

Immigration Bail and right to study

Brief outline:

[Schedule 10 to the Immigration Act 2016](#) introduced changes to the status of people without leave to enter or remain in the UK, and to detention powers. These changes came into force on 15 January 2018 and are laid out in the Home Office guidance, [Immigration Bail](#).

Schedule 10 has replaced alternatives to detention: [temporary admission](#), [temporary release on bail](#) and [release on restrictions](#). These statuses no longer exist, and from 15 January 2018 eligible people were moved to Immigration Bail instead. In practice, it means that their IS96 and other documents confirming their temporary status in the UK, reporting conditions etc. are replaced by one form: BAIL 201, which sets out any restrictions (bail conditions they have to comply with).

The first version of the guide was published on 12 January 2018. As far as we know there was no consultation with the NGO sector regarding changes that this new guidance brought in relation to study restrictions. Moreover, when the Immigration Bill was passing through Parliament, assurances were made that restrictions to study will not be imposed on asylum seekers and children under the age of 18.¹

Immigration Bail guidance:

In its initial version (published 12 January 2018), for the first time 'study' was listed as one of the bail conditions that may be imposed on a person. The explanation of when a prohibition on study may be imposed on someone was confusing and contradictory. As a result practitioners experienced situations where people (both still in the asylum process as well as those who became appeal rights exhausted, ARE), and children (under 18) were prohibited from study, almost as a blanket policy. In the majority of such cases, the box preventing study was ticked on a BAIL 201 form, many people did not notice it or did not know what it means. No explanation was provided. It was also not clear what activities would fall under the definition of studying, as this was not explained either.

Refugee Council, seeing the impact that this policy has on people, tried to obtain further clarification from the Home Office. We have obtained clarification from the Home Office on 24 April, they have also promised to update their guidance. It was confirmed that people who are still pursuing their asylum

¹ For further information, please see record of the discussion held in the House of Lords on 1 February 2016: <https://www.theyworkforyou.com/lords/?id=2016-02-01a.1625.0&s=Immigration+2016-02-01..2016-02-01+section%3Auk#g1653.0>, and further clarification in a letter from Advocate General of Scotland to Lord Rosser, dated 23 February 2016 (pages 2-3): <http://data.parliament.uk/DepositedPapers/Files/DEP2016-0237/Letter to Lord Rosser RE Committee Consideration of Immigration Bill.pdf>

claim (and as such are not ARE) should not generally have a study condition imposed on them, the same policy was to apply to former unaccompanied children who are care leavers in receipt of support from the local authority, regardless of their status i.e. including those who are ARE (it was clear from first version of the policy that children under 18 can access education). We were also told that people who had restriction to study wrongly imposed on them, should contact the Home Office and ask for this ban to be lifted.

Revised guidance was published on 8 May 2018. Main points on the study issue:

- Page 11: at least one of the immigration bail conditions has to be imposed. It is safe to say that for most people restriction on their residence or reporting conditions are most practical. Additionally, most people who claimed asylum would have a restriction on work imposed on them anyway. On these basis it is not required for the decision maker to also impose an additional condition, that is that of studying;
- Page 12: when setting out conditions for bail, decision makers have to remember that non-compliance can lead to criminal proceedings and imprisonment, conditions of bail should reduce risk of non-compliance. It is not practical to impose condition that is not necessary and one that may lead to an unnecessary breach;
- Page 13 - 16: Study

Definition: '(..) is taken to mean primary and secondary school for children and young adults up to and including the age of 18, and courses which may lead to a qualification for adults, including English for Speakers of Other Languages (ESOL)';

Imposing restriction:

- a) it is not required to give study condition permitting or prohibiting study. The box on BAIL 201 should be left blank if there is doubt over whether to impose condition in relation to studying;
- b) imposing study restriction **must** be authorised at a minimum grade of HEO/CIO equivalent grades;²
- c) when imposing a study condition: (i) consideration has to be given to impact that such restriction will have on an individual, when for example they might be taking exams (university, A-level etc.), and (ii) times scale within which removal is to take place and as such the impact of a study restriction;

Children: children (up until the age of 18) have the right to access education; study condition that they must attend school should not be set. The decision maker may require a child to attend particular school when dealing with a family in order to make sure that family will stay in one location.

Asylum seekers:

- a) nothing in Immigration Rules prevents asylum seekers from studying therefore a study restriction should not be imposed on this group until they become appeal rights exhausted;

² Managerial level positions. CIO = Chief Information Officer, HEO= High Executive Officer (higher grade than CIO)

- b) former unaccompanied children care leavers (i.e. those who turned 18) and who are being supported by the local authority, must be permitted to study;
- c) those under [section 71 of the Nationality, Immigration and Asylum Act 2002](#)³: decision maker can impose a study restriction but this has to be in line with person's leave (example: T4 student must be permitted to study).

Quick guide (page 15-16):

Status	Bail condition	Further information
Under 18s (general)	Permit study	Inc. those who turn 18 in final school year
Under 18s refused LTE for study purpose	Do not set a study condition	Border force – where intending to study at state schools without valid EC
Former UASC care leavers	Permit study	Until post-ARE
Care leaver	Permit study	Until post-ARE
Adult asylum seeker	Do not set a study condition	Admissions to HE institutions are matter for institutions concerned
Section 71 asylum seeker	Any condition should reflect conditions of leave	Do not use bail to remove a pre-existing condition unless circumstances change
Adult Immigration offender (not asylum seeker)	Prohibit study	Min CIO/HEO authorisation. Consider any exams.
Post-ARE (other than care leavers)	Prohibit study	Min CIO/HEO authorisation. Consider any exams. Follow steps to check if they arrived in UK as UASC/unaccompanied child
Post-ARE UASC/unaccompanied child in receipt of 'leaving care' support	Do not set a study condition	Check if they arrived in the UK as a UASC/unaccompanied child
Deportation – under 18	Do not set a study condition	Including those who turn 18 in final school year
Deportation – adult (no asylum claim)	Prohibit study	Min CIO/HEO authorisation But consider any exams.
Deportation – adult (DO not signed or in force, outstanding asylum claim/appeal)	Do not set a study condition	Until ARE or DO signed and in force
Deportation – DO signed and in force	Prohibit study	Min CIO/HEO authorisation
Deportation – prison license	Permit study	Limited to "as specified in the licence conditions"

How the H.O. is going to rectify a bail restriction to study that was imposed in error:

On 9 May 2018, Home Office Minister in the Lords said that: 'The Home Office is proactively looking to identify cases where this has been applied inappropriately, and will issue a new bail notice to the individual'.⁴

³ A person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom

⁴ Baroness Williams of Trafford: <https://hansard.parliament.uk/Lords/2018-05-09/debates/D28B1DAA-BDBB-4483-8275-498710B06C91/AsylumSeekersStudents#contribution-1DFDA888-5EDD-43FF-B824-9596E2C00825>

We were advised by the Home Office that people can contact them on a number provided on their BAIL 201 form in order to inform that their restriction to study was imposed on them in error. We were told that you don't have to be regulated in order to do this. If you are seeking a variation on bail conditions i.e. in a category other than those listed above to whom the restriction should not apply, it people are advised to seek legal advice, there is Legal Aid available for advice and representation in relation to the conditions of immigration bail.

Possible issues to explore further:

- Rights of people who made statelessness application and never claimed asylum;
- Rights of those who are on s4 support, and even more broadly, all people who became ARE but can't leave the country;
- How the Home Office is dealing with requests to lift restriction to study.

Links:

Schedule 10 to the Immigration Act 2016: <http://www.legislation.gov.uk/ukpga/2016/19/schedule/10>

Immigration Bail Guidance v2 from 08 may 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705600/immigration-bail-v2.0ext.pdf

About the Refugee Council

The Refugee Council is one of the leading organisations in the UK working with asylum seekers and refugees. We give help and support to asylum seekers and refugees, and also work with them to ensure their needs and concerns are addressed by decision-makers.