



POLICY NOTE: IMMIGRATION BAIL AND THE RIGHT TO LIBERTY

How enforcement-first policy is hollowing out bail in immigration detention

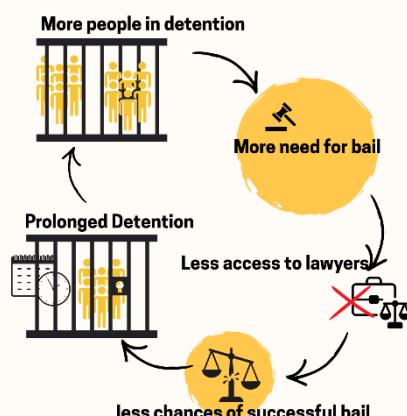
Summary

Immigration detention in the UK operates without a statutory time limit and continues to expand under an enforcement-first approach to migration governance. At the same time, access to legal advice and representation — essential to exercising the right to immigration bail — is contracting.

This policy note shows that these trends are product of **structural policy choices** that:

- Expand detention capacity and enforcement activity
- Concentrate power within the executive
- Systematically under-resource legal aid

Together, these choices hollow out the right to bail while preserving its formal existence.



1. What is Immigration Detention?

Immigration detention is the administrative deprivation of liberty for reasons related to a person's migration status. It operates separately from the criminal justice system yet mirrors it in form and severity. The critical distinction remains: while citizens are released after completing a criminal sentence, migrants may continue to be detained under immigration powers, including after sentence completion. There is **no statutory time limit** on immigration detention in the UK.

At the end of September 2025, **1,962** people were held in immigration detention (either in immigration detention facilities or in prisons under immigration

Figure 2: People detained under immigration powers in the UK, on the last day of the quarter, 31 December 2017 to 30 September 2025^{1,2}

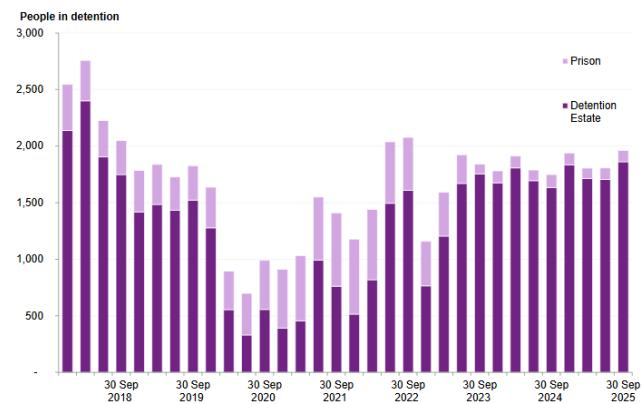


Figure 1 Immigration Detention Population (Home Office)

powers), a **12% increase** from the previous year¹. While most people detained under Immigration powers are detained in the immigration detention estate rather than prisons, those held in prisons faces particularly acute barriers to accessing legal advice and exercising their rights.

Detention therefore functions as an open-ended carceral power justified not by ‘punishment’, but by administrative convenience and enforcement objectives.

2. Enforcement Expansion and Policy Direction

The Labour government has sharply increased immigration enforcement, with a surge in immigration raids, arrests, and detention across the UK.² According to the government ‘detention is typically used to facilitate a return from the UK’.³ This enforcement-first approach has direct structural consequences: rising detention numbers generate rising demand for bail, legal advice, and judicial oversight.

Yet legal capacity is not being expanded in parallel. Instead, new legislative and policy initiatives prioritise speed of removal over access to justice, including measures enabling the immediate deportation of convicted foreign nationals and the expansion of “deport now, appeal later” schemes⁴. Together, these developments compress opportunities to access legal advice, challenge detention, or pursue meaningful bail, further entrenching executive control over liberty and removal decisions.

3. Legal Framework: Reasons and power to detain

Powers to detain derive primarily from Schedules 2 and 3 of the Immigration Act 1971 and section 62 of the Nationality, Immigration and Asylum Act 2002.

Section 12 of the Illegal Migration Act 2023 further entrenches executive discretion by weakening judicial oversight and overturning established common law principles set out in case law.⁵

Although Home Office policy states detention must be used sparingly and for the shortest period possible, detention remains lawful where deemed “reasonably necessary” by the Secretary of State. This erosion of safeguards is occurring alongside repeated political attacks on the European Convention on Human Rights (ECHR)⁶ and proposals to limit its domestic effect, further weakening external constraints on executive power in immigration control.

¹ Image Source (Figure 1) [How many people are detained under immigration powers in the UK? - GOV.UK](#)

² [Immigration raids and enforcement report- Migrants Rights Network Crackdown on illegal working in UK leads to surge in arrests - BBC News](#)

³ [Knowledge is power! Our updated Key Guide on Immigration Detention – Right to Remain](#)

⁴ Press release(Home Office) [‘Foreign criminals to face immediate deportation’](#)

⁵ Hardial Singh [1984] 1 WLR 704 and R (A) v SSHD [2007] EWCA Civ 804

⁶ House of Commons Briefing on [‘Immigration and the ECHR’](#)

4. What is Immigration Bail

Immigration bail is the temporary release of a person who would otherwise be detained, usually with conditions.

Two routes exist:

- Secretary of State bail (rarely granted, no hearing, no independent oversight)
- First-tier Tribunal bail (hearing before a judge, higher grant rates)

This dual system embeds a conflict of interest: the same institution that authorises detention also controls one of the principal release pathways.

At bail hearings judges conduct risk assessments rather than determining the lawfulness of detention itself.

5. Current challenges: Bail as a Representation-Dependent Right

In practice, Tribunal bail hearings do not determine whether detention itself is lawful but involve a judicial risk assessment conducted in accordance with First-tier Tribunal guidance. Hearings now normally take place remotely via video conference (CVP) or telephone, with the applicant usually appearing online from the place of detention alongside the Immigration Judge, court clerk, Home Office Presenting Officer, and — where available — a legal representative and interpreter. While remote hearings have increased throughout, they also reduce public scrutiny by requiring prior permission for observing. They also place additional burdens on unrepresented applicants navigating complex procedures alone⁷. Where bail is granted, [release is almost always conditional](#), including reporting requirements, restrictions on work or study, residence conditions, and — in deportation cases — mandatory electronic monitoring (GPS tagging). Additional financial conditions may also be imposed. Even after bail is granted, individuals may remain subject to immigration bail despite there being no realistic prospect of removal, and in some circumstances bail cannot be granted at all without Secretary of State consent where removal [directions are set within 14 days](#). These layered procedural and conditional hurdles mean that bail functions less as a straightforward safeguard and more as a technically demanding legal process in which representation is decisive⁸.

Legal advice is provided but the consultation is often via telephone exacerbating language barriers, communication in general and creating confusion as to the outcome of the initial

⁷ For details on Bail Hearings see [Bail Observation Project Third Report](#), page 21

⁸ See [Bail Observation Project Third Report](#) and JRS [Accessing legal advice in detention July 2025](#)

consultation. Serious vulnerabilities are missed. The remote nature of advice then makes it harder to follow up with legal advisors or hold accountable. But good representation secured via the DDAS positively impacts clients' lives.⁹

Legal aid is available for Tribunal bail applications, yet many detainees are unrepresented.

People are unrepresented at bail hearings and have no idea of how best to approach them or any likely impact on their wider case¹⁰. The concrete realities of lack of legal representation and provision of legal aid in immigration and asylum in England and Wales [is well documented by scholars and practitioners](#). So-called '[advice deserts](#)' and '[advice droughts](#)' in the [supply of legal representation](#), including in bail applications before the judiciary, have been constant features in the terrain of legal access since the implementation of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\) in 2013](#), which cut large areas of asylum and immigration law from legal aid.

The scale of this problem is documented in recent research:

- [Bail for Immigration Detainee \(BID\) Legal Advice Survey](#) (November 2025) found that representation levels in detention are the lowest they have ever been since they started monitoring. [Bail Observation Project's third](#) report also demonstrates systemic barriers to access to bail and disadvantages.
- Research on [accessing legal advice in detention](#) by JRS UK (July 2025) revealed that the remote nature of advice makes it much harder for the people in detention or to hold legal advisors to account.

6. Conclusion: A Growing Crisis

The access to justice gap is a structural failure, unfolding within a political context where international human rights protections, including the ECHR, are increasingly framed as barriers to enforcement rather than essential safeguards.

It is produced by three interacting policy choices:

- Expansion of immigration detention and enforcement
- Concentration of executive power
- Retrenchment of legal aid

Together, these hollow out bail while preserving its formal existence, creating a widening gap between rights on paper and rights in practice.

For further information and resources, please scan the QR code.



⁹ [Accessing legal advice in detention July 2025](#)

¹⁰ [Accessing legal advice in detention July 2025](#)