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BRIEFING PAPER

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Immigration detention in the UK: an overview

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Summary

Home Office officials have the power to detain asylum seekers, as well as unauthorised migrants who do not enter the asylum system, for administrative purposes.

Immigration detention is generally used

- To establish a person's identity or basis of claim;
- to effect a person's removal from the UK; or
- where there is reason to believe that the person will fail to comply with any conditions attached to a grant of temporary admission/release.

Home Office policy states that detention should be used sparingly, and for the shortest period necessary. However, there is no maximum time limit for the use of immigration detention in the UK (unlike in other EU states). Nor is there automatic judicial oversight of decisions to detain.

There are strong calls on the Government to introduce a maximum time limit, and to enhance existing mechanisms for independent oversight of decisions to detain.

The Home Office is currently reviewing its use of immigration detention. In particular, it is considering the size of the detention estate, and how long people can spend in detention. So far, however, it has not indicated any intention to legislate to introduce a maximum time limit for immigration detention.

In addition, two independent reviews, of specific detention policies and procedures, and Serco's work in Yarl's Wood IRC, are due to report in the autumn.

1. Practical overview: the detention estate

Immigration detention is used in respect of asylum seekers, as well as migrants who do not enter the asylum system (such as non-EEA nationals who do not have a valid immigration status in the UK, and foreign national ex-offenders who are being considered for deportation from the UK).

1.1 Where are people detained?

There are currently 10 Immigration Removal Centres (IRCs) across the UK. Dungavel House is the only IRC in Scotland. In addition, foreign national offenders can be held for immigration purposes in prisons (typically, after serving their criminal sentence and pending their removal from the UK).

Other types of secure accommodation are also used for immigration purposes, namely Cedars, a secure "pre-departure accommodation" for families facing removal from the UK, and residential and non-residential short-term holding facilities (not discussed in detail in this briefing).

Most IRCs are operated by private sector companies under contract to the Home Office but a few are operated by HM Prison Service. 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 section 'Find an Immigration Removal Centre', and the website of the Association of Visitors to Immigration Detainees (an NGO).

1.2 How many migrants are detained?

Statistics on detentions and removals from detention centres are published by the Home Office as part of their quarterly Immigration Statistics.

As at the end of June 2015, 3,418 people were in detention, 11% higher than in June 2014.

Recent Home Office immigration statistics (April - June 2015) show that there has been an increase in the number of people entering detention, but a decrease in the proportion of detainees who are removed from the UK upon release from detention:

> The number of people entering detention in the year ending June 2015 increased by 10% to 32,053 from 29,122 in the previous year. Over the same period there was a similar increase of 9% in those leaving detention (from 29,055 to 31,628).
>
> There was a continuing decline in the proportion of detainees being removed on leaving detention from the most recent peak in the year ending March 2011 of 64% to 49% in the year ending June 2015. Conversely, there was an increase in the proportion of detainees granted temporary admission or release, from 28% to 40%, and an increase in the proportion of detainees granted bail, from 6% to 9%, over the same periods.

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

1.3 Systems for independent oversight

The conditions in IRCs vary, depending on the differing physical/security environments and operational cultures. The Detention Centre Rules 2001 (SI 2001/238) specify certain rights and standards to apply in IRCs, including detainees' access to healthcare, communications, welfare and privileges. The Detention Services Operating Standards Manual, published in September 2011, contains more detailed provisions, including those relating to complaints procedures. Detention Service Orders specify further procedures to be followed by Home Office staff in IRCs.

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

- Her Majesty's Inspectorate of Prisons (HMIP) – his remit includes reporting on the treatment of and conditions for people held in IRCs.

  HMIP's most recent reports are:

  An unannounced inspection of Yarl's Wood IRC, 12 August 2015
  An unannounced inspection of The Verne IRC, 11 August 2015
  An unannounced inspection of Dungavel House IRC, 7 July 2015
  An unannounced inspection of Tinsley House IRC, 28 May 2015

- 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 (as per Part VI of the Detention Centre Rules 2001).
- 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, and some also publish their own research reports on the use of immigration detention and conditions in specific IRCs. See, for example, Women for Refugee Women, *I am Human*, January 2015 (a report based on the experiences of 38 women who were detained in Yarl's Wood between 2012 and 2014).

1.4 How much does immigration detention cost?

Answers to PQs in the past year show that:

- The total cost of running the immigration detention estate (IRCs, short-term holding facilities, and spaces in prisons) in 2013/14 was £164.4 million.[1]
- It costs on average £98.70 per day to keep a migrant in immigration detention, equivalent to £36,026 per year. This compared against an estimated annual cost for keeping a migrant on electronic monitoring of £4968.[2]

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. A PQ answered in December 2014 gives a breakdown of recent compensation payments:[3]

> The amounts paid by the Home Office in compensation following claims for unlawful detention were as follows:
>
> 2011-12 £4.5 million
> 2012-13 £5.0 million
> 2013-14 £4.8 million

1 WPQ 214848, answered on 24 November 2014
2 WPQ 213949, answered on 17 November 2014
3 WPQ 214974, answered on 1 December 2014

2. Policy overview: When can migrants be detained?

2.1 In what circumstances can immigration detention be used?

Powers to detain are exercised by Home Office officials, rather than judges. Immigration detention is generally used:

- To establish a person's identity or basis of claim;
- to effect a person's removal from the UK; or
- where there is reason to believe that the person will fail to comply with any conditions attached to a grant of temporary admission/release.

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), Schedule2, 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 *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 domestic and ECHR case law. It must also be in line with the Home Office's stated policy. Detention can only be lawfully exercised if there is a realistic prospect of removal within a reasonable period.

Chapter 55 of the Home Office's *Enforcement Instructions and Guidance* gives an overview of the policy and some case law on the use of immigration detention. It emphasises that there must be a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention (such as temporary admission with reporting restrictions, electronic monitoring, or release on bail) should be used.[4] Detention should be used sparingly, and for the shortest period necessary. In all cases, decisions to detain must be supported by "a properly evidenced and justified explanation of the reasoning behind the decision".

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.

[4] Approximately 60,000 individuals were subject to regular reporting restrictions (as at October 2014), with a compliance rate of approximately 95%: Written evidence from Immigration Minister to APPG detention inquiry, 13 October 2014

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

- 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?

2.2 Who cannot be detained?

Home Office policy guidance identifies certain categories of person who are generally considered to be only suitable for detention in very exceptional circumstances:

♦ Unaccompanied children and young persons under the age of 18 (see 55.9.3 above).

♦ The elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention.

♦ Pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this.

♦ Those suffering from serious medical conditions which cannot be satisfactorily managed within detention.

♦ Those suffering from serious mental illness which cannot be satisfactorily managed within detention.

♦ Those where there is independent evidence that they have been tortured.

♦ People with serious disabilities which cannot be satisfactorily managed within detention.

♦ Persons identified by the competent authorities as victims of trafficking.

Families with children are no longer detained in IRCs before removal from the UK, due to policy changes made in 2010 by the Coalition Government (some of which were subsequently put into primary legislation: sections 2-6 of the Immigration Act 2014).

However, families may be held for up to a week in a secure "pre-departure accommodation" facility, called Cedars. Cedars is used as a last resort measure to ensure removal from the UK. Families are usually held for a maximum of 72 hours, but can be held for up to 7 days in exceptional cases (with ministerial authorisation). The use of Cedars is subject to independent monitoring and oversight, including by the Independent Family Returns Panel and Her Majesty's Chief Inspector of Prisons.

Families and unaccompanied children can be held in short-term holding facilities at UK ports of entry (or in Tinsley House Immigration Removal Centre) pending their admission to or immediate removal from the UK. Families are usually held for a maximum of 72 hours; unaccompanied children cannot be held for longer than 24 hours.

Unaccompanied children (under 18) can only be detained in very exceptional circumstances, and for the shortest possible time. Children cannot be held in an IRC in any circumstance. The same restrictions apply in age dispute cases when the person is being treated as a child.[5]

2.3 The detained fast-track

Some adult asylum seekers have been kept in immigration detention whilst their asylum claims were considered under expedited procedures, as per the 'detained fast-track' (DFT) policy. Detained fast-track policies have operated, in various guises, since 2000. Most recently, at Yarl's Wood Immigration Removal Centre (for women) and Colnbrook and Harmondsworth Immigration Removal Centres (for men).

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

In July 2015, following a string of court cases which had found that the DFT was operating unlawfully, the Government announced a temporary suspension of DFT processes. This remains in place (discussed further in section 6.4).

Any adult asylum seeker could have been routed to a detained fast track process if:

- there was a power in law to detain; and
- it appeared, from the initial facts of the case, that a quick decision on the asylum claim was possible; and
- none of the detained fast track suitability exclusion criteria applied.

Home Office policy guidance indicated the types of case where a quick decision might be possible. They included cases likely to be certified as "clearly unfounded" (under section 94 of the *Nationality, Immigration and Asylum Act 2002*).

The 'suitability exclusion criteria' identified certain types of case which were unlikely to be suitable for DFT processes:

- Pregnant women (24 weeks or more)
- Children and family cases
- People who have independent evidence of torture
- People who have been identified by a competent authority as a potential/victim of trafficking
- People who have a disability, physical or mental medical condition which cannot be adequately treated or properly managed in in detention

[5] Home Office, *Enforcement Instructions and Guidance,* Chapter 55, para 55.9.3 (accessed on 23 July 2015)

- People who clearly lack the mental capacity or coherence to understand that asylum process or present their claim

Critics said that in practice, inappropriate cases did get allocated to the DFT. The initial 'screening' process was argued to be inadequate for identifying suitable cases, due to the limited information it obtained about the applicant and the basis of their claim. Furthermore, once routed to the DFT, there were difficulties in obtaining evidence to support a request to be taken out of the process (e.g. independent evidence of torture).[6]

Subject to the main criteria being satisfied, other considerations also influenced DFT intake decisions. For example, Home Office policy guidance states that particular consideration should be given to cases where the person has claimed asylum at a late stage (e.g. when facing removal from the UK, or after a prolonged unlawful stay in the UK). However, there was no requirement that a claim be "late and opportunistic" in order to be allocated to the DFT.

Operational considerations (e.g. capacity in the detention estate, security considerations, and potential barriers to removal) were also taken into account.

There were two DFT processes, depending on the type of case:

- **Detained fast track process**: An asylum decision would usually be served within less than 10 – 14 days. The appeal process was also fast tracked.
- **Detained non-suspensive appeals process**: For cases certified as 'clearly unfounded' (and therefore do not have in-country appeal rights). An asylum decision was served around 10 – 14 days after the person entered the DFT process.

Home Office policy guidance on flexibility within DFT timetables required that a person's ongoing suitability for DFT processes must be reviewed by the asylum case owner throughout the duration of the case. The applicant or their legal adviser could also make a request for flexibility/removal from DFT processes.[7] Nevertheless, campaigners consistently raised concerns that the speed of the process resulted in unfairness to applicants: there was not enough time for applicants to gather supporting evidence and prepare their cases, and the flexibility policy was difficult to activate in practice. Policy guidance stated, for example, that it would not usually be considered appropriate to grant requests for more time to prepare for an asylum interview. Similarly, decision-making would usually only be delayed in order to enable the applicant to submit further evidence if it would be unfair to make a decision without the evidence, and usually for less than five days.

If asylum was refused and the person had exhausted their in-country appeal rights, they would be liable to removal from the UK. Detention could be continued pending their removal from the UK, if in line with

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6 Detention Action, 'End the Fast Track to despair', (undated, accessed 9 July 2015)

7 A written flexibility policy was introduced further to a 2004 legal challenge to the fairness of the fast track system: *R (Refugee Legal Centre) v SSHD [2004], EWHC Civ 1481*

broader Home Office policy on immigration detention (as previously discussed).

2.4 Challenging detention: judicial review, *habeas corpus* and access to bail

Decisions to detain are made by Home Office officials. There is no automatic judicial review of a decision to detain, either at the time of the decision or at any stage thereafter. Detainees can contest the lawfulness of their detention through judicial review or *habeas corpus* proceedings.

Continued detention is subject to internal administrative review, in order to ensure that detention remains lawful and in line with stated detention policy. The Home Office's policy guidance states that each administrative review must consider the prospects for the detainee's removal and all other information relevant to the decision to detain.

Bail can be granted by a Chief Immigration Officer or the Home Secretary. Bail can be granted subject to conditions, such as to provide sufficient sureties, to live at a specified address and/or regularly report to an immigration reporting centre.

Detainees can also apply for bail to the First Tier Tribunal (Immigration and Asylum Chamber). There is no presumption in favour of bail, although guidance notes to adjudicators indicates that there is a common law presumption, so that the burden of proof that bail should not be granted rests on the Home Secretary, on the balance of probabilities.[8]

However, section 7 of the *Immigration Act 2014* introduced some new restrictions on the availability of bail. Firstly, a detainee cannot be released on bail if their removal is scheduled to take place within the next 14 days, unless the Home Secretary consents. Secondly, the Tribunal must dismiss a bail application without a hearing if it is submitted within 28 days of a previous decision, unless there has been a material change in circumstances.

Some general practical information about applying for immigration bail is available from the GOV.UK page 'Immigration detention bail'. Chapter 57 of the Home Office's Enforcement Instructions and Guidance discusses the policy on bail in greater detail.

8 G Clayton, *Immigration and asylum law*, 4th edition, p.570

3. Criticisms of current policy and practice

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

Some of the central objections are summarised on the website of the Detention Forum, a network of over 30 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, and independent inspection reports, such as by HMIP and 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 centre around:

- 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

4. APPG 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.

The cross-party panel of Members and Peers had received written and oral evidence from over 200 individuals and organisations, as well as the 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.[9]

The panel's key recommendations are 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 contains 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 then Government's brief response to the report set out its reasons for not supporting a maximum time limit for detention (discussed in the following section). It invited Stephen Shaw to consider the panel's recommendations relating to conditions in detention, as part of his separate review (discussed in section 6.2 of this briefing). There was a short debate on the report in the Lords before the General Election. A Backbench Business Committee debate on immigration detention, prompted by the APPGs' inquiry, is scheduled for 10 September.

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[9] APPG on Refugees and APPG on Migration, *The APPG Inquiry into the use of Immigration Detention in the United Kingdom,* March 2015, p.72

5. Calls for a maximum time limit on immigration detention

5.1 The current position: no statutory maximum time limit

There are no statutory time limits on how long a person may be detained under immigration powers in the UK.

However, unreasonably lengthy detention is unlawful. The prospects of removing the person are a significant consideration in determining the reasonableness of detention.

Continued detention is subject to internal administrative review, in order to ensure that detention remains lawful and in line with stated detention policy. The Home Office's policy guidance states that each administrative review must consider the prospects for the detainee's removal and all other information relevant to the decision to detain.

A 2011 briefing by the Migration Observatory summarises some policy challenges that arise due to the uncertain length of detention:

> That nobody can be sure how long anyone will be detained is a unique characteristic of immigration detention and one of its key policy challenges. The uncertainty is difficult for detainees, who find it hard to bear not knowing what will happen in their case. It is also demanding for those working in detention. Without a sense of the duration of their population's stay, centre managers are unable to develop much of a regime. (…) From the staff perspective, an active population would be easier to manage, while, for detainees, education, work and training would help the time to pass and might provide useful skills in their future lives.

5.2 How long do people spend in immigration detention?

The commentary accompanying the latest immigration statistics (April – June 2015) gives the following overview:

> During the year ending June 2015, 31,628 people left detention. Of these, 62% had been in detention for less than 29 days, 18% for between 29 days and two months and 12% for between two and four months. Of the 2,343 (7%) remaining, 187 had been in detention for between one and two years and 29 for two years or longer.
>
> Over a third (36%) of people leaving detention had been detained for seven days or less (11,383). Of these, 5,581 (49%) were removed, 5,524 (49%) were granted temporary admission or release, 88 (1%) were granted leave to enter or remain and 87 (1%) were bailed. Of the 216 detained for 12 months or more, 38% were removed, 38% were bailed and 20% were granted temporary admission or release.

5.3 Recent Government responses to calls for a time limit

There have been longstanding calls to introduce a time limit for immigration detention, and these have intensified in recent months. Her Majesty's Chief Inspector of Prisons, Nick Hardwick, has recently expressed his support for a time limit, in light of the findings of his most recent inspection of Yarl's Wood IRC.[10]

In May 2015 the Home Secretary indicated that the issue of length of detention is being considered by Home Office officials as part of a broader review of immigration detention.[11] Further details about the review are not known.

So far, however, the Government (like the Coalition Government) has not expressed support for legislating to introduce a time limit.[12]

The Minister for Immigration, James Brokenshire, set out some reasons why he did not agree with a statutory time limit for detention in March 2015.[13] He was writing in response to a report from the APPGs on Migration and Refugees, which recommended a 28 day time limit.[14]

In short, the Minister said that the then Government did not intend to propose statutory time limits, because it was satisfied that the existing safeguards for detainees were adequate. He made the following points:

- Domestic and Strasbourg case law already contains safeguards against indefinite detention, notably by requiring that exercise of detention powers requires a reasonable prospect of removal within a reasonable timeframe.
- There is "intense judicial scrutiny" of decisions to detain, because detainees can challenge the decisions through judicial review. Judges do sometimes find against the Home Office, in spite of Home Office efforts to ensure decisions to detain are lawful.
- The vast majority of detainees (93%) leave detention within four months. The courts have recognised that in certain scenarios, such as foreign national offender cases, longer periods of detention might be appropriate, because of the need to consider the risk of absconding, and potential risks to members of the public.

With regards to the suggested 28 day time limit, the Minister pointed out that a proposal to introduce a 60 day time limit had been rejected by a majority of over 300 Peers, during passage of what became the *Immigration Act 2014*. He said that this indicated that Parliament's clear view was that an upper limit on detention is not necessary.

Lord Taylor, then Home Office junior Minister, cited similar arguments during debate on that proposed amendment in April 2014.[15]

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10 HMIP, Report of an unannounced inspection of Yarl's Wood IRC, 12 August 2015
11 HC Deb 28 May 2015 c209-10
12 See, for example, HL Deb 11 March 2015 c658
13 Letter from James Brokenshire to Sarah Teather MP, 24 March 2015 (available from www.detentioninquiry.com)
14 APPG Migration and APPG Refugees, *The Report of the Inquiry into the use of Immigration Detention in the United Kingdom*, March 2015
15 HL Deb 1 April 2014 c877-8

He emphasised that the current policy gives the courts responsibility for determining the reasonable length of detention in individual cases, and suggested that such decisions are fact-specific and unsuited to arbitrary upper time limits. He argued that there was no need to legislate, since the relevant case law was "very settled", and that to do so would remove discretion from the judiciary.

Lord Taylor also highlighted some potential difficulties that could arise from applying a strict time limit. For example, he said it could undermine the incentive for detainees to cooperate with efforts to remove them.

Lord Taylor also contended that detention powers were already used proportionately, due to "the well-established common law and case law, coupled with active judicial oversight and the Home Office's own published policies and procedures". He emphasised that the courts (including the Supreme Court) have been satisfied with the principles underlying the relevant case law for over 30 years, and had not found that the current approach leads to 'indefinite detention'.

Courts' interpretation of what constitutes a 'reasonable' length of detention has varied, depending on the individual cases, and in some cases, very lengthy periods of detention (e.g. several years) has been upheld as being reasonable. Campaigners argue that this underlines the need for Parliament to set a clear time limit.[16]

5.4 Time limits in other EU states

Other EU Member States apply maximum time limits for immigration detention.

Article 15 of the EU 'Returns Directive' (Directive 2008/115/EC), which applies to all EU Member States apart from Ireland and the UK, specifies that immigration detention must be for a maximum of six months. It can be extended for a further 12 months if removal is likely to take longer due to lack of co-operation by the detainee or delays in obtaining travel documentation for them from other countries.

In all cases, detention must be for "as short a period as possible" and subject to review at "reasonable" intervals.

A 2014 report by the European Commission considered implementation of the Directive. It found that the Directive had contributed to a convergence of maximum detention periods. The Directive had reduced the maximum legal length of detention for 12 Member States, but it had increased them in eight other Member States.

It is open to Member States to apply shorter maximum time limits if they wish. According to a UNHCR briefing, the maximum length of time is 45 days in France, 60 days in Spain and Portugal, and 2 months in Belgium. Ireland is not bound by the Directive, but nevertheless limits immigration detention to 21 days.

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16 APPG *inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015, p.18

6. The future use of immigration detention: current policy reviews

Separate to the below, the UNHCR has a five-year 'Beyond Detention' global strategy for working governments and other partners to make the detention of asylum seekers exceptional. The UK has been identified as one of the countries that UNHCR will work with to review detention practices and strengthen available alternatives to detention.

6.1 Recent Government statements of policy

The Home Office is currently reviewing its use of immigration detention. In particular, it is considering the size of the detention estate, and how long people can spend in detention. In addition, two independent reviews, of specific detention policies and procedures, and Serco's work in Yarl's Wood IRC, are due to report in the autumn.

In March 2015 Lord Bates (a Home Office junior Minister) indicated that the then Government did not intend to increase overall capacity in the detention estate:

> I can also say as a statement of intent that we do not, as a direction of travel, want to see growth in the numbers of people in the immigration detention centres. For that reason, I can inform the House that the planning application for an extension at Campsfield has been declined. Moreover, today we are announcing that we are handing the Haslar immigration removal centre back to the prison estate. These are very important points as a general statement of direction of travel as to where government policy is going.[17]

The Home Secretary gave more details about the new Government's thinking during the Justice and Home Affairs debate on the Queen's Speech, on 28 May 2015:

> The Home Office is looking at what estate is required and at the whole question of periods of detention. I and, I suspect, my hon. Friend would prefer to see people detained for a very short period—in fact, many people are detained for only a matter of days, and the majority of detentions are for less than two months.[18]

However, the Minister for Immigration, James Brokenshire, maintained in July 2015 that the Government remains committed to the idea of a detained fast-track asylum system, in spite of recent successful legal challenges which have led to its temporary suspension:

> (…) the Government remain committed to the principles of a detained fast track system and will re-introduce one as soon as we are satisfied the right structures are in place to ensure it operates as it is supposed to.[19]

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17 HC Deb 26 March 2015 c1587-8
18 HC Deb 28 May 2015 c209-10
19 HC Deb 2 July 2015 c51WS

6.2 Stephen Shaw's review of detention policies

In 2012 the Home Office commissioned the Tavistock Institute of Human Relations to review how mental health issues are dealt with in detention, in order to improve detainees' well-being and ensure that fewer cases resulted in legal challenges.

The report, and Home Office response, were published in February 2015. The Institute's findings included that:

> 3.9 Because of the underlying defensive dynamic, the current 'culture/s' in the IRCs will likely continue unchanged. The provision of training, more staff, different providers and other inputs, will likely be incorporated into the existing defensive culture/s. Therefore no real change is likely to take place.
>
> 3.10The Home Office's and IRC's culture of 'detention' should be shifted towards a culture of 'temporary transitional institution' with the primary task of aiding, helping and preparing detainees to be returned to their countries of origin. This would be a culture-changing initiative.

The Tavistock report made 11 specific recommendations, which were all accepted, or accepted in part, by the Home Office. One of the recommendations was to initiate a pilot project in an IRC "to embed a new task culture that integrates the task of detention and return with care and welfare to drive improvements in the identification of mental health and its management." The Home Office accepted the recommendation, agreeing that the proposal was worth considering, "subject to practical and resource constraints".

Upon publishing the report and Home Office response, the Government also announced that Stephen Shaw CBE, a former Prisons and Probation Ombudsman, had been appointed by the Home Secretary to lead an independent review of policies and procedures concerning the welfare of immigration detainees. The Terms of Reference for Mr Shaw's review state:

> The review will consider the appropriateness of current policies and systems designed to:
>
> (a) identify vulnerability and appropriate action;
>
> (b) provide welfare support;
>
> (c) prevent self-harm and self-inflicted death;
>
> (d) manage food and fluid refusal safely without rewarding non-compliance;
>
> (e) assess risk effectively;
>
> (f) transmit accurate information about detainees from arrest to removal;
>
> (g) safeguard adults and children;
>
> (h) manage the mental and physical health of detainees;
>
> (i) other matters the review considers appropriate
>
> (…)

> The review may make specific recommendations for change. These shall take into consideration the need to maintain a strong immigration control and also to make exceptions where issues of public protection are involved, balanced with the welfare aspects. It should decide which detainees are to be considered vulnerable. These may include but need not be limited to pregnant women, victims of trafficking and those with mental health or disability issues.

The Terms of Reference explicitly exclude consideration of decisions to detain people, and the underlying principle of using detention for immigration control purposes.

In March 2015, Lord Bates, a Home Office Minister, committed to writing to Mr Shaw to extend the remit of his review to include the detention of pregnant women, people with disabilities, and people who have been subject to sexual violence or torture.[20] The Government has also asked Mr Shaw to prioritise an assessment of conditions in Yarl's Wood IRC in his review.[21]

The review is expected to be completed in September. Ministers have agreed to publish the report, and the Government's response to the recommendations, as soon as reasonably practicable.

Anti-detention campaigners have broadly welcomed the review, but are critical of the narrow remit it has been given.[22]

6.3 Kate Lampard's review of Serco's work in Yarl's Wood

In early March 2015, Channel 4 News broadcast footage filmed undercover in Yarl's Wood over several months. It raised serious questions about the standards of health care available in the Centre, including the treatment of women who had self-harmed, and highlighted examples of staff showing offensive and disrespectful attitudes towards detainees. Yarl's Wood IRC has had a long history of controversy, protests and allegations of abusive treatment of detainees by staff.

Karen Bradley, Home Office junior Minister, set out the Government's response in Parliament the day after the first broadcast:

> The director general of immigration enforcement has written to Serco making our expectations about its response to these allegations very clear. We told Serco that it must act quickly and decisively to eradicate the kinds of attitudes that appear to have been displayed by its staff. Serco immediately suspended one member of staff who could be identified from information available before the broadcast, and has suspended another having seen the footage. The company has also commissioned an independent review of its culture and staffing at Yarl's Wood. This will be conducted for Serco by Kate Lampard, who, as the House will be aware, recently produced the "lessons learned" review of the Jimmy Savile inquiries for the Department of Health. However, more needs to be done. The Home Office has made it clear that

20 HL Deb 26 March 2015 c1588
21 Written Question HL586, answered on 30 June 2015
22 Refugee Council, 'Independent detention review announced', 9 February 2015

> we expect to see the swift and comprehensive introduction of body-worn cameras for staff at Yarl's Wood. In addition, we have discussed with Her Majesty's chief inspector of prisons how he might provide further independent assurance.[23]

Serco's announcement of the Lampard enquiry does not indicate when it is expected to be completed, or if it will be made publicly available.

Serco has had the contract to operate and manage Yarl's Wood since 2007. In November 2014 the contract was renewed for a further eight years (starting in April 2015), at a value of over £70 million.

6.4 July 2015: Temporary suspension of the detained fast-track

A succession of cases have successfully challenged the legality of the detained fast-track processes in recent months. A brief summary of some of the cases is available from the websites of Detention Action and the Migrants' Law Project (who brought/provided legal representation in several of the cases).

In particular, in June 2015, the High Court found that the procedural rules for fast-track appeals were *ultra vires*. In particular, the Court found that there was "structural unfairness" in the system, and that refused asylum applicants were put at a serious procedural disadvantage. The Court of Appeal upheld the High Court's decision in late July.[24] It found that the tight time limits made fair appeal hearings impossible in a significant number of cases, and that the 'flexibility' safeguard was insufficient.

Other legal challenges have also made findings against the use of the fast-track process in relation to cases involving particularly vulnerable asylum seekers, including those who are potentially victims of trafficking or torture.

In response, on 2 July 2015 the Minister for Immigration announced a temporary suspension of the DFT, by way of a Written Statement. As explained in the Statement, the suspension is to enable the Government to urgently review the evidence of possible unfairness in the DFT and address any identified shortcomings:

> The Government are committed to the underlying principles of the detained fast track (DFT) and believe that for the most part it is operating well and is removing back to their own countries those whose asylum claims are clearly unfounded. But we must be satisfied that our safeguards for dealing with vulnerable applicants throughout the system are working well enough to minimise any risk of unfairness—as we have always striven to do.
>
> Recently the system has come under significant legal challenge, including on the appeals stage of the process. Risks surrounding the safeguards within the system for particularly vulnerable applicants have also been identified to the extent that we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT.

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23 HC Deb 3 March 2015 c823

24 *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840

> In light of these issues, I have decided to temporarily suspend the operation of the detained fast track policy. I hope this pause to be short in duration, perhaps only a matter of weeks, but I will only resume operation of this policy when I am sure the right structures are in place to minimise any risk of unfairness.[25]

The statement went on to outline the implications for people in the DFT at the time. Every individual who had been detained under the DFT system and was still in detention would have their detention urgently reviewed. They would continue to be detained if their detention could be justified under the general detention criteria. They would only be released if their ongoing detention could not be justified outside of the DFT policy.

Media reports have estimated that around 800 cases were due to be reviewed, and more than 100 people released from detention.[26]

Various NGOs, including Detention Action, Freedom from Torture and the Refugee Council, issued responses calling for the end of the routine use of detention of asylum seekers.

The Government initially indicated that the temporary suspension might only last a matter of weeks. However, there have been further legal defeats for the Government on the detained fast-track since the suspension was announced. The Court of Appeal has refused permission to appeal against its judgment on the fast-track appeals process to the Supreme Court, although the Government may submit a further request to the Supreme Court directly.

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25 HC Deb 2 July 2015 c51WS

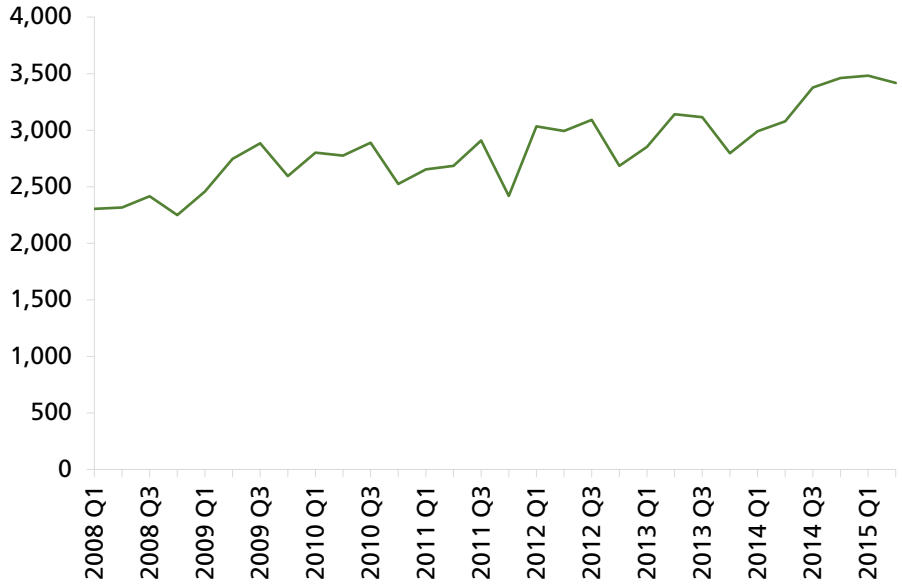
26 The Guardian, 'Hundreds of torture victims may sue UK over asylum detention', 3 July 2015

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.[27] The most recent data is for Q2 2015. This contains 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 – 2015



Source: Home Office Immigration Statistics, April to June 2015, 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 Q2 2015. At the end of Q2 2015 the number of people in detention in the UK was 3,418. This was lower than at the end of the previous two quarters but higher than any other quarter during the period. 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 Q2 2015 broken down by broad nationality.

At the end of Q2 2015 the largest group of foreign nationals in immigration detention were nationals of South Asian countries. There were 1,346 nationals of South Asian countries in detention, comprising nationals of India (488), Pakistan (452), Bangladesh (309), Sri Lanka (82), Nepal (14), and Maldives (1). Altogether, South Asian nationals were 39% of people in detention.

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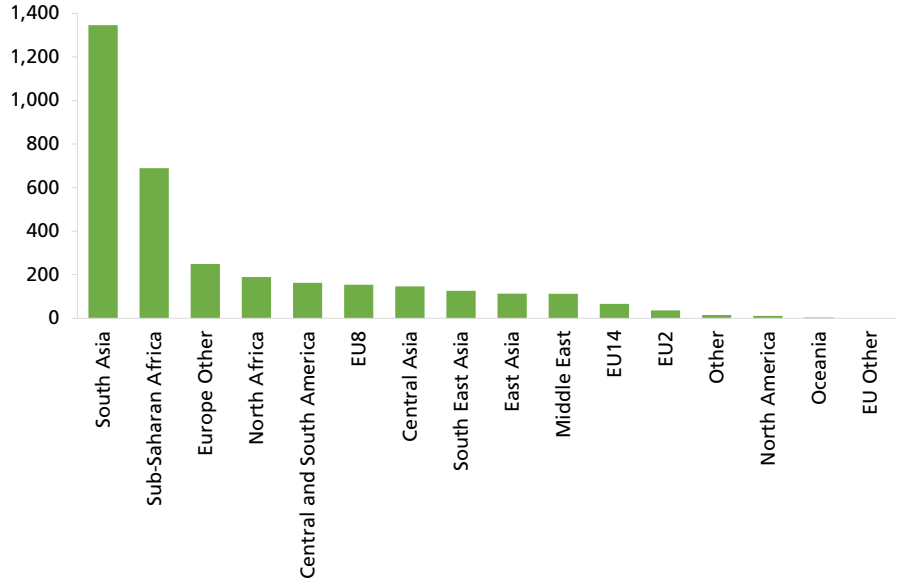
[27] Home Office Immigration Statistics, April-June 2015

Chart 2: People in detention by broad nationality, as at end of quarter, Q2 2015



Source: Home Office Immigration Statistics, April to June 2015, dt_13_q

The second largest group were nationals of Sub-Saharan African countries. There were 689 nationals of these countries in immigration detention at the end of Q2 2015, which was 20% of people in detention. The most common nationalities within this group were nationals of Nigeria (219), Somalia (67) and Ghana (65).

Other countries with large numbers of nationals in immigration detention in the UK were Albania (152), Afghanistan (140), Jamaica (110), China (108), and Vietnam (86).

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 Q2 2015.

Most immigration detainees are men. At the end of Q2 2015, 90% of the 3,418 people in detention were men. The ratio of male to female detainees has averaged around 8.5 male detainees per female detainee during the last five years.

The number of children in detention has fallen in recent years. On average there has been around one child in detention at the end of each quarter since Q2 2010. However this measure does not properly 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 38 in Q2 2015.

The reason for the difference between these two measures is that children typically do not spend as long in detention as they did in the past. Of the 39 children leaving detention in Q2 2015, 38 were in detention for one week or less, and 29 were in detention for three days or less. All 39 children were in detention for 28 days or less.

Table 1: People in detention by sex and age, as at end of quarter, Q1 2010 – Q2 2015

		Gender			Age	
As at end of	Total detainees	Male	Female	Ratio of male to 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

Source: Home Office Immigration Statistics, April to June 2015, dt_13_q

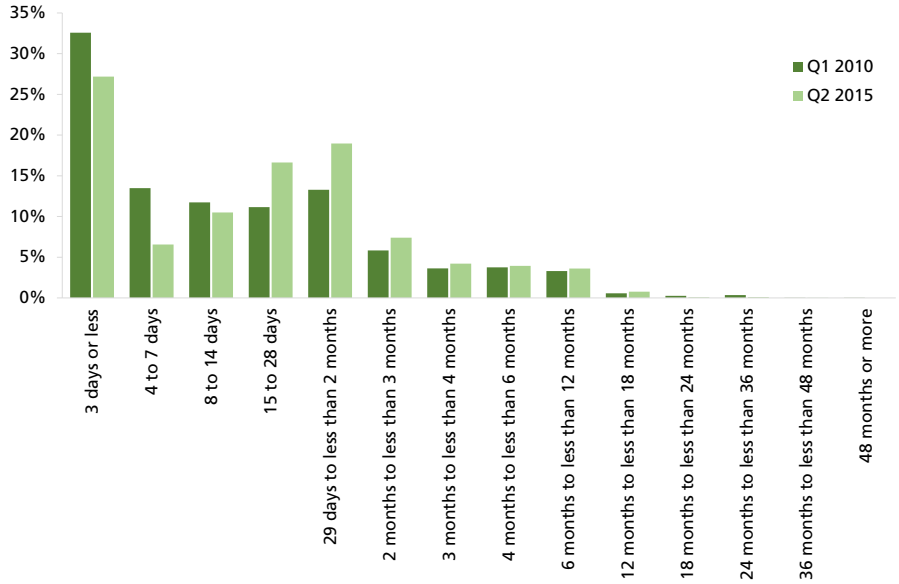
By contrast, in Q1 2010, 214 children left detention, of whom 90 were detained for longer than one week, and 19 of those were detained for longer than 28 days.

7.4 Duration of detention

Chart 3 below shows people leaving detention in Q1 2010 and Q2 2015 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 34%, while the percentage of people leaving detention after 28 days has increased from 31% to 39%.

Chart 3: People leaving detention by length of detention, Q1 2010 and Q2 2015



Source: Home Office Immigration Statistics, April to June 2015, dt_06_q

8. Selected further reading

There is a vast literature on the use of detention for immigration purposes in the UK and internationally, and possible alternatives to detention. See, for example, the list of recent related NGO research reports on the website of the Detention Forum.

Current Government policy and practice

APPG on Refugees and APPG on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015. See also the submission of written evidence by the Immigration Minister, and the Government's response to the recommendations

Alternatives to detention

UNHCR, Beyond detention Global strategy 2014-2019

Odysseus Network, *Alternatives to immigration and asylum detention in the EU: time for implementation*, January 2015

European Commission, *The use of detention and alternatives to detention in the context of immigration policies: synthesis report for the EMN focused study 2014*

Detention, alternatives to detention and deportation, *Forced Migration Review*, 44, September 2013

J Phelps, 'Is there an alternative to locking up migrants in the UK?' Opendemocracy.net, April 2013

Jesuit Refugee Service, 'Alternatives to detention', November 2013

Matrix evidence, *An economic analysis of alternatives to long-term immigration detention*, September 2012

International Detention Coalition, *There are alternatives: a handbook for preventing unnecessary immigration detention*, May 2011

Amnesty International, *Irregular migrants and asylum seekers: Alternatives to immigration detention*, April 2009

Welfare in detention

Detention Forum, *Rethinking 'vulnerability' in detention: a crisis of harm*, July 2015

Home Office, Freedom of Information Release, Number of suicides committed in UK detention centres, 2009 to 2013, Gov.uk, published 14 January 2014

Home Office, Freedom of Information Release, 'Self-harm incidents in immigration removal centres, 2009 to 2013', published 25 July 2014

International policy comparisons

Jesuit Refugee Service, Detention in Europe

Global Detention Project

International Detention Coalition

BRIEFING PAPER
Number 7294, 7 September 2015