

# Immigration Act 2016

## Factsheet – Immigration Bail (Section 61 and Schedule 10)

### What are we going to do?

- Create a new duty for the Home Office and the courts to tag foreign national offenders released on immigration bail, so we always know exactly where they are. This will help reduce absconding and increase the number of criminals deported.

### How will we do it?

- Tag all foreign criminals who are not detained but who are awaiting deportation.
- Eliminate complexities and gaps in the legal framework so that illegal migrants can be made subject to bail conditions and sanctions if they breach those conditions.

### Immigration Minister James Brokenshire said:

“Foreign criminals have no place in the United Kingdom and this Government is using all the resources available to protect the British public. We take this duty very seriously.

“Through the Immigration Bill we will legislate to use GPS satellite technology to tag foreign national offenders whom we are seeking to deport when they are released on immigration bail.”

### Background

- The Government will always seek to deport as many foreign national offenders as quickly as possible. The Home Office will normally seek to detain a foreign national offender pending deportation, where there is a reasonable prospect of removal.
- In 2015 the Home Office removed over 5,600 foreign national offenders, the highest number for more than five years. Since May 2010 over 29,000 foreign national offenders have been removed.
- We have also been removing more European criminals. We removed over 3,300 EEA nationals in 2015 compared to 933 in 2010.
- In some cases where there are delays due to protracted legal challenges or difficulty obtaining travel documents from foreign governments, foreign national offenders may be released on bail, pending deportation.
- The majority of foreign national offenders living in the community have been released by an Immigration Judge. Currently, the judge has the discretion to tag a foreign national offender. While in the vast majority of cases we would expect judges to impose a tag when requested, a request could be refused. The Immigration Act will change the law to create a duty for both the Home Office and the courts to impose a tag as a bail condition when such an individual is released on bail.

- Tagging foreign national offenders using GPS technology should allow immigration officers to more quickly re-detain them when deportation is imminent. Monitoring individuals using GPS tags will also improve public protection.
- Illegal migrants, including foreign national offenders, who are awaiting deportation or removal, can be placed on conditions, such as reporting, if detention is not appropriate. The current legal framework for this is complex and fragmented as there are six different legal statuses including immigration bail and temporary admission. This complexity is confusing and leads to litigation. These reforms will create a single power of bail, where it is clear what conditions can be imposed, when and what the sanction is for breaching conditions.

## Key Questions and Answers

- **Will tagging automatically apply to all non-detained foreign national offenders?**  
No, electronic monitoring will not be one of the conditions of bail when an FNO is released if the Secretary of State thinks it will breach the person's human rights or is not practicable.
- **Will this apply to offenders who are already on bail before the Act is brought in?**  
The power will be available to be used on everyone who is on bail.
- **Will you impose other conditions like a curfew or need to report?**  
This will be a case by case consideration. A wide range of conditions can be sought on release on bail, such as residency and reporting restrictions and curfews.
- **With the ability to tag everyone on immigration bail will there be less need for detention?**  
Immigration detention is a vital tool to ensure those with no right to remain in the UK, are returned to their home country. No one is held in detention indefinitely. Individuals are detained for the shortest period necessary and all detention is reviewed on a regular basis to ensure it remains justified and reasonable. We have a duty to protect the public from individuals who pose a risk of harm, particularly those who have committed serious criminal offences.
- **The term bail is very emotive, aren't you criminalising refugees by using it?**  
No. Our intention is to simplify existing powers. The concept of immigration bail is long established and there should not be any confusion with criminal bail, which is provided for under an entirely separate legislative framework.

Home Office

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