

Immigration Detention

If you do not have the right to remain, you are liable to being held in immigration detention. This can happen at any time, but there are several points in the asylum and immigration process when you are more likely to be detained (see below).

People detained under immigration powers may be detained in an immigration removal centre (IRC) or short-term holding facility, or if they are a foreign national ex-offender who has completed their custodial sentence they may continue to be detained in prison.

The Home Office uses the term Immigration Removal Centre but as many people are held in detention for long periods of time with no prospect of removal/deportation, this term can be misleading. We use the term detention centre in this Toolkit instead.

People in detention cannot leave and have very limited freedom of movement within the centres. There is no time-limit on adult detention in the UK - you can be detained indefinitely (with the exception of pregnant women who can only be detained for up to 72 hours, unless extended by ministerial approval).

You can find a list of the detention centres and short-term holding centres in the UK here: <http://righttoremain.org.uk/resources/detention.html> You will also find links for helpful organisations if you or someone you know is detained.

When can you be detained?

If you do not have the right to remain in the UK, you are liable to be detained at any time, but there are some points in the asylum and immigration process when it is more likely to happen:

- when you first enter the UK
- when you claim asylum, if the Home Office categorise your case as a Dublin safe third country case, or as a non-suspensive appeals case. This will happen after your screening interview.
- if you have claimed asylum, been refused and you are “appeal rights exhausted”. This means after you have been refused and either have appealed to the First-tier Tribunal and lost your appeal; or if you did not take the opportunity to appeal; or if you did not have the right to appeal. Remember - this is a Home Office term and you may in fact have legal options/further appeals available to you.
- if you do not have any immigration status or applications pending and you are picked up by an immigration enforcement team.

It is common for someone at risk of detention to be picked up when they go for their

regular reporting/signing event at the Home Office.

People are also picked up from their homes (sometimes in dawn raids), during immigration raids on businesses, and stop-and-searches at train and bus stations.

Who shouldn't be detained, according to the Home Office's own policy?

The Home Office's "**Adults at Risk in Immigration Detention**" [policy](#), which was brought into force in September 2016, sets out the conditions or experiences which will indicate that a person may be "particularly vulnerable to harm in detention":

- suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition)
- having been a victim of torture
- having been a victim of sexual or gender based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery
- suffering from post traumatic stress disorder (which may or may not be related to one of the above experiences)
- being pregnant
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transsexual or intersex person.

However, someone falling under one of these categories does not necessarily mean, according to the Home Office's point of view, that they will not be detained.

The Adults at Risk policy states that although there is the presumption that detention will not be appropriate if a person is considered to be "at risk", *"detention will only become appropriate at the point at which immigration control considerations outweigh that presumption. Within this context it will remain appropriate to detain individuals at risk if it is necessary in order to remove them."*

The policy has not been long in place, so it remains difficult to assess how it is being applied. However, there are already legal challenges to the policy underway, such as to the definition of torture used within the policy.

In addition to the categories of *adults* at risk listed above, **unaccompanied minors** should also not be detained, apart from in exceptional circumstances (though sometimes children are wrongly detained by the Home Office, because the Home Office classify them as adults).

Be prepared in case you are detained

ACTION SECTION – Be prepared

If you are at risk of being detained, there are some things that you can and should do to be prepared.

- You should have a list of **emergency contacts**, and someone else should have a copy. These might include your lawyer's number (and your case reference number the lawyer uses in letters to you), any close friends or family, people you have spoken to about caring for children in case of detention, doctors or hospitals if you have a medical condition.

ACTION SECTION – Be prepared

- **Have copies of your documents.** If you are detained, it may become impossible for you to access your documents if they are in your home. This means that vital evidence that a lawyer or a friend/supporter needs can't be reached. You should have a copy of all your documents, not just your lawyer. Give a copy of these documents to someone you trust.
- If possible, give a friend a **copy of your house/room key**. If you are detained, they can go and get essential things for you from your house. This may not be possible, for example if you are living in asylum support or Section 4 accommodation. Only give a key to someone you trust, and make sure you are allowed to do this under your accommodation rules.
- **Your phone will probably be taken off you** when you are detained. Keep your important numbers written down. If it's possible to still use your own sim card, it's a good idea to have saved important numbers to the sim card beforehand (rather than to your phone handset) so the numbers will be still available in the replacement phone. If you have a smart phone, the sim card is unlikely to work in the detention centre device.

Signing support and *detention action plans*

Most people who have applied for asylum or other immigration status and have not had a positive decision have to regularly report at their local Home Office reporting centre or a police station. At every reporting visit, the person is at risk of detention, particularly if their

application has been refused, which they may not know until they go and report.

Some people phone a friend when they are entering the reporting centre, with instructions for what to do and who to contact if they are detained. If the friend does not get a call within an hour or two to say they are safe, the friend can call their lawyer and/or support group if they have one.

In some areas, local support groups have set up systems to help with this. The person going to report will check-in with the group first, who keep a record of everyone's contact details and emergency instructions of what to do if they do not come out.

A system like this can save valuable time: friends/supporters can start finding out exactly where the person is, what has happened, and what can be done to help straight away.

A signing support system also means that the person going to sign knows people are looking out for them, and that there is a plan in place if things go wrong and they are detained. This can reduce the psychological burden of reporting/signing at the Home Office.

Some starters on setting up a signing/detention support system for your group

(1) Make sure you know when everyone in the group goes to sign

(2) Where are people signing?

(3) Where they will be detained locally, before they are sent to a longer-term detention centre?

(4) Have basic information about the stage that group members' cases are at. Remember, you don't need to know everything about someone's case, and you should only ask for information if the person is comfortable sharing it.

(5) It may help to have a basic form that you use with information on such as name, date of birth, emergency contact details including lawyer if there is one, family, health problems etc. Their Home Office reference number may be important for contacting the lawyer/the Home Office. On this form, you can indicate issues that need to be thought about if someone is detained – are there children who need emergency child-care? Is medication needed?

(6) Create a simple consent form for every group member to sign, giving permission for the group (or a named representative of the group) to speak to the person's lawyer, or MP, or to enter their asylum accommodation, for example.

(7) How does the group find out that somebody's been detained? You might want to think about a buddy system (with back-up in case the buddy is away), a telephone tree or email system.

Have an action plan

- Agree in advance with individuals what they want to happen if they are detained.
- Ring their lawyer (if they have one).
- Try and find out about legal aid advice in the detention centre they are taken to.
- If they can't get legal advice, can your group help them apply for bail?
- Once you know which detention centre they are in, arrange visiting for family, friends, support group members. If it's too far away, get in touch with the local visitors' group (see below). You may want to think about fundraising to pay for travel to the detention centre.
- Are there any family members, professionals involved in the case that need contacting?
- Are there other actions to take? Legal support? Fundraising for legal fees? Contacting the local MP?

Legal options in detention

Legal aid contracted firms

In general, there is no legal aid for immigration matters that are not asylum, apart from some cases involving domestic violence or trafficking. Read more at the Toolkit page *Your Legal Case*. If you have a non-asylum immigration case, you will not be able to get legal aid advice on your substantive case, though you may be able to get legal aid to challenge your detention.

At detention centres in England, legal aid advice is provided by a few contracted legal firms at each centre. You can find out which firm covers the detention centre that you or someone you know is detained by searching the website for Bail for Immigration Detainees: www.biduk.org. You can also ask at the detention centre which firms are currently contracted.

These firms have legal surgeries which you can sign up for if you are in detention. The rotas for these surgeries get booked up very far in advance, and the quality of legal advice is variable. If you experience problems signing up with the rota, or with the legal advice you receive, you can make a complaint to the solicitor firm, the Office of the Immigration Services Commissioner or the Legal Ombudsman.

Detention far from where you live

Nearly all removals/deportations take place from London airports. If you apply for asylum or other immigration status and live in Scotland, Wales or Northern Ireland and you are detained, you will very likely be moved to a detention centre in England prior to

removal/deportation.

This makes it very difficult for your Scottish, Welsh or Northern Irish lawyers to continue to advise you. This is also a problem if you live in England and you are moved to a detention centre a long way from where your English lawyer's office is located.

If you claimed asylum or other immigration status and lived in Scotland or Northern Ireland, there is the additional problem of restricted legal aid in England if you are moved to a detention centre there.

In theory, if your lawyer has already starting working on an aspect of your case (for example, a fresh claim), they can continue to work on it even if you are moved across to England/far away in England. It will be very difficult for them to work effectively on your case, however, if they cannot visit you in detention.

Similarly, while only certain firms have contracts to take on new cases in detention, if you are already being represented by a firm and they are in the middle of working on an aspect of your case, they can continue. This, again, may be difficult because of not being able to meet with you.

ACTION SECTION – Legal help

If you are unable to get legal advice from one of the contracted firms in immigration detention, you could think about these alternatives:

- pro bono legal advice. Read more at the Toolkit section *Your Legal Case*
- supporters/friends providing *legal support* that does not involve giving legal advice. Read more at the Toolkit section *Your Legal Case*
- fundraise for a private solicitor

If you are detained

The procedure in each detention centre is different. You may not be able to rely on the staff there to give you helpful information about procedure and your rights, so it could be a good idea to contact a local visitor group (see below). If you feel your rights are not being respected, let someone know. You may want to tell a visitor group, your solicitor, a friend or supporter, or make a complaint to the detention centre or the Home Office.

Communication

It can be difficult to keep in touch with people if you are detained.

At some detention centres the mobile phone signal is very poor. If you have your mobile

phone and sim cards taken off you and you are given a detention centre device, the cost of calling out can be very expensive.

If you are supporting someone in detention, remember that many phone networks charge to pick up voicemail messages. If you don't get through to the person in detention, it's better to send a text message which they can read for free.

You should have access to the internet in detention, but you may have limited time to use the computers. Certain sites such as Facebook and Skype are blocked.

Chaplains/religious support At every detention centre there will be one or more chaplains (religious ministers) who can provide support in many different ways. There are usually several chaplains from different faiths who work in rotation. Chaplains can provide religious support, emotional support, or help in practical ways too. The place of worship where the chaplain is based may provide a quiet place for reflection or prayer.

There are usually prayer groups in detention centres (often organised by people in detention), which some people find very comforting.

ACTION SECTION: VISITING

Friends and family can visit you in detention.

They will need to find out the visiting times, notify the centre in advance (they may need to give 24 hours' notice) and bring ID with them. They can ring the detention centre to find out what form of ID they will need. They will have their photograph taken at the centre, and their fingerprints may be scanned as well. See the Home Office website for details of visiting each detention centre: gov.uk/immigration-removal-centre/overview

There are also visitor groups (co-ordinated groups of people, usually volunteers, who regularly visit people in detention to provide company and emotional support) set up for each detention centres and some prisons. The Association of Visitors to Immigration Detainees (AVID) has a list of their members on its website: aviddetention.org.uk

If someone you know has been detained, you might want to arrange visits to see them. The isolation of detention can make it very difficult to keep your spirits up. Keeping engaged and communicating is essential not just for wellbeing but also for continuing with the legal process.

If a member of your group has been detained, you might want to think about fundraising to pay travel costs so group members can visit the person in detention. Detention centres are often difficult to reach by public transport, so sharing lifts in a car/petrol costs may be the easiest way of visiting.

Some groups also organise letter writing sessions, where everyone gets together to write to someone they know (or even someone they don't) in detention. If a member of your group has been detained, you might want to take photos of the group getting together to take this action and send the photos to the person in detention, so they know people are thinking about them.

Getting out of detention

Case law on length of detention has established that people can only be detained for a “reasonable” period of time, and the power to detain only exists when there is a “realistic prospect of removal”.

The Home Office must undertake regular detention reviews to justify a continued detention. To request release from detention, a request can be made for temporary admission or bail.

Whether or not your removal/deportation is “imminent” may depend on whether emergency travel documents can be issued for you allowing you to be admitted back into your country. You may wish to contact the organisation Bail Immigration for Detainees (BID) about this, and see the Home Office information about whether you are likely to be issued with a travel document quickly or at all (see the BID website)

Immigration bail

If you have been detained, you can apply to be released by "immigration bail". From January 2018, any migrant lawfully in the UK without leave to remain (including asylum seekers) is technically on immigration bail. This replaces the previous status of "temporary admission". This section of the Toolkit refers specifically to immigration bail when someone is detained.

You can apply for bail if you have been detained for 7 days or more. You can apply for bail from the Home Office and if this is refused, you can apply to the First-tier Tribunal to have a bail hearing in front of a judge.

The Tribunal cannot grant bail for *eight days after arrival* or when *removal is (supposed to be) within the next 14 days*.

If your application for bail has been refused by the First-tier Tribunal, the Tribunal will automatically refuse any further applications for bail made within 28 days of the last refusal – unless you can demonstrate there has been a material change in your circumstances. You will have to convince the Tribunal of this change in writing, when you make your application.

If you cannot find a lawyer to help you with these applications, you can apply for bail yourself. Bail Immigration for Detainees (BID) have produced a handbook which can help with this: <http://www.biduk.org/pages/6>

The main conditions of release will be a specified address and sureties and a requirement to report regularly at a police station or reporting centre. Sometimes people are released on condition of being fitted with an electronic tagging device.

If a period of your detention has been found to be unlawful by the High Court (if the Home Office has not followed its policy on reasonable length of detention, for example) you may be able to seek financial compensation (damages).

Automatic bail hearings should be provided for those who have been detained for four months and who have not applied for bail themselves or with the help of a lawyer (unless they are detained subsequent to serving a criminal sentence).

Addresses

Successful bail applications will include a particular address to live at on release. If you do not have an address (your own or a friend, family or supporter who can house you), the Home Office have the power to provide accommodation in "exceptional circumstances" if this is needed to ensure someone's liberty.

Bail Sureties

A surety is someone who puts up a sum of money guaranteeing the person applying for bail will keep to the bail conditions. If the detainee doesn't keep to the conditions, the surety is liable to lose the money they have put up. This role is called a "cautioner" in Scotland.

Usually no money is handed over when someone agrees to be a surety, but if bail conditions are broken the money will be taken from their bank account. The amount for surety may be a significant amount – it can be thousands of pounds (and if the surety has a high income, it may be even higher as it is meant to be an amount which would be difficult to lose).

The bail application form has space for two sureties, though this isn't a requirement. The surety will need to attend the bail hearing and provide ID, proof of address, occupation, financial status and immigration status.

Note - a criminal record check and immigration record check can be undertaken of all people who act as sureties.

You do not need to be a British citizen to act as surety, but if you have problems with your immigration status, you need to consider whether it is safe for you to be a surety for someone else.

Good sureties are close friends or colleagues, rather than family members, or supporters who do not know the person in detention well, but this is not always possible.

The Immigration Bail Observation Project Scotland has produced a useful leaflet and guide about being a cautioner, the bail procedure and providing bail addresses. While written for people supporting those in Scotland, the information is also useful for those supporting someone trying to get immigration bail elsewhere in the UK too.

Leaflet: <http://sdv.org.uk/wp-content/uploads/2016/10/Being-a-cautioner-leaflet.pdf>

Guide: <http://sdv.org.uk/wp-content/uploads/2016/10/Guide-for-Cautioners-Final.pdf>

Bail hearings

Bail hearings take place in front of a judge at court (in the Tribunal), but you are likely to stay in your detention centre and only join the proceedings via video-link.

The bail hearing will consider things such as the release accommodation, sureties, the likelihood that the applicant will abscond (run away or not keep to reporting conditions), immigration history, family or community ties and factors such as health conditions.



It's important to check the bail summary provided by the Home Office (their case for continued detention) as there are often mistakes in this that could be challenged. The bail summary should be made available to you and your lawyer (if you have one) the day before the hearing.

There are often problems with bail hearings such as procedural irregularities, lack of legal representation and interpretation problems.

You may want a friend or supporter to attend the bail hearing with you as an observer. If your bail hearing is taking place via video-link, your friend would sit in the Tribunal with the judge, while you give evidence by

video from detention. It is unlikely you will be able to see them or speak to them.

Medical cases, torture survivors and Rule 35 Detention Centre

Rule 35 requires detention centre doctors to report to the Home Office 'any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.'

Many people in detention struggle to access proper healthcare in detention, and rule 35 reports are commonly either not done, or not done properly. If you think this is the case for you, you should speak to a lawyer and/or contact the organisation Medical Justice: medicaljustice.org.uk.

To be released from detention as a survivor of torture, you will need to provide independent evidence of this.