Courts and Tribunals Judiciary

Judge Plimmer, President of the First-tier Tribunal (Immigration and Asylum Chamber)
Presidential Guidance Note No 1 of 2024 (Implemented on 31 January 2024)

Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber)

CONTENTS

INTRODUCTION

1. This Guidance Note replaces Bail Guidance Note No 1 of 2023 and its updates.

2. This guidance is directed to Judges of the First-tier Tribunal ("judges"). In response to requests from judges, the guidance seeks to be concise and to focus on practical issues. Judges should familiarise themselves with schedule 10 to the Immigration Act 2016 ("the 2016 Act"), which is annexed to this guidance.

3. Guidance can never be exhaustive. Judges are expected to adapt the principles and practices described below when deciding whether to grant immigration bail.

GENERAL PRINCIPLES

4. Liberty is a fundamental right of all people and can only be restricted if there is no reasonable alternative. This principle applies to all people in the UK, including foreign nationals.

5. Home Office guidance to staff states that,

> "•there is a presumption in favour of granting immigration bail - there must be strong grounds for believing that a person will not comply with conditions of immigration bail for detention to be justified.
> • all reasonable alternatives to detention must be considered before detention is authorised."[1]

6. Immigration detention cannot be used as punishment, as a deterrent or for any coercive purpose. Immigration detention cannot be used to prevent or restrict the establishment of family or private life, or to prevent or restrict an applicant from pursuing lawful action to remain in the UK.

7. When considering whether to grant bail, judges are not deciding whether continued detention is lawful.

8. It is accepted that detention for three months would be considered a substantial period and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.

9. Judges should be slow to interfere in case where a person is detained for the expedited examination of an immigration application, such as a protection claim, where detention can be shown to be necessary and justified. However, judges should not tolerate delays in such actions.

The power to grant immigration bail

10. The power of the First-tier Tribunal (hereinafter "the Tribunal") to grant immigration bail

[1] Home Office – Detention: General Instructions version 3.0 (28 September 2023)

is contained in paragraph 1(3) of schedule 10 to the 2016 Act. A person detained under the provisions listed therein can be granted immigration bail either on application by that person or by reference by the Secretary of State ("auto-referral").[2]

11. When considering whether to grant immigration bail, and the conditions of immigration bail, the Tribunal must have regard to the matters listed in para 3(2) of schedule 10 to the 2016 Act, as amended by section 48 of the Nationality and Borders Act 2022. These are:

    (a) The likelihood of the person failing to comply with a bail condition,
    (b) Whether the person has been convicted of an offence,
    (c) The likelihood of a person committing an offence while on immigration bail,
    (d) The likelihood of a person's presence in the UK while on immigration bail causing a danger to public health or being a threat to the maintenance of public order,
    (e) Whether the person's detention is necessary in that person's interests or for the protection of any other person,
    (ea) Whether the person has failed without reasonable excuse to cooperate with any process—
        (i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom,
        (ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,
        (iii) for determining whether the person's leave to enter or remain in the United Kingdom should be varied, curtailed, suspended or cancelled,
        (iv) for determining whether the person should be removed from the United Kingdom, or
        (v) for removing the person from the United Kingdom, and
    (f) Such other matters as the Tribunal thinks relevant.

12. The first specified matter in para 3(2) relates to the likelihood of a person failing to comply with a bail condition. Judges will need to take a preliminary view as to what bail conditions might be imposed. Judges are reminded they must always assess and impose the minimum conditions needed because to do more would be to act disproportionately. Any bail condition is a restriction of liberty, albeit less restrictive than detention. A grant of bail cannot be unconditional. On granting bail at least one condition must be imposed[3].

13. Detailed guidance on how judges should approach these matters and issues is given below.

The conditions of immigration bail

14. Where immigration bail is granted to a person, a judge must impose one or more conditions. These are listed in paragraphs 2(1), 2(3), 2(4) and 5 of schedule 10 to the 2016 Act. These are:
    (a) An "appearance date condition", requiring the person to appear before the Secretary of State or the Tribunal at a specified time and place,
    (b) An "activity condition", restricting the person's work, occupation or studies in the UK,
    (c) A "residence condition", specifying where the person is to reside,

[2] The duty on the Secretary of State to arrange consideration of bail is contained in para 11 of schedule 10 to the 2016 Act.
[3] See para 2(1) of Schedule 10 to the 2016 Act.

(d) A "reporting condition", requiring the person to report to the Secretary of State or such other person as may be specified,

(e) An "electronic monitoring condition" (meaning a condition requiring the person to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means the location, presence or absence of the person at specified times or periods), which may be in place of a reporting condition and in some cases will be mandatory[4],

(f) Any other condition a judge granting immigration bail thinks fit.

15. The judge may also impose a "financial condition" (meaning a condition requiring the payment of a sum of money by the person to whom immigration bail is granted or another person in a case where the person granted bail fails to comply with another condition of bail). This must only be imposed if a judge thinks that it would be appropriate to do so with a view to ensuring that the person granted bail complies with the other bail conditions.

16. Detailed guidance on how judges should decide what conditions to impose is given below.

APPLICATION FOR IMMIGRATION BAIL

17. An application for immigration bail should be made on form B1. This form is available at immigration removal centres, from the Tribunal and online. The bail application will be listed for hearing as soon as possible, normally within 3-6 days.

18. The respondent (the Home Office) is required to provide a bail summary on the day prior to the hearing, in accordance with rule 40 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the Procedure Rules"), which should include:

(i) any concerns in relation to the factors listed in paragraph 3(2) of schedule 10 to the 2016 Act,

(ii) the bail conditions being sought should bail be granted and,

(iii) whether removal directions are in place.

19. The applicant, especially if legally represented, is encouraged to focus on the same factors in the grounds for bail or in a skeleton argument.

20. Certain bail applications can be made online using "MyHMCTS" and the intention is that all bail applications will be able to use this facility.

BAIL HEARINGS

21. Considering the issues to be assessed, a bail hearing differs from an appeal hearing because it is a risk assessment. Although it remains an adversarial setting[5] the narrow

[4] See para 2(2) of schedule 10 to the 2016 Act for when electronic monitoring is mandatory.

[5] See R (AR(Pakistan)) v SSHD [2016] EWCA Civ 807, at 11.

focus and the need for the parties to present their principal arguments in advance means it is open to a judge to ask questions directly of those present to obtain clarification of evidence and information. Bail hearings will often have the appearance of an inquisitorial hearing.

22. Bail hearings normally take place remotely using videoconferencing. If an applicant is unwilling to participate in a bail hearing using such equipment, he/she may request to attend the bail hearing in person and a judge will decide whether the person should be produced at the hearing centre. The applicant may ask for the bail hearing to go ahead in his/her absence.

23. All those involved in an application, including any persons offering to support a financial condition, should be present at the start and at the end of the proceedings. In most cases they will stay throughout but, depending on the issues to be decided, it may be necessary to exclude some persons from parts of the hearing, but this will be a matter for the judge to decide.

24. The judge should ensure that any person offering to support a financial condition is present at the end of the hearing so they hear the decision and reasons.

25. A bail hearing will usually deal with the following elements:

    (a) Introduction of the proceedings and those present.
    (b) Practical checks that the video-conferencing equipment is working, that any interpreters are suitable and that both parties have the same documents as held by the Tribunal.
    (c) Confirmation each party has the grounds for bail and the bail summary, both of which should focus on the matters listed in para 3(2) of schedule 10 to the 2016 Act.
    (d) Identification of the date the person seeking immigration bail entered immigration detention, if not obvious from the chronology set out in the bail summary.
    (e) Confirmation that the chronology in the bail summary is accurate and, if necessary, its correction.
    (f) Removal directions, if applicable.
    (g) Consideration of any additional documentary evidence or argument, which may be admitted subject to the overriding objective[6].
    (h) Time for each party to address the judge on:
        i. the matters listed in para 3(2) of schedule 10 not already covered in the bail grounds and bail summary,
        ii. any other matter the judge thinks relevant, and
        iii. the minimum bail conditions they think are necessary in this case.

    (i) Where a person seeking bail does not have legal representation, a judge may ask them for their comments on each of the matters listed in para 3(2) of schedule 10 and in response to any other relevant matter identified by the judge.
    (j) If the judge decides a financial condition is appropriate with a view to ensuring the person granted bail will comply with other bail conditions, documentary

[6] Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

evidence will normally have been provided. Where such evidence is inadequate, or questions remain, an examination of the proposed financial condition and any person supporting the financial condition may be necessary.

(k) A decision on whether to grant bail.

(l) If bail is granted, a decision on the condition or conditions that are to be imposed.

(m) If bail is granted, and after an opportunity has been given to the bail party and any financial condition supporters to make representations, a decision on the transfer of management of bail to the Home Office.

26. An oral decision will be given at the conclusion of the bail hearing, and this will be supplemented by a written decision.

27. The written grant of bail will be prepared and issued immediately after the hearing.

28. Written refusals of bail should usually be prepared immediately after the conclusion of the hearing and issued to the parties.

29. Because of the narrow issues to be considered, in most cases it will be unnecessary for examination-in-chief or cross-examination to be undertaken of the applicant or other persons present. Nor will there be a need for closing submissions. The nature of a bail hearing means the judge will take the lead and will expect the parties to co- operate to promote the overriding objective.

DECIDING WHETHER TO GRANT IMMIGRATION BAIL

30. A judge will only grant immigration bail after having regard to all the matters listed in para 3(2) of schedule 10 to the 2016 Act (as amended by the Nationality and Borders Act 2022). By virtue of paragraph 3(3) of schedule 10 to the 2016 Act, the tribunal has no power to grant bail to a person who is being detained under paragraph 16(1) of schedule 2 to the Immigration Act 1971 (illegal entrants) until after the period of 8 days beginning with the date of the person's arrival in the UK.

31. There is no obvious priority to the matters listed and a judge will reach a decision based on the matters in the round. To grant bail, a judge must be satisfied that no one matter is sufficient to refuse bail and that, when taken cumulatively, the matters are not sufficient to refuse bail.

32. It is for the immigration authorities[7] to show it is more likely than not that there is no reasonable alternative to detention. In all cases involving people detained under immigration powers, the first reason for detention is to enable the immigration authorities to carry out their functions. Safeguarding is a secondary purpose of detention and includes preventing a person absconding, if released.

33. Where immigration detention is no longer justified, bail should be granted.

34. The following points provide guidance on how the risks arising from the specific matters

[7] The term "immigration authorities" is used throughout this guidance to refer generically to Immigration Officers and the Secretary of State for the Home Department, each of whom can exercise the power to detain foreign nationals.

listed in para 3(2) may be assessed. Similar principles should be applied to any other matter the judge thinks relevant.

The likelihood of the person failing to comply with a bail condition

35. The first matter listed requires a judge to assess the likelihood of the person failing to comply with a bail condition. This will be assessed in terms of the evidence provided and what is reasonably foreseeable.

36. A judge will consider the evidence and arguments presented in each individual case. Judges will often face a mixture of factors and it will be for them to decide the weight to give the various factors and to balance them.

37. Although not required by legislation, it has long been the practice of the Tribunal to set as the minimum conditions of bail an appearance date condition and a residence condition. A reporting condition is unlikely to be appropriate where management of bail is being transferred to the Home Office because the Home Office will set reporting conditions at the appearance date. A residence condition should only be imposed where a person is required to reside at a particular address for bail monitoring purposes (so may be unnecessary where there is an electronic monitoring condition). Consequently, the minimum is likely to be an appearance condition (paragraph 60-62 below).

38. The risk of absconding, by which is meant a failure to appear or report as required, is likely to be low if the person seeking bail proposes to reside at a stable address, has active support from friends or relatives and there are good reasons to keep in contact with the Tribunal or the immigration authorities, such as a pending immigration application, appeal or judicial review.

39. The risk of absconding is likely to be low where the applicant is subject to criminal licence, which will provide for supervision and monitoring by the Probation Service.

40. If there is no imminent prospect of removal, this is a factor which may point to a low risk of absconding. Removal will always be treated as being imminent if scheduled within 21 days of the bail hearing, in which case para 3(4) of schedule 10 will apply so as to require the Secretary of State's consent to bail being granted (see below, from para 114). A judge may consider removal as being imminent where removal directions have been set, even if longer than 21 days hence, and where there is evidence removal action is actively being sought.

41. Where removal is being progressed but the timescale for removal is unclear the Home Office Country returns guide may help in providing clarity as to the process and timescale for removal.[8]

42. Where it exists, a person's previous conduct with the immigration authorities, the police, probation, courts or other agencies may be useful indicators of the risk of non-compliance. This is provided for in paragraph 3(2) (ea) of schedule 10 (see above). Conversely a positive history of interaction with such authorities may be a good indication that the risk of absconding is low. Where there is no mention in the bail summary of previous adverse conduct issues it should be accepted that the history of interaction has been positive.

[8] https://www.gov.uk/government/publications/country-returns-guide

43. The more stable a proposed bail address, the lower the risk of absconding. An address is likely be more stable where there is reliable evidence the person has lived there before, where the person has permission to live at the address, and where other people in the property have an interest in ensuring the person complies with the residence condition. The absence of these factors does not mean the address is not suitable. Each case must be decided on its own merits.

44. Where the release of a person would pose safeguarding concerns, a judge may consider imposing additional conditions. Additional/alternative bail conditions are discussed in more detail below.

45. Such conditions will be appropriate only if there is evidence that there is a safeguarding concern, usually identified from a person's previous conduct in the UK or elsewhere. The likelihood of compliance should be assessed in terms of the person's conduct to date, including any rehabilitation that might address the safeguarding issue.

46. In all cases, a judge can impose a financial condition but should only do so where it is considered appropriate to ensure that the person released on immigration bail complies with one or more of the other bail conditions. As such, a financial condition is a mechanism to reduce the risk of non-compliance to an acceptable level, which means a level where a judge is satisfied it is more likely than not that the person will comply with the other bail conditions. The condition(s) which the financial condition is intended to support should be specified.

Whether the person has been convicted of an offence

47. This is the second factor listed in para 3(2) of schedule 10 to the 2016 Act. Whether a person has been convicted of an offence will be a matter of fact and will not usually be in dispute. In the absence of any other evidence, a Police National Computer (PNC) printout will usually be sufficient to establish that a person has been convicted.[9]

48. A PNC printout may record convictions in EU member states but may be incomplete, particularly if the offending took place post-Brexit. It will not include convictions elsewhere. The immigration authorities may rely on other evidence or on a person's admissions regarding convictions elsewhere when raising any safeguarding issues.

49. The fact a person has been convicted of an offence may raise a safeguarding issue but, if the person is subject to a criminal licence, the licence conditions should normally be sufficient to address any concerns. It will be for a judge to decide the weight to give to any safeguarding concern and may include consideration of the date of the last conviction(s), behaviour since, the impact on the public and any risk assessments undertaken by professionals, such as the Probation Service.

50. Where the evidence shows the risk of further offending is low, either because of a professional assessment or because the offence relied upon by the immigration authorities is historical, then a judge is likely to find there is little or no safeguarding risk.

51. A risk assessment by the Home Office is not a professional risk assessment and is unlikely

[9] The National Police Chiefs Council (NPCC) has confirmed the immigration authorities can provide PNC printouts to the Tribunal when relevant for immigration bail hearings.

to be afforded any weight.

*The likelihood of a person committing an offence while on immigration bai*l

52. This is the third matter to be considered when determining whether to grant immigration bail. The likelihood will relate directly to the person's criminal history and any professional risk assessments should be produced. In the absence of such assessments, a judge is likely to decide that the risk a person may commit an offence while on immigration bail will be higher where the person has a history of offending, where the history of offending is recent and where the person does not have support or guidance available to reduce the risk of offending. Where support and guidance are present, these factors may reduce the risk.

53. Where the person is subject to a criminal licence the licence conditions should normally be sufficient to address any concerns, particularly as recall is likely to be a stronger sanction than any restrictive bail conditions. Note that only people subject to a licence can be recalled. There is no power to recall people subject to post-sentence supervision, although there are criminal sanctions for breaching PSS.

The likelihood of the person's presence in the UK on bail causing a danger to public health or being a threat to the maintenance of public order

54. This is the fourth matter in para 3(2). It is for the immigration authorities to prove that it is more likely than not that a person poses a danger to public health or to the maintenance of public order. In the absence of reliable evidence, judges will find the likelihood of such matters is low and this alone will not be a reason for refusing bail.

55. Where evidence is provided, it will be assessed in ways analogous to the examples already given. Where evidence is considered sensitive, either party may apply for a direction under rule 13 of the Procedure Rules prohibiting disclosure, but the Tribunal will be slow to restrict the evidence available to the other party.

Whether the person's detention is necessary in that person's interests or for the protection of any other person

56. Judges should avoid immigration detention being used in place of other powers of detention, such as on remand or under the Mental Health Acts but it is possible for a person to be "dual detained", by which is meant that they may be detained by more than one authority and for more than one purpose.

57. Where a person is dual detained, if the judge decides immigration bail should be granted (for example, because there is no longer justification for continuing immigration detention), the person will not be released because they will remain detained by the other authority.

Whether the person has failed without reasonable excuse to cooperate with any process

58. The bail summary will detail any issues regarding the bail applicant's conduct that respondent considers should be taken into account. The applicant must be given the opportunity to respond and to provide any reasonable excuse.

DECIDING THE CONDITIONS OF IMMIGRATION BAIL

59. Immigration bail is an alternative to immigration detention and the conditions of immigration bail must provide sufficient reassurance to the judge that the person released will maintain contact and cooperate with the immigration authorities and Tribunal as required.

Appearance date condition

60. It has long been the practice of the Tribunal to set as the minimum conditions of bail an appearance date condition and a residence condition because these were considered necessary to monitor a grant of bail and to minimise the risk of absconding. For the reasons given below (paragraphs 63 and 64) a residence condition is no longer always required.

61. An appearance date condition will be a date when the bail conditions can be reviewed by the Home Office and onward reporting conditions imposed.

62. Where management of bail is transferred to the Secretary of State there is no need to impose a reporting condition (see below, from para 107).

Residence condition

63. A residence condition may be imposed to ensure the person granted bail can be located. Judges should distinguish a 'bail address' from a 'residence condition'. The Home Office position is that where a stable bail address is available a condition requiring the person to live at that address will not normally be appropriate.

64. Judges should not automatically impose a residence condition. This fits with the general principle that bail conditions should be the minimum necessary. Judges will remember that it is for an applicant to show that a proposed bail address is a stable address. The factors outlined in paragraphs 38 and 43 may be relevant in deciding whether a bail address is stable.

65. Where a person who has an outstanding asylum application cannot offer a bail address, a judge may consider whether they might be eligible for support under schedule 11 to the 2016 Act. If the applicant is so entitled, the judge can grant bail conditional upon an address being provided within a suitable period and the applicant being released immediately the address is available[10]. The period can be extended on application, and by consent, if necessary. If the likelihood of a bail address becoming available within a reasonable period is low, then it will be appropriate to consider whether other conditions can be applied in the meantime rather than refusing bail.

66. The Secretary of State must be notified of the proposed bail address as soon as possible to enable the immigration authorities to carry out checks so that they can decide if they consider the address is suitable. The immigration authorities may advise the Tribunal they have not had sufficient time to carry out background checks. If a judge is satisfied that is the case, then it will be for a judge to decide whether there is sufficient other

[10] Paragraph 3(8) of schedule 10 to the 2016 Act permits a grant of immigration bail being conditional on arrangements being put in place.

evidence about the suitability of the address to make a decision about a residence condition. If there is insufficient other evidence, then it will be unlikely a residence condition can be imposed, and the judge should consider whether other bail conditions will be sufficient to address the risk of absconding before refusing bail.

67. If the immigration authorities oppose a proposed bail address, they must provide evidence to substantiate their objection. Speculation or generic arguments will not be sufficient. Judges will examine concerns raised by the immigration authorities about the suitability of a bail address but should not make decisions based on suspicion or speculation.

68. In the absence of any evidence to the contrary, judges will assume:
    (a) landlords will give permission for an applicant to live in a property, and
    (b) where a person is subject to a licence that a probation officer will approve the bail address if the immigration authorities have no specific concerns about that address other than the absence of express approval from a probation officer.

69. Foreign National Offenders who have completed their custodial sentence are usually subject to licence conditions requiring them to live at an address approved by a probation officer. It should usually be unnecessary to impose such a condition as a requirement of immigration bail (the purpose of which is of course to ensure the immigration authorities can affect immigration control) and therefore unnecessary to have a review hearing and unnecessary to continue the person's immigration detention. This is because the approval of the address and therefore the release of the applicant is a matter for the criminal authorities.

70. Judges should not be concerned as to whether release will breach licence conditions. This is not a matter that should affect immigration bail. The issue for the judge is whether the applicant will comply with the conditions of bail, applying the factors listed in paragraph 3 of schedule 10 to the 2016 Act. Releasing an applicant without an address would not in any event place them in breach of the licence condition to reside in approved premises.

71. Licence conditions are designed to mitigate the risk of reoffending and/or the risk to the public and it will only be in exceptional circumstances that immigration detention could be justified to prevent reoffending or risk of harm.

Reporting condition

72. A reporting condition is imposed to ensure the person granted bail maintains regular contact with the immigration authorities or the Tribunal. This serves to remind the person that they remain subject to immigration control. A reporting condition will only be appropriate where management of bail is not transferred to the Home Office.

Activities condition

73. A judge can impose a condition restricting the person's work, occupation or studies in the UK. Judges should not impose such conditions where the law already restricts such activities, such as where the person has no right to work, because a judge should impose the minimum bail conditions necessary and, if a person's activities are already restricted by law, there can be no need for such a bail condition (cf Lauzikas v SSHD [2016] EWHC 3215 (Admin)).

74. Where a person's activities would not be restricted upon release, a judge may impose an activities condition where there is a safeguarding issue. An activities condition restricts a person's liberty beyond what would normally be expected.

75. A judge may wish to bear in mind that employment and studying may be factors that establish that a person is unlikely to abscond.

76. In most cases an activities condition will not be appropriate unless there is specific evidence from the Home Office that such a condition is necessary to ensure that a person maintains contact with the immigration authorities.

Electronic monitoring condition

77. An electronic monitoring condition can be imposed on any person granted bail and must be imposed where a person is pending deportation (see para 2(1)(e) and para 2(3) of schedule 10 to the Immigration Act 2016). In practice this applies from a stage 1 deportation decision onwards.

78. Judges must not impose an electronic monitoring condition if informed by the Secretary of State that such a condition would be impractical or contrary to the person's protected human rights (see para 2(7) of schedule 10), even if the person is to be deported. Where electronic monitoring is mandatory judges have no power to decide whether an electronic monitoring condition would be impractical or contrary to a person's protected human rights.

79. In cases where an electronic monitoring condition is not mandatory, before imposing such a condition, judges should consider the following factors:
    (a) Is such a condition necessary? Where there is no significant safeguarding concerns, which might include a serious risk of absconding or of future criminality, then such a condition will usually be unnecessary.
    (b) Is such a condition practical? Where the immigration authorities do not have facilities for electronic monitoring, then such a condition should be avoided.
    (c) Would such a condition be contrary to the person's protected human rights? Electronic monitoring is unlikely to be appropriate where such monitoring may aggravate a physical or mental health condition.

80. Para 4 of schedule 10 to the Immigration Act 2016 specifies the requirements that must be in place for an electronic monitoring condition. Paragraph 4(1) requires the person on whom an electronic monitoring condition is imposed to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means the person's location, presence or absence from a location during or at specified times and locations. Para 6(5) of schedule 10 prohibits the Tribunal from amending an electronic monitoring condition, which is an exception from the general power to vary bail conditions.

81. Electronic monitoring is based upon a GPS system supported by mobile telephone SIM technology and does not require an installation at the applicant's proposed residence. A standard electronic monitoring condition (agreed by the Tribunal with the Home Office) allows detention to be maintained for up to 72 hours to facilitate the fitting of the monitoring device.

Financial condition

82. Paragraph 5 of schedule 10 to the 2016 Act permits the Tribunal to impose a financial condition. Paragraph 5(2) states that a financial condition "may be imposed on the person to be granted immigration bail only if the person imposing the condition thinks that it would be appropriate to do so with a view to ensuring that the person complies with the other bail conditions". Accordingly, a financial condition cannot be imposed in isolation and should be the exception and not the rule.

83. Paragraph 5(1) explains that a financial condition is a condition requiring the payment of a sum of money by the person to whom bail is granted or another person in a case where the person granted bail fails to comply with another condition to which their immigration bail is subject.

84. A financial condition is not a pre-requisite of immigration bail. In each case, if a judge is satisfied that a person will comply with the conditions of bail, a financial condition will not be required. Where there is some doubt that a person will comply with the bail conditions, a financial condition might provide additional weight to permit the judge to be satisfied the person is more likely than not to comply with the other bail conditions. If a financial condition is imposed the financial condition supporter must acknowledge their responsibility. As release cannot take place until this has been done, judges should be flexible as to how this is achieved and an email or electronic signature should suffice.

85. Judges will bear in mind that it is rarely appropriate to impose a financial condition on the person to be released on bail because they will rarely have the means to pay anything but a notional sum and indeed where the person has absconded the condition cannot be enforced.

86. Where a judge decides that a financial condition is necessary to reduce to an acceptable level the risk of non-compliance with the other bail conditions, they will evaluate the level of the financial condition and the ability of the person supporting the financial condition to meet that sum. The bail condition that the financial condition is intended to support should be specified to enable the financial condition supporter to understand the risk they are guaranteeing. If, for example, the financial condition is to support the bail applicant's appearance condition only, then the financial condition supporter will have discharged their duty once the bail applicant appears.

87. Because the financial condition is an additional mechanism for reducing the risk of non-compliance, it will rarely be necessary to question the person supporting the financial condition about whether they have any influence over the person to be released on immigration bail. Their suitability will depend on any adverse evidence about their character, such as a relevant criminal record, their own immigration status and whether there is reliable evidence they would be able to cover the financial condition or their part thereof.

88. In all cases, judges must be cautious about imposing a financial condition simply because one is offered. A judge must only impose the minimum bail conditions necessary and do no more because bail conditions are themselves a restriction of liberty.

Payment Liability (formerly known as forfeiture)

89. Liability to pay Financial Conditions will be dealt with by the Secretary of State unless there has been no transfer of the management of bail.

90. When considering any question of liability, the Tribunal has power to order the whole sum to be paid or a part thereof. This is implicit in the provisions of paragraph 5(6) of schedule 10, which require the person who is liable to make a payment to be given an opportunity to make representations. It is also possible for the Tribunal under para 6, if it retains management of the bail conditions, to vary the financial condition at any time, including in relation to a question of liability to pay.

Other common issues relating to bail conditions

91. Judges should ensure they do not impose an immigration bail condition that conflicts with other restrictions on an applicant, such as those of a criminal licence. Similarly, where an applicant is already subject to restrictions as a matter of law, for example relating to their permission to work, there will be no need for a judge to impose such a condition.

92. Because judges must impose the minimum bail conditions, they should not adopt the restrictions imposed by another authority, most commonly licence conditions, as bail conditions. To do so will be unnecessary since the applicant is already subject to those conditions. In addition, imposing such restrictions as immigration bail conditions might introduce confusion as to who is responsible for monitoring compliance and the consequence of any failure.

93. Judges may remind parties that the decision not to impose such restrictions as bail conditions does not remove the duty on the applicant to comply with the other restrictions.

FURTHER MATTERS

Bail reviews

94. Where a judge has found it necessary when granting conditional bail to give directions for a review to ascertain whether a condition material to release has been satisfied the review may, at the discretion of a judge, be listed 'on the papers'.

Bail decisions (including withdrawals)

95. As in all judicial decisions, the parties are entitled to know not only the judge's decision but the reasons for that decision. A record of the decision and reasons also assists the Tribunal in relation to any subsequent application or other matter related to bail.

96. To ensure clarity, any written reasons, including reasons for accepting an application is withdrawn, must be typed.

97. Where immigration bail is granted, written reasons are not usually issued to the parties. A judge should, however, explain to the parties why bail has been granted and should record brief typewritten reasons in the record of proceedings.

98. Typewritten reasons for proposing to grant immigration bail must be given where

directions are in place for the applicant's removal from the UK within 21 days. This is to ensure the Secretary of State can consider whether to consent to grant immigration bail (see para 3(4) of schedule 10 to the Immigration Act 2016).

99. Typewritten reasons for refusing immigration bail must be given in all cases.

100. Judges should not encourage the withdrawal of bail applications as an alternative to refusing bail. The giving of any preliminary view should be for the purpose of crystallising a decision, enabling the parties to provide any counter evidence or argument. In other words, the giving of a preliminary view must not be used as an alternative to deciding the application.

101. These principles are needed because the provisions relating to repeat bail applications (see para 12 of schedule 10) can only be effective if the Tribunal is robust in its handling of bail applications. Written reasons for refusing bail will assist a person to focus a fresh application and will help the Tribunal, where applicable, to decide whether there has been a material change in circumstances since a previous application. Addressing the reasons for refusal will almost always be evidence of a material change.

102. Where an applicant seeks to withdraw an application on the day of the hearing, either prior to the bail hearing commencing or during the hearing, judges may have more regard to the above principles because it is likely at that stage in the proceedings that it will be in the interests of justice to refuse bail rather than accept the withdrawal.

103. Where the immigration authorities release a person prior to a bail hearing, the Tribunal has no jurisdiction to entertain a bail application because the person is no longer detained, and such situations must not be treated or recorded as a "deemed withdrawal".

104. In all cases, reasons should be succinct and objective, and must be based on the individual circumstances of the person's bail application. The reasons should be brief and address as far as necessary the issues specified in paragraphs 3(1) and 3(2) of schedule 10 to the 2016 Act.

Auto-referral

105. Judges should be alert to the fact that the Secretary of State in certain circumstances has a duty to arrange consideration of bail and must arrange a reference to the Tribunal to decide whether to grant bail (see paragraph 11 of schedule 10 to 2016 Act).

106. Judges should approach such cases in the same way as if a person applied for immigration bail. Judges will have special regard, however, to the length of detention since the duty on the Secretary of State is only engaged after a period of four months' detention. It is generally accepted that detention for three months would be considered a substantial period of time and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.

Transfer of bail to the Secretary of State

107. Paragraph 6(3) of schedule 10 permits the Tribunal to direct that the Secretary of State exercises the power to amend, remove or impose new conditions of bail. Where the Tribunal so directs, bail is transferred from the Tribunal to the Secretary of State. Transfer of bail can be directed in all cases. Once a transfer has been made, the Tribunal cannot

take back management of bail in order to vary it.

108. Judges must consider the overriding objective when deciding whether to direct bail to be transferred to the Secretary of State. A judge must balance issues relating to justice with those of efficiency.

109. The Tribunal may not give a direction to transfer bail without first giving the bail party and any other person subject to a financial condition an opportunity to make representations.

110. The fact that a person opposes bail being transferred to the Secretary of State is not sufficient reason not to transfer bail. It is for a judge to decide what is in the interests of justice, having regard to the overriding objective.

111. In general, where a judge imposes bail conditions equivalent to those requested by the immigration authorities, it will be appropriate for a judge to direct that bail is transferred to the Secretary of State. This is because there will be no realistic prospect of the Secretary of State imposing more stringent conditions.

112. Where a judge directs that bail is to be transferred to the Secretary of State, there is no need to impose a reporting condition in addition to an appearance date condition because any reporting conditions will be imposed by the Secretary of State at the appearance date.

113. Where bail is not transferred, it is likely that reporting conditions will need to be imposed.

Consent of Secretary of State where removal directions are in force

114. Under sub-paragraph 3(4) of Schedule 10, as amended by section 46(8) of the Nationality and Borders Act 2022, a person must not be granted immigration bail by the Tribunal without the consent of the Secretary of State if directions for the person's removal within 21 days are in force.

115. Where an application for bail is made, the Tribunal is required under the Procedure Rules to list and hear the application. If the Tribunal decides to refuse bail, then a refusal decision can be made, and the Secretary of State's consent is not required. If, however, the Tribunal considers that bail should be granted the judge should immediately prepare and issue a typed note setting out reasons bail should be granted. The Home Office Presenting Officer will pass on the contents of this typed note to an official of the Secretary of State who will decide whether to consent to the grant of bail. A copy will also be provided to the bail applicant. If consent to the granting of bail is refused, the Tribunal will then issue a decision to this effect, indicating that bail is refused because the consent of the Secretary of State has been refused. If the Secretary of State delays in responding to the note it should be assumed that consent is refused, and this should be noted in the refusal decision.

116. The refusal decision in these circumstances should state both the reasons why the judge would have granted bail and also that refusal of bail is a mandatory requirement under the legislation (Schedule 10, para 3(4)) because the Secretary of State has refused consent.

117. If the Secretary of State gives consent, then the Tribunal may proceed to issue a notice granting bail in the usual way. The grant decision notice will not contain reasons and there will not be any need to reference the consent of the Secretary of State.

118. Care should also be taken in ascertaining whether a person is subject to directions for their removal. There are specific powers to give removal directions at paragraphs 8- 10A and 12-14 of Schedule 2 to the Immigration Act 1971. It would seem questionable whether all removal arrangements made by the Home Office involve the use of removal directions. The judge must be satisfied that removal directions are in place for removal within the next 21 days starting with the date of the decision whether to grant bail and can expect to see evidence of those directions. Removal directions do not have to have been served on the bail applicant to be in force.

119. This is an important point because, where individual liberty is affected, the extent of any statutory powers being exercised should be precisely observed. The Home Office may not wish to produce satisfactory evidence that removal directions are in force before the Tribunal, or may have none to produce, and if this is the case the Home Office will not be able to show that the person applying for bail is subject to directions for their removal within 21 days. The restriction on granting bail will then have no effect. The Tribunal's decision should make a finding to this effect.

Annex: Schedule 10 to the Immigration Act 2016 (as at 31/1/24)

Power to grant immigration bail

1.

(1) The Secretary of State may grant a person bail if—

(a) the person is being detained under paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal)

(b) the person is being detained under paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),

(c) the person is being detained under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or

(d) the person is being detained under section 36(1) of the UK Borders Act 2007 (detention pending deportation).

(2) The Secretary of State may grant a person bail if the person is liable to detention under a provision mentioned in sub-paragraph (1).

(3) The First-tier Tribunal may, on an application made to the Tribunal for the grant of bail to a person, grant that person bail if—

(a) the person is being detained under paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971,

(b) the person is being detained under paragraph 2(1), (2) or (3) of Schedule 3 to that Act,

(c) the person is being detained under section 62 of the Nationality, Immigration and Asylum Act 2002, or

(d) the person is being detained under section 36(1) of the UK Borders Act 2007.

(4) In this Schedule references to the grant of immigration bail, in relation to a person, are to the grant of bail to that person under any of sub-paragraphs (1) to (3) or under paragraph 10(12) or (13) (release following arrest for breach of bail conditions).

(5) A person may be granted and remain on immigration bail even if the person can no longer be detained, if—

(a) the person is liable to detention under a provision mentioned in sub-paragraph (1), or

(b) the Secretary of State is considering whether to make a deportation order against the person under section 5(1) of the Immigration Act 1971.

(6) A grant of immigration bail to a person does not prevent the person's subsequent detention under a

provision mentioned in sub-paragraph (1).

(7) For the purposes of this Schedule a person is on immigration bail from when a grant of immigration bail to the person commences to when it ends.

(8) A grant of immigration bail to a person ends when—

(a)in a case where sub-paragraph (5) applied to the person, that sub-paragraph no longer applies to the person,

(b)the person is granted leave to enter or remain in the United Kingdom,

(c)the person is detained under a provision mentioned in sub-paragraph (1), or

(d)the person is removed from or otherwise leaves the United Kingdom.

(9) This paragraph is subject to paragraph 3 (exercise of power to grant immigration bail).

Conditions of immigration bail

2.

(1) Subject to sub-paragraph (2), if immigration bail is granted to a person, it must be granted subject to one or more of the following conditions—

(a) a condition requiring the person to appear before the Secretary of State or the First-tier Tribunal at a specified time and place;

(b) a condition restricting the person's work, occupation or studies in the United Kingdom;

(c) a condition about the person's residence;

(d) a condition requiring the person to report to the Secretary of State or such other person as may be specified;

(e) an electronic monitoring condition (see paragraph 4);

(f)such other conditions as the person granting the immigration bail thinks fit.

(2) Sub-paragraph (3) applies in place of sub-paragraph (1) in relation to a person who is being detained under a provision mentioned in paragraph 1(1)(b) or (d) or who is liable to detention under such a provision.

(3) If immigration bail is granted to such a person—

(a)subject to sub-paragraphs (5) to (9), it must be granted subject to an electronic monitoring condition,

(b)if, by virtue of sub-paragraph (5) or (7), it is not granted subject to an electronic monitoring condition, it must be granted subject to one or more of the other conditions mentioned in sub-paragraph (1), and

(c)if it is granted subject to an electronic monitoring condition, it may be granted subject to one or more of those other conditions.

(4) Immigration bail granted in accordance with sub-paragraph (1) or (3) may also be granted subject to a financial condition (see paragraph 5).

(5) Sub-paragraph (3)(a) does not apply to a person who is granted immigration bail by the Secretary of State if the Secretary of State considers that to impose an electronic monitoring condition on the person would be—

(a) impractical, or

(b) contrary to the person's Convention rights.

(6) Where sub-paragraph (5) applies, the Secretary of State must not grant immigration bail to the person subject to an electronic monitoring condition.

(7) Sub-paragraph (3)(a) does not apply to a person who is granted immigration bail by the First-tier Tribunal if the Secretary of State informs the Tribunal that the Secretary of State considers that to impose an electronic monitoring condition on the person would be—

(a) impractical, or

(b) contrary to the person's Convention rights.

(8) Where sub-paragraph (7) applies, the First-tier Tribunal must not grant immigration bail to the person subject to an electronic monitoring condition.

(9) In considering for the purposes of this Schedule whether it would be impractical to impose an electronic monitoring condition on a person, or would be impractical for a person to continue to be subject to such a condition, the Secretary of State may in particular have regard to—

(a) any obstacles to making arrangements of the kind mentioned in paragraph 4 in relation to the person,

(b) the resources that are available for imposing electronic monitoring conditions on persons to whom sub-paragraph (2) applies and for managing the operation of such conditions in relation to such persons,

(c) the need to give priority to the use of those resources in relation to particular categories of persons to whom that sub-paragraph applies, and

(d) the matters listed in paragraph 3(2) as they apply to the person.

(10) In this Schedule "Convention rights" is to be construed in accordance with section 1 of the Human Rights Act 1998.

(11) In this Schedule "bail condition", in relation to a person on immigration bail, means a condition to which the person's bail is subject.

Exercise of power to grant immigration bail

3

(1) The Secretary of State or the First-tier Tribunal must have regard to the matters listed in sub-paragraph (2) in determining—

(a) whether to grant immigration bail to a person, and

(b) the conditions to which a person's immigration bail is to be subject.

(2) Those matters are—

(a) the likelihood of the person failing to comply with a bail condition,

(b) whether the person has been convicted of an offence (whether in or outside the United Kingdom or before or after the coming into force of this paragraph),

(c) the likelihood of a person committing an offence while on immigration bail,

(d) the likelihood of the person's presence in the United Kingdom, while on immigration bail, causing a danger to public health or being a threat to the maintenance of public order,

(e) whether the person's detention is necessary in that person's interests or for the protection of any other person,

(ea) whether the person has failed without reasonable excuse to cooperate with any process—

(i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom,

(ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,

(iii) for determining whether the person's leave to enter or remain in the United Kingdom should be varied, curtailed, suspended or cancelled,

(iv)for determining whether the person should be removed from the United Kingdom, or

(v)for removing the person from the United Kingdom, and

(f) such other matters as the Secretary of State or the First-tier Tribunal thinks relevant.

(3) A person who is being detained under paragraph 16(1) of Schedule 2 to the Immigration Act 1971 must not be granted immigration bail by the First-tier Tribunal until after the end of the period of 8 days beginning with the date of the person's arrival in the United Kingdom.

(4) A person must not be granted immigration bail by the First-tier Tribunal without the consent of the Secretary of State if—

(a) directions for the removal of the person from the United Kingdom are for the time being in force, and

(b) the directions require the person to be removed from the United Kingdom within the period of 21 days beginning with the date of the decision on whether the person should be granted immigration bail.

(5) If the Secretary of State or the First-tier Tribunal decides to grant, or to refuse to grant, immigration bail to a person, the Secretary of State or the Tribunal must give the person notice of the decision.

(6) Where the First-tier Tribunal is required under sub-paragraph (5) to a give a person notice of a decision, it must also give the Secretary of State notice of the decision.

(7) Where the decision is to grant immigration bail, a notice under sub-paragraph (5) or (6) must state—

(a) when the grant of immigration bail commences, and

(b) the bail conditions.

(8) The commencement of a grant of immigration bail may be specified to be conditional on arrangements specified in the notice being in place to ensure that the person is able to comply with the bail conditions.

Electronic monitoring condition

4

(1) In this Schedule an "electronic monitoring condition" means a condition requiring the person on whom it is imposed ("P") to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means one or more of the following—

(a) P's location at specified times, during specified periods of time or while the arrangements are in place;

(b) P's presence in a location at specified times, during specified periods of time or while the arrangements are in place;

(c) P's absence from a location at specified times, during specified periods of time or while the arrangements are in place.

(2) The arrangements may in particular—

(a) require P to wear a device;

(b) require P to make specified use of a device;

(c) require P to communicate in a specified manner and at specified times or during specified periods;

(d) involve the exercise of functions by persons other than the Secretary of State or the First-tier Tribunal.

(3) If the arrangements require P to wear, or make specified use of, a device they must—

(1) prohibit P from causing or permitting damage to, or interference with the device, and

(2) prohibit P from taking or permitting action that would or might prevent the effective operation of

the device.

(4) In this paragraph "specified" means specified in the arrangements.

(5) An electronic monitoring condition may not be imposed on a person unless the person is at least 18 years old.

Financial condition

(1) 5(1)In this Schedule a "financial condition" means a condition requiring the payment of a sum of money by the person to whom immigration bail is granted ("P") or another person, in a case where P fails to comply with another condition to which P's immigration bail is subject.

(2) A financial condition may be imposed on P only if the person imposing the condition thinks that it would be appropriate to do so with a view to ensuring that P complies with the other bail conditions.

(3) The financial condition must specify—

(a) the sum of money required to be paid,

(b) when it is to be paid, and

(c) the form and manner in which it is to be paid.

(4) A sum to be paid under a financial condition is to be paid to the person who granted the immigration bail, subject to sub-paragraph (5).

(5) If the First-tier Tribunal has directed that the power in paragraph 6(1) (power to vary bail conditions) is to be exercisable by the Secretary of State in relation to P, the sum is to be paid to the Secretary of State.

(6) No sum is required to be paid under a financial condition unless the person who is liable to make a payment under it has been given an opportunity to make representations to the person to whom it is to be paid.

(7) In England and Wales a sum payable under a financial condition is recoverable as if it were payable under an order of the county court in England and Wales.

(8) In Scotland a sum payable under a financial condition may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(9) In Northern Ireland a sum payable under a financial condition is recoverable as if it were payable under an order of a county court in Northern Ireland.

(10)Where action is taken under this paragraph for the recovery of a sum payable under a financial condition, the requirement to pay the sum is—

(a)in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court;

(b)in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Power to vary bail conditions

6

(1) Subject to this paragraph and to paragraphs 7 and 8, where a person is on immigration bail—

(a) any of the conditions to which it is subject may be amended or removed, or

(b) one or more new conditions of the kind mentioned in paragraph 2(1) or (4) may be imposed on the person.

(2) The power in sub-paragraph (1) is exercisable by the person who granted the immigration bail, subject to sub-paragraphs (3) and (4).

(3) The Secretary of State may exercise the power in sub-paragraph (1) in relation to a person to whom immigration bail was granted by the First-tier Tribunal if the Tribunal so directs.

(4) If the First-tier Tribunal gives a direction under sub-paragraph (3), the Tribunal may not exercise the power in sub-paragraph (1) in relation to the person.

(5) The First-tier Tribunal may not exercise the power in sub-paragraph (1)(a) so as to amend an electronic monitoring condition.

(6) If the Secretary of State or the First-tier Tribunal exercises, or refuses to exercise, the power in sub-paragraph (1), the Secretary of State or the Tribunal must give notice to the person who is on immigration bail.

(7) Where the First-tier Tribunal is required under sub-paragraph (6) to give notice to a person, it must also give notice to the Secretary of State.

Removal etc of electronic monitoring condition: bail managed by Secretary of State

7

(1) This paragraph applies to a person who—

(a) is on immigration bail—

(i) pursuant to a grant by the Secretary of State, or

(ii) pursuant to a grant by the First-tier Tribunal in a case where the Tribunal has directed that the power in paragraph 6(1) is exercisable by the Secretary of State, and

(b) before the grant of immigration bail, was detained or liable to detention under a provision mentioned in paragraph 1(1)(b) or (d).

(2) Where the person is subject to an electronic monitoring condition, the Secretary of State—

(a) must not exercise the power in paragraph 6(1) so as to remove the condition unless sub-paragraph (3) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to remove the condition.

(3) This sub-paragraph applies if the Secretary of State considers that—

(a) it would be impractical for the person to continue to be subject to the condition, or

(b) it would be contrary to that person's Convention rights for the person to continue to be subject to the condition.

(4) If, by virtue of paragraph 2(5) or (7) or this paragraph, the person is not subject to an electronic monitoring condition, the Secretary of State—

(a) must not exercise the power in paragraph 6(1) so as to impose such a condition on the person unless sub-paragraph (5) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to impose such a condition on the person.

(5) This sub-paragraph applies if, having considered whether it would be impractical or contrary to the person's Convention rights to impose such a condition on the person, the Secretary of State—

(a) does not consider that it would be impractical to do so, and

(b) does not consider that it would be contrary to the person's Convention rights to do so.

Amendment etc of electronic monitoring condition: bail managed by First-tier Tribunal

8

(1) This paragraph applies to a person who—

(a) is on immigration bail pursuant to a grant by the First-tier Tribunal in a case where the Tribunal has not directed that the power in paragraph 6(1) is exercisable by the Secretary of State, and

(b) before the person was granted immigration bail, was detained or liable to detention under a provision mentioned in paragraph 1(1)(b) or (d).

(2) Where the person is subject to an electronic monitoring condition, the First-tier Tribunal—

(a) must not exercise the power in paragraph 6(1) so as to remove the condition unless sub-paragraph (3) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to remove the condition.

(3) This sub-paragraph applies if the Secretary of State notifies the First-tier Tribunal that the Secretary of State considers that—

(a) it would be impractical for the person to continue to be subject to the condition, or

(b) it would be contrary to that person's Convention rights for the person to continue to be subject to the condition.

(4) If, by virtue of paragraph 2(7) or this paragraph, the person is not subject to an electronic monitoring condition, the First-tier Tribunal—

(a) must not exercise the power in paragraph 6(1) so as to impose such a condition on the person unless sub-paragraph (5) applies, but

(b) if that sub-paragraph applies, must exercise that power so as to impose such a condition on the person.

(5) This sub-paragraph applies if the Secretary of State notifies the First-tier Tribunal that the Secretary of State—

(a) does not consider that it would be impractical to impose such a condition on the person, and

(b) does not consider that it would be contrary to the person's Convention rights to impose such a condition on the person.

P*owers of Secretary of State to enable person to meet bail conditions*

9

(1) Sub-paragraph (2) applies where—

(a) a person is on immigration bail subject to a condition requiring the person to reside at an address specified in the condition, and

(b) the person would not be able to support himself or herself at the address unless the power in sub-paragraph (2) were exercised.

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of that person at that address.

(3) But the power in sub-paragraph (2) applies only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power.

(4) The Secretary of State may make a payment to a person on immigration bail in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a bail condition.

(5) But the power in sub-paragraph (4) applies only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the making of the payment.

Arrest for breach of immigration bail

10

(1) An immigration officer or a constable may arrest without warrant a person on immigration bail if the immigration officer or constable—

(a) has reasonable grounds for believing that the person is likely to fail to comply with a bail condition, or

(b) has reasonable grounds for suspecting that the person is failing, or has failed, to comply with a bail condition.

(2) Sub-paragraph (3) applies if an appropriate judicial officer is satisfied that there are reasonable grounds for believing that a person liable to be arrested under this paragraph is to be found on any premises.

(3) The appropriate judicial officer may issue a warrant authorising any immigration officer or constable to enter, by reasonable force if necessary, the premises named in the warrant for the purposes of searching for and arresting that person.

(4) Sections 28J and 28K of the Immigration Act 1971 (warrants: application and execution) apply, with any necessary modifications, to warrants under sub-paragraph (3).

(5) Sub-paragraph (6) applies where—

(a) a warrant under this paragraph is issued for the purposes of the arrest of a person under this paragraph, and

(b) an immigration officer or a constable enters premises in reliance on the warrant and detains a person on the premises.

(6) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.

(7) In sub-paragraph (6)—

"detainee custody officer" means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (detained persons: escort and custody), and

"search" means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).

(8) Paragraphs 25A to 25C of Schedule 2 to the Immigration Act 1971 (entry and search of persons and premises) apply in relation to a person arrested under this paragraph as they apply in relation to a person arrested under that Schedule.

(9) A person arrested under this paragraph—

(a) must, as soon as is practicable after the person's arrest, be brought before the relevant authority, and

(b) may be detained under the authority of the Secretary of State in the meantime.

(10) The relevant authority is—

(a) the Secretary of State, if the Secretary of State granted immigration bail to the arrested person or the First-tier Tribunal has directed that the power in paragraph 6(1) is exercisable by the Secretary of State in relation to that person, or

(b) otherwise, the First-tier Tribunal.

(11) Where an arrested person is brought before the relevant authority, the relevant authority must decide whether the arrested person has broken or is likely to break any of the bail conditions.

(12) If the relevant authority decides the arrested person has broken or is likely to break any of the bail conditions, the relevant authority must—

(a) direct that the person is to be detained under the provision mentioned in paragraph 1(1) under which the person is liable to be detained, or

(b) grant the person bail subject to the same or different conditions, subject to sub-paragraph (14).

(13) If the relevant authority decides the person has not broken and is not likely to break any of the bail conditions, the relevant authority must grant the person bail subject to the same conditions (but this is subject to sub-paragraph (14), and does not prevent the subsequent exercise of the powers in paragraph 6).

(14) The power in sub-paragraph (12) to grant bail subject to the same conditions and the duty in sub-paragraph (13) to do so do not affect the requirement for the grant of bail to comply with paragraph 2.

(15) In this paragraph—

"appropriate judicial officer" means—

(a) in relation to England and Wales, a justice of the peace;

(b) in relation to Scotland, the sheriff or a justice of the peace;

(c) in relation to Northern Ireland, a lay magistrate;

"premises"—

(a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984;

(b) in relation to Scotland, has the same meaning as in section 412 of the Proceeds of Crime Act 2002;

(c) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)).

Duty to arrange consideration of bail

11

(1) Subject as follows, the Secretary of State must arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if—

(a) the person is being detained under a provision mentioned in paragraph 1(1)(a) or (c), and

(b) the period of four months beginning with the relevant date has elapsed.

(2) In sub-paragraph (1)(b) "the relevant date" means—

(a) the date on which the person's detention began, or

(b) if a relevant event has occurred in relation to the person since that date, the last date on which such an event has occurred in relation to the person.

(3) The following are relevant events in relation to a person for the purposes of sub-paragraph (2)(b)—

(a) consideration by the First-tier Tribunal of whether to grant immigration bail to the person;

(b) withdrawal by the person of an application for immigration bail treated as made by the person as the result of a reference under this paragraph;

(c) withdrawal by the person of a notice given under sub-paragraph (6)(b).

(4) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person—

(a) includes such consideration regardless of whether there is a hearing or the First-tier Tribunal makes a determination in the case in question;

(b) includes the dismissal of an application by virtue of provision made under paragraph 12(2).

(5) The reference in sub-paragraph (3)(a) to consideration of whether to grant immigration bail to a person does not include such consideration in a case where—

(a) the person has made an application for bail, other than one treated as made by the person as the

result of a reference under this paragraph, and

(b) the First-tier Tribunal is prevented from granting bail to the person by paragraph 3(4) (requirement for Secretary of State's consent to bail).

(6) The duty in sub-paragraph (1) to arrange a reference does not apply if—

(a) section 3(2) of the Special Immigration Appeals Commission Act 1997 (persons detained in interests of national security etc) applies to the person, or

(b) the person has given to the Secretary of State, and has not withdrawn, written notice that the person does not wish the person's case to be referred to the First-tier Tribunal under this paragraph.

(7) A reference to the First-tier Tribunal under this paragraph in relation to a person is to be treated for all purposes as an application by that person for the grant of bail under paragraph 1(3).

Tribunal Procedure Rules

12

(1) Tribunal Procedure Rules must make provision with respect to applications to the First-tier Tribunal under this Schedule and matters arising out of such applications.

(2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to grant a person immigration bail, the Tribunal must dismiss without a hearing any further application for the person to be granted immigration bail which—

(a) is an application to which sub-paragraph (3) applies, but

(b) is not an application to which sub-paragraph (4) applies.

(3) This sub-paragraph applies to an application made during the period of 28 days beginning with the date of the decision mentioned in sub-paragraph (2).

(4) This sub-paragraph applies to an application on which the person demonstrates there has been a material change in the person's circumstances.