

## Bail for Immigration Detainees

### Briefing: New Clause 53

#### Purpose of the amendment:

This amendment sets important safeguards limiting the use of (GPS) electronic monitoring of people on immigration bail. It introduces a six-month time limit on the use of GPS monitoring, except where exceptional circumstances apply relating to public protection or national security. It removes the mandatory element of the system and introduces discretion. It also gives the tribunal power to decide whether electronic monitoring would be impractical / contrary to human rights. It sets important limits on the processing of data obtained via GPS monitoring, so that such data can only be processed when it is for the purposes of, and to the minimum extent reasonably necessary for, determining whether an individual has breached a condition of bail.

#### Background:

In December 2020 the Home Office transitioned from radio frequency monitoring to a far more intrusive system of GPS monitoring for people on immigration bail. Whereas radio frequency monitoring can verify whether a person is where they should be at a given time, GPS monitoring provides 24/7 real time location monitoring, tracking an individual's every move: it tells you where someone has gone, where they have shopped, what GP's practice they have been to, and much more.

Given that GPS monitoring is far more invasive than its predecessor one might logically assume that it would be used more sparingly. Instead the government is dramatically increasing the number of people monitored. In August 2021, the government laid a [commencement order](#) which brought into force remaining parts of Schedule 10 of the Immigration Act 2016, which made electronic monitoring mandatory for anybody on immigration bail facing deportation, except where one of two exceptions applies<sup>1</sup>.

Prior to the introduction of mandatory electronic monitoring, there were 269 people fitted with a GPS tag<sup>2</sup>. This mandatory policy is a dragnet that will sweep up thousands of people.

#### How the data will be used:

The Home Office has given itself almost unlimited discretion to retrospectively access 24/7 geolocation data. This data will be collected, processed and retained by the private subcontractor – Capita – and may be accessed by the Home Office under certain circumstances including “where it may be relevant to a claim by the individual under Article 8 ECHR”<sup>3</sup>.

<sup>1</sup> Those exceptions are where the Secretary of State considers tagging to be a) Impractical, or b) Contrary to the individual's ECHR rights

<sup>2</sup> Data correct up to 10th May 2021, FOI response provided on 17th May 2021

<sup>3</sup> Page 23, Home Office bail policy [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952910/immigration-bail-v7.0-gov-uk.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952910/immigration-bail-v7.0-gov-uk.pdf)



Article 8 claims relate to a person's family or private life and may involve considerable personal and private details about an individual's life. A fundamentally dangerous implication of this proposal is that people who make human rights claims will now be required to give the state *carte blanche* to access highly personal and sensitive geolocation data—simply because it “may be relevant” to their claim. Worse still is the fact that it appears that individuals may not even be made aware of this when it happens.

This attempt to harvest immense volumes of geolocation data for purposes that go far beyond monitoring compliance with bail conditions was neither foreseen nor debated by parliament. This is in stark contrast with the use of electronic monitoring in the criminal justice system, where electronic monitoring data must only be “processed for specified, explicit and legitimate purposes”<sup>4</sup>.

Crucially, the act of making a legal claim about one's human rights has never—and should never—entitle the state to engage in surveillance over one's entire private life. This policy is unprecedented and has worrying implications for everyone's ability to fight for their rights.

### Impact of electronic monitoring:

GPS monitoring is an incredibly intrusive measure that effectively amounts to an extension of immigration detention outside the physical walls of immigration removal centres or prisons. Electronic monitoring of any kind already amounts to a significant interference with individual liberty and privacy. The psychological harm caused by electronic monitoring is well-documented<sup>5</sup> – People involved in a Ministry of Justice GPS Electronic Monitoring Pilot<sup>6</sup> a feeling of being ‘constantly watched’ by the authorities. The Ministry of Justice recognised that GPS monitoring is an infringement on Article 8 rights<sup>7</sup>, and that ankle tags are likely to cause feelings of anxiety and stigma to the wearer<sup>8</sup>.

The harmful impact of electronic monitoring, and the significant intrusion on individual liberty and privacy, is recognised by the courts, and the Supreme Court has accepted in *Jalloh*<sup>9</sup> that curfews – which are frequently used alongside electronic monitoring – amount to a form of detention.

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<sup>4</sup> Code of Practice: Electronic Monitoring, Electronic Monitoring Directorate, October 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/926813/em-revised-code-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926813/em-revised-code-practice.pdf)

<sup>5</sup> One study found that electronic monitoring has an impact on the ability to participate in society; relationships; financial and emotional stress; sleep; feelings of dehumanisation and stigma See Bhatia, Monish “Racial surveillance and the mental health impacts of electronic monitoring on migrants”

<sup>6</sup> Process evaluation of the Global Positioning System (GPS) Electronic Monitoring Pilot Qualitative findings, Ministry of Justice Analytical Series 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779199/gps-location-monitoring-pilot-process-evaluation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779199/gps-location-monitoring-pilot-process-evaluation.pdf)

<sup>7</sup> “It is recognised that the processing of personal data engages Article 8 of the European Convention on Human Rights i.e. the right to respect for private and family life” (Page 3, Code of Practice: Electronic Monitoring, Electronic Monitoring Directorate, October 2020 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/926813/em-revised-code-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926813/em-revised-code-practice.pdf) )

<sup>8</sup> Page 46 Process evaluation of the Global Positioning System (GPS) Electronic Monitoring Pilot Qualitative findings, Ministry of Justice Analytical Series 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779199/gps-location-monitoring-pilot-process-evaluation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779199/gps-location-monitoring-pilot-process-evaluation.pdf)

<sup>9</sup> The Queen (on the application of Jalloh) v Secretary of State for Home Department [2020] UKSC 4, 12 February 2020, where the Supreme Court found that unlawful curfews of this nature amounted to false imprisonment.



Those who are being monitored in this way do not know when the ordeal will end because there is no time limit for how long people will be tracked. This regressive and authoritarian policy is wholly inappropriate in a country that claims to uphold the right to liberty.

Nor is it necessary. Compliance with immigration bail is extremely high. Data obtained by BID shows that of the people granted bail from February 2020 to March 2021 (of which there were more than 7,000<sup>10</sup>), just 43 people absconded – less than 0.56%, while other data suggests that 1% of people released from detention in 2020 absconded<sup>11</sup>.

### **Additional concerns:**

Immigration bail is an administrative tool for contact management of people liable to be detained. It should not be used to coerce or punish and bail conditions must be proportionate in order to be lawful. This policy change is punitive, disproportionate and potentially unlawful.

There has been no consultation and we are not aware of any impact assessments that have been made to consider the equalities or data protection implications – and the government has resisted disclosure of these documents via Freedom of Information Requests. The government is not using a pilot to evaluate the impact, cost or unintended consequences of mass GPS surveillance. The policy change was not announced but rather introduced by stealth via a change to the immigration bail policy.

The use of mandatory GPS monitoring greatly widens the state's powers of surveillance and allows the Home Office to access, with minimal safeguards, people's most sensitive, personal data. There is a real risk that this vastly regressive and authoritarian policy will be expanded in future to tag people who come to the UK to seek asylum. Given that the government already proposes to discriminate between different groups of asylum seekers, and deny basic rights and entitlements to group two refugees, or those whose claims are deemed inadmissible, there will be a group of asylum seekers particularly vulnerable to further rights abuses.

### **Stories of people affected:**

Mo\* told the [Guardian](#): *“My feet were swelling and bleeding. It was too tight and it got infected,” he said. “I have no idea when it’s going to be taken off. I feel bad, I feel down, I feel anxious; I don’t know how to describe it in words. I’m not having my freedom like other people do.”*

The article also reported someone whose ankle monitor “physically prevented her from kneeling down to pray”, and another who said she had stopped taking her son to the playground because it made other parents uncomfortable.

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<sup>10</sup> in the year up to March 2021, 7,701 people were released on bail (stats are [here](#)). The number would be even greater if you include from the beginning of Feb but that isn't possible with the way the data is presented.

<sup>11</sup> FOI data obtained by Brian Dickoff, Response provided Monday 18 January 2021

[https://www.whatdotheyknow.com/request/712000/response/1706999/attach/3/61618%20Dikoff.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/712000/response/1706999/attach/3/61618%20Dikoff.pdf?cookie_passthrough=1)



Darren\*, a former client of BID, told us in an interview: *"The GPS tag is twice the size and then you have to charge it every day. It wakes me up in my sleep if I don't charge it in time,. While I sleep it starts going off and it won't stop until it's charging.*

*Sometimes I feel like there's some frequency going through my ankle, it feels hot. If I lay on it, if I turn to that side, it feels like it just gets so hot, like a burning sensation, and sometimes I get numbing on my leg.*

*It affects my mental health because I can't wear shorts, or if I do go out...There was a time I went to the beach, rolled up my jeans, and there was a guy with his kids, and the kids asked what's that on his foot, and he said "that's a bad guy". He just thinks I've done something because there's a tag on my foot. I feel like I'm still in prison at times. Well, I still am.*

*No, I don't feel like I've been treated fairly, I've been complying with their rules. If I'd been breaking it, I'm doing what they say, I'm a married man with kids, just trying to turn my life around*

*I've got something on my foot with no date. It's not like I've got a date I can look to. As I said it's been 14 months, 15 months coming up."*

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