



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?

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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 or temporary admission.
- 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 have served a criminal sentence in prison the Home Office may have the right 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 practice is to detain foreign nationals who are liable for deportation in prison after their custodial sentence is finished, where they will be held under immigration powers rather 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

How can I ask to be transferred from prison to a detention centre?

You can write to the Home Office to ask them to transfer you to an immigration removal centre. As it is Home Office practice is to keep immigration detainees in prison after they complete their criminal sentences, they may not want to transfer you to a removal centre. Your request for a transfer may not be successful, but you should ask anyway, explaining why you want a transfer (for example, you cannot contact your solicitor easily enough while in prison). The Home Office is required to consider your application and to provide you with reasons if it refuses 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 at the back of this fact sheet.

You may, however, 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.

I have been transferred from a removal centre to a prison, what will happen to me?

If the Home Office thinks that you have been behaving badly in the removal centre they may decide to transfer you to a prison to stop you causing any problems for staff and other detainees. You can be transferred to a prison even if you have never been in prison in the UK before.

In all cases where you are being held in prison under immigration powers your detention must be reviewed monthly in the same way as it would be in a removal centre. If you have been transferred to prison from an IRC because of your behaviour at the IRC, the level of risk that you pose because of your behaviour should also be reviewed every month. If the Home Office accepts that you no longer pose a threat to order or control, it is possible that the Home Office will agree to transfer you back to a removal centre.

I have been transferred to prison after an incident or disturbance in a removal centre, what will happen to me?

If you have been transferred to prison because there are no spare beds for you in a removal centre (if the building has been damaged or closed down), then Home Office policy is that you will be transferred to a removal centre (maybe a different centre) as soon as bed space is available.

You may have been transferred to prison because the Home Office suspects you were involved in the incident or disturbance.

- If the Home Office later accepts that you were not involved in organising the disturbance then you will be moved back to a removal centre as soon as bed space is available.
- If the Home Office believes that you were involved in the incident or disturbance but you were not a ringleader, you will remain in prison and your behaviour will be reviewed on a monthly basis to see whether you can be transferred back to a removal centre.
- If the Home Office confirms that you were a ringleader in the incident or disturbance you will remain in prison until you are removed from the UK.

If you are not sure what your situation is following a transfer to prison from a removal centre you should ask your Home Office caseowner or the prison officer responsible for foreign nationals in your prison.

You should be receiving monthly detention reviews for every month while you are held in prison under immigration powers, even if you have been transferred to prison for bad behaviour.

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 should apply for immigration bail using a bail application form (called a B1 form) which you can request 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, or an Education Officer depending on the prison. You can also ask BID to send you one – our contact details are at the end of this bulletin.

How to apply for bail

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 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 bail application 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.

SURETIES

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

A surety **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 you want to act as your surety what they will have to do at your bail hearing and then afterwards if you are released. If you are not sure whether a person you know is suitable to be a surety you should ask them about their circumstances.

GETTING A BAIL ADDRESS

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 can apply to the Home Office for what is called **Section 4 bail support**. If you are granted this the Home Office will provide an address somewhere in the UK in shared accommodation, and vouchers for financial support. You cannot choose where you live. You may be able to get an application form for a Section 4 bail address from prison staff. You can also write to BID and ask us to send you one (see the back of this factsheet for our contact details).

The Home Office Section 4 office will send you a letter with the bail address, and you will need to give this address to the court in your bail application form. It is possible that your application for Section 4 bail accommodation will be delayed significantly if you have been convicted of certain types of offence. You can seek advice from BID if the Home Office Section 4 team advises you that they will be delaying a decision on your accommodation application.

You should only be refused Section 4 accommodation for a bail address if the offence for which you have been convicted means that the Home Office decides that that they have no suitable accommodation available because you pose a high risk of harm to other people or certain types of people.

If you are refused Section 4 bail accommodation the Home Office should write to you telling you why they have refused your application and giving you information on how to appeal the decision, and an application form for an appeal. You have a right of appeal to the Asylum Support Tribunal under section 103 of the Immigration and Asylum Act 1999.

If you are refused Section 4 accommodation for your bail address then you should contact BID for help.

If your offender supervisor or probation officer has decided that you must live in special accommodation called Approved Premises on release, then you should not apply for Section 4 bail accommodation from the Home Office. You should tell your offender supervisor or probation officer that you want to apply for release on immigration bail and will need a bed in Approved Premises if the court decides to release you.

GETTING PROBATION APPROVAL FOR YOUR BAIL ADDRESS

If you are still on Licence when you apply for release on immigration bail then probation services will need to approve the address before the bail hearing. 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. 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 Section 4 bail accommodation, you should be given a travel warrant by the escorts to allow you to reach your Section 4 accommodation.

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

- Immediately contact the Home Office Section 4 bail team on **020 8196 0347** to tell them not to cancel your accommodation as you will arrive late
- Contact your Home Office caseowner to ask him or her to sort out 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 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 sureties, 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, or 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. You will therefore need to pay a solicitor for any legal advice and representation in your deportation case.

For more information on appeals see BID's '*Factsheet 1: Immigration Appeals including Deportation*'.

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 if I have a complaint about my treatment in prison?

You should first talk to a prison officer. If that does not resolve the problem then you can make a complaint in writing using the complaint forms that will be available on your wing. You should not have to ask a prison officer for a form. But you must make a written complaint within three months of the event or action that you are complaining about. Post your complaint into the yellow complaints box on your landing. Keep a copy of the form for your records.

If you do not accept the response to your complaint you can take it to a more senior officer, and if that does not sort out the problem you can write to the Prisons & Probation Ombudsman. You can also speak to a visitor from the Independent Monitoring Board at your prison.

The **Prisoners Advice Service (PAS)** www.prisonersadvice.org.uk is an independent charity. It is not part of the Home Office or the Prison Service. If you are held in a prison in England or Wales it can provide legal advice and information about your rights. PAS can help you to make a complaint about your treatment inside prison.

You can contact PAS at:

Prisoners Advice Service,
PO Box 46199
London EC1M 4XA

Telephone: 020 7253 3323 or 0845 430 8923

Fax: 020 7253 8067.

You may want to contact a **civil action solicitor** if you have a complaint about the way you have been treated, for example if you have been assaulted by prison staff or held in segregation. Both of these solicitors' firms take on civil actions on behalf of immigration detainees:

Birnberg Peirce & Partners
14 Inverness Street
London NW1 7HJ

Telephone: 020 7911 0166

Bhatt Murphy Solicitors
27 Hoxton Square,
London N1 6NN

Telephone: 020 7729 1115

Fax: 020 7729 1117

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 Section 4 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 responses. If they don't respond 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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