



information sheet

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IMMIGRATION ACT 2016: IMMIGRATION BAIL

This information sheet outlines the provisions in the Immigration Act 2016 on immigration bail. The Act introduces new provisions on immigration bail and reenacts existing provisions on bail, in some cases with modifications. These changes are not yet in force. There was, however, one immediate change to the legislation made when the Act came into force on 12 May 2016 and this is discussed below.

Immediate change to bail provisions

The Immigration Act 2016 made an immediate change to bail making it lawful to set bail conditions when a person is released from immigration detention even if they cannot lawfully be detained again. This reversed a judgment of the Court of Appeal which had found that if there was no legal basis for detention, there was no legal basis for setting bail conditions. The change is to be treated as always having been the law so it applies to bail granted in the past, rendering conditions imposed lawful, as well as to the current and future bail provisions.

New concept of immigration bail

Under new provisions not yet in force, temporary admission and bail will be replaced by a single new concept of 'immigration bail'. People without leave will be granted immigration bail whilst their immigration status is being determined if they are not detained. The choice of the term 'immigration bail' is problematic because it makes people sound like criminals when they are not.

Immigration bail may be granted by an immigration officer or, if the person is detained and being released, it may also be granted by a judge of the First-Tier Tribunal (Immigration and Asylum Chamber). It will be subject to conditions such as the requirement to live at a specific address or to report to the Immigration Service as is the case with temporary admission and bail currently.

Electronic monitoring conditions

The Government made a commitment in its election manifesto that foreign national ex-offenders who were not detained should be subject to electronic monitoring ('tagging'). The Immigration Act 2016 therefore contains provisions that will make electronic monitoring a condition of granting bail for many people who face deportation after having committed a criminal offence.

The provisions state that a person who could be detained whilst awaiting deportation must have an electronic monitoring condition imposed as a condition of granting immigration bail unless the Home Office decides it is either impractical or a breach of the person's rights

under the European Convention on Human Rights to do so. The measure is likely to be brought into force with transitional provisions enabling the Home Office to bring it in gradually for different groups of people.

The Immigration Act 2016 prevents a Tribunal Judge of the First-tier Tribunal from imposing an electronic monitoring condition if the Home Office decides this is impractical or a breach of a person's human rights. The Tribunal is also prevented from changing or removing an electronic monitoring condition imposed by the Home Office. This is a problem because the Tribunal may assess that an electronic monitoring condition would breach an individual's human rights and it has a duty to act in a way that is compatible with the European Convention on Human Rights but, according to the Act, it will have no power to change the condition in line with its duty to respect human rights. The individual affected would therefore have to challenge the Home Office decision in the High Court. The difficulties may lead to the legislation being challenged in the courts.

Support and accommodation to meet conditions of bail

The Immigration Act 2016 will make significant changes to the system of Home Office support and accommodation. These are not in force but will include the repeal of section 4 of the Immigration and Asylum Act 1999 under which many people released from immigration detention on bail are able to access support and accommodation. ILPA's information sheet on [Home Office support and accommodation](#) explains the changes that follow from the repeal, the groups who will continue to be able to access support and the gaps in provision.

Despite the changes, there is a general power in the Immigration Act 2016 for the Home Office to provide support and accommodation in exceptional circumstances to a person on immigration bail who has no other access to support so that they can meet the conditions of their immigration bail. This is a necessary power because if people are not able to secure release from detention because they do not have support and accommodation to meet the conditions of bail, this would breach their right to liberty. It is unclear at the moment how the process for accessing support and accommodation under this power will work in practice.

Duty to arrange consideration of bail

The Government was placed under pressure in parliament to introduce a time limit for immigration detention and ensure greater scrutiny of detention by the courts. A form of automatic bail hearing, limited to immigration detainees who are not facing deportation, was introduced by the Government but is not in force yet.

The Home Office will have a duty to arrange a bail hearing before the Tribunal for an immigration detainee four months after the date of their detention or four months after the date of their last bail hearing. Detainees may still make a bail application and arrange a bail hearing themselves but this new 'automatic' bail hearing will ensure that detainees who have not been able to make an application for bail are brought before a Tribunal at least every four months so that the Tribunal can consider bail in their case.

Individuals who are detained whilst they face deportation (because they have committed a criminal offence leading to their being deported rather than removed under normal processes) will not benefit from this safeguard however. This is a concern because it is this group of immigration detainees who have, to date, experienced the longest periods of indefinite detention.