



INFORMATION FOR IMMIGRATION DETAINEES HELD IN PRISONS

I'm an immigration detainee but I am held in a prison instead of an immigration removal centre. What are my options?

January 2020

Bail for Immigration Detainees (BID) is a national charity that provides legal advice and representation to individuals held under immigration powers to secure their release from detention. We also provide legal advice and representation to detainees facing deportation. BID works with detainees in all removal centres in the UK, and with immigration detainees held in prisons.

- We provide free legal advice, information and support to immigration detainees to help them exercise their right to liberty and access to justice, and to help them challenge their deportation.
- We prepare and present (free of charge) applications for release on bail.
- We carry out research and use evidence from our legal casework to influence decision-makers, including civil servants, parliamentarians, and regulatory bodies through policy advocacy.

Disclaimer

Although every effort is made to ensure the information in this factsheet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law. BID cannot be held liable for any inaccuracies and their consequences. The information in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer or legal adviser before making a decision about what to do.

Please check that this factsheet is up to date before using it. Please also check whether BID has written other factsheets or leaflets that might be relevant to you. All BID factsheets and leaflets can be found at www.biduk.org.

Why am I detained in a prison even though my criminal sentence has ended?

If you are a “foreign national” who has served a criminal sentence in prison the Home Office may wish to remove or deport you to your home country when your sentence has finished. If the Home Office is not able to remove or deport you immediately, they may keep you in immigration detention.

As an immigration detainee you will either be held in a detention centre (also called an Immigration Removal Centre or IRC) or in a prison.

Home Office often detains foreign nationals liable for deportation in prison instead of transferring them to a detention centre after their custodial sentence is finished, where they will be held under immigration powers than criminal justice powers.

It is more difficult to apply for transfer to an IRC if:

- You have served a criminal sentence for importing Class A drugs, for a serious violent offence, or for a serious sexual offence requiring registration on the sex offenders’ register
- You have escaped, tried to escape, planned an escape, or helped others to escape from police, prison or immigration custody
- You have been involved in or assisted others involved in serious disorder, arson, violence or damage
- You have completed a prison sentence of four years or more
- You are a member of a terrorist group or you have been involved in terrorist activities

You can write to the Home Office to ask them to transfer you to an Immigration Removal Centre (a detention centre). Your request for a transfer may not be successful, but you may ask anyway, explaining why you want a transfer (for example, you cannot contact your solicitor easily while in prison). The Home Office is required to consider your application and to provide you with reasons for refusing to transfer you to an IRC. It might be possible to challenge the Home Office reasons if they are not reasonable or fair. If you think this is the case you should seek legal advice to see if it is possible to challenge the Home Office decision.

Please see the sample letter requesting a transfer from a prison to a detention centre at the back of this fact sheet.

You may however also find that the Home Office decides to transfer you to a detention centre for administrative reasons, for example to attend interviews with your embassy or High Commission, for a court hearing, or to be taken to an airport for removal from the UK. You may be returned to prison after the court hearing or interview.

Can I apply for immigration bail if I am detained in a prison?

Yes. You can apply to the court (known as the First-tier Tribunal, Immigration & Asylum Chamber) for release on immigration bail as long as the custodial part of your criminal sentence has finished and you are now detained under immigration powers. If you are still on licence after serving the custodial part of a prison sentence, but are now detained under immigration powers you can apply for immigration bail. You can also apply for bail to the Home Office.

You should apply for immigration bail before the First-tier Tribunal using a bail application form (called a B1 form) or if you are applying to the Home Office by completing Home Office form 401. You can request these forms from the person responsible for foreign nationals in the prison where you are being held. This may be a Foreign Nationals Coordinator, a Diversity Officer, a Welfare Officer or an Education Officer depending on the prison. You can also ask BID to send you the forms – our contact details are at the end of this bulletin.

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How to apply for bail before the First-tier Tribunal

In the prison library you may be able to find information provided by BID which explains how you can apply to get released on immigration bail. If your prison does not have any BID information leaflets, you can write to BID at the address at the end of this book, and we will send you the information you need.

Before you send your bail application (the B1 form) to the court, you can send it to BID and we will check that it is completed correctly. If you are not sure which court to send your B1 form to, you should ask a staff member in the prison where you are detained.

Section 5 of the bail application form asks you to give the reasons why you should be released from detention. You may find it easier to write your reasons for release (your 'grounds for bail') on a separate sheet of paper and send that sheet with your application form.

How to apply for bail before the Home Office

The information referred to above on how to apply for bail to the Tribunal will also help you to prepare your bail application (using Home Office form 401) to the Home Office. The application forms are similar. However you should be aware that it may be more difficult to obtain bail from the Home Office since it is also the authority that has decided to detain you. This is also why we recommend that you first try applying for bail from the First-tier Tribunal. However, you can also make your application for bail to the Home Office at the same time as when you apply for bail from the First-tier Tribunal.

Financial Supporters

It can help your application for bail if you have someone who can come to your bail hearing and be a **financial supporter**. This means that they provide a guarantee of your good behaviour, and offer to pay an amount of money if you abscond (run away) when you are released.

A financial supporter **must**

- be able to turn up at your bail hearing in person and
- bring evidence of their financial means to the court and
- live legally in the UK, but should not have a criminal conviction.

You should explain to anyone who is going to act as your financial supporter what they will have to do at your bail hearing and then afterwards if you are released. If you are not sure whether a

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person you know is suitable to be a financial supporter you should ask them about their circumstances.

You will need to tell the court the **address** where you plan to live if you are released on immigration bail. If you have no **accommodation** of your own, or no friend or family member who can offer you accommodation you may be able to apply to the Home Office for help with accommodation. However what kind of application you can make depends on the type of immigration application you have made and whether or not it has already been refused.

- **Approved Premises accommodation for high risk of serious harm cases:** If your Offender Manager or the Parole Board requires that you reside in Approved Premises accommodation then the Probation Service will be responsible for providing you with a temporary address. Approved Premises are normally provided for 3 months and often require proof of a move-on address. If you think that you might require an Approved Premises address you should speak to your Offender Manager in the community or the Offender Manager Unit in prison to confirm whether an address is being found for you.
- **Asylum seekers and refused asylum seekers:** Asylum seekers and refused asylum seekers can apply for Home Office asylum accommodation (Section 95 and Section 4(2) accommodation) using an ASF1 application form (please contact BID if you would like us to send you this form). You will need to demonstrate that you do not have sufficient finances to pay for accommodation if you are released; you should provide evidence if possible including statements from any bank account you hold and your prison account statement. If you are a **refused asylum seeker** you will also need to show one of the following:
 - You are taking all reasonable steps to return to your country of origin;
 - You are unable to currently return to your country of origin because of some physical or legal reason why you cannot return (for example, you have a health condition which means you cannot travel, or the Home Office is not currently returning people to your country or you have an ongoing immigration case and you are waiting for a decision from the Home Office or the Immigration Tribunal); or
 - Your human rights would otherwise be breached if you are released from detention without accommodation (for example, if you would be made homeless and be forced to live out in the cold with no shelter, or if being without accommodation would make it difficult for you to maintain a relationship with your family or children).

It is unlikely that you will be granted accommodation unless you can show that you are likely to be destitute within 14 days. Therefore you should only submit the ASF1 application once you have submitted your bail application or after you have been granted 'bail in principle' by the Home Office or the Tribunal. You can apply for 'bail in principle' or you can ask to be released on bail without a condition that that you have to live at a specific address.

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If you are released on bail without an address you can call the Migrant Help helpline on 0800 8000 630 to ask for urgent help. Migrant Help should be able to assist with applying for emergency accommodation (also known as Section 98 accommodation).

- **People with Leave to Remain (permission to remain)/ EEA nationals with recourse to public funds:** If you have existing leave to remain and are entitled to public funds then you might be eligible for accommodation through the council where you were living before you were detained. You should speak to the Resettlement Team or Offender Manager Unit in prison to ask that a referral for accommodation is made.
- **Everyone else:** If you are not an asylum seeker, or a refused asylum seeker and you are not otherwise entitled to accommodation, you can apply for accommodation under Schedule 10 (paragraph 9) of the Immigration Act 2016. This is also known as 'exceptional circumstances accommodation' as you must show that there are exceptional reasons why you should be granted accommodation. You can request this accommodation at the same time that you make your application for bail from the Tribunal using form B1 bail or from the Home Office using form 401. You should explain the following in the section on the form titled 'grounds on which you are applying for bail' or 'Reasons for applying for bail':
 - You do not have anywhere to live or any way to support yourself if you are granted bail. Be careful to make sure that you explain why any friends or family will not be able to support you. This is very important if you are also telling the Home Office that you want to remain in the UK because you have friends and family in this country. If you are unclear about this you should seek immigration advice from a qualified advisor.
 - There are 'exceptional circumstances' as to why you should be provided accommodation such as:
 - If probation has assessed you as posing a high or very high risk of harm or risk of or reoffending;
 - Your case is being dealt with by the Special Immigration Appeals Commission (SIAC) court; or
 - If your human rights would otherwise be breached if you are released from detention without accommodation (for example, you are assessed as a high risk of harm but you are not entitled to Approved premises or your release would lead you to being forced to live in inhuman conditions such as living out in the cold with no shelter).

If you are granted accommodation and support by the Home Office you will be provided an address somewhere in the UK in shared accommodation, and vouchers for financial support. You cannot choose where you live.

If you are refused Section 95 accommodation as an asylum seeker or Section 4(2) accommodation as a refused asylum seeker the Home Office should write to you telling you why they have refused your application and provide you with information on how to appeal the

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decision and an application form for an appeal. You have the right to appeal a refusal of accommodation to Asylum Support Tribunal and you will need to send the complete appeal form to the Tribunal within 3 days of receiving the decision.

If you are refused Section 95 or Section 4(2) accommodation as an asylum seeker or failed asylum seeker then you should contact BID for help.

If you are refused 'exceptional circumstances' accommodation under Schedule 10 of the Immigration Act 2016 you should contact BID or your solicitor. As there is no right of appeal you will need to be advised on what alternative steps you might be able to take to reverse the Home Office decision, including the possibility of applying for judicial review of the Home Office decision.

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If you are still on licence or post-sentence supervision when you apply for release on immigration bail then probation services will need to approve the address before the bail hearing. This applies to accommodation provided by the Home Office as well as any private address. For more information on getting probation approval for a bail address, ask BID for our '*Factsheet 2: Getting probation approval for your immigration bail address*'.

You should ask the Foreign National Coordinator at the prison for advice on getting probation services to approve your immigration bail address, or speak directly to your offender manager. If you do not know who your offender manager is you should speak to someone in the Offender Manager Unit (OMU) in prison and ask for their contact details. It might take some time to get probation approval arranged, so you will need to make sure you have arranged for this to happen before you submit your bail application.

What happens during and after a bail hearing?

Once you have submitted your bail application, your case should be given a hearing date and your application heard at court within a few days. You will receive a letter from the Tribunal hearing centre telling you the date.

If the prison has a video link to the hearing centre you will not need to leave the prison for the bail hearing, and you will speak to the judge via the video link. Otherwise, you will be taken in an escort van to the court on the day of your bail hearing, and will speak to the judge in person.

If the judge decides to release you on bail to Home Office bail accommodation, you should be given a travel warrant by the escorts to allow you to reach your accommodation.

If you are not given a travel warrant after your bail hearing you should:

- Immediately contact the Home Office bail accommodation team. The contact details should be on the Home Office letter confirming the Home Office's offer of accommodation and support.
- Contact your Home Office caseowner to ask him or her to arrange a travel warrant immediately.
- If you are still on licence, you should also contact your offender manager/probation officer to tell them you will not be able to reach your release address

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today, and may need to rearrange your first contact with probation after release.

Remember to have all of these telephone numbers with you so that you can make your calls quickly and without delay.

If the judge decides to release you but you have to be fitted with a tag then the escorts will return you to prison for the tag to be fitted. If this happens you can be held in the prison for a further two working days – but no more – for the tag to be fitted. After that you will be released.

If you have applied for bail and been refused, you can apply again after 28 days, or sooner than 28 days if your circumstances change and make your chance of release on bail more likely.

Examples of a change of circumstance include the following:

- you have new financial supporters; you have a new bail address
- a proposed bail address has now been approved by probation
- a travel document interview has been cancelled by your Embassy or High Commission so there will be further delay in obtaining travel documents, meaning that your removal is now further away
- a serious health or compassionate issue has emerged
- new evidence has come to light in your immigration or asylum case

Can BID help me with my appeal against deportation?

Since April 2013 legal aid is no longer available to appeal deportation. However it is possible for you to apply to the Legal Aid Agency for legal aid under the Exceptional Case Funding scheme. This looks at the importance of a case and the reasons why a person requires legal representation. Please contact BID for more information about this scheme or see BID's leaflet '*Exceptional Funding – Applying for Legal Aid in Deportation Cases*'. Your alternative would be to pay a solicitor for any legal advice and representation in your deportation case.

For more information on appeals see BID's leaflet, '*Deportation Appeals – Representing Yourself in the First-tier Tribunal in an Article 8 Deportation Appeal*'.'

BID has a small project that provides legal advice on deportation. All cases referred are reviewed to see if we can provide assistance. We cannot assist everyone, so we will let you know if the project can help you. But otherwise BID cannot give advice on deportation appeals. Our focus remains on helping detainees apply for release on bail.

Who should I contact at the Home Office if I have a problem or complaint about my immigration case or my detention?

You should first write to your Home Office case owner. Their contact details will be on the most recent correspondence to you from the Home Office. You should write to the Home Office if:

- You have been waiting a long time for a response from them
- You want them to send something to you
- You want to know what progress has been made on your travel document application

In your letter you should tell the Home Office what the problem is, and ask them to reply to your letter within a certain time, such as two weeks. Keep a copy of your letter if you can, or if this is difficult make a note of the date when you wrote it and who you sent it to at the Home Office.

You should also tell the Home Office if, for example:

- You have not been receiving your Monthly Progress Reports while detained in prison
- You have not received bail summaries in time before a bail hearing
- You have not taken been by escort to a bail hearing and it is either cancelled or the bail hearing goes ahead without you.

It will help to explain these things to Home Office in writing so that it is recorded on your Home Office file.

If the Home Office doesn't reply to you, you should write to them again. If they do not reply again you can complain. Your complaint letter should be about:

- The lack of any reply
- How this might be affecting you and your case
- And you should explain what you want the Home Office to do.

But be aware that the complaints process is not meant for you to complain or appeal against a Home Office decision.

You can complain by writing to: **Home Office, Direct Communications Unit, 2 Marsham Street, London SW1P 4DF**

Sample letter to the Home Office asking for a transfer from detention in a prison to an immigration removal centre

[Add your Home Office case owners details below]

To:.....

Address:

.....

Home Office reference number:.....

Prison No:.....

Date:

Dear Sir/Madam

Request for release or transfer from detention in prison to an immigration removal centre

My name is.....

My nationality is.....

My date of birth is.....

I am detained at.....

My sentence finished on *[put the date here]*..... and I would like to be released to bail accommodation / this private address *[* delete as appropriate]*:

.....
.....

If you are not willing to release me I would like you to consider my transfer to an immigration removal centre. I am disadvantaged in prison as I cannot communicate easily with solicitors and I do not have the same rights as people in immigration removal centres. If you are not willing to transfer me please explain in full the reasons for your decision.

Yours

[Your SIGNATURE].....

GATHERING EVIDENCE

1. Keep a record of all phone calls & conversations with your offender manager/supervisor, probation services, the offender management unit, or the Home Office

- Every time you have a telephone conversation with your offender manager/supervisor, probation services, the Offender Management Unit in your prison, or a Home Office official you should write down on paper what you talked about, the questions that you were asked, and the answers that you gave.
- Try to get the name and job title of the person you spoke to and write that down too, and put the day of the week, the date and the time as well. You should ask for their name at the start of the conversation.
- If the telephone conversation does not go well, or you hear something you don't like, you should keep calm and try not to get angry. When the phone call is finished write down as much as you can remember of what was said. You will then have a record of discussions that will help you to remember what was said, and which can be used as evidence in court.

2. Keep all notes you send and receive from your Offender Manager/ Supervisor or Home Office caseowner

- Every time you send a request to your offender manager or Home Office caseowner, make sure that you keep all your notes and their written replies. If they don't reply to one of your requests you should make a note on a piece of paper and keep the note.
- You will then have a record of your requests for information and help. This will help you to remember what was said, and you can use your notes as evidence in court.

3. Get proof of posting when sending letters and faxes

If you write letters or send a fax to try to obtain information you should:

- Keep a copy of the letter you sent and make a note on the copy of the date you sent it to be posted.
- Try to get 'proof of posting' from the Post Office so that you can prove to the Home Office or the court or tribunal that you have written the letter. If you have a visitor from the visitors' group at your prison you could ask them if they will help you with this, but not all groups will be able to help with this.
- Keep the envelopes of all letters that are sent to you, as this will prove the date of posting.

How to contact BID

By post:

Freepost RTSU-ZJCB-XCSX

Bail for Immigration Detainees (BID)

1b Finsbury Park Road

London

N4 2LA

Fax: 020 3745 5226

General enquiries: enquiries@biduk.org

Casework enquiries: casework@biduk.org

Advice Line: 020 7456 9750
(Mon-Thurs, 10am - 12 midday)

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