

Background checks will be carried out by UKBA 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.

(v) Bail hearings

The AIT aims to list bail hearings within 3 working days of the application being made. The sureties must attend the hearing and the applicant should be produced from the place of detention, although some hearings are conducted by video link. The hearings are in public so anyone else can attend if they want to.

Before the hearing UKBA will produce a document called a "bail summary". This gives more details about the reasons for detention and sets out UKBA'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 principal. Secondly, if bail is granted in principal, 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 UKBA 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 UKBA to justify their continued detention.

(vi) Bail conditions

If bail is granted, the primary condition will be that the applicant appears before the AIT 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.

Practical Advice

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/friends/supporters on a separate piece of paper and keep it with you at all time for when 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 that they 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 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/UKBA 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. For example, at the moment, there are no returns to Zimbabwe and Zimbabweans are therefore not liable to be detained. There are very few returns to some other countries, for example, Somalia, Eritrea, and Iran. However the situation could change in the future. Many people from DRC, for example, are being detained and issued with removal directions.

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G R E A T E R M A N C H E S T E R
I M M I G R A T I O N A I D U N I T

Immigration Advice and Information

**If you think you
may be detained**



If you think you may be detained

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.

Here is a summary of some of the legal terms that are 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.

The Law and Your Rights

Detention

(i) 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 Borders Agency (UKBA) 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.

(ii) 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

(iii) 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 UKBA does not send many people back to will often remain on temporary admission until such time as UKBA contemplates removal action. There are usually conditions attached to temporary admission including, or example, having to report to UKBA (at Dallas Court) weekly or monthly, and to live at specified address.

UKBA 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 UKBA website – www.ukba.homeoffice.gov.uk

UKBA 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 UKBA policy, then it is unlawful.

3. 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 UKBA to be released on temporary admission, and if this is refused then apply to the Asylum and Immigration Tribunal for bail. Applications to UKBA for temporary admission are fairly unlikely to be successful as, after all, you are asking UKBA to change its mind.

Bail Applications

(i) Who can apply for bail?

Almost anyone who is detained under Immigration Act powers can apply to the Asylum and Immigration 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.

(ii) 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 Asylum and Immigration 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:

Asylum and Immigration Tribunal
1st Floor Piccadilly Exchange
2 Piccadilly Plaza
Mosley Street
Manchester
M1 4AH

Fax: 0161 2342035

The application needs to be made on form B1. You can get blank copies of this form from the AIT website: www.ait.gov.uk (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 vouchers only). This needs to be arranged with UKBA 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.

(iii) 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 UKBA 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 UKBA. 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 UKBA 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

(iv) 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.