

IMMIGRATION BILL- STATEMENT OF INTENT

Bail – effect on Removal Directions (clause 3)

1. The Immigration Bill introduces a requirement for the Secretary of State to consent to the grant of immigration bail when removal is 14 days or less away (clause 3, subsection 2 and subsection 5).
2. This note sets out how the Government will implement the provision.

Current position

3. If a bail application is made when removal directions are set and removal is 14 days or less away, the Tribunal will list the case and an immigration judge will hear the bail application. As is the case now, the Secretary of State considers that bail should not normally be granted in such cases because removal is imminent and the risk of absconding is therefore increased. The Secretary of State would therefore expect the Tribunal to seek to release an applicant on immigration bail only in exceptional circumstances when removal is 14 days away or less.

Post-implementation

4. After the implementation of the provisions in the Bill, if bail is refused by the immigration judge, then the Secretary of State will not need to exercise the power contained in the Bill.
5. If the immigration judge considers that there are exceptional circumstances that mean an individual should be granted bail, despite removal being imminent, the Secretary of State will give serious consideration to release.
6. While it is not possible to anticipate every exceptional circumstance where the Secretary of State may consent to release as the decision will be taken on a case by case basis, possible examples may include persons who are recently bereaved, or have complex medical requirements.
7. The Home Office will not artificially invoke the use of this power by repeatedly setting and resetting removal directions to prevent release on bail. This would be an obvious abuse of the power.
8. Legality of detention will still be challengeable by way of judicial review or habeas corpus applications. These are the recognised means by which the lawfulness of immigration detention is to be determined for the purposes of Art 5(4) (see the recent European Court of Human Rights case of *Ismail* (No. 48078/09, 10 October 2013).