



Demonstrating compliance with the Public Sector Equality Duty (PSED)

**Due regard must be shown:**

- ✓ Decision-makers must be made aware of their duty to have 'due regard' and to the aims of the duty
- ✓ Due regard is fulfilled before and at the time a particular policy or operational activity, that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken. It is not a box ticking exercise.
- ✓ Due regard involves a conscious approach and state of mind. The duty must be exercised with rigour and an open mind.
- ✓ The duty cannot be delegated to another body and will always remain on the body subject to it.
- ✓ The duty is a continuing one.
- ✓ It is good practice for the public body to keep an adequate record showing that they have considered their equality duties and considered relevant questions.

**1. Name and outline of policy proposal, guidance or operational activity**

The impact of the use of expanding our GPS technology devices to include non-fitted devices for the purpose of electronically monitoring individuals subject to immigration bail.

The use of electronic monitoring as a condition of immigration bail has been included in immigration legislation since 2004. It is contained in Paragraph 2 (1) (e) of Schedule 10 to the Immigration Act 2016 and use of electronic monitoring is directed by immigration bail policy.

In addition, paragraph 2 (3) of Schedule 10 to the Immigration Act 2016 introduced a duty on the Secretary of State to electronically monitor those who are subject to a deportation order or deportation proceedings. This is in response to manifesto commitments made by the current Government in 2015 and 2017 to satellite track all foreign national offenders subject to deportation order or deportation proceedings.

Traditionally the use of Electronic Monitoring for immigration purposes has been restricted to the use of a tag worn around the ankle. However, those devices are not suitable for all of those the Home Office wish to monitor either as a result of their impact on certain medical conditions. In addition, whilst these devices can be covered by clothing the wearer may be conscious that it is noticeable to others and concerned with how this may be perceived by members of the public.

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The Immigration Act 2016 does not place a limit on how long electronic monitoring may be imposed. It is acknowledged that long term use of a traditional style tag may not be appropriate for those individuals who do not pose significant risk of harm and who have been compliant with their immigration bail conditions. As a result, the Home Office is introducing the use of other methods of electronic monitoring which are not securely fitted to the person but rely on the use of biometrics to establish that the device is identifying the location of the person subject to monitoring. These other methods are generally more cost effective providing better value for money.

The Home Office employs the use of technology and services provided through the contract held by the Ministry of Justice (MoJ) and which is accessed by a number of law enforcement agencies. The contract allows for the use of multiple types of devices and the Ministry of Justice has worked with the Home Office to identify potential appropriate solutions. Potential solutions included a smart watch which uses facial recognition, a device which scans fingerprints and apps accessed through smart phones.

It is planned to initially use one of the alternative methods – the device which reads fingerprints. However, consideration is being given to expanding this to other options at a later date once research and commercial considerations have been completed.

The decision to use GPS devices was assessed as a part of the commercial process. Consideration was given to the use of alternatives which could be identified as electronic monitoring but were discounted as they failed to provide the level of service expected by Ministers and Parliament: that monitoring provides a 24/7 record of a person's movements. In considering the impact of using GPS services the Home Office identified that the policy relating to electronic monitoring would be founded on a one off consideration of individual circumstances. In short, a balanced Convention rights-based decision which reflects not only protected characteristics but other personal circumstances, the risk of harm and absconding posed by the individual and where it applies, the duty placed upon the Secretary of State to monitor those identified within paragraph 2(2) of Schedule 10 to the Immigration Act 2016.

The majority of those subject to Electronic Monitoring as part of the legislative duty will initially be placed on a traditional tag. Following reviews of electronic monitoring which include compliance with immigration bail conditions and the risk of harm posed by the person they will be considered for transfer to another device. The length of time before transfer will on average be longer where the person poses a high risk of harm and is less compliant. Where relevant vulnerabilities have been identified for example, pregnant women or those with significant skin conditions around the ankle, it would be expected

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that they are placed immediately on the alternative solution(s). There may be some instances where a change of device does not occur because removal of the person is enforced before it is considered appropriate (based on individual circumstances) to transfer them to a non-fitted device.

Where there is a decision to use electronic monitoring on a discretionary basis the type of device to be used will be on a case-by-case basis and may be more likely to utilise the alternative solution(s). The decision regarding which device type to use will be made by the Home Office. At the time of writing less than 50 individuals are subject to discretionary electronic monitoring as a condition of immigration bail.

The Home Office is committed to implementing this operational change in a way which promotes equality, respects diversity and takes into account the needs of people with protected characteristics. The intention is that this operational change will not impact negatively on individuals with protected characteristics and that, in the rare situations in which there may be a negative impact, this is justifiable and proportionate. Where there may be a negative impact, we explain how this is a proportionate means of achieving a legitimate aim in accordance with our obligations under the Equality Act 2010 and explain the mitigating action being taken.

For immigration and nationality functions, the requirement to have due regard to the need to advance equality of opportunity does not apply in relation to age, religion or belief and race; however, when making a decision regarding the use of Electronic Monitoring, consideration is given, on an individual basis, to potential breaches of Convention rights in addition to practical considerations e.g. the ability of the individual to comply with their electronic monitoring related immigration bail conditions. The process which has been mapped includes providing a clear opportunity to provide representations against electronic monitoring conditions, including device types. This includes the opportunity for a person seeking immigration bail to include representations against the use of electronic monitoring as well as the active invitation of representations as part of the consideration process.

Where it has been established that there is no disproportionate breach of Convention rights in an individual case, decisions will be based on any criminality, any harm that they could cause the public and the individual's compliance with immigration bail conditions alongside broader immigration legislation. For practicality reasons, for example available resources, those who pose less harm to the public as a result of their criminality and who are more compliant with their immigration bail conditions are more likely to spend a shorter period subject to electronic monitoring in particular a securely fitted device (tag). In addition, it may not be practical to electronically monitor those

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who are resident in more remote locations where connectivity is less reliable and/or it is not possible to operate an effective field support service.

No criteria within the policy, regarding consideration of the type of electronic monitoring device to apply, are based on any of the protected characteristics.

Data collected through both fitted and non-fitted GPS devices will only be accessed as outlined in a data protection impact assessment. Data is available on request by the monitored person and there are no variations of data collected as a result of any characteristics.

The immigration bail guidance has been updated to include the use of non-fitted GPS devices.

## 2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.

In order to demonstrate due regard to the Public Sector Equality Duty (PSED), the Home Office has considered evidence from a number of sources primarily:

- UK Prison Population Statistics - [UK Prison Population Statistics \(parliament.uk\)](https://www.parliament.uk/publications/2019/04/uk-prison-population-statistics/)
- Internal Home Office Management data – the number of deportation orders obtained in 2020 for foreign national offenders broken down by nationality, age and gender

Deportation Orders served, top 10 nationalities by gender and age group, 2020													
Country of nationality	Total 18-29 (age group)	18-29		Total 30-49 (age group)	30-49		Total 50-69 (age group)	50-69			Total 70+	70+	Grand total
		F	M		F	M		F	M	U		M	
Albania	263	1	262	129	0	129	7	0	7	0	0	0	399
Romania	154	8	146	194	12	182	19	0	19	0	0	0	367
Poland	47	1	46	132	1	131	14	0	14	0	0	0	193
Lithuania	41	1	40	77	3	74	9	2	7	0	0	0	127
Portugal	19	0	19	23	1	22	8	1	7	0	0	0	50
Jamaica	12	0	12	14	0	14	8	1	7	0	0	0	34
Bulgaria	16	7	9	13	7	6	4	2	2	0	0	0	33
Latvia	13	3	10	18	2	16	2	0	2	0	0	0	33
Italy	5	0	5	17	0	17	9	1	8	0	0	0	31
Netherlands	17	0	17	5	0	5	5	0	5	0	0	0	27
Other nationalities	174	13	161	280	18	262	57	6	50	1	3	3	514
Grand Total	761	34	727	902	44	858	142	13	128	1	3	3	1808
Notes: These figures have been taken from a live operational database. As such, numbers may change as information on that system is updated. Data extracted on 15/10/2021													

- Immigration Enforcement vulnerability strategy
- Caselaw – Gedi [www.bailii.org/ew/cases/EWCA/Civ/2016/409.html](https://www.bailii.org/ew/cases/EWCA/Civ/2016/409.html)

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- Caselaw - Jalloh [R \(on the application of Jalloh \(formerly Jollah\)\) \(Respondent\) v Secretary of State for the Home Department \(Appellant\) \(supremecourt.uk\)](#)
- Existing immigration bail guidance
- Deportation policy

## **Stakeholder engagement**

The Home Office employs the use of technology and services provided through the contract held by the **Ministry of Justice** and which is accessed by a number of law enforcement agencies. The Ministry of Justice have developed their service to offer GPS devices. This has been delivered through an ongoing major programme with full oversight. As their programme has developed, they have completed a number of assessments of the impact on equality under the Public Sector Equality Duty. The Home Office has had sight of these assessments to help inform consideration of whether there are any impacts in terms of deployment as a tool for managing immigration bail.

As the Government Department holding a contract for electronic monitoring, the Ministry of Justice has assessed the impact of electronic monitoring on those with protected characteristics and have shared this with the Home Office. Consideration has been given to the impact of using non-fitted GPS technology on the following characteristics and of the approach which is employed by the EMS officer deploying the service on behalf of the Home Office.

Additionally, as a member of the Ministry of Justice's oversight boards, the Home Office has had access to academic research conducted on behalf of the Ministry of Justice as well as papers analysing the use of electronic monitoring in other countries including Canada.

### [Canadian research](#)

#### [EMEU - Electronic Monitoring in England and Wales](#)

There has been access to data gathered via pilots conducted by that programme to aid understanding of the practical issues. There has also been participation with a forum led by one of these academics, Andrea Hucklesby, examining the ethical and practical implications of the use of electronic monitoring. Consideration has also been given to the experiences of US ICE who have introduced the use of an alternative to a securely fitted device(tag) as part of their alternative to detention approach.

### **3a. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.**

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The primary purpose of the policy change is to provide alternatives to the traditional method of fulfilling a government manifesto commitment to electronically monitor foreign national offenders. It also provides an alternative solution to electronically monitor those not subject to that commitment and the attached legislative duty.

Consideration has been given to whether the changes could constitute conduct prohibited by the Equality Act 2010.

The change would apply to all people who are subject to electronic monitoring, or liable to be electronically monitored. This cohort is predominantly made up of Foreign National Offenders who are subject to deportation orders or deportation proceedings but is not exclusive to this cohort and could be applied on any person who is subject to immigration bail where the individual circumstances warrant it. Where the duty does not apply, electronic monitoring 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 but is not limited to these cases. This application is irrespective of any protected characteristics and would therefore not constitute direct discrimination.

## Age

[Schedule 3](#) to the Equality Act 2010 permits exceptions in relation to functions exercised under certain immigration legislation in relation to age and nationality and ethnic or national origins. Its effect is that discrimination that is authorised or required by legislation and the Immigration Rules is not unlawful.

### Direct Discrimination

The Home Office is prohibited from using electronic monitoring as a condition of immigration bail on those under the age of 18 (paragraph 4(5) of Schedule 10 to the Immigration Act 2016) and this will not change due to the use of different electronic monitoring devices. This differentiation on the grounds of age is justifiable in order to fulfil the duty created by [Section 55 of the Borders, Citizenship and Immigration Act 2009](#) to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. Decisions to apply discretion where a person is subject to the duty will not be based on a person's age. Therefore, although only persons over the age of 18 will be affected by the use of non-fitted electronic monitoring devices, with regards to those over 18 we do not consider that direct discrimination on the basis of age arises due to the commencement of the duty.

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### Indirect Discrimination

The use of the use of alternative electronic monitoring solutions could apply to all people who are currently subject to electronic monitoring, are on or liable to be granted immigration bail and could have electronic monitoring as a condition of bail. This cohort is largely made up of Foreign National Offenders who are subject to deportation orders or deportation proceedings but is not exclusive to this cohort and could be applied on any person who is subject to immigration bail where the individual circumstances warrant it. The majority of Foreign National Offenders who were made subject to a deportation order in 2020, were aged between 30 and 49 (see table in 2 above), therefore people within this age group are most likely to be subject to electronic monitoring than other age groups.

The Home Office immigration bail policy will indicate that special consideration should be given to the age of the person being considered for electronic monitoring. Where a person is over 18, age in itself is not a barrier to electronic monitoring as equipment can be configured to make allowances for different sizes and ranges of mobility, but should be considered along with any indication of frailty or medical conditions associated primarily with older age e.g. vascular dementia, limited mobility, arthritis. It may as a result be more likely that an older person with age related disabilities or frailty may be more likely to be placed on an alternative solution rather than a securely fitted device (tag). However, there remains scope for there to be a decision to not monitor based on any such frailties. Those decisions will however, been made based on individual circumstances.

### Section 55 considerations

Considerations have been made as regards the 'best interests of children', in regards to the partial commencement of the duty. It is provided to support the Home Secretary's assessment of her duties as set out at section 55 of the Borders, Citizenship and Immigration Act 2009:

- (1) The Secretary of State must make arrangements for ensuring that—*  
*(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and*  
*(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.*

Although children are not directly impacted by this policy, as part of the immigration bail guidance, decision makers will need to ensure that they have regard to section 55 when making decisions on immigration bail, and conditions of that bail (including electronic monitoring), which may involve or impact on children under the age of 18. All available information and evidence must be carefully considered to determine if the imposition of the electronic

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monitoring would be contrary to a child's best interests. If that is not the case consideration should also be given to whether the interests of the child would be best served by use of the alternative device(s) available. Where this is the case, decision makers must consider and record on file the reasons in favour of granting bail and of imposing electronic monitoring using an alternative device in the individual circumstances.

Following these considerations therefore, it is likely that the choice of device type would lead to a greater level of indirect impact upon those aged 50 and under (see table in 2 above). In any case, the disadvantages would be justified and that it is appropriate to rely on the limited exceptions in the 2010 Act in order to support a proportionate means of achieving a legitimate aim, of deporting foreign national criminals whose presence in the UK is not conducive to the public good or the removal of those who are unlawfully present in the UK.

## Disability

For the purposes of the Equality Act 2010, disability is described as being: "A physical or mental impairment that has a 'substantial' and 'long-term' negative effect on an individual's ability to carry out normal daily activities". It will be a matter for the decision maker to ensure the person to be monitored is physically and mentally fit enough to be tagged and to comply with the requirements of their order.

The Home Office does not collect data on the number of people facing deportation or immigration bail broken down by disability as defined by the Equality Act 2010.

### Direct Discrimination

The policy change means that those who do not have a disability are less likely to be placed on an alternative device without first having been placed on a securely fitted device. That decision will be made on a case-by-case basis based on medical evidence. We do not consider that direct discrimination arises as a consequence of this change, with regards to this protected characteristic.

### Indirect Discrimination

There is no evidence to suggest that the use of alternative solutions would have a disproportionate negative impact on this particular group when compared with others subject to the duty. All decisions to apply electronic monitoring must take into consideration whether any or all of the available devices would breach Convention rights or if it would not be practical to apply the duty.

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### Reasonable Adjustments

We accept that where a person is either subject to the duty or being considered for electronic monitoring and has a disability, reasonable adjustments may need to be made on account of that disability. These reasonable adjustments can include ensuring all information is in an easy-to-read format and explained verbally, and equipment being configured to make allowances for different sizes and ranges of mobility. However, there are limitations to the securely fitted device used, and this will be considered as part of the decision in whether it is practical to apply Electronic Monitoring to a person. The use of an alternative solution will address this in some although not all cases. Where a person has cognitive related issues the need to follow instructions to provide biometric data may continue to provide a significant barrier irrespective of the device to be used.

Home monitoring units will be installed at the address of some of those released on immigration bail. This has a telephone handset with a ring tone that can be set to a range of volumes. There currently is no technical solution for someone who is profoundly deaf as communication between the Monitoring Centre and the person concerned is via a telephone handset. Where the installation of a home monitoring unit is not considered appropriate the immigration bailee will be issued with a mobile phone.

Those with disabilities that prevent them from being tagged or complying with electronic monitoring requirements should not have such conditions imposed. Where the contracted supplier, EMS become aware of this after the order is issued, they will inform the decision maker.

Under Home Office immigration bail policy electronic monitoring will not be used for those who have been subject to detention under paragraphs 35 and 48 of the Mental Health Act and whose immigration case is managed by the Mentally Disordered Offenders Team of FNO RC.

Under the policy it will also be appropriate to give specific consideration to any physical or mental health conditions which may be exacerbated by electronic monitoring. Consideration will be dependent on the provision of medical evidence of the expected impact.

On the basis of the above, there is no evidence to suggest that anyone under the protected characteristic of disability will be adversely impacted by the use of alternative electronic monitoring devices.

### **Gender Reassignment**

Under section 7 of the Equality Act 2010, an individual has the protected characteristic of gender reassignment where the person has proposed, started or completed a process to change their gender. This not only covers

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situations in which the individual has begun hormone treatment and/or gender reassignment surgery; Section 43 of the Act provides that the protected characteristic also applies in cases in which a person decides to spend the rest of their life in the opposite gender without seeking medical advice or without medical intervention.

The Home Office does not routinely collect data on those subject to deportation proceedings or immigration bail by gender reassignment. It is important to note Transgender or intersex persons will be respected and treated according to the gender that they identify and live as.

#### Direct Discrimination

The policy change means that alternative electronic monitoring solutions will be considered for all persons who are subject to the duty, or are on immigration bail or liable to be granted immigration bail and an electronic monitoring condition is considered appropriate in their case . We do not consider that direct discrimination arises as a consequence of this change, with regards to this protected characteristic of gender reassignment.

#### Indirect Discrimination

There is no evidence to suggest that the use of alternative electronic monitoring solutions would have a disproportionate negative impact on this particular group when compared with others subject to the duty. Therefore, we do not consider that any indirect discrimination arises with regards to this protected characteristic.

As indicated below in the section on Sex, if the order to monitor indicates that the person to be monitored is female, the service provider will deploy a female member of staff to install/change devices to that person. If the person identifies as male, then a male or female member of staff will carry out the installation. For non-binary individuals they will have their equipment fitted/issued by a member of staff of the sex they feel most comfortable with.

If a male officer is deployed on the basis that the order indicates a male person, but on arrival, the person to be monitored identifies as a female, the service provider will rearrange the visit to allow a female member of staff to fit the tag. Female officers can fit tags to males.

The Home Office immigration bail policy does not identify any specific considerations for transgender or intersex individuals in respect of electronic monitoring aside from those identified above.

On the basis of the above, there is no evidence to suggest that anyone under the protected characteristic of gender reassignment will be adversely impacted by the introduction of non-fitted devices.

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## Marriage and Civil Partnership

We have considered equality as it affects marriage and civil partnership. The Home Office does not regularly collect or publish data on the marital status of people subject to immigration bail, or who are subject to deportation proceedings or a deportation order.

### Direct Discrimination

Immigration bail, and conditions, including electronic monitoring, which can be applied to a person on bail apply equally to all individuals regardless of their marital status, and the policy does not specify any exceptions based on marriage and civil partnership. However, the legislation and policy allow for consideration of Convention rights and individual consideration may be given to any detrimental impact on family members or civil partners due to device types. We therefore consider that the policy changes do not result in direct discrimination with regards to this protected characteristic.

### Indirect Discrimination

There is no evidence to suggest that introduction of non-fitted devices would have any disproportionate impact on individuals because of their marital status. We therefore consider that this policy does not result in indirect discrimination with regards to this protected characteristic.

## Pregnancy and Maternity

Immigration bail applies equally to all persons who meet the criteria set out in 1 (1) of Schedule 10 to the Immigration Act 2016 whether they are pregnant or have recently given birth.

### Direct Discrimination –

Although immigration bail applies equally to all persons who are liable to be detained, guidance around the electronic monitoring condition is clear that pregnant women or women who have recently given birth may not be suitable for the condition to be applied using a traditional fitted device. It should be noted that pregnancy does also not always mean electronic monitoring cannot be applied and the use of a non-fitted device may be considered a suitable alternative; however, this provision in the policy does mean that persons who are pregnant or post-partum may be treated more favourably than those who are not. 13(6)(b) of the Equality Act 2010 provides that it is not discriminatory to afford special treatment to a woman in connection with pregnancy or childbirth.

There will be further guidance within the policy for circumstances where a pregnant person will be subject to the electronic monitoring duty, or EIA enquiries **must** also be sent to [PSED@homeoffice.gov.uk](mailto:PSED@homeoffice.gov.uk)

considered for electronic monitoring outside of the duty, and that consideration of whether electronic monitoring may not be practical or a breach of their rights under ECHR. This is explicitly considered where a person is 18 weeks or more pregnant, or is 3 months post-partum however, these considerations are not exhaustive, and the individual facts of the case must be considered.

The changes due to the availability of a non-fitted device do not alter the explicit consideration of where a person is pregnant and therefore we do not consider that this policy change results in direct discrimination with regards to this protected characteristic.

### Indirect Discrimination

There is no evidence to suggest that the policy would have any disproportionate impact on individuals because of their being pregnant. We therefore consider that this policy does not result in indirect discrimination with regards to this protected characteristic.

### Reasonable adjustments

In the rare circumstances where a decision may be considered to look to apply electronic monitoring to a person who is pregnant or up to 3 months post- partum, reasonable adjustments may need to be made. These reasonable adjustments can include (in fitted devices) equipment being configured to make allowances for different sizes and ranges of mobility – for example, there is the potential for pregnant women to be unable to wear a tag on their ankle. However, the availability of non-fitted devices will provide an alternative which will offer a reasonable adjustment. Stakeholders and decision makers will be informed of the limitations of the equipment as mentioned elsewhere in this document.

## **Race**

The definition of race as a protected characteristic within the Equality Act 2010 includes reference to nationality. Any person without leave to remain in the UK, who meets the criteria set out in 1 (1) of Schedule 10 to the Immigration Act 2016 can be placed on immigration bail. The cohort of people who are subject to immigration bail, is made up of non-UK nationals. Immigration control necessitates overseas nationals being subject to considerations not applicable to UK nationals and will inherently impact some nationalities disproportionately.

### Direct discrimination

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The immigration bail guidance applies equally to all persons, regardless of their race. Decisions relating to the type of device to be used for electronic monitoring will not be based on a person's race. As a result, we do not consider that direct discrimination arises with regards to a person's race as a result of the partial commencement of this electronic monitoring duty.

#### Indirect discrimination

It is acknowledged that certain nationalities may be more likely to be subject to electronic monitoring. The cohort of individuals who will fall within the duty, the majority of those on electronic monitoring, is fluid and is influenced by the volumes of each nationality within the community, as well as levels of criminality and compliance with immigration control. In 2020, 1,808 deportation orders were obtained for Foreign National Offenders from a total of 97 countries. 4 countries accounted for 1,086 of those deportation orders, whilst the top 10 countries accounted for 1,294 orders. In addition, prison statistics show that in March 2020 there were 163 nationalities held in prisons in the UK. Of those, the top 10 nationalities accounted for 56% of all foreign national offenders<sup>1</sup>. However, it will be the actions of the individual which led them to be subject to deportation. Once the individual is identified as being subject to the duty, or considered for electronic monitoring outside of the duty, any decision in relation to device type will be based on their personal circumstances along with their compliance with their immigration bail conditions. Nationality is not a factor in that decision-making process.

The Ministry of Justice's Contract Management Team has been working with EMS and Ministry of Justice's Analytics team to improve data management and reporting in this area. They plan to develop a set of required fields such that data on race, where made available on the notification or provided by the monitored person, can be retrieved on all live orders, as well as historical data for those that have been monitored. The Home Office have an embedded member of staff within the Contract Management Team.

EMS staff receive equality and diversity training and so are clear about the expected standards of behaviour in their dealings with those that they may come into contact with in their daily jobs, and are also clear that failure to abide by these standards may result in some form of action being taken.

Induction and other documentation will be available in different languages and will be in easy read format. Additionally, for those whose first language is not covered by the documentation EMS can make use of a telephone translation service. EMS has been provided with a list of languages that the documentation provided to immigration bailees will need to cover, as well as making use of the translation services as and when required.

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<sup>1</sup> [UK Prison Population Statistics \(parliament.uk\)](https://www.parliament.uk/statistics/justice/prison-population-statistics)

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Following the considerations above, it is possible that introduction of non-fitted devices would lead to a greater level of indirect impact upon the top 10 nationalities identified. In any case, the disadvantages would be justified in order to support the objectives as we believe that it is appropriate to rely on the limited exceptions in the 2010 Act due to the legitimate aim of deporting foreign national criminals whose presence in the UK is not conducive to the public good.

### Religion or belief

Immigration bail policy does not prescribe, or exclude, individuals from immigration bail or being subject to the duty by virtue of their religion or belief. Any individual subject to deportation proceedings or a deportation order, or considered for electronic monitoring outside of the duty, may be placed on electronic monitoring regardless of religion or belief (or absence of it), provided that it is not impractical to do so or is in breach of their rights under ECHR.

#### Direct discrimination

The immigration bail guidance applies equally to all persons, regardless of their religion or belief. Decisions relating to the type of device to be used for electronic monitoring will not be influenced by a person's religion or belief and therefore we do not consider that direct discrimination arises as a result of this policy change, with regards to this protected characteristic.

#### Indirect discrimination

The Home Office does not collect or publish data on the number of people subject to deportation proceedings, a deportation order, or immigration bail broken down by religion or belief. The cohort of people subject to both immigration bail, deportation proceedings, or a deportation order is made up of non-UK nationals with no leave to remain in the UK, with migrants from some countries or regions more commonly represented within that cohort. It is possible that, as with the protected characteristic of race, some religions or beliefs will be disproportionately represented within this cohort of individuals

The Home Office recognises that individuals may require the provision of specific observations to allow them to practice their religion whilst on electronic monitoring, and that they would be disproportionately disadvantaged if these provisions were not fulfilled.

EMS staff will receive equality and diversity training and so will be clear of the expected standards of behaviour in their dealings with the various religious beliefs of monitored persons.

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Any claim that the fitted or non-fitted devices will interfere with religious observance will be considered in line with our duties under the ECHR. In such cases, relevant advice may be sought on the claimed impacted religious practice.

We have not identified any potential disproportionate impact with the use of alternative devices being discriminatory in terms of people's religion or belief. The Home Office does not collect data on a person's religion in all cases and where it is collected as information directly relevant to a person's claim to remain in the UK it is not in a searchable/reportable format. Information relating to religious beliefs is not recorded as part of their electronic monitoring related records.

We consider that any indirect discrimination arising from the use of both fitted and non-fitted devices with regards to this protected characteristic represents a proportionate means of achieving the policy aims as outlined above.

## Sex

Schedule 10 to the Immigration Act 2016, and the immigration bail guidance does not exclude any persons from being subject to bail, or any of the conditions of bail by virtue of their sex – men and women are equally eligible for bail and all conditions of bail.

### Direct discrimination

The immigration bail guidance and the use of fitted and non-fitted devices applies equally to all persons, regardless of their gender. Decisions to apply discretion regarding the device type to be used will not be influenced by a person's sex. As a result, we do not consider that direct discrimination arises with regards to a person's sex as a result of this policy change.

### Indirect discrimination

It is acknowledged that more males will be subject to electronic monitoring than females. The duty applies primarily (although not solely) to Foreign National Offenders. Of the 1,808 deportation orders signed in 2020 only 91 were for women. The inequality is a reflection of the general prison population where in 2019 just 4% of the UK's prison population were female, and statistics show that this is a long-term trend<sup>2</sup>. Decisions on which device type is most appropriate will be determined on a case by case basis examining the individual circumstances of the person, but sex will not be a determining factor within this consideration.

Where relevant, reasonable adjustments regarding fitting/issuing devices will be made. Females will always have the equipment fitted by a female member

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<sup>2</sup> [UK Prison Population Statistics \(parliament.uk\)](https://www.parliament.uk/statistics/2020/uk-prison-population-statistics)

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of staff. If the person to be monitored identifies as male, then a male or female member of staff will carry out the installation. For non-binary individuals they will have their equipment fitted by a member of staff of the sex they feel most comfortable with.

We consider that any indirect discrimination arising from using of both fitted and non-fitted devices with regards to this protected characteristic represents a proportionate means of achieving the policy aims as outlined above.

## Sexual Orientation

A person's sexual orientation is not included as a specific factor when considering whether electronic monitoring should be applied.

### Direct Discrimination

The immigration bail policy applies equally to all persons regardless of their sexual orientation. Sexual orientation is not a factor in determining whether a fitted or non-fitted device is most suitable. Therefore, we do not consider that this will result in direct discrimination with regards to this protected characteristic.

### Indirect Discrimination

The Home Office immigration bail policy does not identify any specific considerations in relation to sexual orientation in respect of electronic monitoring aside from those identified above. There is no evidence to suggest that use of non-fitted devices would have any disproportionate impact on individuals because of their sexual orientation and therefore we do not believe there to be any indirect discrimination with regards to this protected characteristic.

EMS have policies and training in place to ensure staff understand their obligations around equality and required behaviour and that they should not show bias or discriminatory behaviour towards members of the LGBT community.

There are no apparent potential issues with the use both fitted and non-fitted devices being discriminatory in terms of people's sexual orientation. We do not collect data on a person's sexual orientation in all cases and where it is collected as information directly relevant to a person's claim to remain in the UK it is not in a searchable/reportable format.

## Conclusion

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The policy to introduce the use of non-fitted devices in addition to fitted devices is designed to provide alternative options to apply the duty placed on the Secretary of State whilst taking into account potential physical and mental health implications of doing so. Decision makers will reach their conclusion that electronic monitoring is appropriate and if so which device type is most suitable by applying the related policy. Decisions will be made on an individual basis, albeit within a framework. As a result, individuals with shared characteristics within that smaller group will not all receive the same outcome. The personal circumstances of an individual when looked at in conjunction with their immigration compliance, criminality, the risk of harm they pose to the public and any vulnerabilities will determine whether they are placed on a fitted device, non-fitted device or no device; how long it takes to move through device types and whether there are any supplementary electronic monitoring conditions attached to their immigration bail. This means that 2 people sharing protected characteristics could have a very different outcome.

We do not consider that use of both fitted and non-fitted devices will disproportionately affect those with any particular protected characteristic, for the reasons given above.

**3b. Consideration of limb 2: Advance equality of opportunity** between people who share a protected characteristic and people who do not share it.

This limb of the duty does **not** have to be considered in relation to immigration and nationality functions in respect of race (excluding colour), religion or belief and age.

The Equality Act specifies that this limb involves having due regard to three specific aspects:

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **Disability –**

The Equality Act 2010 places a duty on public bodies which requires them to make reasonable adjustments for individuals with a disability (including mental health and learning disabilities) so that they are not disadvantaged. It is

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possible that an individual with a physical or mental disability may require additional support, which is provided, for example literature in accessible formats or reasonable adjustments. When making a decision on whether to apply electronic monitoring, consideration must be given as to whether these needs would mean electronic monitoring is a breach of Convention Rights or is impractical. As part of this decision consideration will be given to whether the type of device to be used will have an impact on the overall decision to apply the electronic monitoring. Consideration will be given to whether the use of a fitted device type may have a negative impact on any known disabilities. If this is determined to be the case consideration will be given to whether this may be overcome by using a non-fitted device.

### **Gender Reassignment –**

We do not foresee any particular needs or disadvantages as a result of an individual with this protected characteristic relating to electronic monitoring device types.

### **Maternity and Pregnancy –**

Maternity and pregnancy may raise additional needs for persons who are subject to the duty or considered for electronic monitoring outside of the duty. When making a decision on whether to apply electronic monitoring, consideration must be given as to whether these needs would mean electronic monitoring is a breach of Convention Rights or is impractical. Where this is not the case the use of a non-fitted device will avoid the potential physical implications of using a fitted device.

### **Race (colour) -**

We do not foresee any particular requirements or disadvantages arising as a result of an individual's colour.

### **Sex –**

We do not foresee any particular needs or disadvantages as a result of an individual's sex relating to electronic monitoring.

### **Sexual Orientation –**

We do not foresee individuals of any particular sexual orientation having specific needs relating to electronic monitoring.

We acknowledge that, with regard to the third aspect of limb 2, there will be some limitations on participation in public life for individuals placed on electronic monitoring although the limitations may differ based on the type of device being used. The expected reduced limitations caused by being monitored using the non-fitted device are intentional providing a reduction in the impact of monitoring where there has been a clear, sustained compliance with the original monitoring order. This restriction is inherent to the nature of EIA enquiries **must** also be sent to [PSED@homeoffice.gov.uk](mailto:PSED@homeoffice.gov.uk)

immigration bail and will apply to any person subject to immigration control and therefore potentially liable to detention regardless of any protected characteristic, therefore we do not believe this disproportionately disadvantages any particular group.

**3c. Consideration of limb 3: Foster good relations** between people who share a protected characteristic and persons who do not share it

- We do not foresee this policy change causing detrimental relations between people who share a protected characteristic and those who do not, on the grounds that it does not apply any specific advantage to any group on the basis of their sharing a protected characteristic.
- We do not anticipate any particular groups of people holding any other group responsible for any perceived problems.
- We do not anticipate any particular group as being seen to benefit unfairly on the basis of any one or more protected characteristics.

All electronic monitoring devices and processes are designed to be as unobtrusive as possible to minimise others being aware that a person is being monitored. Furthermore, the use of electronic monitoring as a condition of immigration bail is mainly limited to a tightly defined group who will have different but possibly overlapping characteristics. This group is not altered by the use fitted and non-fitted devices. As a result, it is not expected that the implementation of alternative devices will actively foster good relations.

All FNORC EM hub staff undertake mandatory training in diversity and inclusion.

EMS have policies and training in place to ensure staff understand their obligations around equality and required behaviour and that they should not show bias or discriminatory behaviour.

#### 4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
<b>Age</b>	Yes	It is possible that due to the demographics of the cohort Foreign national offenders subject to deportation or deportation proceedings, people of some age groups may be more impacted than others. In addition it is possible that older people subject to electronic monitoring are only monitored using a non-fitted device as they have a higher likelihood of having a frailty/vulnerability which make a fitted device unsuitable.	This is inherent to the introduction of any changes to immigration bail policy or concerning foreign national offenders and as such we believe our policy aims justify this potential impact.
<b>Disability</b>	No	We do not anticipate this policy change will result in a negative impact on those who have this protected characteristic. Notwithstanding that, the Home Office has a duty to provide reasonable adjustments for those with a disability. We intend to meet this in part by the introduction of non-fitted devices.	<p>The duty to make reasonable adjustments for individuals with disabilities, and the way the Home Office fulfils this duty are covered at parts 3a and 3b of this document.</p> <p>There is discretion to not apply electronic monitoring where it is impractical or a breach of rights under ECHR and consideration of this can include where a person suffers from a disability, either physical or mental illness and the impact electronic monitoring may have on the person.</p>

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<b>Gender Reassignment</b>	No	We do not anticipate this policy change will result in a negative impact on those with this protected characteristic.	
<b>Marriage and Civil Partnership</b>	No	We do not anticipate this policy change will result in a negative impact on those with this protected characteristic	
<b>Pregnancy and Maternity</b>	No	We do not anticipate this policy change will result in a negative impact on those with this protected characteristic. However, individuals with the protected characteristic of pregnancy or maternity may require particular consideration of whether electronic monitoring is practical or can be met by the use of a non-fitted device.	The immigration bail policy sets out a non-exhaustive list of circumstances where the use of fitted devices may not be practical, and this includes where an individual is pregnant (18 weeks +) or has recently given birth (within last 3 months)
<b>Race</b>	Yes	The cohort of people subject to immigration bail and foreign national offenders, by definition, made up of overseas nationals, and as such this policy change may disproportionately affect some nationalities.	This is inherent to the introduction of any changes to immigration bail policy and as such we believe our policy aims justify this potential impact.
<b>Religion or Belief</b>	Yes	The cohort of people subject to immigration bail and foreign national offenders, is made up of a number of different religions, and as such this policy change may disproportionately affect some religions more than others.	This is inherent to the introduction of any changes to immigration bail policy and as such we believe our policy aims justify this potential impact.
<b>Sex</b>	Yes	The fact that there are significantly more men than women who are foreign national offenders, suggests that men may be more likely to be placed on electronic monitoring and in due course on non-fitted monitoring devices. As	This disproportionate impact is inherent to the introduction of any changes to immigration bail policy or foreign national offenders and as such we believe our policy aims justify this potential impact.

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		such, this policy may disproportionately impact men, as a greater number of men will fall within its scope.	
<b>Sexual Orientation</b>	No	We do not anticipate this policy change will result in a negative impact on those with this protected characteristic	EMS have policies and training in place to ensure staff understand their obligations around equality and required behaviour and that they should not show bias or discriminatory behaviour.

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**5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?**

Whilst we do not foresee the policy change having a disproportionate impact on individuals with protected characteristics, we have put a number of mitigations in place to minimise any potential negative impact:

- A Data Protection Impact Assessment will be in place and will clearly set out how any data collected through the various electronic monitoring devices will be stored and may be accessed/used. Those individuals subject to electronic monitoring will be advised when their data may be used and how they can access their data.
- The bail guidance will be comprehensive and clear. Consideration of whether the duty applies, or consideration of electronic monitoring outside of the duty, will be based on the impact of the use of electronic monitoring on the individual's Convention rights. It will consider the impact on any medical conditions – both physical and mental, and impact on Article 8 rights. A person's compliance with immigration control including any previous immigration bail conditions will also be a deciding factor.
- The introduction of non-fitted devices aims to provide an alternative solution where the person has a condition which renders fitted devices an unsuitable option allowing the Secretary of State to comply with the duty placed on her.
- Decision makers have been required to attend a training course regarding the duty and the way in which it is being implemented. They have also been required to undergo e-learning on how to task and record events on ATLAS. This training has been supplemented by changes to the immigration bail policy and casework instructions. There is an established enquiry hotline for questions from staff and frequently asked questions are circulated through normal communications channels. The policy and process has also been discussed at command meetings where questions have been welcomed. Additional training will be provided to ensure understanding of how to make decisions regarding the appropriateness of the devices available where there are known vulnerabilities.
- Those who may become subject to the duty will be provided with information leaflets whilst either in immigration detention or whilst

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serving a prison sentence. It is planned to offer this leaflet in a range of languages. Amendments have been made to all letter templates which set out a person's immigration bail rights to include reference to the duty. This includes seeking reasons why the person feels that there may be a breach of their Convention rights. Representations are welcomed both before electronic monitoring commences and once it is in place. These representations will help determine whether the use of a non-fitted device will mitigate against any potential breach of Convention Rights posed by the use of a fitted device.

- In addition to information provided by the Home Office those being monitored will provide information from the electronic monitoring Supplier which includes advice on maintaining their device and how to seek assistance from the electronic monitoring Supplier. Leaflets are available in a variety of languages and a phone interpretation service may be used during the fitting of a device if the person being monitored requires this.
- Both the Home Office and the electronic monitoring Supplier provide information relating to the use of personal data in their information leaflets.
- Electronic monitoring conditions are reviewed on a quarterly basis. Compliance with bail conditions, including electronic monitoring, will be a major factor in deciding the type of device used and whether electronic monitoring will remain a condition of that person's bail. Any representations regarding the person's electronic monitoring conditions, including device type or a breach of those conditions will also generate a review - a person can also make representations at any point whilst subject to electronic monitoring and those representations will be considered promptly.
- Any data that is gathered from the GPS devices will be processed automatically and will not be routinely monitored by the department. We have undertaken a Data Protection Impact Assessment in relation to the introduction of GPS monitoring, and devices, which sets out the specific permitted circumstances where data can be accessed, and any access outside of these circumstances is considered a data breach. Those who are subject to electronic monitoring are made aware of the circumstances as to when their data can be accessed during the induction process.

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**6. Review date** February 2024

## **7. Declaration**

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

**SCS sign off:** Jane Sutton

**Name/Title:** Director

**Directorate/Unit:** Foreign National Offenders Command, Immigration Enforcement

**Lead contact:**

**Date:** 15/02/2023

For monitoring purposes all completed EIA documents **must** be sent to the [PSED@homeoffice.gov.uk](mailto:PSED@homeoffice.gov.uk)

**Date sent to PSED Team:**

22/02/2023  
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