

Detention (Practical Advice)

This information is accurate as of February 2017. We will be updating this information semi-annually.

If you think you may be detained:

1. Try to make sure that you have a mobile phone that is fully charged and has credit on it.
Don't have a phone with a camera as this will be confiscated.
2. Have the telephone numbers of your solicitor or legal adviser in your phone, as well as the friend(s) or supporter(s) that you would want to contact if you were detained.
3. Put the telephone number of your solicitor/legal adviser or friends/supporters on a separate piece of paper and keep it with you at all times (in case your phone gets confiscated).
4. Make sure you tell your friends/supporters when you are going to sign so that if you are detained they can try and get help for you. Tell your friends/supporters to put every effort they can into getting you out of detention.
5. Make sure your friends/supporters have the name and telephone number of your solicitor/legal adviser and your Home Office Reference number.
6. Think about what you want your friends/supporters to do with your belongings and documents that may be in your house/accommodation.
Can they get access? Have they got a key, for example? You could also give your friends/supporters a signed letter authorising them to act on your behalf.
7. If you have an active and ongoing case with the Home Office/UK Borders Agency, take copies of it with you every time you sign.
If you don't have evidence but you have submitted a fresh claim, for example, tell Dallas Court or the immigration officers of this at the earliest opportunity.
If you have an active case you should not be detained.
8. If detained at Dallas Court, you will be transferred to a detention centre – ring and tell your friends/legal adviser where you are as soon as you can.
9. If you are detained and served with a removal notice, you have 72 hours before you can be removed.
This gives you time to try and get legal representation or for your solicitor to submit a Judicial Review about the decision to remove you.
10. You are more likely to be removed if you are from some countries rather than others. This is due to the political situation in each country and whether it is possible to return you. Find out what the situation is for the country you are from.
11. For example, although from October 2010 returns to Zimbabwe were to be recommenced by the Home Office, we have seen that in practice very few Zimbabweans have been detained or removed. Further, there are very few returns to some other countries, for example, Somalia, Eritrea, and Iran. Many people from DRC, for example, are being detained and issued with removal directions.
However, the situation could change in the future.

Detention (More Information)

This information is accurate as of February 2017. We will be updating this information semi-annually.

This is one of a series of advice sheets designed by Greater Manchester Immigration Aid Unit for people who have claimed asylum and want to know more about their rights. We understand that facing the possibility of detention is very frightening. This advice sheet is written to help you understand the legal situation you may be in together with some practical tips about what you can do if you think you are at risk of being detained.

Summary of legal terms used in this advice sheet:

- Leave to Enter is permission to enter the UK
- Leave to Remain is permission to stay in the UK
- Dallas Court is the centre where people who are claiming asylum in Greater Manchester have to sign on
- Deportation or Removal is when someone is returned to their home country

Who can be detained under Immigration Act powers?

- People who have just arrived in the UK and who are waiting for an examination by an immigration officer to decide whether or not they can be granted admission to the UK.
- People who have entered the UK illegally (for example, in the back of a lorry or using false documents), who are waiting for a decision as to whether they will be granted leave to enter, and who are waiting for removal if leave to enter is refused. Many people claiming asylum will fall within this category.
- People who have overstayed their limited leave to remain, or who have breached conditions attached to their leave to remain, and who are waiting for a decision about whether they are to be removed from the UK.
- People against whom the United Kingdom Visas and Immigration (UKVI) is taking deportation action. Most people in this position will be foreign national prisoners who have completed their criminal sentence.
- If someone does not fall within one of the above categories their detention will be unlawful.

Who cannot be detained under Immigration Act powers?

- People who cannot be detained under Immigration Act powers are:
- British citizens
- People with indefinite leave to remain
- People with limited leave to remain who have not breached the conditions attached to their leave to remain

Who is likely to be detained?

- Just because someone falls within one of the categories of people who can be detained, they will not automatically be detained.
- Where there is a power to detain, there is also a corresponding power to grant "temporary admission".
- Temporary admission (also known as temporary release) is a status which allows a person to be lawfully at large in the UK without them being granted leave to remain.
- Most people who are claiming asylum are given temporary admission while a decision is made on their case. People can spend years on temporary admission.
- Refused asylum seekers from countries which UKVI does not send many people back to will often remain on temporary admission until such time as UKVI contemplates removal action.
- There are usually conditions attached to temporary admission including, for example, having to report to UKVI (at Dallas Court) weekly or monthly, and to live at specified address.

- UKVI has policies about which of the people in the above categories will be detained. This policy is contained in the Enforcement Instructions and Guidance, which can be found on the policy and law section of the UKVI website
– <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

UKVI policy says that there is a presumption in favour of liberty, but that detention will be justified in the following circumstances. These are:

- Where there are reasonable grounds to believe that a person will fail to keep to the terms of temporary admission, for example, if they have a history of absconding or using deception
- Where removal from the UK is imminent
- Where a person has just arrived in the UK, for a short period, to clarify their identity and nationality
- Experience also suggests that foreign national prisoners facing deportation action are almost invariably detained at the end of their criminal sentences.

On the other hand, the following people should not normally be detained:

- People who have been tortured, where there is independent evidence of torture
- Families with young children, unless removal is truly imminent
- Unaccompanied asylum seeking children, or age dispute cases unless the person's appearance very strongly suggests that they are an adult
- If detention is not in accordance with UKVI policy, then it is unlawful.

Getting people out of detention

- If it is contended that detention is unlawful, then the way to get a person out of detention is to bring a judicial review/writ of habeas corpus. This is technical and is likely to need specialist legal advice, and is beyond the scope of this document.
- If detention is not unlawful, then a person should first apply to UKVI to be released on temporary admission, and if this is refused then apply to the First Tier Tribunal (Immigration and Asylum Chamber) for bail. Applications to UKVI for temporary admission are fairly unlikely to be successful as, after all, you are asking UKVI to change its mind.

Bail Applications

Who can apply for bail?

- Almost anyone who is detained under Immigration Act powers can apply to the Tribunal for bail.
- The only exception is that people who are detained on arrival to the UK, while they are examined by an immigration officer, cannot apply for bail until 7 days after their date of arrival in the UK. People detained at Manchester Airport may well fall into this category.

Preparing bail applications

- Firstly you need to know the reasons why a person is being detained. They should have been served with a document called a form IS91R which gives the reasons for detention. If a person has not been given reasons for detention in writing, their detention is unlawful.
- Applications for bail are made to the Tribunal (AIT). The AIT is an independent court, which is also responsible for hearing asylum and immigration appeals.
- Bail applications should be made to the nearest hearing centre. For those detained in the North West this is:
General enquiries
First-tier Tribunal (Immigration and Asylum Chamber)
PO Box 6987
Leicester

LE1 6ZX

- The application needs to be made on form B1. You can get blank copies of this form from (go to the forms and guidance section and scroll down to the bottom). Detainees should be given a copy of this form by detention centre staff if they ask for it.
- Before a person can make a bail application, they will need an address where they can live if they are released on bail. Asylum seekers who are still waiting for a final decision on their claim or asylum seekers who have made a fresh application for asylum and are waiting for a decision are entitled to support from NASS. This is either full support or Section 4 (which is prepaid card). This needs to be arranged with UKVI before the bail application is made. Otherwise the applicant will need to give an address of a friend/family member where they will live if bail is granted.

Grounds for bail

In the box on the form an applicant should set out all of the arguments why they should be released. These should address the reasons for detention in the form IS91R. Continuation sheets can be used. Common arguments in favour of release:

- The applicant has previously complied with conditions of temporary admission and has no history of deception
- The applicant's removal from the UK is not imminent. This can be the case even where they have exhausted all appeal rights because UKVI finds it very difficult to return people to certain countries (for example, Iran) and in relation to other countries there are no enforced removals (currently Zimbabwe, for example, or Sudan for those who originate from Darfur).
- The applicant has an outstanding application/appeal which gives them an incentive to remain in touch with UKVI. The stronger the chance of success of this application, the stronger this argument is.
- The applicant has strong family ties in the UK which makes it likely they will stay in one place.

Some people are very unlikely to get bail:

- Those whose removal from the UK really is imminent, where removal directions have been issued to take place in the next few days and there is no way to challenge this removal.
- Those who UKVI are attempting to remove who are not cooperating with the re-documentation process, for example refusing to attend interviews with their Embassy, or refusing to make attempts to obtain documents from family overseas.
- Those who have a poor immigration history, including a history of previously breaking the conditions of temporary admission, absconding, using deception and/or committing criminal offences.

Sureties

- A "surety" is a person who acts as a guarantor for a bail applicant. Basically they put forward a sum of money and say that if the person breaches their bail conditions they will forfeit that money. It is not necessary to have sureties to be released on bail but having sureties may mean that a judge is prepared to grant bail where they otherwise would not do so. The form gives space for two sureties but an application can be made with just one or with more than two.
- There is no set amount of money that a surety should put forward. It depends on the surety's circumstances. The judge will want to see that it is an amount of money that is important to the surety, and which they cannot afford to lose. So if the surety is rich, a judge will look for several thousand pounds, if the surety does not have much money, a few hundred or even less will be sufficient. The surety must demonstrate that they actually have the sum of money that they have put forward, by providing their bank statements and wage slips, although they do not actually have to pay the money to anyone unless the applicant breaches their bail conditions.
- Sureties must also provide evidence of their identity and nationality.
- Background checks will be carried out by UKVI on sureties, so it is important that they are people of good character with no criminal record. The judge will also want to know how the

surety will exercise influence over the applicant to ensure that they do not breach the conditions of their bail.

- The bail form has a space for a "recognisance". This is an amount of money that the applicant will put forward that they will forfeit if they breach the conditions of their bail. If the applicant does not have any money, it is usual to put a nominal amount here, for example, about £5. They won't actually be asked for £5.

Bail hearings

- The Tribunal aims to list bail hearings within 3 working days of the application being made. The sureties must attend the hearing and the applicant is normally connected by video link from their place of detention. The hearings are in public so anyone else can attend if they want to.
- Before the hearing UKVI will produce a document called a "bail summary". This gives more details about the reasons for detention and sets out UKVI's reasons for opposing bail. These often contain inaccuracies and should be carefully scrutinised.
- Proceedings are fairly informal and are in two stages. Firstly, the judge will decide whether or not it is correct to grant bail in principle. Secondly, if bail is granted in principle, the judge will go on to consider whether sureties are necessary and if they are necessary whether the proposed sureties are suitable.
- There is a presumption in favour of bail. It is therefore for UKVI to justify the applicant's continued detention, not for the applicant to prove they should be released.
- If bail is refused there is nothing to stop an applicant from making repeat bail applications. However, if there have not been any changes in circumstances they are unlikely to be successful.
- However, please note that the passage of time in itself can amount to a change in circumstances. The longer a person has been in detention, the harder it is for UKVI to justify their continued detention.

Bail conditions

- If bail is granted, the primary condition will be that the applicant appears before the Tribunal at a specified time in the future. There will usually be secondary conditions such as residence at a given address and reporting. If a person breaches their conditions, then it is likely that they will be detained.