



BRIEFING PAPER

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Immigration detention in the UK: an overview

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Summary

Administrative detention

The Government has wide powers to detain people for reasons of immigration control. Those who are subject to immigration controls may be held whilst they wait for permission to enter the UK or before they are deported or removed from the country. Immigration detention is an administrative process and is not to be confused with any criminal justice procedure. Powers to detain are exercised by Home Office officials, rather than judges.

Home Office policy states detention may be used in the following circumstances:

- The person is likely to abscond if given temporary admission or release;
- There is insufficient reliable information to decide whether to grant temporary admission or release;
- The person's removal from the UK is imminent;
- Detention is needed whilst alternative arrangements are made for the person's care; and
- Release is not considered conducive to the public good.

The detention estate

Detainees are held in Immigration Removal Centres (IRCs) which are separate to prisons and short-term holding facilities. There are 11 IRCs across the UK. Most are managed by private sector companies; two are operated by the Prison Service. Foreign national offenders held for immigration purposes may be detained in prison.

Independent oversight is provided by HM Inspectorate of Prisons, Independent Monitoring Boards, the Prisons and probation Ombudsman and the Independent Chief Inspector of Borders and Immigration.

'At risk' adults, pregnant women and families with children

Guidance issued pursuant to the *Immigration Act 2016* is intended to lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal. There is now a presumption that detention will not be appropriate if a person is considered 'at risk'. In such circumstances detention will be used only if immigration control considerations outweigh the presumption.

Pregnant women may not be detained for longer than 72 hours, though this may be extended up to a week in total with Ministerial approval.

Changes introduced by the Coalition Government ended the pre-removal detention of families with children in Immigration Removal Centres. However, they may be detained in 'pre-departure accommodation'. Home Office policy sets a maximum period of 72 hours but this too may, in exceptional circumstances and subject to Ministerial authority, be extended up to a week. The lauded Cedars facility - which opened in 2011 and was jointly managed by G4S, the Home Office and Barnardo's, who provided social work, welfare and support services to detained families - was closed in 2016 to ensure value-for-money.

Criticism of detention

The use of detention is one of the most controversial aspects of the UK immigration and asylum system. Recurring criticisms include:

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- That it is unfair to deprive a person of their liberty for administrative convenience
- That detention is costly, ineffective and harmful, and that there are better alternatives to detention
- That indefinite detention is harmful to detainees' mental health and well-being
- That safeguards to protect detainees and prevent inappropriate cases from being detained are insufficient and ineffective
- That policies to guard against prolonged, unnecessary and unlawful detention are inadequately enforced
- That there is a lack of transparency about the use of detention and conditions in IRCs, including the treatment of detainees and the conduct of detention centre staff
- That detainees are disadvantaged by their limited and inadequate access to legal advice, external communications and healthcare

Critics call for a maximum time limit on the length of detention; for automatic judicial oversight of decisions to detain; and for consideration of community-based alternatives.

The Government asserts that detention and removal are essential to ensure effective immigration control, and insists it understands the need for the maintenance of dignity and respect. It promises that decisions to detain are never taken lightly, and points to its policy that detention must be used sparingly and for the shortest period necessary.

Stephen Shaw's review of detention policies

In February 2015 then Home Secretary Theresa May tasked Stephen Shaw, former Prisons and Probation Ombudsman for England and Wales, with conducting an independent review of Home Office detention policies and procedures.

Mr Shaw made 64 specific recommendations, including that the presumption against detention be extended to include victims of rape and other sexual or gender-based violence (including FGM), to those with a diagnosis of PTSD, to transsexual people and to those with learning difficulties. He called for an absolute exclusion of pregnant women from detention, and advised that the clause "which cannot be satisfactorily managed in detention" should be removed from the section of the guidance covering those suffering from serious mental illness. Mr Shaw also found that rule 35 of the Detention Centre Rules - designed as a key safeguard for victims of torture or whose health would be at risk from continued detention - failed to protect vulnerable people in detention.

The Government accepted 'the broad thrust' of the recommendations and invited Mr Shaw to conduct a shorter follow-up review in autumn 2017 to assess progress made in implementing his recommendations.

1. Policy overview: who can be detained and when?

1.1 What is immigration detention?

The Government has wide powers to detain people for reasons of immigration control. Those who are subject to immigration controls may be held whilst they wait for permission to enter the UK or before they are deported or removed from the country. Immigration detention is an administrative process and is not to be confused with any criminal justice procedure. Powers to detain are exercised by Home Office officials, rather than judges.

Immigration detention should not be confused with criminal procedure

1.2 When can detention powers be exercised?

[Chapter 55](#) of the [Enforcement Instructions & Guidance](#) issued by the Home Office gives an overview of the policy and of some of the case law on the use of immigration detention.

It sets out five reasons for when detention may be appropriate:¹

- The person is likely to abscond if given temporary admission or release;
- There is insufficient reliable information to decide whether to grant temporary admission or release;
- The person's removal from the UK is imminent;
- Detention is needed whilst alternative arrangements are made for the person's care; and
- Release is not considered conducive to the public good.

When detention is deemed appropriate it is usually for one of five reasons

The statutory powers to detain are spread across different pieces of immigration legislation.

- The power to detain an illegal entrant or person liable to removal is set out in the *Immigration Act 1971* (as amended), Schedule 2, paragraph 16 (2)
- A free-standing power to detain in cases where the Home Secretary has the power to set removal directions is provided for in the *Nationality, Immigration and Asylum Act 2002*, section 62
- Powers to detain people liable to deportation are set out in the *Immigration Act 1971*, Schedule 3, paragraph 2, and the *UK Borders Act 2007*, section 36.

In order to be lawful, detention must be in line with one of the statutory powers and in accordance with the limitations imposed by case law (both domestic and that of the European Court of Human Rights). It must also be in line with the Home Office's stated policy.

¹ UK Visas and Immigration, Enforcement instructions and guidance, [Chapter 55: detention and temporary release](#), paragraph 55.6.3

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Detention can only be lawfully exercised if there is a realistic prospect of removal within a reasonable period.

Home Office policy dictates that there is a presumption in favour of temporary admission or release rather than detention. It also emphasises that wherever possible, alternatives to detention (such as temporary admission with reporting restrictions, electronic monitoring, or release on bail) should be used. Detention should be used sparingly, and for the shortest period necessary. Detention is reviewed at fixed intervals and continued detention must be authorised at certain levels of seniority.

Home Office policy is that detention ought to be used sparingly

In cases involving foreign national ex-offenders liable for deportation, the presumption in favour of release is weighed against the risks posed by the individual case.

In all cases, decisions to detain must be supported by “a properly evidenced and justified explanation of the reasoning behind the decision”.²

Relevant considerations when considering whether to detain (or to continue detention) include:³

- What is the likelihood of the person being removed and, if so, after what timescale?
- Is there any evidence of previous absconding?
- Is there any evidence of a previous failure to comply with conditions of temporary release or bail?
- Has the person taken part in a determined attempt to breach the immigration laws?
- Is there a previous history of complying with the requirements of immigration control?
- What are the person's ties with the UK?

1.3 What about vulnerable people?

‘At risk’ adults

Section 59 of the *Immigration Act 2016* required the Home Secretary to issue guidance specifying matters to be taken into account by immigration officers when determining whether a person would be particularly vulnerable to harm if detained.

The [Guidance on adults at risk in immigration detention](#)⁴ is intended to lead to a reduction in the number of vulnerable people detained and to reduce the duration of detention before removal.

There is a presumption that ‘at risk’ individuals will not be detained

The appropriateness of a vulnerable person’s detention will be assessed on a case-by-case basis. There is a clear presumption that detention will not be appropriate if a person is considered to be ‘at

² UK Visas and Immigration, Enforcement instructions and guidance, [Chapter 55: detention and temporary release](#), paragraph 55.1.1

³ Ibid, paragraph 55.3.1

⁴ Home Office, *Immigration Act 2016: Guidance on adults at risk in immigration detention*, 23 August 2016

risk'. Detention will only become appropriate at the point at which immigration control considerations outweigh this presumption.⁵

The guidance provides the following indicators of risk:

Indicators of risk

11. The following is a list of conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention.

- suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition)
- having been a victim of torture (individuals with a completed Medico Legal Report from reputable providers will be regarded as meeting level 3 evidence, provided the report meets the required standards)
- having been a victim of sexual or gender based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery
- suffering from post-traumatic stress disorder (which may or may not be related to one of the above experiences)
- being pregnant (pregnant women will automatically be regarded as meeting level 3 evidence)
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transsexual or intersex person.

The guidance provides the following examples of immigration control considerations that may outweigh the presumption that an 'at risk' person should not be detained:

14. The immigration factors that will be taken into account are:

- Length of time in detention – there must be a realistic prospect of removal within a reasonable period. What is a "reasonable period" will vary according to the type of case but, in all cases, every effort should be made to ensure that the length of time for which an individual is detained is as short as possible. In any given case it should be possible to estimate the likely duration of detention required to effect removal. This will assist in determining the risk of harm to the individual. Because of their normally inherently short turnaround time, individuals who arrive at the border with no right to enter the UK are likely to be detainable notwithstanding the other elements of this guidance
- Public protection issues – consideration will be given to whether the individual raises public protection concerns

Indicators of risk are considered against immigration control considerations

⁵ Ibid, paragraphs 2-4

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by virtue of, for example, criminal history, security risk, decision to deport for the public good

- Compliance issues - an assessment will be made of the individual's risk of abscond, based on the previous compliance record.

Pregnant women

Pregnant women may not be detained for longer than 72 hours. This period is extendable up to a week in total with Ministerial approval.⁶

There is separate Home Office guidance on the restrictions on the detention of pregnant women for the purpose of removal and on the duration of their detention.⁷ The strong preference is to avoid the detention of pregnant women, even where their removal from the UK is to be enforced. Detention must be reviewed promptly if there is any change in circumstances, especially if related to her pregnancy or to her welfare more generally.

Families with children under the age of 18

Families with children are no longer detained in Immigration Removal Centres ('IRCs' - see section 2) before removal from the UK, due to [policy changes made in 2010](#) by the Coalition Government. Some of these were subsequently put into primary legislation.⁸

As a last resort, families with children may be detained in 'pre-departure accommodation'. Home Office policy states this is normally for a maximum of 72 hours but may, in exceptional circumstances and subject to Ministerial authority, be extended up to a total of seven days.⁹

Following the adoption of a new approach to removing families from the UK, a secure facility named Cedars was opened in 2011 to provide this pre-departure accommodation. Cedars was managed by G4S, the Home Office and Barnardo's, who provided social work, welfare and family support services. HM Chief Inspector of Prisons described the Cedars facility as 'ground-breaking' and said it 'produced the best outcomes for detainees that we have seen anywhere in immigration detention'.¹⁰

The 'ground-breaking' Cedars facility was hailed by the Chief Inspector of Prisons

On 21 July 2016 the then Immigration Minister Robert Goodwill announced the closure of Cedars and the establishment of new pre-departure accommodation at Tinsley House IRC.¹¹ The decision followed the recommendation of Stephen Shaw, the former Prisons and Probation Ombudsman tasked by Theresa May with conducting a review of Home Office detention policies (see section 5 below). Mr Shaw felt that to ensure value-for-money the Government should

⁶ *Immigration Act 2016*, section 60

⁷ UK Visas and Immigration, Enforcement instructions and guidance, [Chapter 55a: detention of pregnant women](#)

⁸ See sections 2-6 of the *Immigration Act 2014*

⁹ UK Visas and Immigration, Enforcement instructions and guidance, [Chapter 55: detention and temporary release](#), paragraph 55.9.4

¹⁰ HM Chief Inspector of Prisons, [Report on an unannounced inspection of Cedars pre-departure accommodation](#), June 2016

¹¹ [HCWS114](#), 21 July 2016

either close Cedars or change its use as a matter of urgency. In an answer to a subsequent Parliamentary Question the Government promised that ‘the important assistance to families preparing to return to their home country, provided at Cedars, will remain in place at the new pre-departure accommodation’.¹²

The introduction of pre-departure accommodation did not end criticism of the detention of families, and Members of Parliament and campaigners expressed disappointment and concern over the closure of Cedars.¹³

Unaccompanied children

The general policy is that unaccompanied children must not be detained other than in very exceptional circumstances. If they are to be detained, it should be for the shortest possible time and with appropriate care. While this may include detention overnight, an unaccompanied child must not be held in an IRC in any circumstances. This includes the subject of an age dispute case, where the person concerned is being treated as a child.¹⁴

The very exceptional circumstances in which it might be appropriate to detain unaccompanied children is set out in paragraphs [55.9.3A – 55.9.3C](#) of the guidance.

1.4 What was the detained fast-track policy?

From 2000 until July 2015 persons making an asylum claim could be detained if a quick decision was likely in their case. This was known as the detained fast-track policy (referred to as ‘the DFT’). The detained fast-track process operated at certain IRCs: Harmondsworth, Colnbrook and Oakington (until 2005) for men, and Yarl’s Wood for women.

In these cases, asylum decisions and appeals were made within a matter of days and weeks, rather than months (as is often the case for non-detained asylum cases).

In June 2015 the High Court found the procedural rules for fast-track appeals to be *ultra vires*. Quashing the rules, Mr Justice Nicol described a “structural unfairness” in the system. He held that refused asylum applicants were put at a serious procedural disadvantage. The Government’s appeal was dismissed by the Court of Appeal on 29 July 2015. The Court of Appeal said the purpose of the fast-track policy was “entirely laudable” but described its procedural rules as “systemically unfair and unjust”.¹⁵ The Court found the tight time limits

The fast-track procedure was available for cases likely to be decided in a short period of time

Legal challenges in 2015 resulted in findings that the fast-track rules were unfair and unjust

¹² [PQ HL1739](#), 11 October 2016

¹³ See, for example: BiD, ‘[Comment – closure of Cedars removal centre](#)’, 22 July 2016; Church of England, ‘[Closure of Cedars](#)’, 22 July 2016; ‘[Government accused of scrapping pledge to end child detention in prison-style immigration removal centres](#)’, *Independent*, 22 July 2016

¹⁴ UK Visas and Immigration, Enforcement instructions and guidance, [Chapter 55: detention and temporary release](#), paragraph 55.9.3

¹⁵ [The Lord Chancellor v Detention Action](#) [2015] EWCA Civ 840, paragraph 49

made fair appeal hearings impossible in a significant number of cases, and that the 'flexibility' safeguard was insufficient.

On 2 July 2015 the then Immigration Minister, James Brokenshire, announced the suspension of the policy.¹⁶ In a Written Statement he explained that legal challenges had identified risks surrounding the safeguards for particularly vulnerable applicants, and admitted "we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT". He expressed hope that the suspension would be short in duration but promised he would not resume operation of the policy until he was "sure the right structures are in place to minimise any risk of unfairness".

In response to the decision to suspend the detained fast-track, the Home Office formed a dedicated detained asylum casework team for examining asylum claims by those in detention (known as the DAC team). In July 2015 it published guidance entitled [*Detention: interim instruction for cases in detention who have claimed asylum, and for entering cases who have claimed asylum into detention*](#) (known as 'the *Detention Interim Instruction*' or 'DII'). In June 2016 the High Court dismissed claims challenging the lawfulness of the DII policy.¹⁷

A policy equality statement issued by UK Visas and Immigration in August 2016 states that since the suspension of the detained fast-track policy, the DAC team considers the asylum claims made by those detained for removal under general detention policy, and to an 'indicative and non-accelerated timescale':

The policy on processing asylum claims in detention rests solely on the various policies and instructions relating to the handling and consideration of asylum claims, and to general detention policy (as set out in chapter 55 of the Enforcement Instructions and Guidance).¹⁸

1.5 How can immigration detention be challenged?

Detainees can challenge the lawfulness of their detention through an application for judicial review (or, if release is the only remedy sought, by the writ of habeas corpus¹⁹).

Bail can be granted by:

- the First-tier Tribunal (Immigration and Asylum Chamber);
- a Chief Immigration Officer; or
- the Home Secretary.

¹⁶ [HCWS83](#), 2 July 2015

¹⁷ [Hossain and others v Secretary of State for the Home Department](#) [2016] EWHC 1331 (Admin)

¹⁸ UK Visas and Immigration, [Asylum claims in detention: policy equality statement](#), 1 August 2016

¹⁹ A writ of *Habeas Corpus* allows a person deprived of his or her liberty to have the decision reviewed by a court, which will decide if any justification for the detention is lawful

The GOV.UK webpage '[Immigration detention bail](#)' provides some general practical information on applying for immigration bail. [Chapter 57](#) of the Enforcement Instructions and Guidance provides greater detail on Home Office policy on immigration bail.

2. The detention estate

2.1 Where are people detained?

Detainees are held in Immigration Removal Centres (IRCs). Separate to prisons and short-term holding facilities, IRCs are used solely for the detention of people detained under the *Immigration Act 1971* or under section 62 of the *Nationality, Immigration and Asylum Act 2002*. Prior to 2003 IRCs were called 'detention centres'.

The Detention Centre Rules 2001 defines the purpose of an IRC as follows:

... to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.²⁰

There are 11 IRCs across the UK. Most IRCs are managed by private sector companies under contract to the Home Office. Two are operated by the Prison Service.

Foreign national offenders held for immigration purposes can also be detained in prisons (typically after serving their criminal sentence and pending their removal from the UK).

Most IRCs accommodate male detainees exclusively (or almost exclusively). Yarl's Wood IRC in Bedfordshire is for women and adult family units. IRC profiles are available online; see for example the GOV.UK webpage '[Find an Immigration Removal Centre](#)', and the website of the [Association of Visitors to Immigration Detainees](#) (an NGO).

2.2 How many people are detained?

Statistics on detentions and removals from detention centres are published by the Home Office as part of their [quarterly Immigration Statistics](#). The most recent data is for Q1 2017.

As at the end of March 2017 the number of people in detention in the UK was 2,930. This figure is similar to the number recorded at the end of March 2016 (2,925). As at 3 April 2017, there were 337 detainees held in prison establishments in England and Wales solely under immigration powers as set out in the *Immigration Act 1971* or *UK Borders Act 2007*.

Section 7 of this briefing contains further detention statistics, including the demographics of recent detainees.

²⁰ Detention Centre Rules 2001 r. 3(1)

2.3 What oversight is there?

Independent monitoring and oversight of conditions in immigration detention is provided by various bodies:

- [Her Majesty's Inspectorate of Prisons](#) (HMIP): its remit includes reporting on the treatment of and conditions for people held in IRCs.

HMIP's most recent reports are:

- [Report on an unannounced inspection of Morton Hall Immigration Removal Centre](#), 21 - 25 November 2016
- [Report on an unannounced inspection of Brook House Immigration Removal Centre](#), 31 October - 11 November 2016
- [Report on an unannounced inspection of Cedars pre-departure accommodation](#), 4 - 26 April 2016

- [Independent Monitoring Boards](#): they have a statutory duty to monitor the conditions and operation of IRCs. They have a right to monitor the way that complaints are managed, and a statutory obligation to hear complaints sent to them from detainees.

They also publish reports. See, for example, the [Brook House IMB 2016 Annual Report](#).

- The [Prisons and Probation Ombudsman](#): his remit includes hearing complaints from detainees who have already exhausted the Home Office's internal complaints procedures; and conducting investigations into deaths occurring in the estate. A March 2014 '[Learning lessons bulletin](#)' discusses some of the recurring themes identified in the Ombudsman's investigations in IRCs relating to fatal incidents and complaints from detainees.
- The remit of the [Independent Chief Inspector of Borders and Immigration](#) also extends to immigration detention cases.

Various NGOs and [volunteer visitor groups](#) also attend IRCs and other detention facilities, some of which publish their own research reports on the use of immigration detention and conditions in specific IRCs.

2.4 How much does immigration detention cost?

The Home Office's [Annual Report and Accounts for 2015-16](#) states detention costs of £125 million in the year ending 31 March 2016. This is down from expenditure of £136.9 million in 2014-15.

According to Stephen Shaw's January 2016 report to the Home Office, it costs, on average, £92.67 to keep someone in detention for one night. That amounts to just under £34,000 per detainee place per

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year.²¹ This contrasts with an estimated annual cost of £4968 to monitor a migrant using an electronic monitoring device.²²

Inappropriate use of immigration detention (e.g. excessively lengthy detention) can lead to further costs, as a result of compensation payments to people who have been unlawfully detained. An answer to a Parliamentary Question in October 2016 gave a breakdown of recent compensation payments:²³

Our records indicate that over the past 3 financial years (covering 2012-13, 2013-14 and 2014-15), that a total of £13.8 million has been paid out to 573 claimants, as per the below table. All of whom were paid compensation following a period of unlawful detention.

Financial Year	Total Unlawful Detention Compensation payments (£ million)	Number of claimants for the last 3 financial years
2012-13	£ 5.0	195
2013-14	£ 4.8	199
2014-15	£ 4.0	179

²¹ Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, paragraph 2.22

²² [PQ 213948](#), 17 November 2014

²³ [PQ 47658](#), 19 October 2016

3. Criticism of current policy and practice

The use of detention is one of the most controversial aspects of the UK's immigration and asylum system.

3.1 NGO and academic criticism

Some of the central objections are summarised on the website of [the Detention Forum](#), a network of 38 organisations campaigning against the use of immigration detention in the UK:

Immigration detention is not the answer for anyone. In the UK today, people are detained without a time limit, for months, sometimes even years. It is harmful and expensive. It robs people of their dignity, spirit and lives. We need to work towards an immigration system that is based on fairness not force and alternatives to detention that are accountable and allow people to contribute to society.

There is a large body of NGO and academic literature on the harmful effects of immigration detention. Independent inspection reports, such as by HMIP and those of the Independent Monitoring Boards, frequently identify specific areas of concern within different IRCs.

Recurring criticisms of the use of immigration detention include:

- That it is unfair to deprive a person of their liberty for administrative convenience
- That detention is costly, ineffective and harmful, and that there are better alternatives to detention
- That indefinite detention is harmful to detainees' mental health and well-being
- That safeguards to protect detainees and prevent inappropriate cases from being detained are insufficient and ineffective
- That policies to guard against prolonged, unnecessary and unlawful detention are inadequately enforced
- That there is a lack of transparency about the use of detention and conditions in IRCs, including the treatment of detainees and the conduct of detention centre staff
- That detainees are disadvantaged by their limited and inadequate access to legal advice, external communications and healthcare

Calls for reform of current policy and practice commonly include:

- Introducing a maximum time limit on the length of detention
- Providing for automatic judicial oversight of decisions to detain
- Exploring alternatives to immigration detention, such as community-based case management approaches, learning from international best practice

- Exempting certain vulnerable groups from detention, such as pregnant women, people who have experienced gender-based persecution, and potential victims of trafficking or torture
- Ending the use of detained fast-track asylum procedures

3.2 Home Affairs Committee

The Home Affairs Committee expressed concern as to the operation of the Home Office's 'adults at risk policy':

70. Ten months on from Stephen Shaw's report on detention, the number of people spending more than two months in detention has increased. The Government aims to address the problem of long detention in its 'adults at risk' policy. The policy states that "a failure to remove within the expected timescale might also tip the balance to the extent that release becomes appropriate." This does not strike us as a firm commitment to reduce the length of time people are detained. We will monitor the implementation of this policy closely. It must meet our and Mr Shaw's recommendations that the length of detention be reduced. If it fails to do so then further interventions such as a statutory limit on detention will have to be considered.²⁴

The Home Affairs Committee expressed disquiet that prolonged detention has not been addressed

3.3 Westminster Hall debate

A [Westminster Hall debate](#) on 14 March 2017 addressed the detention of vulnerable persons.²⁵ Anne McLaughlin, who moved the debate, argued that detention is "not necessary, is extremely damaging and is not cost-effective". She and Members from both sides of the House sought to highlight the impact of detention on a detainee's mental health.

Diane Abbot, David Burrowes and Gavin Newlands raised the length of time for which some people are held. Mr Burrowes mooted the possibility of a statutory time limit on detention.

Responding for the Government, Robert Goodwill denied a suggestion that ideology lies behind the use of immigration detention and stressed his and the Home Secretary's personal commitment to ensuring detainees are treated with dignity and detained for the shortest time possible. He set out at length how the 'adults at risk' policy will operate. Defending the Government's record on protecting detainees' mental health, the then Immigration Minister referred to the recently published joint action plan between the Department of Health, NHS England and the Home Office on improving mental health services in immigration detention²⁶:

I hope that I have expressed the seriousness with which the Government take the welfare of those detained. The measures we have put in place, including the adults at risk policy, the statutory protections for pregnant women, the improvements to the approach to caseworking and the mental health action plan,

The duration of detention and its effect on detainees' health was a major theme of the debate

²⁴ Home Affairs Committee, [The work of the Immigration Directorates \(Q1 2016\)](#), HC 151, 2016-17, 27 July 2016

²⁵ HC Deb 14 March 2017 c58WH-84WH

²⁶ Department of Health, Home Office, NHS England, and UK Visas and Immigration, [Improving mental health services in immigration detention: action plan](#), 1 December 2016

represent a comprehensive package of safeguards for all vulnerable people in the immigration system who are detained or who are liable to detention, especially the most vulnerable.²⁷

Mr Goodwill assured the house the Government remained seized of the matter:

I reassure Members that the Home Secretary and I are personally committed to ensuring that every individual in detention is treated with dignity and detained for the minimum time possible. The welfare of vulnerable people is particularly important to me, and Members can be assured that I am determined to see through the reforms started by my predecessors. I have invited Mr Shaw to return and review his policy and the work later in the year.²⁸

²⁷ HC Deb 14 March 2017 cc80-4WH

²⁸ Ibid

4. All-Party Parliamentary Groups' Inquiry into detention

In March 2015 the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration published a report of a joint inquiry into the use of immigration detention in the UK. The [Report](#), [Executive Summary](#), [Government response](#), and submissions of evidence are available from the inquiry's website.²⁹

The cross-party panel of Members and Peers received written and oral evidence from over 200 individuals and organisations, as well as the then Immigration Minister. The wide-ranging inquiry considered immigration detention policy and practice, including the conditions within IRCs.

The panel's broad conclusions included the following:

We believe that the UK uses detention disproportionately and inappropriately. When compared with other countries, we detain more than most other European countries and for longer. This practice cannot be justified based on the number of applications we receive to remain in the UK, or on evidence that it enables us effectively to persuade those who are refused leave to remain to leave the country. The system is hugely costly to the tax-payer and seriously detrimental to the individuals we detain in terms of their mental and physical well-being.

The APPG found disproportionate and inappropriate use of detention; and a 'hugely costly' system that is 'seriously detrimental' to detainees

The panel's key recommendations were as follows:

- There should be a time limit of 28 days on the length of time anyone can be held in immigration detention.
- Detention is currently used disproportionately frequently, resulting in too many instances of detention. The presumption in theory and practice should be in favour of community-based resolutions and against detention.
- Decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.
- The Government should learn from international best practice and introduce a much wider range of alternatives to detention than are currently used in the UK.

The report contained many further detailed recommendations for changes to detention policy and practice. The panel called on the Government to establish an independent working group to oversee implementation of the inquiry's recommendations.

The [Coalition Government's brief response](#) to the report set out its reasons for not supporting a maximum time limit for detention. It invited Stephen Shaw, former Prisons and Probation Ombudsman to consider the panel's recommendations relating to conditions in detention, as part of his separate review (discussed in section 5 of this briefing).

The then Government rejected the call for a maximum time limit

²⁹ Available at <https://detentioninquiry.com>, last accessed 9 June 2017

5. Stephen Shaw's review of detention policies

5.1 An independent review of policies impacting upon detainee welfare

On 9 February 2015 the then Home Secretary Theresa May announced that she had commissioned an independent review into the Home Office policies and operating procedures that have an impact on immigration detainee welfare. She asked Stephen Shaw, former Prisons and Probation Ombudsman for England and Wales, to lead the review. Mrs May told the Commons:

The Government believes that those with no right to be in the UK should return to their home country and we will help those who wish to leave voluntarily. However, when people refuse to do so, we will seek to enforce their removal, which may involve detaining people for a period of time. But the wellbeing of those in our care is always a high priority and we are committed to treating all detainees with dignity and respect.

I want to ensure that the health and wellbeing of all those detained is safeguarded. Following the work I commissioned into the welfare of people with mental health difficulties in police custody, I believe it is necessary to undertake a comprehensive review of our policies and operating procedures to better understand the impact of detention on the welfare of those in immigration detention. The purpose of this wider-ranging review is to consider the appropriateness, and application, of current policies and practices concerning the health and wellbeing of vulnerable people in immigration detention, and those being escorted in the UK. I am committed to considering any emerging findings made by the review and to taking action where appropriate.³⁰

5.2 Stephen Shaw's recommendations

Stephen Shaw's report was completed in September 2015 and published on 14 January 2016. He made [64 specific recommendations](#).

[Part 4](#) of Mr Shaw's report addressed the concept of vulnerability. He recommended that the presumption against detention be extended to include victims of rape and other sexual or gender-based violence (including FGM), to those with a diagnosis of PTSD, to transsexual people and to those with learning difficulties. He called for the presumptive exclusion of pregnant women be replaced by an absolute exclusion, and that the clause "which cannot be satisfactorily managed in detention" should be removed from the section of the guidance covering those suffering from serious mental illness.

Mr Shaw also found that [rule 35](#) of the [Detention Centre Rules](#) - designed as a key safeguard for victims of torture or whose health would be at risk from continued detention - failed to protect vulnerable

³⁰ [HCWS266](#), 9 February 2015

people in detention. He identified the ‘fundamental problem’ as being a lack of trust in GPs to provide independent advice and called on the Home Office to consider whether GPs independent of the IRC system would be more appropriate to conduct assessments.

5.3 The Government response to the review

Responding to the review, the then Immigration Minister James Brokenshire said the Government accepted ‘the broad thrust’ of the recommendations and would take forward three key reforms:

First, the Government accepts Mr Shaw’s recommendations to adopt a wider definition of those at risk, including victims of sexual violence, individuals with mental health issues, pregnant women, those with learning difficulties, post-traumatic stress disorder and elderly people, and to recognise the dynamic nature of vulnerabilities. It will introduce a new “adult at risk” concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained, building on the existing legal framework.

[...]

Second, building on the transfer of healthcare commissioning in Immigration Removal Centres to the NHS, and taking account of the concerns expressed by Mr Shaw about mental healthcare provision in detention, the Government will carry out a more detailed mental health needs assessment in Immigration Removal Centres, using the expertise of the Centre for Mental Health. This will report in March 2016, and NHS commissioners will use that assessment to consider and revisit current provision. In the light of the review the Government will also publish a joint Department of Health, NHS and Home Office mental health action plan in April 2016.

Third, to maximise the efficiency and effectiveness of the detention estate, and in response to Mr Shaw’s recommendation that the Home Office should examine its processes for carrying out detention reviews, the Government will implement a new approach to the case management of those detained, replacing the existing detention review process with a clear removal plan for all those in detention. A stronger focus on and momentum towards removal, combined with a more rigorous assessment of who enters detention through a new gate-keeping function, will ensure that the minimum possible time is spent in detention before people leave the country without the potential abuse of the system that arbitrary time limits would create.³¹

5.4 A further review

At the invitation of the Government Stephen Shaw will conduct a shorter follow-up review in autumn 2017, assessing the progress made in implementing the recommendations in his first report.³²

³¹ [HCWS470](#), 14 January 2016

³² [PQ 59369](#), 19 January 2017

6. The future use of immigration detention

6.1 An overall strategy for detention reform

In his Written Statement of 14 January 2016 the then Immigration Minister James Brokenshire promised an Immigration Enforcement Business Plan for 2016/17, which would set out the Government's plans for the future shape and size of the detention estate.³³

The business plan has never been published, leading to criticism that there remains no overall strategy for detention reform.³⁴ The Government response to Parliamentary Questions in July 2016, October 2016, November 2016 and April 2017 was that the plan would be published in "due course".³⁵

The Immigration Enforcement Business Plan is yet to be published

6.2 Immigration detention in Scotland

On 8 September 2016 the UK Government announced it would close Dungavel House in South Lanarkshire, the only IRC in Scotland, at the end of 2017.³⁶ The announcement was welcomed by the Scottish Government and by campaigners against detention, though they questioned the UK Government's plan to open a short-term holding facility near Glasgow airport.

However on 8 November 2016 Renfrewshire Council refused the Government planning permission for the proposed facility at Glasgow airport. After considering an appeal against the decision, the Government abandoned its plans to close Dungavel House³⁷ and it will remain open for the foreseeable future.³⁸

Whilst opposed to continuing detention at Dungavel House, the independent charity Scottish Detainee Visitors points out that people detained in Scotland have greater access to legal aid than those detained elsewhere in the UK. Legal aid is a devolved matter and has not been subject to the level of cuts seen in England and Wales. The charity argues that removing people from Scotland to IRCs south of the border "would have the effect of removing them from their legal representatives and hindering their access to justice".³⁹

Detainees held in Scotland have greater access to legal aid than those held elsewhere in the UK

³³ [HCWS470](#), 14 January 2016

³⁴ Scottish Detainee Visitors, [Briefing: Immigration detention after the Shaw Review](#), March 2017

³⁵ See [PQ43141](#), 26 July 2016; [PQ50732](#), 7 November 2016; [PQ53856](#), 24 November 2016; [PQ71513](#), 25 April 2017

³⁶ BBC News, ['Dungavel immigration detention centre to close'](#), 8 September 2016

³⁷ BBC News, ['Dungavel House immigration removal centre to stay open'](#), 3 February 2017

³⁸ [HC Deb 14 March 2017 cc80-4WH](#)

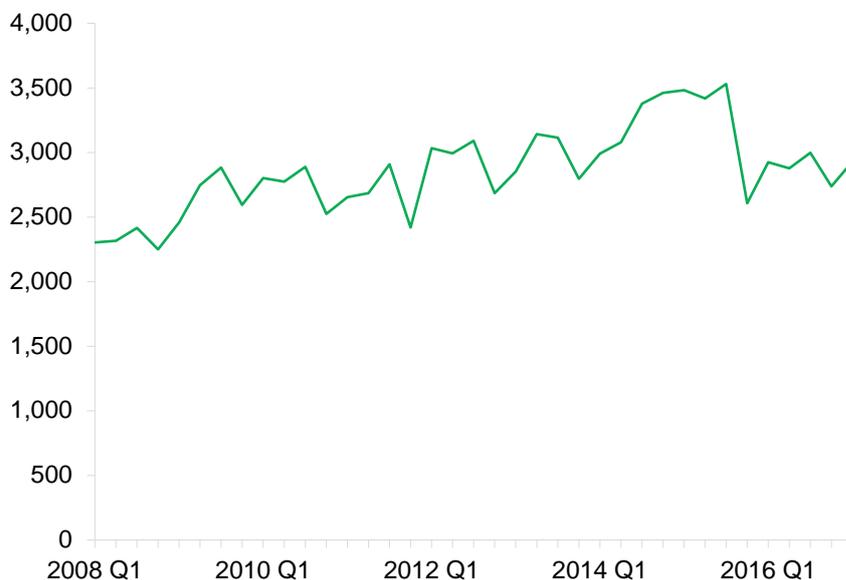
³⁹ Scottish Detainee Visitors, [Update: What is the future of immigration detention in Scotland?](#), November 2016

7. Immigration detention statistics

7.1 Number of people held in detention in the UK

Statistics on immigration detention are published by the Home Office in their quarterly Immigration Statistics release.⁴⁰ The most recent data is for Q1 2017. This provides information on the number of people detained in the UK solely under Immigration Act powers. It excludes those in police cells, Prison Service establishments, short term holding rooms at ports and airports, and those recorded as detained under both criminal and immigration powers and their dependants.

Chart 1: People in detention, as at end of quarter, 2008 – 2017



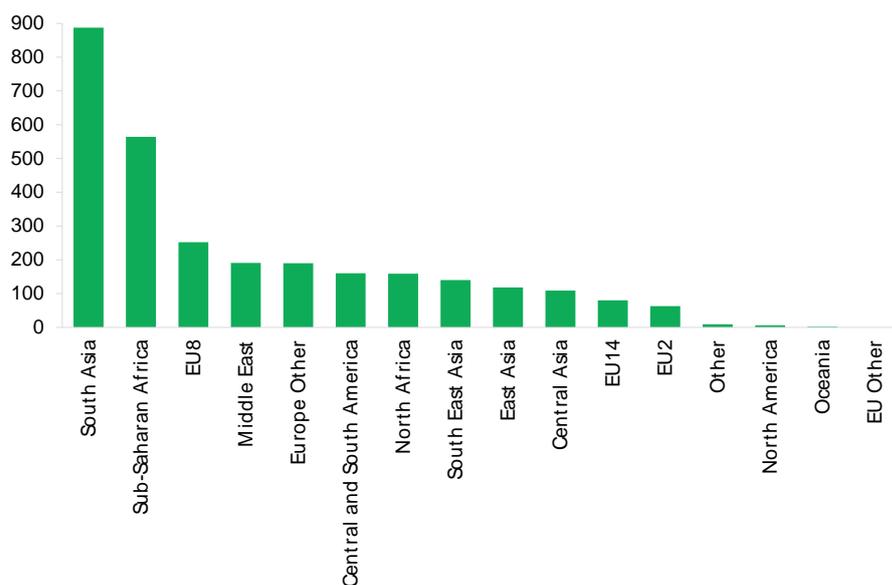
Source: [Home Office Immigration Statistics, January to March 2017](#), dt_12_q

Chart 1 shows the number of people in detention in the UK at the end of each quarter from Q1 2008 to Q1 2017. At the end of Q1 2017 the number of people in detention in the UK was 2,930. This was lower than the average for the period since the start of 2012 (3,054), but higher than the average for the period 2008-11 (2,602). At the end of Q1 2008, the number of people in detention was 2,304.

7.2 Nationalities of people in detention

Chart 2 shows people in detention at the end of Q1 2017 broken down by broad nationality. At the end of Q1 2017 the largest group of foreign nationals in immigration detention were nationals of South Asian countries. There were 887 nationals of South Asian countries in detention, comprising nationals of India (316), Pakistan (256), Bangladesh (221), Sri Lanka (54), and Nepal (40). Altogether, South Asian nationals were almost a third of people in detention (30%).

⁴⁰ [Home Office Immigration Statistics, January to March 2017](#)

Chart 2: People in detention by broad nationality, end of Q1 2017

Source: [Home Office Immigration Statistics, January to March 2017](#), dt_13_q

The second largest group were nationals of Sub-Saharan African countries. There were 564 nationals of these countries in immigration detention at the end of Q1 2017, which was 19% of people in detention. The most common nationalities within this group were nationals of Nigeria (202), Ghana (74), and Somalia (59).

Other countries with large numbers of nationals in immigration detention in the UK were Poland (136), Albania (127), Iraq (118), China (111), Vietnam (109), and Afghanistan (105).

7.3 Gender and age of people in detention

Table 1 below shows the number of people in detention at the end of each quarter broken down by sex and age from Q1 2010 to Q1 2017.

Most immigration detainees are men. At the end of Q1 2017, 90% of the 2,930 people in detention were men. The ratio of male to female detainees has averaged around nine male detainees per female detainee during the last five years.

The number of children in detention has fallen in recent years. On average during the last five years there has been around one child in detention at the end of each quarter. However this measure does not capture the flows of children into and out of detention, although these flows have fallen too. The number of children entering detention in each quarter has fallen from 240 in Q1 2010 to three in Q1 2017.

Children typically do not spend as long in detention as they did in the past. Of the 437 children leaving detention in 2010, 273 (62%) were in detention for one week or less, and 184 (42%) were in detention for three days or less. 164 children (38%) were in detention for longer than one week.

24 Immigration detention in the UK: an overview

By contrast, 74 children left detention in 2016, of whom 67 (91%) were in detention for one week or less, and 55 (74%) were in detention for three days or less. 7 children (9%) were detained for longer than one week.

Table 1: People in detention by sex and age, as at end of quarter

As at end of	Total detainees	Gender		Ratio of male to female	Age	
		Male	Female		Adults	Children
2010 Q1	2,802	2,461	341	7.2	2,774	28
2010 Q2	2,775	2,476	299	8.3	2,772	3
2010 Q3	2,889	2,575	314	8.2	2,884	5
2010 Q4	2,525	2,248	277	8.1	2,525	0
2011 Q1	2,654	2,380	274	8.7	2,654	0
2011 Q2	2,685	2,382	303	7.9	2,685	0
2011 Q3	2,909	2,563	346	7.4	2,908	1
2011 Q4	2,419	2,178	241	9.0	2,419	0
2012 Q1	3,034	2,694	340	7.9	3,033	1
2012 Q2	2,993	2,655	338	7.9	2,989	4
2012 Q3	3,091	2,764	327	8.5	3,091	0
2012 Q4	2,685	2,412	273	8.8	2,684	1
2013 Q1	2,853	2,566	287	8.9	2,852	1
2013 Q2	3,142	2,842	300	9.5	3,141	1
2013 Q3	3,115	2,756	359	7.7	3,113	2
2013 Q4	2,796	2,505	291	8.6	2,796	0
2014 Q1	2,991	2,661	330	8.1	2,990	1
2014 Q2	3,079	2,757	322	8.6	3,079	0
2014 Q3	3,378	3,037	341	8.9	3,378	0
2014 Q4	3,462	3,135	327	9.6	3,460	2
2015 Q1	3,483	3,178	305	10.4	3,483	0
2015 Q2	3,418	3,070	348	8.8	3,418	0
2015 Q3	3,531	3,179	352	9.0	3,529	2
2015 Q4	2,607	2,337	270	8.7	2,607	0
2016 Q1	2,925	2,616	309	8.5	2,925	0
2016 Q2	2,878	2,589	289	9.0	2,878	0
2016 Q3	2,998	2,732	266	10.3	2,998	0
2016 Q4	2,738	2,489	249	10.0	2,738	0
2017 Q1	2,930	2,628	302	8.7	2,930	0

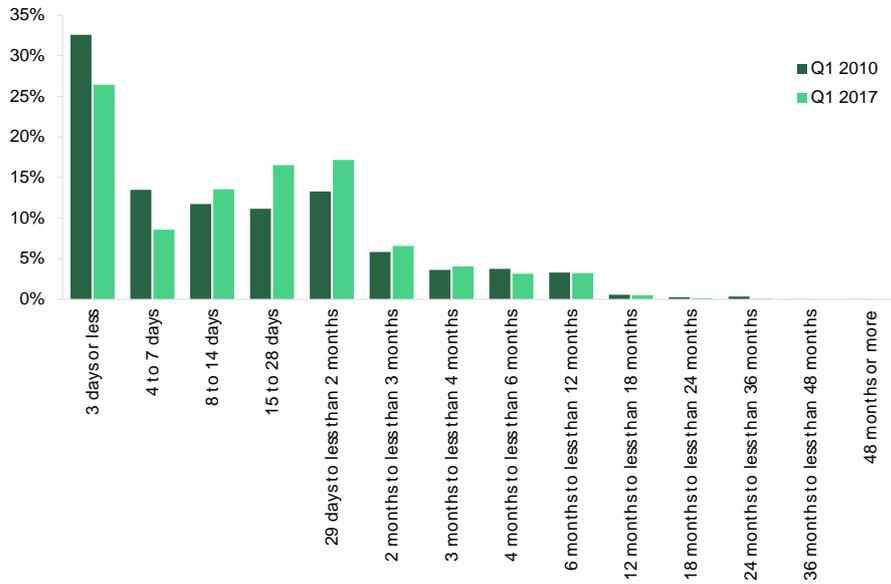
Source: [Home Office Immigration Statistics, January to March 2017](#), dt_13_q

7.4 Duration of detention

Chart 3 below shows people leaving detention in Q1 2010 and Q1 2017 broken down by length of detention.

As the chart shows, the typical length of detention has increased since Q1 2010. The percentage of people leaving detention within one week has fallen from 46% to 35%, while the percentage of people leaving detention after 28 days has increased from 31% to 35%.

Chart 3: People leaving detention by length of detention, Q1 2010 and Q1 2017



Source: [Home Office Immigration Statistics, January to March 2017](#), dt_06_q

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