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Children's Legal Centre

Immigration Bail and Studying
Coram Children's Legal Centre's briefing, March 2018

Schedule 10 of the Immigration Act 2016[1] made significant changes to the status of those without leave to enter or remain in the UK, as well as to detention powers. Most of these provisions came into force on 15th January 2018.[2] 'Immigration bail' replaced several old kinds of status, including 'temporary admission', which was given to asylum seekers entering the UK.

The new immigration bail provisions affect any child or young person who does not have leave to enter or remain but needs it. **The immigration bail provisions are retrospective** and not only cover new arrivals, but also any other individual who is already in the UK but does not have leave to enter or remain. While immigration bail has usually been associated with those in immigration detention, now someone who cannot be lawfully detained can still have immigration bail imposed – this particularly affects children, who can only be detained in strict circumstances. **Home Office guidance outlines that *'if the person being granted immigration bail does not have any leave to enter or remain in the UK, it will be appropriate to impose a bail condition restricting work and studies in the majority of cases.'*[3]**

The Home Office now also has the power to amend, remove or add conditions at any time. Notice should be served on the individual in these circumstances. Conditions that can be attached to an individual's immigration bail are wide and varied – currently there is a non-exhaustive list which includes restrictions on the individual's work, occupation or studies in the UK.

During the passage of the now Immigration Act 2016, concerns were raised that the new immigration bail provisions would be used to prevent children and young people from accessing education. At the time Lord Keen (Advocate General of Scotland) wrote to Lord Rosser on behalf of the government stating that the power was not 'about trying to deny education' and that the government did 'not intend to impose through the use of the power a blanket ban on asylum seekers accessing education. Where the power could have utility, however is on specifying the place at which someone can study.' He gave assurance that the power to restrict access to education would only be used 'on a case by case basis, and only when proportionate'[4] During Committee stage, the Immigration Minister outlined that 'like the other conditions listed, a restriction on study is only an option that is available, it is not a mandatory requirement and can be imposed as appropriate.'

However, **we are already seeing significant numbers of young refugees and migrants being granted immigration bail with a no study condition seemingly as a matter of course and without examination of their circumstances and the impact.** They are being left cut off entirely from education and, in some cases, social care support.

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[1] http://www.legislation.gov.uk/ukpga/2016/19/schedule/10/enacted
[2] http://www.legislation.gov.uk/uksi/2017/1241/contents/made
[3] Home Office, Immigration bail guidance, January 2018, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673954/immigration-bail-v1_0.pdf
[4] http://data.parliament.uk/DepositedPapers/Files/DEP2016-0237/Letter_to_Lord_Rosser_RE_Committee_Consideration_of_Immigration_Bill.pdf

Restrictions on access to education

Home Office guidance states that:

'If a child can lawfully access education services until the age of 18, they are permitted to study. You should not set a study condition that they must attend school, but you must not impose a condition preventing them from study. However, you can, where dealing with a family group, specify that a child may only attend a named school (the one they already attend or will be attending) to ensure a family stays within a particular location.'

The guidance states that there is nothing in the Immigration Rules to prevent asylum seekers studying but they must not be given permission to study using immigration bail conditions if they:

- *have exhausted their appeal rights*
- *have committed immigration offences*
- *are otherwise not entitled to study* [5]

The Home Office already had the power to place restrictions on study for those with limited leave to remain or enter[6], although this was, in CCLC's experience, rarely used in practice. However, there was no such power to place restrictions on asylum seekers – who would previously be granted temporary admission. With the replacement of temporary admission for immigration bail, the Home Office now also has the power to restrict an asylum seeker's studies by placing such restrictions on the condition of their immigration bail. Therefore, those groups of children and young people affected will include:

- Asylum seekers
- Undocumented young people
- Appeal rights exhausted (ARE) young people
- Care leavers who have not resolved their immigration status

There is a particular concern raised for care leavers over the age of 21, whose continued access to leaving care support will be reliant on their remaining in education.

When bail is granted in these circumstances, the person should normally be granted bail subject to the same conditions that applied to their previous grant of leave. For example, if the person could previously work, they should normally be granted bail with a condition that allows them to work. Where the previous condition of work specified that they could only work for a specified employer, the condition of bail should recreate that. Where the person could previously study and seeks to resume their studies, they should normally be granted bail with a condition that allows them to study.

We are already seeing 'no study' conditions imposed on asylum seekers, including care leavers who are still in the asylum system (whether waiting for an initial decision or appeal). This would suggest that those who are appeal rights exhausted or have submitted a fresh claim or immigration application will also see a condition of no study on their immigration bail.

[5] Home Office, Immigration bail guidance, January 2018, pp12-13
[6] Section 3(1)(c)(ia) of the Immigration Act 1971

Enforcement

Paragraph 10 of Schedule 10 gives the Home Office the power to arrest (without a warrant) an individual on immigration bail where the immigration officer or constable has 'reasonable grounds' for believing that the person is likely to, is failing, or has failed to comply with a bail condition. This is a worrying power, where a reasonable belief can empower an immigration officer to arrest a young person.

If an individual does not comply with immigration bail conditions, they should be notified of the breach and given 10 days to make representations. It should also be noted that under section 24(1)(h) of the Immigration Act 1971, a person on immigration bail who breaches a condition without reasonable excuse commits a criminal offence. They are liable to prosecution and may be subject to a fine and/or 6 months imprisonment. This will have an effect on any immigration application being made and may also link back to the immigration bail matters and consideration of conditions by the Home Office – see section below.

Someone will only have their immigration bail ended if:

- the individual can no longer be detained,
- the individual is granted leave to enter or remain in the UK,
- the person is detained or
- the person is removed from or otherwise leaves the UK

Challenging immigration bail conditions

When the Home Office considers their exercise of power to grant immigration bail, they **must have regard to certain matters** whether to grant immigration bail, as well as the conditions imposed.[7] Those matters are:

- the likelihood of the person failing to comply with a bail condition,
- 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),
- the likelihood of a person committing an offence while on immigration bail,
- 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,
- whether the person's detention is necessary in that person's interests or for the protection of any other person, and
- such other matters as the Secretary of State or the First-tier Tribunal thinks relevant

It could be argued that if a 'no study' condition does not relate to the above criteria, then such a condition is potentially unlawful.

The Home Office also has the power to vary the conditions of immigration bail under paragraph 6 of schedule 10. The guidance on variation of bail states the following:

[7] Paragraph 3, Schedule 10, Immigration Act 2016

'Decision makers must use each meaningful interaction with the person or the case as an opportunity to proactively review the person's bail conditions. This is to ensure bail conditions remain appropriate in all the circumstances. ***Decision makers must consider all requests for variation and grant reasonable requests where it is appropriate to do so.*** *However, updating a change of circumstance (for example, a change of contact telephone number) would not constitute a variation of a bail condition unless a condition was for the person to be contactable on a specified telephone number.*
If the Secretary of State exercises the power to vary immigration bail conditions, the decision maker must issue a grant/variation of bail form (BAIL 201) setting out the terms of the variation. If there is a financial condition attached to one of more of the varied conditions, the decision maker must notify any Financial Condition Supporter and ask them to sign a new Financial Condition Supporter agreement (BAIL 301).
If the Secretary of State refuses a request to vary immigration bail conditions, the decision maker must issue a ***notification of refusal of request to vary bail conditions*** *form (BAIL 406)'.*[8]

In practice, an individual with conditions (historically reporting requirements) who wished to vary would have requested this in writing through their legal representative. If such a request is refused, they will need to take further advice on requesting a variation/change in their conditions and challenging the lawfulness of the condition.

Case studies

Adam is 22. He is a former unaccompanied child and care leaver. He was granted UASC leave until the age of 17.5 but his application to extend his leave was refused. He became appeal rights exhausted. He made a fresh claim for asylum which was accepted as a fresh claim but was refused with a right of appeal. He is waiting for his appeal but in the meantime he has been given a 'no study' condition as part of his immigration bail. A significant issue for Adam is that he is over 21 and ongoing care leaver services are dependent on his remaining in education. This means it will affect his housing and financial support. Decision and appeal waiting times remain lengthy and someone could be waiting up to a year for an appeal and a decision on whether to be granted leave to remain. He can attempt to challenge the no study condition but this itself will also take time, particularly if the Home Office refuse to remove the condition, during which period he may miss too much of his studies and then not be allowed back on the course.

Karim is 19 and currently studying at college. He arrived in the UK as an unaccompanied asylum seeking child aged 17. There have been significant delays in his asylum claim and he only had his substantive interview 10 months ago. He is still waiting on his initial decision. He has been reporting regularly to the Home Office since he turned 18. He has now been sent an immigration bail letter stating that he does not have permission to work or study. He is concerned about his ability to go to college. His solicitor is unsure how to approach the issue.

Beimnet is a 20 year old from Ethiopia. She claimed asylum when she was 17. She was refused and became appeal rights exhausted. She has been attending college for three years and continues to

[8] Page 47, Home Office, Immigration bail guidance, January 2018

receive leaving care support. She recently made a fresh claim for asylum. She has been reporting every month and at her last reporting event she was issued with a new BAIL 201 letter, stating that she has no permission to study. She was not advised of this by the reporting centre but it was picked up by a support worker. She is unsure what to do.

Patricia is 18 years old. She has lived in the UK since she was 4. She and her family are undocumented. She wishes to go to university to study engineering – she has been accepted and granted a scholarship. She made an immigration application on the basis of her private life soon after she turned 18. She meets all the requirements for leave to remain on the basis of her private life. She is still waiting for a decision six months on but last week she was sent a letter with reporting requirements and given a condition of no study.

Recommendations

The Home Office should refrain from giving no study conditions to:

- Asylum seekers (including those who are waiting on their initial asylum decision and those who have an on-going appeal/fresh claim accepted).
- Any young person waiting for a decision on their immigration application
- Any care-leaver waiting for a decision on their immigration/asylum application

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, works in the UK and globally to protect and promote the rights of children through the provision of direct legal services; the publication of free legal information; research and policy work; law reform; training; and international consultancy on child rights. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children's Project, a centre of specialist expertise on the rights of refugee and migrant children.

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