

ILPA information sheet

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Immigration Act 2014: Bail

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The Immigration Act contains new restrictions on the right to bail for those detained under immigration powers. There are two material changes:

1. The Act provides that a person cannot be released on bail by the Tribunal where their removal is set to take place within 14 days, unless the Home Secretary consents.
2. The Act provides that the Tribunal must refuse any bail application made within 28 days of a previous application for bail, absent proof of a 'material change of circumstances'

The changes have not yet come into force and full details of how they will work in practice are awaited; this will depend on rules published by the Tribunal Procedure Committee.

(1) New veto of release on bail where removal is within 14 days

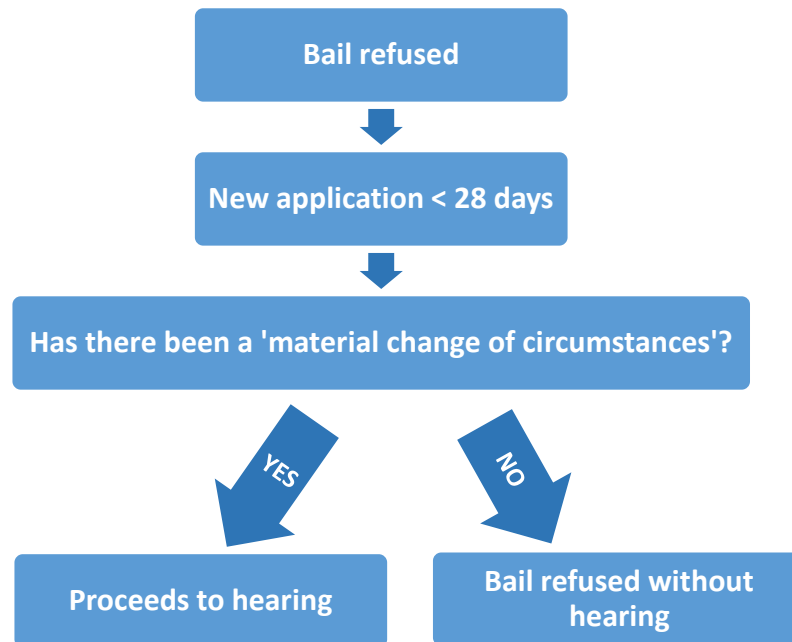
Removal Directions: When a person is to be removed from the UK, "removal directions" are set. This is a letter sent to an airline or shipping company providing details of a person who the Home Office intends to remove using their transportation service. They are separate from the notification to the person concerned that they are to be removed, although very often such notification is effected by serving the person with a copy of the removal directions.

The new veto power: The Act provides that where the Secretary of State has set removal directions, a person cannot be released on bail by the First-Tier Tribunal (Asylum and Immigration Chamber) without the consent of the Secretary of State if the planned removal is within 14 days of the bail decision. It appears that the person will be able to have a bail hearing in the Tribunal and hear whether the tribunal judge thinks that they should be granted bail or not, but that the Secretary of State will have a veto over whether the person is released on bail or not. The Secretary of State will have little incentive to agree to any grant of bail, although an independent tribunal judge has decided in favour of release.

Indeed, in the accompanying [Factsheet on Bail](#), published by the Government with the original Bill, it is stated that only in “exceptional circumstances” would consent be given.

(2) Ban on repeat applications within 28 days

The Act provides that the Tribunal is to dismiss without a hearing any application for bail where it has refused an application within the previous 28 days, unless the person can demonstrate a “material change in circumstances”. This is a change from the status quo, whereby a person can apply for bail as often as they like. The new system will look like this:



In practice this change means that a period of more than 28 days will have to elapse before a subsequent hearing: the *application* cannot be made until 28 days have elapsed, and there will be a further delay until a hearing slot is available in the Tribunal. The length of the delay will vary depending on how busy the hearing centre is; in some there is currently a wait of up to three weeks for a bail listing, well above the Government’s target of three days.

Analysis: The Home Office has acknowledged that it would be an abuse of power for the Secretary of State to make and then cancel successive sets of removal directions in a manner which would frustrate a person’s release on bail.

It will be a matter for the Tribunal to decide whether there has been a material change of circumstances or not. If it decides that there has been, it can proceed with a bail hearing; the Government has no power to interfere in that decision. However the decision as to whether or not there has been a material change in circumstances will be made on the papers, without oral advocacy from the person’s legal representative (bail is one of the areas for which legal aid remains). The Parliamentary debates clarified that the passage of time may constitute a change in circumstances, however it would be difficult to argue that this is a “material change” unless there are specific additional problems for the detainee – it is clear that Parliament considers that a period of at least 28 days should in general elapse before the question of bail is reconsidered by the Tribunal.