



information sheet

Draft Bill – Immigration Bail

1st December 2008

In July 2008, the Government published the draft (partial) Immigration and Citizenship Bill. This information sheet provides information about the new status of ‘immigration bail’ which is proposed by the draft Bill. It is proposed that immigration bail will replace temporary admission, temporary release and bail.

General information on the draft Bill is available from the “Draft (partial) Immigration and Citizenship Bill” information sheet.

Temporary admission

Someone who arrives in the UK without leave to enter may be detained while the UK Border Agency consider whether he or she should be given leave to enter or removed from the UK. If leave to enter is refused, he or she may be detained while any appeal is dealt with or pending his or her removal from the UK.

However, in many instances the UK Border Agency will not detain someone in these circumstances. Instead, the person may be granted temporary admission. Many asylum-seekers are granted temporary admission while their asylum claims and appeals are considered. Many of those accepted to be refugees, or granted some other status in the UK (e.g. discretionary leave or humanitarian protection), will never be detained. Indeed, some of those who are refused asylum and required to leave the UK may also never be detained – particularly if they make a voluntary departure.

Bail and temporary release

Someone who is detained may apply for bail. Bail may be granted by a Chief Immigration Officer or by the Asylum and Immigration Tribunal (AIT). Temporary release is essentially the same as a grant of bail, but may only be granted by a Chief Immigration Officer.

People granted bail are required to give a recognizance – i.e. promise that they will abide by conditions of bail, failing which they will forfeit an agreed sum of money. Asylum-seekers are usually asked to give a recognizance of no more than £5 or £10.

Sometimes sureties are required before the AIT or Chief Immigration Officer will grant bail. A surety is someone who gives a recognizance for someone else – i.e. the surety promises that the other person will abide by conditions of bail, failing which the surety will forfeit an agreed sum of money. Sureties may be asked to give a recognizance of varying amounts (ranging from £50 or £100 to several thousands of pounds) depending on the individual case and the financial resources of the surety.

Although there is power to require a sum of money to be deposited as a recognizance, this is generally not done.

Conditions of temporary admission, temporary release and bail

The conditions that can be applied to temporary admission, temporary release and bail are essentially the same. However, it will often be the case that conditions of bail are stricter than conditions applied to someone on temporary admission.

ILPA information service

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Reporting and residence conditions will usually be included. A reporting condition is where someone is required to report to the UK Border Agency (or sometimes to a police station). The frequency of reporting will vary in individual cases. A residence condition requires a person to live at a specified address. If the person wishes or needs to move address, he or she may need to first obtain permission and will need to keep the UK Border Agency informed of the address.

In most cases, someone will not be permitted to work. Electronic monitoring conditions may also be included. This can include electronic tagging.

Breaching a condition of temporary admission or bail (or temporary release) is a criminal offence.

The proposed new status – ‘immigration bail’

The draft Bill proposes to replace temporary admission, temporary release and bail with one status – immigration bail.

Clause 64 of the draft Bill also proposes that a financial deposit (or bail bond) could be imposed as a condition of immigration bail. The money would have to be deposited with the UK Border Agency. This would differ from current arrangements in two respects:

- a recognizance is not currently required to be deposited – by requiring a deposit, the draft Bill could require people to give up substantial sums of money for very long periods of time (some people currently remain on temporary admission or bail for many months or years)
- those on temporary admission are not required to give a recognizance or have sureties – by eliminating the distinction between temporary admission and bail many more people (including those who have never been detained) could be required to deposit money or have sureties who must deposit money

Under the draft Bill, the UK Border Agency and the AIT would continue to have power to grant bail to someone who was detained. However, the draft Bill would give important powers to the UK Border Agency to interfere with the AIT’s powers to grant bail:

- the AIT could not grant bail where it was said that a person’s removal was imminent unless the UK Border Agency gave its consent (clause 62(3))
- the UK Border Agency could vary the conditions of bail set by the AIT or impose additional conditions to those set by the AIT (clause 68)

Any breach of bail conditions would continue to be a criminal offence (clause 116).

The effect of making these changes

The changes would greatly restrict access to bail for those in immigration detention. People detained would be far less likely to obtain sureties because of the need for a surety to deposit money for what may be many months or even years. Where the UK Border Agency said removal was imminent, the AIT could be precluded from granting bail – this could include cases where the UK Border Agency was not able to remove the individual despite saying the removal was imminent. Where bail was granted, the UK Border Agency could impose much stricter conditions than the AIT even though the AIT did not consider these were necessary.