

Border Security, Asylum and Immigration Bill

House of Lords, Committee Stage (September 2025)

Joint Briefing on Amendment 137 - Duty to make legal aid available to detained persons

1. It is currently impossible for many people who are deprived of their liberty in immigration detention to access legal aid representation, due to the unsustainability of and lack of capacity across immigration and asylum legal aid.
2. This amendment introduces a new Clause (Duty to make legal aid available to detained persons) to address this in England and Wales. It would place a duty on the Lord Chancellor to make civil legal aid available to detained persons in relation to already in-scope judicial review and immigration matters, within 48 hours of their detention.
3. Provision of legal aid is a key component in upholding the constitutional right of access to the courts, which is itself inherent in the rule of law.¹ The courts have repeatedly upheld the principle that a failure to provide legal aid can amount to a breach of fundamental rights.² Legal aid is essential to ensuring that people without means can secure effective access to justice and redress.
4. We urge Parliamentarians to support amendment 137, tabled by Lord Bach, and supported by Baroness Ludford, Baroness Prashar, and Lord Carlile of Berriew:

After Clause 41, insert the following new Clause—

“Duty to make legal aid available to detained persons

(1) The Lord Chancellor must secure that civil legal services in relation to any of the matters set out in paragraphs 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 31A, 32 or 32A of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are made available to any person who is detained under a relevant detention power within 48 hours of the relevant time.

(2) The Lord Chancellor may make such arrangements as they consider necessary for the performance of their duty under subsection (1).

(3) The duty under subsection (1) is subject to—

(a) section 11 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (qualifying for civil legal aid) and any regulations made under that section, and

(b) section 21 of that Act (financial resources) and any regulations made under that section.

¹ Echoing the words of Lord Reed in *R (Unison) v Lord Chancellor* [2017] UKSC 51 at §66.

² *R (Gudanaviciene & Others) v Director of Legal Aid Casework and Lord Chancellor* [2014] EWCA Civ 1622; ‘Spending of the Ministry of Justice on legal aid’ House of Commons Library briefing, (October 2020) <<https://researchbriefings.files.parliament.uk/documents/CDP-2020-0115/CDP-2020-0115.pdf>> accessed 20 April 2023 [1.2].

(4) In this section—

“civil legal services” has the same meaning as in section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“relevant detention power” means a power to detain under—

(a) paragraph 16 of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),

(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State), or

(d) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

“relevant time” means—

(a) the time at which a person is first detained under a relevant detention power; and

(b) if a person has been released following detention under a relevant detention power, the time at which they are next detained under a relevant detention power.”

Member's explanatory statement

This amendment places a duty on the Lord Chancellor to make civil legal aid available to certain detained persons in relation to judicial review and immigration matters within 48 hours of their detention.

Why is this amendment necessary?

5. In England and Wales, following more than a decade of austerity and cuts to legal aid services and fees, people in immigration detention are unable to access legal aid representation. Without urgent changes to our legal aid system, already insufficient legal aid provision will be even harder to access, resulting in people unable to access justice.
6. **The immigration and asylum legal aid sector is at breaking point, due to:**
 - a. **The scope of legal aid being decimated by the cuts in 2013.**³ In England and Wales, most non-asylum immigration matters were excluded from the scope of legal aid. This has damaged the entire immigration legal aid sector and the ability of everyone – including individuals in detention – to access reliable, quality, legal aid immigration advice.

³ Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- b. **Practitioners providing essential public advice and representation have been working on poverty rates**, which have not increased for nearly three decades but were instead subject to a 10% cut in 2011.⁴ On 2 July 2025, the Government announced it would increase fees for immigration and asylum legal aid to £65.35 outside of London and £69.30 inside, or a 10% uplift, whichever is the higher.⁵ While we welcome the announcement, after decades of eroding the value of legal aid rates and whittling down legal aid services/practices, increases in capacity will not take place overnight. Until the legal aid system can attract and support the retention, accreditation, training, supervision, and regulation of the volume of practitioners needed to meet current unmet legal need in advice deserts across England and Wales, urgent action must be taken to ensure people (particularly, those deprived of their liberty) have access to justice.
- c. **New policies, such as the UK-France Agreement on the Prevention of Dangerous Journeys and the introduction of adjudicators for asylum appeals, are likely to require the assistance of legal aid practitioners to be fair and effective.** The UK-France pilot has already displayed the deep fissures in the current system. In late August, a large group of people were detained and served notices of intent in relation to removal to France. They were given seven days to reply to that notice, but they could not even secure an advice appointment – let alone respond – within that timeframe. The Home Office and Legal Aid Agency’s response was to arrange an additional advice surgery slot, two days after their deadline to respond had passed. Our amendment would remedy this issue, as a representative would have been allocated within 48 hours, rather than a mere advice appointment taking place after important deadlines have passed. Access to timely advice and representation, will help the Government ensure that cases can be fairly and efficiently progressed.

7. Despite the Lord Chancellor having a duty to secure the availability of legal aid,⁶ there are already vast numbers of unrepresented individuals:

- a. Jo Wilding’s research demonstrates that in 2023-2024, almost 57% of all people making asylum claims and appeals, i.e. nearly 55,000 people, did not have legal aid assistance.⁷
- b. At a recent meeting of the Tribunal Jurisdictional Public Engagement Group on 21 May 2025, HMCTS reported that in March 2024 19% of appeals received were from unrepresented appellants. In March 2025, the figure had risen to 39% and it is expected to rise further.

⁴ Community Legal Service (Funding) (Amendment No.2) Order 2011.

⁵ Ministry of Justice, ‘Civil legal aid: Towards a sustainable future - Consultation response’ (July 2025, CP 1333) <https://assets.publishing.service.gov.uk/media/6862619ab466cce1bb1219e6/Civil_legal_aid_-_towards_a_sustainable_future_print_-_final_1.pdf> accessed 2 July 2025.

⁶ Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 1(1).

⁷ Jo Wilding, ‘No Access to Justice 2: Mapping the UK’s continuing immigration and asylum legal advice crisis’ (2025) <<https://justice-together.org.uk/wp-content/uploads/2025/06/No-Access-to-Justice-Report-2025.pdf>> accessed 11 June 2025.

8. **While people detained in Immigration Removal Centres (IRCs) in England are eligible to receive 30 minutes of free legal advice in person or by telephone under the Detained Duty Advice Scheme, this does not ensure that they will find a legal representative willing to take on their case:**

- a. Bail for Immigration Detainees (BID) recently published a Legal Advice Survey based on 26 people⁸ being held in IRCs. Before the legal aid cuts came into force, 79% of people had legal representation, and the figures have remained far lower ever since.⁹ The 2025 survey found that only 42% of people had a lawyer in their immigration case.¹⁰
- b. One respondent to BID's recent survey said "I know about DDAS [the Detained Duty Advice Scheme] but I've heard it is so bad, there is no point in even trying. So that's why my family saved up to pay for a lawyer for me..."¹¹
- c. Jesuit Refugee Service UK's July 2025 report, *Accessing legal advice in detention: becoming an impossibility*, notes from surveying people who were detained at Harmondsworth IRC, through welfare surgeries between May and June 2025, only 38% (18 out of 47) of participants had any legal representation, only 30% (14 out of 47) had legal representation via the DDAS, 23% of survey respondents (11 out of 47) signed up to the DDAS but never received any communication from a lawyer, 36% (17 out of 47) never received any documents, including the requisite written summary or a client care letter from a legal adviser, and only 19% of participants (9 out of 47) had a legal representative via the DDAS working on their substantive case. One participant explained that he had signed up 8 times to the DDAS and received no advice.¹² JRS UK notes that people in detention are routinely missing appeal deadlines and are unrepresented at appeal hearings because they do not have any legal representation.
- d. With limited phone credit and no access to a free phone, detained people are not always able to make repeated calls, to secure legal representation after the initial advice surgery. JRS conveys the words of Daniel, a victim of trafficking criminally exploited and facing deportation, with a child and a partner in the UK, who explains after he signed up to the DDAS: "*I spoke to a guy once, he said he was going to take my case. I kept calling and never got through. I called 3 times a day. I was sometimes on hold for an hour plus. I never got through to him*".¹³

⁸ Those individuals were all BID clients. Not all are individuals seeking asylum.

⁹ For more detail, see BID's 'Legal advice in immigration detention: a 10-year review'

<https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1293/10_Years_of_Legal_Advice_Survey.pdf> accessed 11 June 2025.

¹⁰ Bail for Immigration Detainees, 'Legal Advice Survey - March 2025'

<https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/1398/250314_LAS_2025.pdf> accessed 11 June 2025

¹¹ *Ibid.*

¹² JRS, 'Accessing legal advice in detention: becoming an impossibility' (July 2025)

<<https://www.jrsuk.net/wp-content/uploads/2025/07/Accessing-legal-advice-in-detention-July-2025.pdf>> accessed 22 July 2025.

¹³ *Ibid.*, 6. "Daniel" is a pseudonym.

9. **Accordingly, it should be the responsibility of the Government to not only ensure access to 30 minutes of free legal advice, but also that where a person requires legal aid representation following that advice they receive it.** Therefore, to bolster existing statutory obligations, we propose a new duty on the Lord Chancellor to secure the availability of civil legal services for in-scope judicial review and immigration matters within 48 hours.
10. **Where legal aid advice is currently available in detention, there have been concerns, including those expressed by His Majesty's Chief Inspector of Prisons, about the quality of advice.**¹⁴
Evidence gathered by Detention Action in 2021 showed that the Detained Duty Advice Scheme was operating with persistent fundamental defects, including people not knowing whether they had a legal representative willing to take on their case at the end of the session, being denied representation on the basis of complexity or provider capacity, not being given written advice, and providers lacking knowledge of law and practice on key issues.¹⁵ JRS UK's July 2025 report shows that these issues persist. Many of their survey participants had to wait a long time before being told their advisor was unable to take on their case, after which often no explanation was given or lack of available capacity to take on the case or apply for Exceptional Case Funding was cited. Some never heard from the legal advisers who promised to take on their case, with the vast majority not receiving any written summary of the advice. Some advisers did not even use interpreters to communicate with people in a language they could understand. The move to remote-only telephone advice sessions compounds these quality problems, resulting in vulnerabilities, self-harm, lack of mental capacity and severe learning difficulties being missed. For those held in prisons under immigration powers, the barriers to accessing legal aid are even greater.¹⁶
11. **Under the present arrangements, immigration legal aid practitioners simply do not have available capacity to help.** The current lack of capacity is exemplified by a 2024 survey of legal aid immigration practices across the UK conducted by Baker McKenzie on behalf of ILPA.¹⁷ Of the 490 offices (in 307 firms across the UK) contacted, just over half of the offices responded (which gives a sense of how many even have capacity to pick up the phone calls and emails). Only 20% of those who responded, amounting to fewer than 40 offices, had capacity to help with new

¹⁴ For instance, see BID's 'Legal Advice Survey - March 2025'

<https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/1398/250314_LAS_2025.pdf> accessed 11 June 2025; HMIP, 'Report on an unannounced inspection of Colnbrook Immigration Removal Centre (19 November – 7 December 2018)' page 16: "*some of the new representatives providing this service had been seeing a large number of detainees for less than the allotted time, potentially affecting the quality of provision*"

<<https://www.justiceinspectorates.gov.uk/hmiprison/inspections/colnbrook-immigration-removal-centre-4/>> accessed 11 June 2025.

¹⁵ *R (Detention Action) v Lord Chancellor* [2022] EWHC 18 (Admin).

¹⁶ For more information, see BID's report: *Catch 2022 – accessing immigration legal advice from prison* (2022) <https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/635/BiD_Prison_Report_page_1_1_.pdf> accessed 11 June 2025; HM Chief Inspector of Prisons, 'The experience of immigration detainees in prisons' (September 2022) 4

<https://hmiprison.justiceinspectorates.gov.uk/hmipris_reports/the-experience-of-immigration-detainees-in-prisons/> accessed 11 June 2025.

¹⁷ Baker McKenzie & ILPA, 'Support for People Seeking Legal Aid Asylum and Immigration Advice' (March 2025) <<https://www.ilpa.org.uk/baker-mckenzie-report-in-collaboration-with-ilpa-on-the-capacity-of-immigration-practices-undertaking-legal-aid-work-support-for-people-seeking-legal-aid-asylum-and-immigration-advice/>> accessed 11 June 2025.

asylum and immigration claims and appeals. 40 offices, or fewer, simply cannot meet the legal need of 55,000 unrepresented people in the asylum system, including all of those in detention, at a time when the asylum claim backlog stands at 79,000. Therefore, the Lord Chancellor will likely need to exercise her powers to make the necessary arrangements to carry out this duty and secure the availability of legal representation.

12. **Immigration law is highly complex and extremely difficult – if not impossible – to navigate without a lawyer.** It is unrealistic to believe that individuals in detention, who may be seeking asylum or have a human rights claim, who may have just arrived in or been trafficked to the UK, who may be traumatised and vulnerable, and who may speak little to no English, can understand our complex laws, meet court and Home Office deadlines, make effective representations, avoid delay, and fully participate in proceedings without professional legal assistance. This amendment would help to secure prompt access to legal assistance, which is crucial to the fairness of administrative and judicial decision-making.
13. **The expansion of the detention estate in advice deserts across England and Wales will erect a further barrier to access to advice and representation.** For example, the Labour Government announced plans last year to reopen Campsfield House (in Kidlington near Oxford) as an IRC. Oxfordshire contains only one legal aid provider, Turpin Miller, which historically took case referrals from a wide geographical radius but is no longer able to do so due to the higher numbers of people in asylum accommodation in Oxfordshire.¹⁸ With the proposed expansion of the detention estate, it is even more crucial that legal representation is secured for people detained in advice deserts.
14. **New “fast track” and streamlined procedures will place further limitations on the already stretched capacity of a limited pool of providers practising in this area.** This Bill leaves in place the expedited and accelerated detained appeal processes in the Nationality and Borders Act 2022. Furthermore, the Bill introduces a new, ordinary, statutory timeframe (of 24 weeks) for the Tribunal to determine appeals brought by a person in asylum accommodation and non-detained persons liable to deportation. The Immigration White Paper promises further reforms to the asylum system, later this summer, with the Home Secretary indicating to the Home Affairs Committee that she is keen to have a “fast-track system” for persons from so-called “safe” countries.¹⁹ These new fast track procedures will likely prove unworkable, impractical, and unfair in practice if people do not have access to legal aid representation.
15. **For people held in Short-term Holding Facilities (such as Manston) and Residential Holding Rooms, there is no access to a duty advice scheme.** Instead, individuals are meant to access a telephone on their own initiative to find a legal aid lawyer willing to represent them. Even if they did identify potential legal aid providers, the likelihood that a legal aid representative would provide a free assessment of the merits of a case given the unremunerated expense and time involved—especially over the phone—is extremely low.

¹⁸ Jo Wilding, ‘No Access to Justice’ pages 189 and 216.

¹⁹ House of Commons, Home Affairs Committee, ‘Oral evidence: The work of the Home Office, HC 505’ Q56 <<https://committees.parliament.uk/oralevidence/15986/html/>> accessed 11 June 2025.

16. **Access to high quality legal advice, within 48 hours, would increase the effectiveness and efficiency of the immigration and asylum system.** With adequate legal aid, people would be better able to make timely claims increasing efficiency within the Home Office and the justice system. They would know the evidence they must produce and understand their prospects of success, to enable them to make an informed decision regarding whether and how to proceed with their claim, or even whether to access the Home Office's services such as for Voluntary Return.
17. **This amendment will build upon current legal aid arrangements.** We understand that a good precedent is the facility for people detained at police stations. When a person is taken to a police station and it is decided there is no criminal element to the case, the police request assistance through the Immigration Police Station Advice scheme.²⁰ For immigration matters that are classed as criminal offences, the details are captured by the Defence Solicitor Contact Centre (DSCC) which is responsible for ensuring cases are allocated to the relevant defence practitioners. Our proposed 48-hour system would involve allocating an immigration lawyer to an individual upon them entering detention.
18. For the above reasons, as a necessary measure to ensure access to justice for those in immigration detention, we urge Parliamentarians to support amendment 137.
19. This joint briefing is supported by Bail for Immigration Detainees (BID), the Immigration Law Practitioners' Association (ILPA), Public Law Project (PLP), Detention Action, the Anti-Trafficking Labour Exploitation Unit (ATLEU), and Jesuit Refugee Service UK (JRS UK).

If you have questions, please contact:

Bail for Immigration Detainees - Pierre Makhoulf, Legal Director - pierre@biduk.org

Immigration Law Practitioners' Association (ILPA) - Zoe Bantleman, Legal Director - zoe.bantleman@ilpa.org.uk

²⁰ Legal Aid Agency, 'Civil news: changes to immigration advice in police stations' (30 May 2022) <<https://www.gov.uk/government/news/civil-news-changes-to-immigration-advice-in-police-stations>> accessed 11 June 2025.