Bail for Immigration Detainees
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**BID COMMENTS ON**

**THE NOTE ON THE BAIL PROVISIONS OF THE IMMIGRATION ACT 2016 ISSUED BY THE PRESIDENT OF THE FIRST-TIER TRIBUNAL ON 17 MARCH 2017**

**AND NEW BAIL FORMS**

1. Bail for Immigration Detainees (BID) is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation.

2. BID is a member of the Immigration Law Practitioners' Association (ILPA), and we endorse the comments included in their submissions on the Tribunal bail note and forms dated 26 April 2017.

**Auto-referral**

1 BID wishes to ensure that the auto-referral mechanism under paragraph 11 of Schedule 10 takes into account the vulnerable circumstances of immigration detainees, many of whom remain without legal representation.

2 The presidential note states at paragraph 6 that "Under sub-paragraph 11(7) [of Schedule 10] a reference to the First-tier Tribunal under paragraph 11 is to be treated for all purposes as an application for bail. If bail is refused, or the application is withdrawn, or a notice by the person declining referral is withdrawn, then after a further 4 months another referral must be made".

3 BID noted in submissions that it recently made to the Tribunal Procedures Committee:

"The right to a bail hearing for anyone who has not had such a hearing is defined and limited by the references from which the 4-monthly time period starts. BID has concerns that detainees who withdraw bail applications, or who may have the impression given to them by the detaining authorities that a bail application may not be in their interests or may be refused out of hand, may be encouraged to withdraw their bail applications or state that they do not wish to proceed with an application.
In these circumstances references given by the Home Office to the Tribunal should include:

a. Confirmation that the detainee has been provided with oral and written confirmation of their right to apply for bail and of the implications of withdrawing or deciding not to apply for bail.
b. Signed confirmation by such detainees that they have had such notice read out and explained to them.
c. Confirmation that the person has been provided with written and oral notification of the requirement that should they wish to withdraw notice that they do not wish to proceed with a bail application, then they must do so in writing.
d. Confirmation that where a bail 'event' took place due to the application of the 14 day removal rule, that the person has been informed [provided with written and oral

notification] that such event restarts the 4 month clock and it is therefore their responsibility to apply for bail should they wish to do so."

4 BID therefore asks that there is rigorous analysis of what is meant by 'a reference' to the Tribunal that might amount to a bail application. This is so that the purpose of Section 11, to ensure that detained persons have at least one bail hearing every four months, is not undermined in circumstances where a detainee may be vulnerable or suffering from mental health or other problems.

**Consent of Secretary of State where removal directions are in force**

5 The president's note states at paragraph 10 that where a judge intends to grant bail the judge should draft a note setting out the reasons why in the judge's opinion bail should be granted. If the Home Office refuses to consent to granting bail or if it delays in responding to the provisional grant of bail the Tribunal will refuse to grant bail.

6 BID would ask that the Tribunal also considers a further option which is to:

a. Provide initial indication that it is minded to grant bail;
b. Adjourn the bail application to a date 14 days after initial consideration to grant bail was given;
c. If the applicant is removed from the UK within the 14 day period the bail application is to be deemed to have lapsed or refused.
d. If the applicant has not been removed from the UK, indication to be provided by the Tribunal to the Home Office at the end of the 14 day period that it intends to grant bail and failing any objection or response to that indication, bail to be granted.
e. It will therefore be open for the Home Office to respond to the Tribunal to request a renewal or continuation of the bail application;
f. Should further indication be provided by the Home Office that it intends to remove the applicant within 14 days then it will remain open to the First-tier Tribunal judge to either refuse to grant bail or to again adjourn the hearing to 14 days after the date when bail would have been granted.

7 BID believes that this procedure will help to ensure that where the 14 day notice period for removing a person is not actually applied, the original decision to grant bail can be implemented.

8 This will help to avoid unnecessary delays. At the moment, and as occasionally occurs due to changing Tribunal workloads, some hearing centres can take a long time to list a case for hearing, sometimes not for 2 to 3 weeks after receiving a bail application. In such circumstances where bail is refused due to the 14 day removal period being applied by the Home Office the bail applicant will in reality be penalised by up to 28 or more days before a subsequent bail hearing can proceed.

9 Ensuring the initial bail hearing is adjourned and that a final decision is not made will not defeat the intention of the '14 day rule'. Providing indication that bail may be granted if the bail applicant is not removed within 14 days while allowing the Home Office the opportunity of reverting to the Tribunal to oppose bail will also not defeat the purpose of paragraph 3(4) of Schedule 10. Allowing a person to be granted bail where removal does not take place within 14 days and where the Home Office does not seek the renewal of the bail hearing will also ensure that the original intention of the Tribunal to grant bail is implemented without unnecessary delay.

**Enforcement and Transfer of bail to the Secretary of State**

10 The president's note states at paragraphs 21 and 22 that it is anticipated that in most cases once bail is granted the Tribunal will transfer the administration of bail to the Home Office. It seems that the reason for this is that this is effectively the existing arrangement prior to the introduction of Schedule 10.

11 BID has experience of cases in which the Home Office has strongly opposed bail and insisted on strict curfew conditions. In some of those cases, the First-tier Tribunal has released the applicant on bail and issued conditions that were less restrictive than those sought by the Home Office, only for the Home Office to immediately impose its own – often even more restrictive - conditions after the person's release.

12 BID is therefore concerned that once the Tribunal issues its direction under paragraph 6(3) for the Home Office to have sole administrative control over a person's bail conditions, the Tribunal will lose its ability to make any further changes, while the Home Office may consider this to be authority for it to set more stringent conditions than the Tribunal originally envisaged.

13 BID wishes to ensure that the Tribunal will give careful consideration to applicants who request that the Tribunal retains control or responsibility for the administration of their bail. Bail applicants may have good reasons for holding such concerns and yet may also be worried that by raising their concerns before the Tribunal this may be relied upon as evidence that they do not wish to cooperate with the Home Office and may therefore be at increased risk of absconding.

14 BID believes that it is essential that the Tribunal retains responsibility over the administration of bail so that any application to vary conditions including reporting, residential or other conditions should be referred to the Tribunal. This will not prevent the Home Office from making a decision to re-detain e.g. for the purpose of imminent removal, but will ensure that the Tribunal has control over the supervision of conditions that it has imposed following a considered judicial hearing; as well as the supervision of re-detentions made where the Home Office relies solely on the assertion that there has been a breach of bail conditions.

15 The significance and importance of the Tribunal retaining control over the administration of bail in all circumstances is essential and should not be understated. Given the nature of administrative detention for immigration reasons it is reasonable to require the Tribunal to retain judicial authority over bail and not to hand over that authority to the Home Office which is the detaining authority that has opposed the initial grant of bail.

16 BID notes that the new B1 form asks bail applicants if they consent to future management of bail being transferred to the Home Office, and if not to briefly explain why. For the reasons given under point 13 above BID is concerned that this question places bail applicants in a difficult position as they may be led to believe that an answer in the negative will result in their bail application being refused. BID believes the question on this issue should be removed and a statement included instead making clear that the Tribunal will retain responsibility for administering bail. The statement can inform the bail applicant that the Home Office may make a request for the transfer of the administration of bail to itself.

17 BID also believes that it is reasonable for bail applicants to refuse to consent to the transfer of the administration of bail to the Home Office without there being any justification on the part of the Home Office for the transfer. Only after the Home Office justifies and gives reasons to the Tribunal and the bail applicant for requesting the transfer of administration should a bail applicant be asked to address this issue.