



**Electronic monitoring bail
condition - A Basic Guide for
Individuals facing Deportation**

March 2023

Bail for Immigration Detainees (BID) is a national charity that provides legal advice and representation to individuals held under immigration powers to secure their release from detention. We also provide legal advice and representation to detainees facing deportation. BID works with detainees in all removal centres in the UK, and with immigration detainees held in prison at the end of their sentence.

- We provide free legal advice, information and support to immigration detainees to help them exercise their right to liberty and access to justice, and to help them challenge their deportation.
- We prepare and present (free of charge) applications for release on bail or temporary admission.
- We carry out research and use evidence from our legal casework to influence decision-makers, including civil servants, parliamentarians, and regulatory bodies through policy advocacy.

Disclaimer

Although every effort is made to ensure the information in this fact sheet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law. BID cannot be held liable for any inaccuracies and their consequences. The information in this fact sheet is not legal advice. If you have a legal problem you should talk to a lawyer or legal adviser before making a decision about what to do. Please check that this fact sheet is up to date before using it. Please also check whether BID has written other fact sheets or leaflets that might be relevant to you. All BID fact sheets and leaflets can be found at www.biduk.org

Who This Leaflet is For

The leaflet is for individuals applying for immigration bail or on immigration bail who are going through deportation proceedings or have a Deportation Order in force against them.

It provides an overview of the Home Office procedure on Electronic Monitoring.

It is intended as a basic guide only. **You are strongly advised to seek legal advice on your individual case. See below, sources of Advice.**

What is Electronic Monitoring (EM)

EM is a device used by the Home Office to electronically monitor a person's movements using Global Positioning System (GPS). There are two types:

- Fitted Device (Tag fitted to the body, usually the ankle)
- Non-Fitted Device: This is a small device that is not worn on the body but must be carried by the person. It can take fingerprints and the fingerprints are compared to the fingerprints taken when the device was issued. Requests for fingerprints are made randomly throughout the day to check the device is being carried as required.

The Fitted Device is the most commonly used form of EM and is often called a 'tag'.

EM may be accompanied by additional conditions, e.g. a curfew or an inclusion zone or exclusion zone (a requirement to remain in a certain area or not to enter a certain area).

Who is subject to an EM requirement as a bail condition

The Home Office has a legal duty to impose Electronic Monitoring on anyone on immigration bail who could be detained because they are subject to deportation proceedings or have a Deportation Order against them (Immigration Act 2016, Schedule 10 Part 1 (paragraphs 2(2) and 2(3)), unless it would breach human rights under Article 8 of the European Convention on Human Rights. Article 8 protects the right to respect for family and private life. Those not subject to the Duty may also have an EM requirement imposed on bail.

In England and Wales, this duty was effective from 31 August 2021, for people released on immigration bail from that date onward and from 31 January 2022 for those who had been released on bail before 31 August 2021.

However, EM must not be imposed on certain people including:

- On a person under 18;
- Following detention under S.37 or 41 Mental Health Act 1983 where the person remains subject to a supervision order.
- Where the Home Office agrees it may breach (violate) a person's human rights

Q. Under what circumstances might the EM requirement be a breach of a person's human rights (e.g. Article 8 rights)

A person may have a physical or mental health condition or other vulnerability which the EM, particularly the fitted device may cause physical or mental suffering or worsen the condition.

Any claim that EM would be a breach of a person's human rights due to a health condition must provide supporting medical evidence to the Home Office.

The Home Office Guidance provides a list of physical or psychological conditions which may make a person vulnerable, and the type of medical evidence they would be expected to provide. A basic summary is in the table below. However, there may be circumstances not covered by the guidance. Each case must be considered on the individual circumstances

If a fitted device would breach human rights, the Home Office may consider use of a non-fitted device, so long as that also does not breach human rights.

CONDITION	EVIDENCE
EM would cause serious harm to mental/physical health Serious medical condition e.g. cancer	Medical evidence that wearing a device would cause physical/mental suffering; or a medical condition which would mean assistance would be needed to charge the device, e.g. mobility problems. Evidence the EM may affect treatment e.g. regular MRI scans.
Person's claim to have been tortured has been accepted by the Home Office or First-tier Tribunal	Medical evidence that the EM would significantly impact mental or physical health, e.g. damage to individuals diagnosed with PTSD.
Person has received a Positive Conclusive Grounds decision as a Victim of Trafficking/Modern Slavery	Medical evidence that the EM would significantly impact mental or physical health, e.g. damage to individuals diagnosed with PTSD.
Mental Capacity issues	Medical evidence regarding capacity to understand how to use the EM device or where the device may cause confusion or anxiety.
Pregnant women (18 weeks +) and women who have recently given birth (within the last 3 months)	MAT B1 (evidence of pregnancy)/ or birth certificate.
Person suffering from phlebitis or similar condition	Medical evidence
The Elderly	Age alone will not be a bar. However, medical evidence of frailty/thinning, skin/age-related conditions/confusion, which indicates Em may cause physical or mental suffering.

If I am detained and the Home Office is considering granting bail, will I have a chance to explain why I should not be made to wear a tag?

Yes, the Home Office must write to you to ask for reasons why a tag would breach your human rights. You should have 3 working days to reply.

A sample letter with reasons is attached (Appendix A). You can complete the personal information and tick all of the boxes that apply to you. You should attach as much supporting evidence as you can.

Can I ask the Home Office to remove the tag?

Yes, you can ask the Home Office to remove the tag if you believe that wearing the tag is breaching your human rights.

A sample letter with reasons is attached (Appendix B). You can complete the personal information and tick all of the boxes that apply to you. You should attach as much supporting evidence as you can.

Will the Home Office wait for the supporting medical evidence

Home Office Guidance states that the Home Office may delay a decision on whether to impose EM for up to 28 days to await the supporting medical evidence. If it is not received by that time, it will make a decision on the information that it already has. However, it must review the decision within 14 days of receipt of the medical evidence.

Does the Home Office have to review the EM requirement

The use of EM must be reviewed by the Home Office. However, where the legal duty to impose EM applies, use of EM will continue unless it breaches human rights.

Home Office guidance states that the use of EM must be reviewed:

- on a quarterly basis
- when it receives any representations from the individual or a person representing them
- when deciding how to respond to a breach of immigration bail conditions
- when a request is made by another decision maker

The type of factors the Home Office will consider in a review can include:

- Overall time spent on EM
- Time spent on a particular type of EM, (fitted or non-fitted)
- Risk of absconding (risk of failing to keep in contact with the Home Office without EM)
- Risk of harm to the public
- Risk of re-offending
- Expected time before removal from the UK
- History of compliance with immigration bail conditions
- Physical or mental health or other vulnerabilities

Is there a time limit after which the EM will be removed?

There is no clear time limit. For people on bail going through deportation proceedings or who are subject to a Deportation Order, EM will apply unless ongoing EM would breach human rights.

However, Home Office guidance provides a rough guide to minimum time a person would normally be on EM, either a fitted or non-fitted device. The Guidance uses a complicated point based 'harm score' based on offending history and risk of harm and length of sentence for the criminal offending.

The Home Office Guidance (Immigration Bail) also contains a guide to types of offences and the harm category they are considered to fall within. The categories are, low, medium, high, very high.

See: Immigration Bail version 15 (27.01.23) <https://bit.ly/3Y8uote>

The general guide by sentence length explains how long a person should be on a Fitted-Device (FD) or a Non-Fitted Device (NFD) (Bail Policy 27.01.23 p.48-50)

Sentence Length	Months (M) on EM Device
15 years and over	24 M on FD & indefinitely on NFD
6 years and over	12 M on FD & 30M on NFD
4 years and over	9 M on FD & 24 M on NFD
3 years and over	6 M on FD & 18 M on NFD
Less than 3 years	3 M on FD & 18 M on NFD

Source: Home Office 'Detention: General Instruction'

If a person facing deportation applies for immigration bail, will they be put on an EM device?

If a person facing deportation is granted bail by the Home Office (called 'Secretary of State bail') they must be put on an EM device, unless it would not be practical or it would breach their human rights.

Normally, if the Home Office agrees to grant bail, it should write to the individual and let them know they are planning to impose EM and allow 3 working days for the person to explain why they should not be subject to EM.

If you apply to the Immigration Tribunal for immigration bail, the Home Office will ask the Tribunal to impose an Electronic Monitoring condition, unless the Home Office accepts it would not be practical or it would breach human rights.

If the Tribunal does not impose an EM condition, and the management of bail is transferred to the Home Office, the Home Office can vary the bail conditions to impose EM. If management of the bail is not transferred to the Home Office, the Home Office can apply to the Tribunal to vary the bail conditions to impose an EM requirement. If this happens it is important to seek legal advice.

How long does it take the Home Office to fit the EM device before a person can be released on bail?

The grant of bail will state how long the Home Office has to fit the EM device. Normally, the Home Office will have up to 72 hours to fit the EM device. If it is not fitted, the person should be released and the device fitted once they are in the community on immigration bail.

A person must be given an 'induction' to explain how the EM device works and a handbook explaining their responsibilities and their rights regarding use of the data collected.

If a person has already been released on bail and there is no EM requirement, can the Home Office vary the conditions to impose an EM requirement

The Home Office can impose an EM requirement. The Home Office must write to the individual to let them know they intend to vary bail conditions to include an EM requirement. The person must be given 10 working days to provide any reasons why EM should not be imposed.

How will data collected from the EMD be used?

The EM device will collect data to show where the person has been and when. Data is collected by the supplier of the EM device on behalf of the Home Office. The EM supplier will notify the Home Office of any breach of bail conditions.

The Home Office can also access EM data in the following circumstances:

- **Failure to comply with immigration bail conditions**
- **Where the Home Office receives allegations that EM terms or bail conditions have been breached**
- **If the person absconds (fails to keep in contact with the Home Office)**
- **Requests by an External Agency (e.g. a law enforcement agency)**
- **Upon receipt of Further Submissions based on Article 8 (right to respect for family and private life. The Home Office may request access to the data to check if the claims made in the application are supported by the data, (e.g. claims of time spent with family/working).**
- **Where a Subject Access request is received or in the event of a legal challenge**

Where can a person get advice on immigration bail

Call Bail for Immigration Detainees Advice Line, Monday -Thursday 10am-12 midday on 020 7456 9750

How to contact BID

By post:

Freepost RTSU-ZJCB-XCSX
Bail for Immigration Detainees (BID)
1b Finsbury Park Road
London
N4 2LA

Fax: 020 3745 5226

General enquiries: enquiries@biduk.org

Casework enquiries: casework@biduk.org

Advice Line: 020 7456 9750
(Mon-Thurs, 10am - 12 midday)

BiD Bail for Immigration Detainees

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APPENDIX A - Model Letter for Non Imposition of Tag

Home Office address / email

Date:

Dear Sir/Madam,

Re: Full name HO Reference

Contact Address and Email

Re: Reasons why Electronic Monitoring should not be imposed

I am writing to request that my grant of bail is not subject to an electronic monitoring device (tag).

the requirement to wear the tag would breach my human rights for the following reasons

[tick the boxes that apply to you & provide any relevant information and evidence]:

- **I have a serious physical or mental condition**

Wearing the tag would:

- cause me physical discomfort and emotional distress and/or
- interfere with my medical treatment.

The condition that I have is *[name]*. It would interfere with my treatment because *[explain how it interferes]*.

I enclose medical evidence of my condition (*for example from your GP or a support organisation/IRC or prison medical team*).

- **I have been accepted as a victim of torture by the Home Office /the Immigration Tribunal.** Wearing the tag would cause me significant distress.

I enclose a supporting letter from [for example, an organisation that is supporting you as a Victim of Trafficking, or a mental health expert treating you for depression/anxiety or Post Traumatic Stress Disorder (PTSD).

- **I have received a positive Conclusive Grounds decision as a victim of trafficking or modern slavery. Wearing the tag would cause me significant distress.**

I enclose a supporting letter from *[for example, an organisation that is supporting you as a Victim of Trafficking, or a mental health expert treating you for depression/anxiety or Post Traumatic Stress Disorder (PTSD)].*

- **I have Mental Capacity Issues. My condition means that I suffer from confusion and anxiety.**

I enclose letter explain my condition *(for example from a Carer/Support Organisation/medical professional).*

- **I am 18 weeks+ pregnant.** I enclose a copy of the Mat B1 form.
- **I have given birth within the last 3 months.** I enclose a copy of the birth certificate
- **I suffer from phlebitis of similar condition.** *[state medical condition]*

Wearing the tag would cause me physical discomfort and emotional distress.

I enclose medical evidence of my condition.

- **I am elderly** *[state age].*

Wearing the tag would cause me physical and emotional distress,(for example, because of:

- *Thinning skin*
- *Frail bones*
- *Confusion*
- *Other*

If you require further information or evidence before making a decision on whether to impose a tag requirement, please contact me.

I would be grateful for an urgent reply to this request.

Yours faithfully,

Name

APPENDIX B - Model Letter for Removal of Tag

EM Hub address or email

Date:

Dear Sir/Madam,

Re: Full name HO Reference

Contact Address and Email

Re: Request to vary bail conditions regarding Electronic Monitoring

I am writing to request removal of my electronic monitoring device (tag).

The tag was imposed as part of my immigration bail terms on *[Insert date]*.

I would like to request removal of the tag because the requirement to wear the tag breaches my human rights for the following reasons:

- **I have a serious physical or mental condition**

Wearing the tag would:

- cause me physical discomfort and emotional distress and/or
- interfere with my medical treatment.

The condition that I have is *[name]*. It would interfere with my treatment because *[explain how it interferes]*.

I enclose medical evidence of my condition (*for example from your GP or a support organisation/IRC or prison medical team*).

- **I have been accepted as a victim of torture by the Home Office /the Immigration Tribunal.** Wearing the tag would cause me significant distress.
- **I have received a positive Conclusive Grounds decision as a victim of trafficking or modern slavery.** Wearing the tag would cause me significant distress.

I enclose a supporting letter from *[for example, an organisation that is supporting you as a Victim of Trafficking, or a mental health expert treating you for depression/anxiety or Post Traumatic Stress Disorder (PTSD)].*

- **I have Mental Capacity Issues. My condition means that I suffer from confusion and anxiety.**

I enclose letter explain my condition *(for example from a Carer/Support Organisation/medical professional).*

- **I am 18 weeks+ pregnant.** I enclose a copy of the Mat B1 form.
- **I have given birth within the last 3 months.** I enclose a copy of the birth certificate
- **I suffer from phlebitis of similar condition.** *[state medical condition]*

Wearing the tag would cause me physical discomfort and emotional distress.

I enclose medical evidence of my condition.

- **I am elderly** *[state age].*

Wearing the tag would cause me physical and emotional distress,(for example, because of:

- *Thinning skin*
- *Frail bones*
- *Confusion*
- *Other*

If you require further information or evidence before making a decision on whether to impose a tag requirement, please contact me.

I would be grateful for an urgent reply to this request.

Yours faithfully,

Name