further information, see Immigration bail conditions: reporting).

Examples of when a grant of immigration bail subject to a condition requiring appearance before the Secretary of State at a required time and place may be used include for:

- self check-in returns, to allow collection of passports, tickets or other documents from the airport and for departure
- attending travel documentation or other application-related interviews at the Home Office or a place of immigration detention
- attending for return flights following refusal of leave to enter at a port of entry

Decision makers must not use this condition to require a person to attend an Embassy, High Commission or Consulate for re-documentation for removal purposes, or any other voluntary action.

A condition requiring appearance before the Tribunal at a required time and place would usually be necessary where a person has on-going proceedings before the Tribunal. A condition of this kind will generally be appropriate where the Tribunal grants bail rather than the Secretary of State.

Self check-in

Where this condition is used for a self check-in return:

- the Notification of grant/variation of immigration bail notice (BAIL 201) must be given to the individual
- the self check-in notice (BAIL 202(SCI)) must be given to the appropriate carrier when requested

Immigration bail conditions: restrictions on work, occupation or studies

Work or occupation

If the person being granted immigration bail does not have any leave to enter or remain in the UK, it will be appropriate to impose a bail condition restricting work in the majority of cases.

It may be appropriate to impose an immigration bail condition that restricts a person's work or occupation if that person had leave permitting these activities, but that leave has been curtailed. It may also, depending on the facts of the individual case, be appropriate for European Economic Area citizens who are granted immigration bail pending deportation action.

An asylum seeker, or a failed asylum seeker with outstanding protection-based further submissions, whose claim has been outstanding for more than 12 months through no fault of their own, may be granted permission to work. Those who are allowed to work are restricted to jobs on the Shortage Occupation List.

Study

In this context, "study" is taken to mean primary and secondary school for children and young adults up to and including the age of 18, and courses which may lead to a qualification for adults, including English for Speakers of Other Languages (ESOL) courses. However, children up until the age of 18 are entitled to education, and so should be set a condition permitting study.

A person does not have to be given a study condition permitting or prohibiting study. They must have at least one other condition of bail. If there is any doubt over whether study should be restricted, no study condition should be applied. Either leave the box on the BAIL 201 notice (or relevant refusal notice) blank, or delete the study condition.

Bail conditions prohibiting study must be authorised at a minimum grade of HEO/CIO equivalent grades. Consideration must be given to whether the individual is already studying or wishes to commence a course, the length of course or whether the individual is undertaking significant exams, for example "A" levels or their equivalents or university finals, and what the timescale is when taking removal action into account, and therefore the impact of a study restriction.

Children

Children can access education services until the age of 18, and they must be permitted to study up to and including the final year of school in which they turn 18. You should not set a study condition that they must attend school. However, you

can, where dealing with a family group, specify that a child may only attend a named school (the one they already attend or will be attending) to ensure a family stays within a particular location.

Where Border Force officers refuse entry to children at the border who are coming to the UK to study at state schools but who do not have the correct Entry Clearance (EC), then if they are being granted immigration bail, no study condition should be applied to them. This is because all children under the age of 18 are entitled to free education, even where they are liable for removal from the UK.

Asylum seekers

There is nothing in the Immigration Rules to prevent asylum seekers studying. Therefore, anyone who claims asylum should **not** have a study condition applied to them.

A condition prohibiting study may be applied at the point an asylum seeker becomes appeal rights exhausted, if considered necessary on the facts of the individual case. The decision maker must have due regard to the matters under Exercising the power to grant immigration bail. This includes those asylum seekers who are also immigration offenders (for example, illegal entrants via clandestine entry), but see below for steps to take to check if they are former unaccompanied asylum seeking children (UASC) or unaccompanied children.

If an asylum seeker who has exhausted their appeal rights submits further representations and these are accepted as a fresh claim, the decision maker must lift any study restriction applied to the person. If an asylum seeker who has exhausted their appeal rights submits further representations and a decision on whether these constitute a fresh claim remains pending beyond the usual period of time for making such a decision, the decision maker must consider lifting any study restriction applied to the person.

Former UASC care leavers who have turned 18 and who have an application or appeal pending or with ongoing litigation in respect of a decision in relation to their asylum claim, must be permitted to study. They should continue to be permitted to study until they become appeal rights exhausted (ARE). This includes those who did not receive an adverse decision on their application until after turning 17 and a half and so were not granted temporary UASC leave, but still have a right of appeal.

In all cases where someone becomes ARE and consideration is being given to prohibiting study, decision makers must take the following steps:

1. Check whether the individual arrived in the UK as a UASC/unaccompanied child (and therefore may still be in receipt of ‘leaving care’ support, including education, from the local authority (LA)). You can do this by checking if there is an ‘unaccompanied minor’ special condition flag on CID.

2. If they have arrived in the UK as a UASC, then confirm with the individual whether they are still in receipt of ‘leaving care’ support, including support in education. If so, then do not apply any study condition. If there is doubt about

whether the LA is still providing ‘leaving care’ support, then you should exercise caution and should not apply a study condition to them at that time pending further enquires with the LA.

3. If they have not arrived as a UASC/unaccompanied child then they will not be in receipt of ‘leaving care’ support and a ‘no study’ condition may be applied when they become ARE.

4. Consider the impact of a study restriction on the facts of the individual case.

Admissions to higher education (HE) institutions are a matter for the institutions concerned with policies varying between institutions.

Under section 71 of the Nationality, Immigration and Asylum Act 2002, decision makers can apply a study condition to individuals who claim asylum when they have valid leave to enter or remain in another category. This should be in line with the person’s leave, so a Tier 4 student must be permitted to study. These individuals may be restricted to studying at a particular institution. For further information see Asylum claims from persons with leave.

Immigration offenders

Non-asylum seeking adult immigration offenders who are liable to removal should normally be prohibited from studying.

Deportation cases

Where a person is granted bail pending deportation (this includes pending the making of a deportation order (DO) as well as in pursuit of a DO), if they are under 18 or turning 18 in their final school year, they must not be prohibited from studying.

If they are over 18, they should normally be prohibited from studying, unless they are an asylum seeker with an application or appeal pending and the DO is not signed and in force. However, if a licence condition requires attendance on a course, they must be given permission to study, but limited to “as specified in your licence conditions”. Any decision to prohibit a person from studying who is subject to a deportation order must be made on the basis of the particular facts of the case.

The study condition can also be used in national security cases where a restriction on studying may be imposed as part of a package to manage those with whom an individual is able to associate.

Study condition: quick guide on usage

This must not be used at a stand-alone guide, as the suggested condition may not be appropriate in every case of a particular status. Use must be in conjunction with the detailed guidance on use of the study condition above.

Status	Suggested bail condition	Further information
Under 18s (general)	Permit Study	Including those who turn 18 in final school year
Under 18s refused LTE for study purpose	Do not set a study condition	Border Force – where intending to study at state schools without valid EC
Over 18s refused LTE	Prohibit Study	Border Force – where a non-visa national visitor is refused LTE and removal directions are in place and their removal from the UK is imminent.
Over 18s cancellation of an Entry Clearance (EC) or biometric residence permit (BRP): change of circumstances, false representations or failure to disclose material facts	Do not set a study condition	Border Force – where an EC or BRP has been cancelled and an administrative review application and an administrative review decision are pending.
Over 18s cancellation of an EC or BRP: change of purpose	Prohibit Study	Border Force – where an EC or BRP has been cancelled for a change of purpose there will be no right to an administrative review. Removal directions are in place and their removal from the UK is imminent.
Former UASC care leavers	Permit Study	Until post-ARE
Care leaver	Permit Study	Until post ARE
Adult asylum seeker (including clandestine entrants)	Do not set a study condition	Admissions to HE institutions are a matter for the institutions concerned with policies varying between institutions
Section 71 asylum seeker	Any condition should reflect conditions of leave	Do not use bail to remove a pre-existing condition unless circumstances change.
Adult immigration offender (not asylum seeker)	Prohibit Study	Min CIO/HEO authorisation Consider any exams etc.
Post-ARE (other than care leavers)	Prohibit Study	Min CIO/HEO authorisation. Consider any exams, etc. Follow steps to check if they arrived in the UK as a UASC/unaccompanied child
Post-ARE UASC/unaccompanied child in receipt of ‘leaving care’ support	Do not set a study condition	Follow steps to check if they arrived in the UK as a UASC/unaccompanied child
Deportation – under 18	Do not set a study condition	Including those who turn 18 in final school year

Status	Suggested bail condition	Further information
Deportation – adult (no asylum claim)	Prohibit Study	Min CIO/HEO authorisation But consider any exams
Deportation - adult (DO not signed or in force, outstanding asylum claim/appeal)	Do not set a study condition	Until ARE or DO signed and in force
Deportation – DO signed and in force	Prohibit Study	Min CIO/HEO authorisation
Deportation – prison licence	Permit Study	Limited to “as specified in the licence conditions”

Immigration bail conditions: residence

It will not usually be necessary to impose a residence condition. A residence condition should only usually be imposed where residence at a particular address is necessary to enable a high level of contact or mitigate against a serious risk of non-compliance. This is more likely where the person poses a high risk of harm to the public on the basis of criminality or in cases concerning national security.

This does not mean that people granted immigration bail do not need to provide a contact address and they can, for example, be subject to a condition which requires them to keep the Home Office informed of their contact details, including their current place of residence. If a detainee is not able to provide a bail address, decision makers may only use this as grounds for opposing bail if they consider a condition requiring the detainee to live at a particular address to be necessary and the individual does not qualify for Home Office support.

Asylum seekers and failed asylum seekers accommodated by the Home Office under section 95, 98 and 4(2) of the Immigration and Asylum Act 1999 do not need to be subject to a residence condition unless there are specific reasons why they must live at a particular address. Where this is the case, decision makers may impose a residence condition specifying that they live at “an address which will be separately notified to you by your accommodation provider”.

Decision makers must **not** apply a residence condition to a grant of immigration bail if both the following apply:

- the individual is disqualified from renting – individuals who require leave to enter or remain but do not have it are disqualified from renting **unless** they have permission to rent (permission to rent currently only applies if the address is in England)
- the address in question is ‘private rented property’, that is, accommodation covered by a residential tenancy agreement as defined by section 20 of the Immigration Act 2014 (this means that rent must be being paid for the accommodation, although this rent does not have to be the market rate nor paid by the disqualified person)

Decision makers must also **not** apply a residence condition to a grant of immigration bail if the Home Office is serving a civil penalty Referral Notice or Notice of Letting to a Disqualified Person (NLDP) on a landlord at the address in question.

When considering if it is appropriate to set a residence condition, decision makers may also wish to consider any landlord civil penalties or NLDPs served on the landlord of the property in question as relevant factors in reaching a decision.

When considering whether to set a residence condition requiring an individual to live in private rented property, decision makers must consider any case against the Permission to rent criteria which set out where the Home Office will grant permission to rent to migrants who do not have a right to rent. If the person meets one or more of the criteria, they may be granted permission to rent in accordance with the guidance.

Full guidance on permission to rent can be found in the Permission to rent criteria.

Decision makers must consider cases on what is reasonably apparent on the evidence clearly available, including any information which was received with any enquiry about permission to rent.

Residence condition set by the First-tier Tribunal

Permission to rent will normally be granted to individuals who have been granted bail by an immigration tribunal or the courts, which contains a residence condition and/or electronic monitoring condition.

Presenting Officers will manage immigration bail applications in the normal way (see: Immigration bail: First-tier Tribunal) and consider whether the Home Office should oppose any application. Where the Tribunal or court is minded to grant immigration bail despite Home Office concerns, Presenting Officers may provide the courts with assurance that permission to rent will be granted and CID updated immediately so that any check by a landlord can be managed quickly (the landlord will contact the Home Office landlord's checking service in order to establish that they may rent to the bailed person).

Residence condition: referring cases to the Immigration Enforcement (IE) Evictions Team

Where a bail application has been received which meets the criteria set out below, the decision maker must refer it to the IE Evictions Team for consideration of whether a Notice of Letting to a Disqualified Person should be served.

Referrals should be made when a bail application is received and all of the following conditions apply:

- a residential address has been provided and the accommodation is covered by a residential agreement defined by section 20 of the Immigration Act 2014

- rent is being paid (this does not have to be market rate nor being paid by the disqualified person)
- the individual requires leave to enter or leave to remain and does not have it
- the individual does not qualify for Permission to Rent

For family cases, (a family is defined as having at least one or more children under 18 years of age) cases should be referred if the family was previously complying with the family returns process, but has since dropped out due to non-compliance. Family cases where the family is complying with the Family Returns Process, or where the family has never been within that process, need not be referred.

When considering bail in the field, Immigration Compliance and Enforcement (ICE) teams should routinely consider the service of an NLDP and Right to Rent Referral Notice in line with guidance on these measures.

Immigration bail conditions: reporting

Reporting centres

A reporting condition, if imposed, should normally require a person to report to an immigration reporting centre. The Home Office has 14 immigration reporting centres in the London and South, North, Midlands and Wales, and Scotland and Northern Ireland regions. Decision makers must not set a reporting condition requiring a person to report to a police station if an immigration reporting centre is available.

For further information: Reporting and Offender Management.

Reporting to police stations

If reporting to a police station is considered essential the frequency will need to be agreed between the ROM and the police station (see Reporting and Offender Management for more information).

If a person fails to attend a reporting event, the police will report this to the (ICE) team for appropriate action. The decision maker must inform the appropriate police station when a case is completed.

Immigration bail conditions: electronic monitoring (EM)

A person may be granted immigration bail subject to an electronic monitoring condition if justified by the circumstances of the case.

An electronic monitoring condition is a condition that requires the bailed person to cooperate with any arrangements the Secretary of State specifies for detecting and recording by electronic means one or more of the following. The bailed person's:

- location at specified times, during specified periods of time or while the arrangements are in place

- presence in a location at specified times, during specified periods of time or while the arrangements are in place
- absence from a location at specified times, during specified periods of time or while arrangements are in place

The arrangements with which the person must cooperate may include the bailed person:

- wearing an electronic monitoring device and facilitating arrangements for its detection, which may include installation of electronic monitoring equipment at a specified address
- making specified use of an electronic monitoring device
- communicating in a specified manner and at specified times or during specified periods
- allowing people other than the Secretary of State or the First-tier Tribunal to exercise electronic monitoring functions

The electronic monitoring period must be no longer than the minimum period necessary to maintain the continued operation of the electronic monitoring system (usually a short period once each month), unless a separate curfew condition is set.

Use of EM

EM is more likely to be appropriate as a condition of bail where a person poses a high risk of harm to the public on the basis of criminality and/or in cases concerning national security.

EM is less likely to be appropriate in any case where a person is granted immigration bail from a position of liberty (for example, on arrival at the border or submission of an in-country application).

EM must not be imposed on a person under the age of 18.

Currently, electronic monitoring cannot be imposed as a condition of bail if a person does not have fixed accommodation. This is because of the use of radio frequency tags where the equipment needs to be set up in a fixed location. The accommodation requirement is expected to change in the future when the Home Office moves to using different technology.

Under current arrangements, EM can only be implemented in practice if accompanied by a curfew requirement. If the First-tier Tribunal grants bail with an EM condition but no curfew condition, it will not be possible to install EM equipment under current arrangements. In this situation, if the First-tier Tribunal has not transferred bail management to the Secretary of State (see: Transfer of bail from the Tribunal to the Secretary of State), the decision maker will need to write to the First-tier Tribunal to request a variation in conditions to include a curfew requirement, explaining that the EM condition cannot be implemented without a curfew. If the First-tier Tribunal agrees to vary bail conditions to include a curfew condition, the decision maker should proceed as outlined in Curfews: additional requirements.

However, if the First-tier Tribunal refuses to impose a curfew, the EM condition cannot be activated while the person remains on First-tier Tribunal bail.

If the First-tier Tribunal has transferred bail management to the Secretary of State, the Home Office decision maker will need to assess whether a curfew is justified on the facts of the case. If it is, the decision maker must give the bailed person an opportunity to make representations about the provisional curfew before bail conditions are varied to include a curfew condition.

Electronic monitoring is currently not available in Scotland and Northern Ireland.

Individual business areas have **additional** criteria to identify suitable cases and these are outlined in further detail below.

However, there will be some cases that, although falling into the above criteria, may not be suitable for an EM condition. Examples of this could include:

- pregnant women and women who have recently given birth
- the elderly
- where there is strong evidence to suggest that an EM condition would cause serious harm to the person's health
- people whose claim to have been tortured has been accepted by the Home Office or First-tier Tribunal – for these cases alternative arrangements would have to be made

This is not an exhaustive list: decision makers must consider the individual circumstances of each case. If you identify a case which would otherwise appear to be suitable for EM but there are factors in the case which cause you to question suitability, please seek advice from your team leader. Decisions not to apply an EM condition for reasons not listed above must receive Assistant Director authority.

Electronic monitoring: Foreign National Offender (FNO) cases, including Nexus

In all cases where an FNO applies for immigration bail or the Home Office is considering whether to grant immigration bail, the decision maker **must** consider if the FNO is a suitable candidate for electronic monitoring as part of their conditions of bail in the event that bail is granted.

Criminal Casework decision makers must always request both an electronic monitoring condition and a curfew condition if the FNO has committed certain offences – for further information see Immigration bail conditions: curfews: foreign national offenders.

Electronic monitoring: implementation

See also: Curfews: additional requirements.

The decision maker must make every endeavour to inform the individual of their responsibilities regarding EM (and their curfew requirement) both before and after the EM induction has taken place in order to answer any questions or concerns that an individual may have about the process.

It is important that decision makers inform the bailed person of their responsibilities regarding electronic monitoring. These are as follows:

- being present at the specified address during a fixed period in order for EM equipment to be installed
- reading and fully understanding the fact sheet that is given to them – this explains their EM condition in detail
- contacting the monitoring centre and the decision maker immediately if problems occur with their telephone line, tag or monitoring equipment
- ensuring that they report at the times and days specified in their BAIL 201
- in the event of an emergency which means that they have to leave home and are unable to be monitored electronically, they must notify the decision maker and the monitoring centre either during the emergency or as soon as possible thereafter:
    - decision makers must make individuals aware that they would need to prove the emergency in the form of documentary evidence, for example, medical certificate

The EM Contractor will notify the Compliance Monitoring and Workflow Team (CMWT) in Criminal Casework of the outcome of address suitability assessments and inductions. CMWT will then notify the decision maker and update CID (notes and events tab within restrictions screen).

If induction is successful, there is no further action required by the decision maker in relation to the commencement of EM services.

EM address considered unsuitable

If the EM contractor reports that a proposed immigration bail address is deemed unsuitable for EM services, CMWT will notify the decision maker that an alternative address is needed in order to install EM equipment. The relevant sections of the BAIL 206 (see Curfews: additional requirements for further information) must be issued to end the live EM order with the EM contractor.

The decision maker must then consider how to proceed with the case, seeking assistance as necessary from their managers. Further consideration may be given to whether an EM condition remains necessary for a grant of bail and, if so, what alternative address could be sourced for the person. If a new address is sourced, a new tagging order must be made and a fresh BAIL 206 completed.

Failed EM Inductions

The EM contractor will attend the property to install the EM equipment and apply the EM device to the bailed person. If the contractor is unable to complete this induction,

the contractor will notify CMWT of the failure and will automatically arrange a second attempt. If the second attempt to induct the bailed person is successful, no further action is required by the decision maker in this regard.

However, if the second attempt fails, the EM contractor will make no further attempt to install the EM equipment or apply the EM device to the bailed person. The contractor will notify CMWT of the failure. CMWT will notify the decision maker and request BAIL 206 to end the tagging order with the EM contractor.

The decision maker must investigate the reasons for failure to induct before requesting further induction visits. If these enquiries indicate the bailed person has absconded, attempts to implement EM must cease and the absconder process must be followed.

If these enquiries indicate the bailed person is unable to access the property for some reason, the decision maker must consider asking the bailed person to provide an alternative address before re-instigating the EM service.

If the enquiries confirm the bailed person is residing at the address, a new BAIL 206 must be completed and resubmitted to CMWT for their action.

If a second round of attempts to induct the bailed person fail, more detailed enquiries must be made. It may be necessary to consider alternatives to EM at this stage.

Immigration bail conditions: other

Under paragraph 2(1)(f) of Schedule 10, a person may be subject to ‘such other conditions as the person granting the immigration bail thinks fit’.

Any such condition must be reasonable and it must be necessary to meet the purpose of the grant of the immigration bail. For example, decision makers may require a person granted immigration bail to notify the Home Office of a change of circumstances, or require them to surrender their passport if there is reason to believe that the person might deface or destroy the document to obstruct return to the country of origin or country from which the person arrived.

Another example is the use of curfews. These may be used to mitigate risk to the public if the person being granted bail poses such a risk. The length of the curfew and time of day to which it applies must be determined on the facts of the individual case and must be proportionate.

Immigration bail conditions: curfews: foreign national offenders

In Criminal Casework cases, decision makers must always request a curfew condition (together with an electronic monitoring condition where radio-frequency tags are used) if a foreign national offender (FNO) has committed one of the following offences:

Homicide:

- murder or attempted murder
- manslaughter

Sexual offences:

- any sex offence, including rape or attempted rape

Offences against the person:

- violent crime (including grievous bodily harm, malicious wounding and actual bodily harm)

Other serious crime:

- terrorist offences
- conspiracy (defraud, murder, kidnap)
- kidnapping, including attempted kidnapping
- armed robbery
- arson with intent to endanger life
- any offence where the victim is a child

Additionally, it may also be appropriate to request a curfew condition in cases where the offence is not on the list above if, on the facts of the case, the decision maker considers that the FNO poses a high risk of harm, reoffending or absconding. In such cases, the decision maker must also consider whether the individual meets the criteria for exceptional circumstances to receive Secretary of State support if they do not have accommodation. The authority of an **assistant director** must be obtained before requesting EM with a curfew requirement.

In every request, decision makers must clearly identify and fully describe the risk of harm and/or risk re-offending or absconding posed by the FNO. The decision maker's consideration process must demonstrate why a curfew condition is necessary in the particular circumstances of the case including:

- the intended aim of the curfew
- risks of not applying the curfew
- what the curfew can achieve that cannot be realised by other immigration bail conditions
- proposed timing and length of curfew, and how these are linked to achieving the intended aim

In cases identified as suitable for a curfew condition, the decision maker must, in the bail summary (BAIL 505) or referral for Secretary of State bail (BAIL 407) do the following:

- request an EM immigration bail condition
- state clearly the curfew period or periods sought

- set out the reasons for requesting the curfew, and the requested length and timing (its aim, risks if curfew is not imposed)

For example, if the aim of the curfew is to reduce the risk of re-offending, there must be a logical connection between the length and timing of the requested curfew period or periods and the previous offending pattern.

It will then be the decision of the First-tier Tribunal or Strategic Director, as appropriate, to determine if the requested curfew condition is proportionate and justifiable. If it is concluded that the requested curfew condition is not proportionate or justifiable in the circumstances of the case, the request will be refused.

The decision maker must give the person to be granted bail an opportunity to make representations about a provisional curfew before the curfew condition is put in place.

Immigration bail conditions: curfews: non-foreign national offenders

It is not usual practice to seek a curfew condition in a non-FNO case. However, there may be occasions where the individual is considered to be of such risk of absconding and to pose such risk of harm that a curfew condition would be necessary and proportionate. In these cases, you must obtain authority from your grade 6 to seek a curfew condition. It is also possible for the First-tier Tribunal to impose a curfew condition on its own initiative (that is, where this has not been requested by the Home Office).

Curfews: additional requirements

If the First-tier Tribunal or Secretary of State grants bail with both electronic monitoring and curfew conditions, the caseworker must complete the Notification to Contractor of New (or Variation to Existing) Electronic Monitoring Condition form (BAIL 206) and forward to the Compliance Monitoring and Workflow Team (CMWT) in Criminal Casework by email to:

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As part of this process, the caseworker must:

- ensure that a photograph of the person is attached to the BAIL 206 in order that the EM Contractor can identify the correct person to induct and tag
- ensure a recent Police National Computer (PNC) check has been conducted on the person to be tagged – a PNC check is required because of the Home Office duty of care to the contractor – the contractor will use this information when risk

assessing the proposed induction, instructions for PNC checks are dependent on existing local arrangements
- provide CMWT's contact details on the BAIL 206, these are:

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The caseworker is responsible for ensuring that paperwork has the appropriate authorisation and is completed correctly. CMWT will not monitor cases where paperwork has been rejected and will take no further action to refer the case to the EM Contractor until the caseworker resubmits paperwork that meets the required standard.

CMWT will check the appropriate authority has been given for the use of EM and curfew conditions and will quality assure the BAIL 206 to ensure it has been correctly completed. Any paperwork without an appropriate authorisation, or which is incomplete, will be returned to the case owner for remedial action. The CMWT mailbox is constantly monitored in working hours and any paperwork which requires amendment will be returned to the caseworker within 24 hours.

Once CMWT is satisfied that the paperwork is correct, it will refer the case to the EM Contractor to arrange induction of the bailed person.

Curfews: review

See also: Varying immigration bail conditions.

It is essential that all decision makers ensure that there is regular review of curfew conditions.

All decision makers must review the curfew condition in any case allocated to them:

- on a quarterly basis
- when they receive any representations on the matter, including requests to vary the condition, from the individual or a person acting on their behalf
- whenever information on a breach of the condition is received

Decision makers must use the relevant review pro forma to carry out reviews and must consider:

- the continued necessity of the curfew – whether a curfew is still necessary or if the circumstances changed sufficiently that a curfew no longer serves its intended purpose
- the proportionality of the curfew – whether the current curfew periods are still appropriate both in terms of timing and length, whether there is a basis on which to alter the curfew, for example if family circumstances have changed significantly
- any challenge to the curfew – whether there has been a challenge to the curfew from the individual or legal representatives, whether an argument has been made and how strong this is

The purpose of the review is to ensure that the individual remains suitable for a curfew condition and any curfew continues to be necessary and proportionate in light of the facts at the date the review is undertaken.

Any decision maker who wishes to propose an amendment to a curfew must seek senior executive officer (SEO) agreement within their command for this variation.

The outcome of the review of the curfew, including the consideration undertaken by the decision maker and any escalation to SEO, should be recorded in a comprehensive file minute and on Case Information Database (CID).

If a review is conducted as a result of representations by, or on behalf of, an individual, the decision maker must provide a comprehensive response to the representations within 20 working days of the date on which the representations were received. There is no requirement to share the outcome of the other curfew reviews (that is, any carried out without representations by or on behalf of the individual). However, the outcome of curfew reviews may, as required, be shared with the individual at a future date as part of any response to further challenge or litigation.

Immigration bail conditions: financial condition

As mentioned under Immigration bail conditions: general, a financial condition may be attached to a grant of immigration bail. A financial condition is a condition that requires the person granted bail, or another named person (Financial Condition Supporter), to pay a sum of money (payment liability) if the person granted bail fails to comply with one or more of the other condition or conditions attached to the grant of immigration bail. **A financial condition cannot be imposed in isolation**. It may be imposed only if it is thought to be an appropriate means of ensuring that the bailed person complies with at least one of the other conditions of immigration bail. For example, a financial condition of £500 for failing to comply with a reporting condition plus a sum of £500 for failing to comply with a condition relating to work.

You must obtain **higher executive officer (HEO)** authorisation if setting or varying a financial condition. Currently only Criminal Casework (CC) and the relevant unit will be imposing financial conditions. However, if the First-tier Tribunal has set this condition and transferred management of the bail to the Secretary of State, any team can continue to manage this condition.

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You must specify the following when imposing a financial condition:

- the sum of money required to be paid (payment liability)
- when the sum of money is to be paid
- the form and manner in which it is to be paid

The use of a financial condition to secure compliance with other conditions of immigration bail is flexible. It may be a single sum imposed against one or more individual condition so that the specified sum of money becomes payable if that particular condition is breached, or it may be different sums imposed against different conditions.

Financial condition: fixing the sum to be paid

You must view the sum of money to be paid as part of a financial condition in relation to the means of the person to be bailed or the Financial Condition Supporter. You must set payment liability at a level that will act as a substantial incentive to the person to comply with the relevant other condition or conditions of immigration bail.

You must assess each case on its own merits.

You should not normally apply a financial condition in a sum less than £500 to a bail condition. This is because, if this went to debt recovery, the recovery itself would cost more money than the actual debt.

Financial condition: supporter

During a foreign national offender's induction into immigration detention, a person acting on behalf of the Secretary of State must give them form BAIL 403 and ask for information about possible Financial Condition Supporters in the event of bail being granted. For further information see Informing detainees of their immigration bail rights.

A Financial Condition Supporter must satisfy all of the following:

- be aged over 18 and settled in the UK (a person on immigration bail or with limited leave will rarely be acceptable as that person's own stay may be limited/curtailed)
- have a personal connection with the person, or be acting on behalf of a reputable organisation which has an interest in the person's welfare

- have enough money or disposable assets (clear of existing liabilities) to be able to pay the sum due if the person breaches a relevant immigration bail condition
- be a homeowner or at least well-established in the place of residence
- be free of any unspent criminal convictions (see Rehabilitation of Offenders Act guidance) – but see the note following these bullet points on unspent convictions
- not to have come to adverse notice in connection with other immigration matters, including, in particular, previous immigration bail cases

Unspent convictions: A Financial Condition Supporter with an unspent conviction may still be suitable – the gravity with which a particular offence is viewed, and the consequences for the suitability of the Financial Condition Supporter, will be a matter for the discretion of the Secretary of State.

Investigating Financial Condition Supporters

The financial and general standing of all prospective Financial Condition Supporters should be investigated as fully as possible. The decision maker must give them a BAIL 306 notice setting out what is required when standing as a Financial Condition Supporter. As such, they will be asked to produce evidence of their identity and financial position. Care should be taken over accepting bank books, statements of account and other similar evidence at face value, as it may be that sums of money have been deposited temporarily to create a false picture of the holder's means. A record of deposits over a period (minimum of 3 months) is a useful indication of financial status.

All the usual immigration checks must be undertaken.

Immigration Intelligence may be consulted in appropriate cases (for example, where it is suspected that a Financial Condition Supporter may previously have been involved in facilitation or racketeering activities).

Where the Secretary of State is granting immigration bail, a Financial Condition Supporter will need to sign a BAIL 301 notice setting out the other condition or conditions of immigration bail to which the financial condition is attached. See: Immigration bail Consideration of bail process: detained: FNOs, with financial condition.

Where the Tribunal is granting immigration bail, the Home Office decision maker must record information on the Financial Condition Supporter checks done and their outcome on the bail summary BAIL 505, including where no opportunity to conduct checks has been given.

Financial condition: recovery

A payment liability under a financial condition is to be paid to the Secretary of State if either of the following applies, the:

- Secretary of State granted the immigration bail

- First-tier Tribunal granted the immigration bail but has directed that the power to vary the person's bail conditions is to be exercisable by the Secretary of State

In all other cases, the payment liability is to be paid to the Tribunal.

The person liable for payment must be given the opportunity to make representations regarding the alleged breach.

For further information on financial recovery, see Recovery of payment under financial condition.

Related content
Contents

Exercising the power to grant immigration bail

This page tells you about using the power to grant immigration bail. It also tells you about limitations on using the power.

In considering whether to grant immigration bail to a person, and which conditions to attach to the immigration bail if granted, the Secretary of State or the First-tier Tribunal must have regard to the following:

- the likelihood of the person failing to comply with a bail condition
- whether the person has been convicted of an offence (whether inside or outside the UK)
- the likelihood of the person committing an offence while on immigration bail
- the likelihood of the person's presence in the UK while on immigration bail causing a danger to public health or being a threat to the maintenance of public order
- whether the person's detention is necessary in that person's interest or for the protection of any other person (for example, if a person is awaiting transfer to a mental health hospital)
- such other matters as the Secretary of State or the First-tier Tribunal consider relevant (for example, the Adults at Risk in immigration detention policy)

Statutory limitations on First-tier Tribunal power to grant immigration bail

The power of the First-tier Tribunal to grant immigration bail is subject to the following statutory limitations:

Detention under paragraph 16(1) of Schedule 2

Under paragraph 3(3) of Schedule 10 to the Immigration Act 2016, the First-tier Tribunal must not grant bail to a person detained under paragraph 16(1) of Schedule 2 to the Immigration Act 1971 until the end of a period of 8 days since the person arrived in the UK. This means that the earliest point at which the First-tier Tribunal can grant immigration bail to a person detained under paragraph 16(1) of Schedule 2 to the Immigration Act 2016 is on day 9 of the person's presence in the UK.

This limitation only applies to people detained under paragraph 16(1) of Schedule 2. It does not extend to those detained under paragraph 16(1A) of the Schedule.

Consent to bail: directions in force for removal within 14 days of bail decision

See also: Consent to bail: Secretary of State.

Under paragraph 3(4) of Schedule 10, the First-tier Tribunal must not grant bail to a detainee **without the consent of the Secretary of State** if both of the following apply:

- directions for the detainee's removal from the UK are in force (and are not withdrawn)
- the directions require the detainee to be removed from the UK within 14 days, starting with the date of the decision on whether the person should be granted immigration bail

This means that, if the Presenting Officer provides evidence that removal directions are set for 14 days or fewer away at a bail hearing, the First-tier Tribunal cannot grant immigration bail if the Secretary of State does not consent.

Directions for removal do not have to have been given to or served on the detainee to be in force. Under paragraphs 8-10A or 12-14 of Schedule 2 to the Immigration Act 1971 directions for removal are given to the carrier by which the person is to be removed. This includes removal by way of charter flights. Removal can only take place if directions are properly given in accordance with these paragraphs.

For these purposes, evidence of directions for removal being in force can be demonstrated when any of the following has been served on the detainee and/or the carrier that is required to conduct the removal:

- IS151D (notice that removal directions have been issued, given to the individual)
- IS151G (limited notice that removal directions have been issued, given to the individual)
- IS 83 (directions to remove individual issued to the carrier in port cases)
- IS 152B (directions to remove individual issued to the carrier in non-port cases)
- ISE 312 (notice of deportation arrangements)
- flight manifest (directions given to the carrier for a charter flight)

Repeat applications for immigration bail

Paragraph 12(2) of Schedule 10 requires Tribunal Procedure Rules to secure that if the First-tier Tribunal has decided not to grant a person immigration bail, the Tribunal must dismiss any further application for the person to be granted immigration bail without a hearing if both of the following apply:

- the application is made within 28 days of the earlier decision
- the person does not, on the papers, demonstrate to the Tribunal that there has been a material change in the person's circumstances

Related content
Contents

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)

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 Her Majesty's Prisons' team and record signed confirmation of conveyance on CID

Related content
Contents

Immigration bail: Secretary of State

The page tells you about the Secretary of State immigration bail process.

The Secretary of State may consider for a grant of immigration bail a person who is detained – or who is liable to be detained – under one of the provisions mentioned under Eligibility for bail. The consideration may take place whether or not the person has submitted an application for immigration bail.

In the following circumstances, the relevant team can decide to grant bail without an application form, when:

- a person is first encountered at a port or elsewhere in the UK, Border Force officers must complete an Immigration Bail Risk Assessment form as part of this process, see Immigration Bail Process Map
- a person is detained and a casework team proactively decides that detention is no longer appropriate
- Criminal Casework decides not to detain a Foreign National Offender (FNO) for deportation action at the end of criminal sentence

Application for bail

Detained persons must submit their applications for Secretary of State immigration bail using form BAIL 401. This form is available on the GOV.UK website. If the decision maker receives an application in another format, it may be rejected and a BAIL 405 notice sent directing the person to the correct form.

The decision-making unit must log all applications for Secretary of State bail on the CID restriction screen under bail section by selecting “SoS Bail” (new event type). When doing this:

- for NRC cases ‘date applied’ is when the Customer Liaison Team (CLT) receives the application
- in all other cases the ‘date applied’ must be the date the decision-making unit received the application

Decision makers must make their decisions and send a response to the applicant within 10 working days of the date recorded under ‘date applied’.

Level of authority to grant or refuse immigration bail

The minimum level of authority to grant, or refuse following application, immigration bail to detained individuals on behalf of the Secretary of State is HEO/CIO/HO level.

Individuals managed by Criminal Casework (CC) may generally only be granted bail if grade 3 authorisation has been obtained. However, bail may be granted with authorisation at SEO/Inspector/SO level if all of the following apply:

- the individual was detained to take part in an interview scheme with their embassy or high commission
- the individual complies with that interview or the interview is cancelled and not re-scheduled in the short term
- the individual has previously been compliant with reporting and/or other conditions of immigration bail
- there is no short-term prospect of returning the individual following the interview
- grant of bail is within 7 days of the individual being detained for the interview scheme

Individuals managed by the relevant unit (see below) may only be granted bail if grade 5 authorisation is obtained.

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Immigration bail consideration process: non-detained

See also:

- Conditions of Immigration Bail

If the person you are considering for a grant of immigration bail is not detained, you must take into account the requirements set out under exercising the power to grant immigration bail.

Immigration bail consideration process: detained

See also:

- Level of authority to grant or refuse immigration bail
- Conditions of Immigration Bail.

If the person you are considering for a grant of immigration bail is detained, you must take into account both the requirements set out under exercising the power to grant immigration bail and, in addition, the following:

- the length of any likely additional period necessary to eliminate barriers to removal
- any specific features of the case – such as those set out below – which indicate that detention is necessary
- the reliability and standing of any Financial Condition Supporters
- where appropriate, whether the person has a suitable settled address

- any other factors relevant to the decision to detain
- in Criminal Casework cases, any licence conditions

Indicators that a person is unlikely to comply with the conditions of immigration bail might include:

- any history of escaping, or attempting to escape, from legal custody
- previous breach or breaches of conditions of immigration bail – or its predecessors
- statement from the person or the person's Financial Condition Supporter indicating an intention to breach bail
- the person's immigration application sponsor, if any, refusing to act as Financial Condition Supporter because the sponsor does not believe the person will comply, even if other Financial Condition Supporters are produced subsequently
- risk of offending or potential harm to the public, including on the basis of national security, terrorism, criminality
- previous failed removal attempt owing to the individual's disruptive behaviour or failure to comply with the documentation process

The above lists are not exhaustive. You must assess each case on its individual merits, taking account of the person's family, social and economic background, health (physical and mental) and immigration history. You may still be able to grant immigration bail to a person with an adverse background or history if they produce sufficient and satisfactory Financial Condition Supporters or there are reasons to believe that the person will comply with bail conditions.

If an individual is detained, decision makers must complete either a Grant Consideration Form (BAIL 408) or for FNOs, Referral of Case Suitable for Secretary of State Bail (BAIL 407) when assessing a person for a grant of immigration bail.

Immigration bail consideration process: detained: FNOs with financial condition

If you are considering attaching a financial condition to one or more other conditions of granting bail to an FNO, the following should happen, if relevant:

- if an application for Secretary of State bail (BAIL 401) is received, the FNO must provide details of possible Financial Conditions Supporters
- if bail is being considered without an application from the detainee, the decision maker must ask the detainee for possible Financial Condition Supporters in the event of bail being granted
- if bail is considered appropriate the decision maker must complete the BAIL 407 proposing the grant of bail and set the appropriate financial condition(s) and refer for authorisation
- if bail is authorised, fully or conditionally, the decision maker must conduct any necessary checks on the Financial Condition Supporters – this must include any additional checks the authoriser may request with the intention to grant bail

- the decision maker must send the BAIL 301 (Financial Condition Supporter Agreement) to the supporter by email giving 2 working days to sign and return:
  - if this timescale is unrealistic, for example if no email address is provided, it will be necessary to adjust it to allow for the BAIL 301 to be sent out and returned by post
  - decision makers may also allow Financial Condition Supporters more than 2 working days to return BAIL 301s sent by email if considered necessary

Outcome of consideration

Following receipt of a person's application for immigration bail, decision makers must decide whether immigration bail should be granted or refused. Decision makers must document the reasons for their decisions on CID and/or the person's case or port file.

Grant of immigration bail

If the Secretary of State decides to grant immigration bail, the decision maker must notify the person in writing. The notice (BAIL 201) must include:

- when the grant of immigration bail begins
- the bail conditions

Under paragraph 3(8) of Schedule 10, the start of a grant of immigration bail may be specified to be conditional on arrangements stipulated in the notice being in place to ensure that the person is able to comply with the bail conditions. This provision is likely to be most relevant in cases where a grant of immigration bail is subject to:

- a residence condition – while arrangements are made to secure accommodation if it is not already available
- an electronic monitoring condition – while arrangements are made to install the necessary equipment

The bail conditions imposed must be in line with the requirements of conditions of immigration bail. Decisions on the appropriate conditions must be made on the facts of the individual case. Conditions must:

- enable the Home Office to maintain appropriate levels of contact with the individual
- reduce the risk of absconding or other non-compliance
- minimise potential delay in the Home Office becoming aware of any non-compliance
- be in furtherance of facilitating the individual's return

In Criminal Casework cases, decision makers should consider any criminal licence conditions fully to ensure any immigration bail conditions do not conflict.

If decision makers in detained and non-detained cases wish to set up reporting to facilitate detention on reporting (DOR) or a contact management regime when BAIL

201 is served, then they must use the ICE Finder to identify the appropriate reporting location and follow the instructions to set up the first reporting event.

For some reporting centres, the details of the first reporting event will be stipulated and decision makers can simply follow the instructions.

For other reporting centres, decision makers will need to contact the reporting centre directly. The reporting centre will then review and set up any further reporting events.

The exception to this is Criminal Casework or relevant unit (see below) cases and those required to report to a police station. Decision makers must communicate with the appropriate reporting centre in such cases.

See Reporting and Offender Management for further details on communication between decision makers and reporting centres.

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Issuing bail paperwork

If a decision was taken to detain the individual but the Detention Gatekeeper rejects it, the referring officer is responsible for issuing the bail paperwork. If the Gatekeeper has accepted the individual in detention but at the 24-hour review stage decides to release them, then the Gatekeeper is responsible for issuing the bail paperwork.

The decision maker responsible for issuing the bail paperwork must prepare and issue the following documents to implement the decision:

- if not already done, issue relevant notice containing liability to removal/detention wording (for example, RED.0001, IS.81, ILL En 101)
- Grant/Variation of Immigration Bail (BAIL 201), although business areas using any of the following documents do **not** need to serve a separate BAIL 201 notice unless they are varying existing conditions:
  - RED.0001 (casework)
  - ICD.1182 IA
  - ICD.3971B IA (email or post)
  - ICD.3971D IA (email or post)
  - ICD.3140
  - ICD.3050
  - ICD.2704
  - ICD.1183 IA
  - ICD.3052 IA
  - ICD.3912

- ARN.0001
- ARN.0003
- ARN.0004
- ARN.0005

The following further notices may need to be issued depending on the arrangements being made:

- Notice to Carrier of Self Check-In Arrangements (BAIL 202(SCI)), if applicable
- Financial Condition Supporter Agreement to Immigration Bail Financial Condition (BAIL 301), if applicable
- Notice to Police of Immigration Bail Reporting Condition (BAIL 205), if applicable
- Notice to Electronic Monitoring Contractor (BAIL 206), if applicable
- Release Order (IS.106) to IRC or prison, if the person is detained

If a grant of immigration bail is subject to a financial condition, the person being granted the bail and the Financial Condition Supporter, if applicable, must sign the Grant/Variation of Bail document (BAIL 201) and Financial Condition Supporter Agreement to Financial condition (BAIL 301), respectively. The decision maker must make copies of the signed documents and place these on the bailed person's port or case file.

Updating CID

For detained cases, the decision-making unit must update the CID Restriction Screen by selecting **Granted** in the 'outcome' field. The 'outcome date' must be the date the decision to grant bail is made.

Units must log a grant of Secretary of State bail on the Restrictions Screen on CID by selecting '**SoS Bail**'. For '**Centre name**', the drop-down menu must be used to select the relevant reporting centre but if a reporting condition is not being set, then '**no centre**' must be selected.

Do not enter anything in the "End Date/Time" column until bail actually ends.

Units must record bail conditions on the Special Conditions screen and select from the drop-down list. Decision makers must set **at least one** bail condition.

'Lodged date' is the date the bail condition was set.

Notifying interested parties

If a detained person is granted immigration bail, the decision maker must notify the following interested parties:

- Detention Gatekeeper
- detainee escorting and population management unit (DEPMU)
- place of detention, to arrange release

- relevant casework unit managing non-detained cases
- electronic monitoring contractor (if electronic monitoring is imposed)
- offender manager (if a criminal casework case)
- relevant reporting centre/police station (if the person is required to report to the police)
- local police (if they have an interest, for example, if releasing a high-risk person into their area)

Refusal of immigration bail

If the Secretary of State refuses to grant immigration bail, the decision maker must notify the person using form BAIL 402 (refusal of Secretary of State Bail Application) and record it on the person's detention and case progression review form. Any decision to refuse must be authorised at minimum HEO level.

Decision makers must use paragraph 3(2) of Schedule 10 as a non-exhaustive checklist for structuring the decision-making process. This structured approach must be reflected in the CID notes, which must be updated to set out the reasons for refusing bail in line with the Consideration Process. In the interests of consistency, decision makers should adopt the following wording when recording reasons on CID:

"The presumption is in favour of immigration bail and I have considered all of the matters stipulated in paragraph 3(2) and consider the following applicable in this case…."

This wording must not be used without including the reasons why bail has been refused.

The decision maker must update the CID restriction screen by selecting '**Refused**' in the 'outcome' field. The 'outcome date' must be the date the decision to refuse bail is made.

Repeat immigration bail applications

There is no limit on the number applications for immigration bail a person can make to the Secretary of State, or when an application can be made. Where a repeat application has been made but there has been no change in the person's circumstances, a bail application may be refused by cross-referring to the same reasons as the previous application.

Related content
Contents

Immigration bail: First-tier Tribunal

This page tells you about the First-tier Tribunal immigration bail process.

A person who is detained under one of the provisions listed under Eligibility for immigration bail can apply to the First-tier Tribunal for a grant of immigration bail. The First-tier Tribunal is independent of the Home Office. This means that while the Home Office can oppose bail and/or propose conditions to be attached to a grant of immigration bail, the First-tier Tribunal is not obliged to follow the Home Office's wishes.

The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (SI 2604/2014) govern the procedures to be followed in relation to bail applications to a judge of the First-tier Tribunal.

The application form for First-tier Tribunal bail (B1) is given to detainees at the point of initial detention. To make an application, the detainee, or their representative, sends the completed form to the First-tier Tribunal directly. The role of the Home Office in First-tier Tribunal bail is to respond to the bail application by:

- producing a bail summary (BAIL 505) to justify the Home Office's case for detaining the individual and the reason(s) why bail should be refused, or what conditions would be considered appropriate should bail be granted
- being represented by a Presenting Officer (PO) at the bail hearing, if applicable

The Home Office also has a duty to refer certain cases to the Tribunal automatically for consideration.

The Tribunal Procedure Rules require applications for immigration bail to be subject to a hearing. The exception is if a person's bail application had been refused following a hearing in the preceding 28 days and there has been no material change in the person's circumstances.

Consideration of cases

Listing an immigration bail hearing

Her Majesty's Courts and Tribunals Service (HMCTS) is responsible for listing bail hearings and this is, where possible, done within 3 working days of receiving a bail application. HMCTS must provide the Presenting Officers Unit with copies of bail applications as soon as reasonably practicable following receipt.

The format of bail hearings may vary according to the preference of the presiding judge but a typical hearing will be as follows:

- the detainee or their representative first presents the case for bail

- the Home Office Presenting Officer (PO) responds, putting forward reasons for opposing bail as outlined in the BAIL 505 bail summary – PO also puts forward any new or updated information, such as a removal date
- the detainee or representative then has the opportunity to argue against the points made in the bail summary
- the judge is able to ask any questions deemed necessary at any stage
- the judge may at this point in the proceedings decide whether or not he or she is minded to grant bail in principle, based on the information available on the detainee and the detainee's circumstances
- if the judge refuses bail in principle, that will be the end of the hearing – bail is refused
- if the judge is minded to grant bail in principle – or if the judge wishes to consider the detainee's Financial Condition Supporters before reaching any kind of decision – the:
  - hearing will progress to bail in practice
  - Financial Condition Supporters – if the detainee has any – will be called
- the representative (or detainee) will ask the Financial Condition Supporters questions
- the PO will then be given the opportunity to cross-examine the Financial Condition Supporters
- both parties then have a final opportunity to deliver submissions on the suitability of the Financial Condition Supporters
- once submissions are completed, the judge will decide whether or not to grant bail in practice

Detainees should normally attend their bail hearings, in person where practicable but usually by video link.

While it is not mandatory for Financial Condition Supporters to attend the bail hearing, the expectation is that they will attend and absence may well undermine the chances of a successful outcome for the detainee.

All parties are expected to bring any additional evidence that they intend to rely on. For example, Financial Condition Supporters must bring proof of identity and immigration status and would normally be expected to bring bank statements and proof that they can accommodate the detainee (for example, a tenancy agreement).

Bail summary

The bail summary should set out the reasons for opposing bail (if bail is to be opposed), and any conditions that would be considered necessary were the First-tier Tribunal to grant bail. A First-tier Tribunal judge will grant immigration bail where there is no sufficiently good reason to detain a person and where lesser measures can provide adequate alternative means of control. In deciding whether to grant immigration bail, a First-tier Tribunal judge must have regard to the requirements set out under exercising the power to grant immigration bail. A judge may also focus on:

- reason or reasons why the person has been detained
- length of detention to date and likely future duration

Additional information on what factors First-tier Tribunal judges normally consider in reaching a decision on bail applications is available in the related link: Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber).

When staff in the Presenting Officers Unit (POU) are notified of an application for immigration bail to the First-tier Tribunal they will request a bail summary from the decision maker. They do this by sending the decision maker:

- a form requesting a bail summary
- the bail application
- any supporting documents

On receiving the request, the decision maker will need to conduct checks on any Financial Condition Supporters included in the bail application and complete the bail summary template (BAIL 505) accurately and in full setting out the reasons why the bail application is being opposed by the Home Office.

Bail summaries must be full, fair and accurate. The decision maker completing the bail summary must ensure that all relevant issues are covered in the bail summary and must also include:

- the detainee's personal details
- details of the Financial Condition Supporters the detainee has put forward, if any
- a full immigration history and chronology
- the reasons for opposing bail, if applicable
- whether removal directions are set for the detainee to be removed from the UK within 14 days of the bail hearing
- date of last hearing at which bail was refused, if any
- the conditions the Home Office wishes to be set in the event that bail is granted
- an assessment of whether the person would meet the exceptional criteria for provision of accommodation if bail is granted
- a request for the Tribunal to direct management of bail to be transferred to the Secretary of State

When completing the bail summary, the decision maker must update any Financial Condition Supporter details on the CID Restriction Screen. No action needs to be taken in ‘accepted’ and ‘paid by date’.

The fully completed bail summary must be returned to the POU in time for it to be filed with the First-tier Tribunal by 2pm on the day before the hearing at the latest. In practice, this means sending it to the POU no later than 12 noon on the day before the hearing.

If the POU is unable to file the bail summary with the First-tier Tribunal by the deadline because it was notified of the bail application fewer than 24 hours before the hearing, the bail summary must be filed as soon as is reasonably practicable. In

addition to filing the bail summary with the First-tier Tribunal, the POU must also, by 2pm on the day before the hearing, send the bail summary to:

- the detainee at their place of the detention
- the detainee's representative, if any

Bail summary: additional requirements if removal scheduled within 14 days of hearing

If directions are in force for the removal of the detainee from the UK within 14 days of the bail hearing, then the decision maker must include the following additional information in the bail summary:

- details of notice of removal – includes notice of a removal window, notice of removal directions or limited notice of removal, as appropriate – see Judicial Review and Injunctions: Immigration Enforcement: general instructions for guidance on the different notices of removal
- the contact details of the primary and secondary contact SCS, acting on behalf of the Secretary of State on the matter of consent (see Consent to bail: Secretary of State below), who will be available to provide instructions to the Presenting Officer if the judge of the First-tier Tribunal intends to grant immigration bail
- Evidence of directions for removal being in force

Directions for removal within 14 days: evidence

See also: Consent to bail: directions in force for removal within 14 days of bail decision.

One of the following must be submitted with the bail summary in these cases as evidence of removal directions having been set for the person's removal within 14 days:

- if the individual has been notified of the **full details of their removal**, a copy of the IS152B, IS83, IS151D, or ISE.312, as appropriate
- if the individual is being removed on a **chartered flight**, a copy of the charter manifest – redacting information on other individuals – may be used;
- if **limited notice of removal** has been issued to the individual – which can also include a charter flight – a copy of the IS.151G:
  - if the detainee is the subject of a deportation order, such as a foreign criminal, the wording of the ISE.312 (Notice of Deportation Arrangements) must be amended to reflect the IS.151G to reflect limited notice of the removal

Removal directions set after bail summary completed

If removal directions are set for within 14 days of the bail hearing after the bail summary has already been completed and sent to the POU, the decision maker must notify the POU without delay.

Bail summary: requirements for auto-referrals

The decision maker must complete a bail summary (BAIL 505) for all eligible detainees who have not opted out of the automatic referral process.

See also – Automatic referral for consideration of immigration bail.

Consent to bail: Secretary of State

If directions are in place for a detainee to be removed from the UK within 14 days of the bail hearing, the First-tier Tribunal cannot grant immigration bail to the detainee without the Secretary of State's consent.

Obtaining consent: process

In cases where the provision applies, the judge of the First-tier Tribunal will explain to the detainee at the beginning of the hearing the requirement for the Home Office to consent to any grant of bail.

If the judge intends to grant bail, he or she will announce this in open court and will issue a note setting out reasons why bail should be granted. The judge will then ask the Presenting Officer (PO) if the Secretary of State consents. The PO will ask the judge for a brief adjournment in order to seek a decision on consent. It is important that consent is sought at that specific point in the hearing, as opposed to prior to the hearing, so that any new evidence which emerges at the hearing can be taken into account by the Senior Civil Servant (SCS, usually a grade 5) named on the bail summary as having responsibility for considering consent.

The SCS will not be familiar with the case. The PO will therefore need to provide them with a verbal summary of the case, explain if there is new evidence or new barriers to removal which have arisen since the decision to oppose bail was made and the judge's reasoning for deciding to grant bail.

In giving the SCS a verbal summary of the case, the PO should:

- summarise, briefly, the person's immigration history, including any history of:
  - complying with a reporting condition
  - non-compliance
  - prior attempts to remove
- summarise any criminal record the person may have
- explain if there were any barriers to removal known to the Home Office at the time the bail summary was written and when it is expected that those barriers will be cleared
- mention the date for which removal directions are fixed

If there is new evidence or a new barrier to removal, the PO should:

- explain the nature of the new evidence and when it came to light
- explain the significance or potential significance of that new evidence in terms of removing the person
- explain any new barriers to removal and the potential significance of that new barrier on removing the person
- so far as possible, explain the likelihood of removing that barrier and/or when clearing that barrier might be achieved

When explaining the reasons the judge has given for why, in their opinion, the person should be granted bail, the PO must explain the:

- factors the judge expressly said they took into account
- factor or factors that led the judge to reach their decision

It is the SCS's responsibility to give or refuse to give consent immediately after hearing what the PO has explained to them.

The detainee will not be granted bail if the SCS (on behalf of the Secretary of State) does not consent.

Consent: considering the request

The consideration of consent must be highly fact specific and based on the circumstances of the individual case, including if detention **remains** lawful. In considering consent, significant weight must be given to the intention of the presiding judge to grant bail. The SCS must give proper regard to the judge's decision and any disagreement with this must be on a rational basis.

The power not to give consent may be exercised where for example, it is considered that the judge has not correctly weighed the high risk of absconding in coming to the decision to grant bail or given enough weight to public protection (if appropriate), the detainee's immigration history, the risk of future failure to surrender to custody, lack of reliable sureties and lack of an appropriate address. This is not an exhaustive list of reasons why consent may be refused.

The power to not give consent cannot be exercised if, during the hearing, the PO does not submit evidence showing that directions for the detainee's removal within 14 days are in force.

Consent: refusal

If the SCS refuses consent, the PO will need to contact the decision maker named on the bail summary to convey the outcome. Ideally, the PO should do this during the adjournment once instructions have been received.

The PO must complete the ‘consideration of consent to bail’ pro forma, setting out the reasons the SCS has given. The PO must ensure that a copy of the pro forma is faxed to the decision maker.

On returning to the hearing, the PO must give the completed ‘consideration of consent to bail’ pro forma to the judge and inform the judge that a letter outlining the Secretary of State’s reasons for refusing consent will be served on both the detainee and the First-tier Tribunal within 48 hours.

The judge will inform the detainee that the Home Office has not consented to bail which means the detainee will not be granted bail.

A decision to refuse consent will be challengeable by way of judicial review. All decisions on consent must therefore be recorded on file and CID.

Refusal of consent: decision maker action

Once the PO informs the decision maker that the SCS (on behalf of the Secretary of State) has refused consent to bail, the decision maker must update CID notes, detailing the name of the SCS who refused consent and the reasons for the decision.

The decision maker must, within 48 hours of the bail hearing, prepare written notification of the reasons for refusing consent using the IS151F / IS151F CCD template on CID DocGen. The decision maker must arrange for the completed IS151F / IS151F CCD to be served on the detainee and the First-tier Tribunal within 48 hours of the bail hearing.

See the court tribunal finder service for telephone and fax numbers for the relevant IAC hearing centre.

First-tier Tribunal grants immigration bail

If immigration bail is granted by a judge of the First-tier Tribunal it is a matter for the judge to decide on the appropriate bail conditions, having regard to requirements mentioned in Conditions of immigration bail and the guidance set out in Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber).

The PO must specify any conditions which the Secretary of State thinks should apply and why, taken from the bail summary (BAIL 505).

Consideration should be given as to whether the case should be transferred to the Secretary of State to manage the bail. If transfer is considered appropriate, the PO must make oral submissions to the judge requesting this.

If a bail application to the First-tier Tribunal is successful, the Tribunal must notify the detainee in writing and give a copy of the notice to the Secretary of State.

The notice must specify:

- when the grant of bail starts
- the bail conditions

The start of a grant of immigration bail may be specified to be conditional on arrangements stipulated in the notice being in place to ensure that the person is able to comply with the bail conditions. The judge's clerk will complete and provide the necessary documents to the parties. The clerk is also responsible for notifying the immigration removal centre if the detainee is not present in court.

If the First-tier Tribunal grants conditional bail but specifies a deadline by which the condition must be fulfilled to allow the bail grant to start, the Tribunal's decision will continue to have effect after the date specified even if the required pre-condition is not fulfilled. That is unless the bail grant notice explicitly states that bail lapses if the required pre-condition is not fulfilled by the date specified. For example, the Tribunal may grant bail subject to an address being provided within 14 days to enable the detainee to meet a residence condition. The grant of bail by the Tribunal will not lapse automatically if a suitable address is not found by the end of the 14-day period unless that outcome is mentioned explicitly in the bail grant notice.

There may be circumstances in which the bail grant notice does not provide for bail to lapse if a pre-condition is not fulfilled by the start date specified and there is no prospect of it ever being met. An example is where the Tribunal grants bail subject to the Secretary of State providing accommodation, but the detainee does not meet the criteria to be provided with such accommodation. In this situation, the decision maker will need to do one of the following:

- apply to the Tribunal to vary (by removing) the relevant condition or conditions of bail, if the Tribunal has retained bail management
- vary the relevant condition or conditions of bail as appropriate, if the Tribunal has transferred bail management to the Secretary of State

If there is a prospect of a pre-condition being met after a specified bail start date, for example because the individual qualifies for accommodation, but a suitable address has not yet been found, it will be necessary to seek an extension of time from the Tribunal in order to meet that condition. However, the conditional bail itself will not lapse.

Once a grant of bail starts, the casework team must close the detention restriction on CID and open an IJ Bail restriction. There is no need to issue an IS.106 (Release Order) to the IRC, the grant of bail court order is sufficient to release the detainee.

First-tier Tribunal refuses bail

If a bail application to the First-tier Tribunal is unsuccessful, the Tribunal must notify the detainee in writing and give a copy of the notice to the Secretary of State. The judge's clerk will complete and provide the necessary documents to the parties.

The POU must update CID with the bail refusal.

Withdrawal of First-tier Tribunal bail application

Should a bail application be withdrawn, the POU must update CID with one of the hearing outcomes:

- withdrawn pre-hearing
- withdrawn at hearing

Related content
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Varying immigration bail conditions

This page tells you about varying the conditions of immigration bail.

See also: Electronic monitoring condition: limitation on variation.

The power to vary the condition or conditions of immigration bail is in paragraph 6 of Schedule 10. This provides for any of the conditions of immigration bail granted to a person to be amended or removed, or for one or more new conditions from immigration bail conditions: general to be imposed on the person.

The power to vary immigration bail conditions can be exercised by the Secretary of State in either of the following circumstances:

- the grant of immigration bail was by the Secretary of State
- the grant of immigration bail was by the First-tier Tribunal but the Tribunal has explicitly directed the power can be exercised by the Secretary of State

The power to vary immigration bail conditions can be exercised by the First-tier Tribunal if the immigration bail was granted by the Tribunal and it has not directed that the power to vary bail conditions can be exercised by the Secretary of State.

Transfer of bail from the Tribunal to the Secretary of State

In any case where the Tribunal has directed that the Secretary of State can exercise the power to vary bail, the power can no longer be exercised by the Tribunal and the Tribunal cannot consider an application to vary conditions thereafter. The decision whether to direct that the power to vary conditions of bail should be given to the Secretary of State rests with the First-tier Tribunal where the Tribunal grants immigration bail.

The Secretary of State cannot vary any condition of bail if the Tribunal has not so directed and so should consider asking the Tribunal to direct that bail be managed by the Secretary of State:

- in the bail summary (BAIL 505)
- at the bail hearing
- where the Secretary of State contacts the Tribunal, using form B3, seeking to vary the condition or conditions of bail – for example a change to a reporting requirement
- where the Secretary of State informs the Tribunal, using BAIL 303 (Breach of Bail Conditions Summary), that the individual has failed, is failing, or is likely to fail to comply with a condition of bail

Transfer of bail with financial condition

If the Tribunal grants bail with a financial condition but agrees to transfer management of bail to the Secretary of State, the Home Office decision maker will

need to inform any Financial Condition Supporter of the appropriate method of payment using form BAIL 305 (Payment information).

If the Tribunal has set a financial condition and has directed that bail can be varied by the Secretary of State, then it is for the Secretary of State to recover any payment liability if the bailed person breaches conditions to which the financial condition is attached.

If the Tribunal does not direct that the Secretary of State manage the case, then the Tribunal keeps complete control, including any decision to vary the conditions, dealing with any breach of conditions and recovering any payment liability under a financial condition.

Variation of bail by the Secretary of State

Decision makers must use each meaningful interaction with the person or the case as an opportunity to proactively review the person's bail conditions. This is to ensure bail conditions remain appropriate in all the circumstances. Decision makers must consider all requests for variation and grant reasonable requests where it is appropriate to do so, having regard to the matters listed under Exercising the power to grant immigration bail. However, updating a change of circumstance (for example, a change of contact telephone number) would not constitute a variation of a bail condition unless a condition was for the person to be contactable on a specified telephone number.

If the Secretary of State exercises the power to vary immigration bail conditions, the decision maker must issue a grant/variation of bail form (BAIL 201) setting out the terms of the variation. The re-issued BAIL 201 must contain all the immigration bail conditions that continue to apply to the individual, not just the condition that was varied.

If there is a financial condition attached to one of more of the varied conditions, the decision maker must notify any Financial Condition Supporter and ask them to sign a new Financial Condition Supporter agreement (BAIL 301).

If the Secretary of State refuses a request to vary immigration bail conditions, the decision maker must issue a notification of refusal of request to vary bail conditions form (BAIL 406).

Where bail conditions are varied, the decision maker must update the Special Conditions screen on CID, using the drop-down list.

Variation of bail by the Tribunal

Where the Home Office applies to the First-tier Tribunal for a variation of bail conditions the:

- decision maker completes the B3 (Variation of Bail Conditions and Transfer) and sends it to the POU

- POU sends the completed B3 to the Tribunal for consideration
- Tribunal sends the completed B3 to the bail party requesting a written response

Where the bailed person applies for a variation of bail conditions the:

- applicant must complete form B2 (Tribunal's Application for Variation form) and send it to the Tribunal
- Tribunal notifies POU and requests a response from the Home Office
- POU contacts decision maker to confirm whether the Home Office agrees or not – the decision maker has 7 days to respond
- decision maker will then complete the Home Office response to the variation request (BAIL 304) and forward to the POU
- PO will send the above notice to the Tribunal for consideration, together with any request to transfer management of bail to the Secretary of State

Variation: consent

Where both sides consent to the variation requested, the Tribunal will normally consider the request on the papers. The Tribunal will send the bail decision to the bail party and the decision to vary/to transfer bail to the POU. POU then inform the decision maker of the outcome.

Variation: refusal of consent

If one side disagrees, the Tribunal will write to the bailed person and the POU, issuing an oral hearing notification. The POU will be notified of the listing and will inform the decision maker. The hearing follows the normal bail process. POU will notify the decision maker of the outcome.

Variation: notification of outcome

If the First-tier Tribunal exercises, or refuses to exercise, the power to vary immigration bail conditions, the Tribunal must notify the person who is on immigration bail, in writing, and provide a copy of the notice to Secretary of State.

Electronic monitoring condition: limitation on variation

The First-tier Tribunal may not exercise the power to amend an electronic monitoring condition imposed on a person granted immigration bail from detention, or liable to be detained, under:

- paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation)
- section 36(1) of the UK Borders Act 2007 (detention pending automatic deportation)

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.

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 Her Majesty's 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 (Limbuela) 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

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

In the case of foreign national offenders (FNOs) still serving prison sentences, Criminal Casework decision makers will work with Offender Managers to prepare a release plan. This will consider, if the subject were to be granted immigration bail either on or after their custodial end date the following:

- whether they will need Home Office supported accommodation
- what the accommodation requirements might be
- whether the individual can support themselves in the accommodation
- whether they meet the exceptional circumstances criteria

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

Individuals who are SIAC cases or 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, B1 or BAIL 401 as appropriate, and these will be assessed as part of the bail consideration process. 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 form is included 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

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). This should be done regardless of whether the person has been granted bail in principle.

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.

Travel expenses

If there are exceptional circumstances for doing so, the Secretary of State may make a payment to a person on immigration bail to cover the person's cost of travel to comply with a bail condition. An example of exceptional circumstances that may justify exercising the power to pay travel expenses is where the individual is subject to a reporting condition but the Secretary of State is unwilling to vary that condition to move it to a closer location to where the person is living and they are unable to afford the additional expense.

See Reporting and Offender Management for full details of the travel expenses process.

Related content
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Automatic referral for consideration of immigration bail

This page tells you about the legal obligation to refer detainees to the First-tier Tribunal automatically, to be considered for immigration bail.

Paragraph 11 of Schedule 10 imposes a duty on the Secretary of State to arrange a referral to the First-tier Tribunal for a decision on whether to grant immigration bail to a person detained under any of the following:

- paragraph 16(1), (1A) or 2 of Schedule 2 to the Immigration Act 1971
- section 62 of the Nationality, Immigration and Asylum Act 2002

The Secretary of State must make the referral to the Tribunal four months after the beginning of the person's detention (unless the Tribunal has considered a bail application in respect of the person in the interim period) and every 4 months thereafter.

If a person has submitted a bail application himself or herself in the interim period, the four-month period for automatic referral is calculated from the date the Tribunal last considered whether to grant immigration bail to the person.

A reference made by the Secretary of State to the Tribunal, automatically, for consideration of immigration bail is to be treated as a bail application to the Tribunal. If a person withdraws such an application, the four-month period for the next automatic referral is calculated from the date the application is withdrawn.

If a person makes an application for immigration bail to the First-tier Tribunal but the Tribunal is prevented from granting bail because of the Secretary of State has refused consent, that particular consideration of bail by the Tribunal is disregarded in calculating the four-month period for automatic referral.

When the duty does not apply

The duty to arrange consideration of bail before the Tribunal does not apply to those detained pending deportation under paragraph 2(1), (2) or (3) of Schedule 3 to 1971 Act or section 36(1) of the UK Borders Act 2007.

It also does not apply if:

- section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in the interests of national security) applied to the person
- the person has given – and has not withdrawn – written notice that he or she does not wish for his or her case to be referred to the Tribunal for consideration for immigration bail in line with the duty

Relevant date for referral

A referral must be made where 4 calendar months have elapsed since the most recent of the following events, the:

- start date of the person's current period in immigration detention
- First-tier Tribunal last considered whether to grant the person bail
- person withdrew an application for bail made on their behalf by the Home Office
- person withdrew notice that they did not wish for the Home Office to refer them to the Tribunal for bail consideration

Automatic referral process

When a detained case is allocated, the decision maker must set up an auto bail reminder on CID Calendar Event. Following on from a Case Progression Panel's decision to maintain detention after 3 months, the detainee will be issued with an automatic bail referral opt out or opt in form with information on the process (BAIL 501). This will be monitored after 5 days and the appropriate action taken in view of the detainee's response.

Opt in

If the detainee agrees to opt in to the automatic referral process they will be asked to complete the Tribunal bail application form (B1) but **not to sign** the form. The POU will update the application date on CID. Forms B1 and BAIL 502 (Automatic Bail Referral Covering Letter) will be sent to the POU who will forward them to the hearing centre and the case will be dealt with under the standard application process.

If the detainee signs the B1 Tribunal bail application form, the Tribunal may take this as an actual application for bail by the detainee and may not treat it as a referral from the Home Office. In such a case, the BAIL 502 should not be sent; instead the signed B1 should be sent to the POU who will forward to the Tribunal as a normal application for bail.

Opt out

If the detainee wishes to withdraw from the automatic referral process, they should complete the BAIL 501 form accordingly and return this to the decision maker. The decision maker must link the BAIL 501 to the file and update CID to reflect the opt-out. If the detainee changes their mind, they can opt back in to the process using the BAIL 501 form.

No response

If the detainee refuses to cooperate with any part of the process and no B1 or BAIL 501 form is received within 5 days of their being notified, the decision maker must update CID notes and send an Automatic Referral Covering Letter – no response

(BAIL 503) to the Tribunal requesting a hearing and send the documentation to the POU. The POU will send the BAIL 503 to the hearing centre and the case will be dealt with under the standard application process but without input from the detainee.

Auto-referral and accommodation

The detainee will need to detail on the application where they plan to live or if they have no fixed accommodation. If they are a failed asylum seeker or have a current asylum claim and wish to apply for support under section 4(2) or section 95 of the Immigration and Asylum Act 1999, they will need to do this themselves.

If the Secretary of State is proposing a residence condition (for example, to avoid a breach of the person's ECHR Article 3 rights), the decision-making team will need to provide this information on the referral. If the individual will be unable to support themselves, the decision-making team will need to arrange the accommodation.

See Meeting bail conditions: Secretary of State Support for further information.

Related content
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Non-compliance with immigration bail: administrative penalties

This page tells you about the administrative penalties that may be applied if a person does not comply with one or more conditions of their grant of immigration bail.

Breach of a bail condition: Secretary of State

A person may breach one or more conditions of bail. This could, for example, be by working where this is prohibited or by failing to attend a reporting event at the time and date specified. Reporting centres are only responsible for managing those bail conditions in relation to reporting.

Where there is no financial condition and the Secretary of State intends to take action in response to the breach, by varying bail conditions, detaining, arresting for the criminal offence (see Non-compliance with immigration bail: criminal penalties), the individual must be notified in writing of the alleged breach using form BAIL 204.

The BAIL 204 gives the individual the opportunity to make representations against whether a breach occurred or to provide a reasonable excuse for the breach. The individual has 10 working days to respond. Any representations a person makes about a breach of bail conditions will not affect the person's case progression, including detention and removal – the entire breach process runs parallel to case progression.

The BAIL 204 notice must also be served if the breach is likely to result in the refusal of leave under the Immigration Rules or if the current bail conditions prohibit work but the individual submits evidence of employment as part of their application for leave.

For information on breach of a bail condition and recovering a payment under a financial condition, see Recovery of payment under financial condition.

Decision makers must record breaches of bail on CID and/or the port or case file. On the breaches screen, under **Restriction Breach** tab, you must select the relevant breach from the drop-down menu. **Date Breached** should reflect the date the breach occurred. If the bailed person or a Financial Condition Supporter (where there is one) provides information and the decision maker considers that a breach did not actually occur, or that there were mitigating circumstances that negate taking any action, then the decision maker must update the **Date Resolved** field.

If the individual does not provide any information in response to the BAIL 204 notice, or the decision maker concludes that breach action is necessary having considered the information provided, the decision maker may:

- vary the conditions of the person's immigration bail
- arrange administrative arrest for breach of immigration bail, if appropriate

Breach of a bail condition: Tribunal

If a person on Tribunal bail breaches any condition of bail, the Home Office must notify the First-tier Tribunal. Where the Home Office decision maker receives notification of a breach they must complete and send both of the following:

- Breach of Bail Conditions Summary (BAIL 303)
- Variation of Bail Conditions and Transfer Request (B3)

to the Presenting Officers Unit (POU). The Home Office will also request transfer of bail to the Secretary of State unless the breach involves a financial condition.

The POU notifies the Tribunal by sending the BAIL 303 and B3, and, if applicable, the Tribunal will list the hearing and notify parties of the hearing date. The Presenting Officer (PO) will attend the hearing, where the bailee and any Financial Condition Supporter will be given the opportunity to respond to the breach allegation. The PO will notify the decision maker of the hearing outcome and update CID.

Recovery of payment under financial condition

If a person fails to comply with a condition of bail to which a financial condition is attached, the relevant sum specified under the financial condition will become payable by the bailed person and/or the Financial Condition Supporter.

Any sum specified in the financial condition does not become payable unless the Secretary of State or First-tier Tribunal, as relevant, gives the person liable to make the payment an opportunity to provide reasons for not being required to pay the sum of money.

Where the person is granted bail by the Secretary of State, or where the Tribunal has directed that the Secretary of State has power to vary conditions of bail, the decision maker must serve a BAIL 208 on any person who is liable for the payment (either the bailed person or any Financial Condition Supporter) informing the recipients of the alleged breach of condition or conditions so that representations may be made in writing to the Home Office. The person liable to make the payment has 28 days to submit representations against payment and the Home Office must then respond within 10 working days of the date of receipt.

If the Home Office accepts the representations made against payment liability, the individual and the Financial Condition Supporter will be notified in writing that no further action is being taken at this time.

If the Home Office does not accept the representations made against payment liability or no representation is received, then financial recovery action will begin.

Initiating financial recovery action

In any case where the decision maker decides to seek recovery of payment liability under a financial condition, the decision maker must:

- vary one or more conditions of the person's continuing immigration bail
- send any Financial Condition Supporter a new BAIL.301 to sign and return
- issue a new BAIL 201 to the bailed person

This is necessary to ensure that the parties are aware that:

- the bailed person remains subject to bail conditions even though a breach process is ongoing
- any further breach or breaches may result in new penalties

To initiate financial recovery action, the decision maker must complete BAIL 307 and refer it to the Compliance Monitoring and Workflow Team (CMWT) within Criminal Casework. CMWT will then update the Civil Penalty Compliance Team (CPCT) spreadsheet.

In Criminal Casework cases, it will not be necessary for Criminal Casework decision makers to complete and refer the BAIL 307 as instructed above. CMWT will initiate the financial recovery action for Criminal Casework following a suspected breach.

Once CMWT updates the CPCT spreadsheet, CPCT will issue form BAIL 302 (Penalty Notice) to the individual and/or Financial Condition Supporter. The Financial Condition Supporter is given 10 working days to make the payment in accordance with the information provided in the BAIL 201 (notification of grant/variation of immigration bail), the BAIL 301 (Financial Condition Supporter agreement), or the BAIL 305 (payment information) forms. Where no payment is received within the appropriate timescale, then the payment liability may be recovered.

The payment recovery is then managed by Home Office Shared Services within a 60-day three-letter process. If payment is still not received, the debt is then transferred to the Home Office Debt Management Team where it is allocated to debt recovery agents via the Debt Market Integrator. Enforcement action may be taken if no payment is received.

In England and Wales, a payment liability under a financial condition is recoverable as if it were payable under an order of the county court in England and Wales.

In Scotland, a payment liability under a financial condition may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court or any sheriffdom in Scotland.

In Northern Ireland, a payment liability under a financial condition is recoverable as if it were payable under an order of a county court in Northern Ireland.

Once the payment is recovered, CID Special conditions must be closed and the "Sureties" field on CID restrictions (this represents Financial Condition Supporters) must be updated.

Arrest by immigration officer or constable

Administrative arrest

The power of an immigration officer or a constable to arrest a person on immigration bail, without warrant, is in paragraph 10 of Schedule 10 to the Immigration Act 2016.

This provides for an immigration officer or a constable to arrest a person on immigration bail if the immigration officer or constable has reasonable grounds for:

- believing that the person is likely to fail to comply with a bail condition
- suspecting that the person is failing, or has failed, to comply with a bail condition

Search and arrest with warrant

If an appropriate judicial officer is satisfied that there are reasonable grounds for believing that a person liable to be arrested for breach of immigration bail is to be found on any premises, the judicial officer may issue a warrant. The warrant would be one authorising any immigration officer or constable to enter, by reasonable force if necessary, the premises named in the warrant in order to search for and arrest the person.

For this purpose, an appropriate judicial officer means, in relation to:

- England and Wales, a justice of peace
- Scotland, the sheriff or a justice of peace
- Northern Ireland, a lay magistrate

The safeguarding and execution of warrant provisions set out in sections 28J and 28K of the Immigration Act 1971 apply also to a warrant under Schedule 10.

For this purpose, premises is defined as follows, in:

- England and Wales, it has the same meaning as in the Police and Criminal Evidence Act 1984
- Scotland, it has the same meaning as in section 412 of the Proceeds of Crime Act 2002
- Northern Ireland, it has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989

Action following arrest

A person arrested under paragraph 10 for breach of immigration bail must, as soon as is practicable after arrest, be brought before the relevant authority, that is:

- Secretary of State, if the grant of immigration bail was by the Secretary of State or the Tribunal has directed that the power to vary the person's immigration bail conditions is exercisable by the Secretary of State
- First-tier Tribunal in all other cases

Until such time as the person is brought before the relevant authority, the person may be detained under the authority of the Secretary of State.

Where the arrested person had been granted bail by the First-tier Tribunal, the decision maker must **also** follow the process for notifying the Tribunal of the suspected breach. For further information, see Breach of a bail condition – Tribunal.

Once the person is brought before the relevant authority, the relevant authority will decide whether the arrested person has broken or is likely to break any of the immigration bail conditions. If the answer is yes, the relevant authority must do one of the following:

- direct the detention of the person under a provision mentioned in Eligibility for immigration bail under which the person is liable to be detained
- grant the person immigration bail subject to the same or different conditions, which must comply with the requirements set out in Conditions of immigration bail

However, if the relevant authority decides that the arrested person has not broken, and is not likely to break any of the immigration bail conditions, the relevant authority must grant the person immigration bail subject to the same conditions that applied prior to the person's arrest. A grant of bail in this situation must comply with the requirements set out in Conditions of immigration bail and it does not prevent a subsequent exercise of the power to vary the conditions of the immigration bail.

Related content
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Non-compliance with immigration bail: criminal penalties

This page tells you about the criminal penalties for not complying with one or more conditions of a grant of immigration bail.

Under section 24(1)(h) of the Immigration Act 1971, a person on immigration bail, within the meaning of Schedule 10 to the Immigration Act 2016, who breaches a bail condition within the meaning of that Schedule, without reasonable excuse, commits a criminal offence. Such a person is liable to prosecution, and if convicted, may be subject to a fine and/or up to 6 months' imprisonment.

Related content
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Asylum claimants: additional information

This page tells you about imposing conditions on asylum claimants.

Asylum claims made by Illegal entrants

An illegal entrant (including an overstayer and someone determined to have entered using deception) who is discovered may claim asylum before a decision is taken to serve a liability to removal notice (for example a RED.0001). Such a person cannot be removed before their asylum claim is decided or decided and certified. For this reason, the person must be issued with form ILL EN 101 setting out their immigration status and their liability to detention instead of a liability to removal notice. The illegal entry contention must be noted in the “Statement of Specific Reasons” box.

For Border Force cases, officers must use the IS81 instead of an ILL EN 101. Border Force officers must follow the clandestine guidance in immigration guidance for Border Force.

The person should be issued with a notification of grant or variation of bail form (BAIL 201) with at least one condition set unless detention is appropriate and considered necessary. See: Detention general guidance.

The decision maker must record the action taken on CID and/or the person’s case or port file.

For further information see:

- Conditions of immigration bail
- Immigration Bail: Secretary of State

Asylum claims from persons with leave

An individual who claims asylum in the United Kingdom **while they have valid leave to enter or remain** in another category cannot be placed on immigration bail. They may be subject to conditions under section 71 of the Nationality, Immigration and Asylum Act 2002 instead. Section 71 allows such a person to be made subject to such conditions as may be placed on a grant of immigration bail. Such persons should be served with a Notice of Restriction to a person who has made an in-country in-time claim for asylum (IS.248).

A person who breaches conditions under section 71 will become liable to detention under paragraph 16 of Schedule 2 to the Immigration Act 1971 and may then be detained under that provision or granted bail under Schedule 10.

A slightly different restriction type should be opened on CID – **Restriction (s.71 NIA 2002)**. CID special condition must be updated to reflect the conditions set.

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Reconsider a decision: grant bail

This page tells you how bail is granted if a person previously had leave which was cancelled by an immigration decision and that decision has been withdrawn and is being reconsidered.

A person may have leave extended by section 3C of the Immigration Act 1971 while an in-time application is being considered. At the point their application is decided, subject to any appeal rights or right to administrative review, the statutory extension of their leave will cease. They will therefore be a person who is liable to detention under paragraph 16 of Schedule 2 to the Immigration Act 1971. For further information on 3C leave, see Leave extended by section 3C (and leave extended by Section 3D in transitional cases).

There are occasions where we withdraw the decision that brought about the end of the statutory extension of the person's immigration leave. This may be due to representations being made or because we agree to reconsider the decision in settling a judicial review. When we withdraw a decision, we will usually have to remake it and where we cannot immediately do that the affected person should normally be granted immigration bail.

You must use form BAIL 209 for granting bail in these circumstances.

Consider the conditions

When bail is granted in these circumstances, the person should normally be granted bail subject to the same conditions that applied to their previous grant of leave.

For example, if the person could previously work, they should normally be granted bail with a condition that allows them to work. Where the previous condition of work specified that they could only work for a specified employer, the condition of bail should recreate that. Where the person could previously study and seeks to resume their studies, they should normally be granted bail with a condition that allows them to study.

In addition, in agreeing to settle litigation we may agree to the person being put on certain conditions and where we have done that you must reflect that in the conditions that you set.

Where there was no previous restriction on where the person could live, you should ensure that the person is permitted to rent. For further information see: Permission to rent.

As with any bail conditions when setting conditions, you must update CID so that the decision maker (casework) is aware of the conditions. This is also important to ensure that if an employer or landlord needs to check the status of the person, they

can do so by contacting the relevant Home Office checking service. See Updating CID for further details.

Where leave is granted following reconsideration of the decision, bail will end (see Ending immigration bail). Where leave is not granted the person remains someone who is liable to detention under paragraph 16 of Schedule 2 to the Immigration Act 1971. Refusal of leave is a material change of circumstances and you must review the conditions of bail as the previous conditions are unlikely to continue to be appropriate. In particular, it will not usually be appropriate to allow a person to continue to have a condition that allows them to work in these circumstances. See Conditions of Immigration Bail for further guidance.

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Ending immigration bail

This page tells you when immigration bail will end.

When bail is granted, the person remains on bail until it automatically ends, for example, where the person is granted leave to enter or remain in the UK, is detained under immigration powers, or departs the UK. Leave includes those granted restricted leave.

Grant letters contain an optional line with wording to end bail so no further notification needs to be provided:

> “Once you have been issued with a Biometric Residence Permit, as specified above, your immigration bail will end automatically, in accordance with the Immigration (Biometric Registration) Regulations 2008 as amended by the Immigration (Biometric Registration) (Amendment) Regulations 2012.”

Secretary of State granted bail, or bail managed by the Secretary of State, can be closed on CID by entering the end date in the restrictions screen.

If an individual is entering the detention estate, an IS Detention ‘restriction type’ will need to be opened.

If an individual has been granted leave or has departed the UK, no further ‘restriction type’ is required.

Any conditions that were attached to the grant of bail must be closed on CID Special Conditions. This can be done by entering the ‘closed date’. This should be the date that bail ended as above.

The decision maker must also inform the First-tier Tribunal, if the Tribunal was managing the bail and was not involved in it coming to an end.

See Duration of Immigration Bail for when bail ends.

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Transitional arrangements

This page tells you about the transitional arrangements for people on other forms of detention/restrictions prior to the commencement of immigration bail.

Under paragraph 13 of Schedule 10, regulations for commencing the Schedule treat people who had already been notified of their liability to detention and given restrictions as an alternative to detention (for example temporary admission, temporary release, release on restrictions and bail) as having been granted immigration bail in such circumstances and subject to the same conditions as were previously specified to the person.

This applies to the following:

- a person on temporary admission under paragraph 21 of Schedule 2 to the Immigration Act 1971
- a person released from detention under that paragraph
- a person liable to detention under paragraph 2(1) of Schedule 3 to the Immigration Act 1971 but released by virtue of a direction of the Secretary
- a person liable to be detained under paragraph 2(2) or (3) of that Schedule but was not so detained
- a person released from detention under section 36(3) of the UK Borders Act 2007
- a person released on bail from detention under any provision of the Immigration Acts

There is no requirement to contact these individuals separately to notify them of their transition onto immigration bail. However, when the person is next contacted they should be informed that they are now on immigration bail.

Below is the recommended wording for explaining immigration bail to persons who have transitioned from their current restriction regime:

> “Following a change in the law, your status in the UK is now described as ‘immigration bail’. Your presence in the UK was previously subject to restrictions or conditions under the Immigration Act 1971. The Immigration Act 2016 has replaced these parts of the Immigration Act 1971. The restrictions on your presence in the UK remain the same.”

A variation of the pre-existing conditions will need to be updated on CID and a BAIL 201 form issued to the person.

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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 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