

The Detention Forum



Briefing Paper: Immigration Bill, Consideration of Lords Amendments, House of Commons – 25 April 2016

The Detention Forum (www.detentionforum.org.uk) is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention.

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Lords Amendment 84: Immigration detention: time limit and judicial oversight

Lords amendment 84 introduces automatic judicial oversight of immigration detention for the first time. Contrary to the title, it does not introduce a time limit, but would provide an important judicial safeguard to the Home Office's powers of detention. The amendment would require the Home Secretary to gain the permission of the First Tier Tribunal if she wanted to detain an individual for immigration purposes for longer than 28 days. The automatic judicial oversight would not apply in cases involving people who have either been given a criminal sentence of 12 months or longer or who face deportation.

Lords amendment 84 is a response to the growing alarm within Parliament at the overuse of detention by the Home Office. **There is currently no maximum length of time the government can hold an individual in immigration detention** and decisions to detain, and to continue to detain, are taken by Home Office officials with no judicial oversight. In 2015 a record number of people, 32,446, were detained in Immigration Removal Centres. More than half of the people leaving detention during 2015 were released back into the community rather than removed from the country, with over 1,200 people detained for longer than six months.¹

In February 2015, the cross-party Parliamentary Inquiry carried out by the APPG on Refugees and the APPG on Migration concluded that 'we cannot go on as we are', finding the current system 'expensive, ineffective and unjust.'² It called for a time limit of 28 days, noting that the UK is an 'outlier' internationally in not having a time limit, and concluding that 'decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.'

¹ Immigration Statistics, October to December 2015, tables dt 01 and dt 06.

² The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom – A Joint inquiry by the All Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration www.detentioninquiry.com

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The 'Shaw Review', commissioned by the Home Secretary in response, in January 2016 likewise found substantial cause for alarm in detention policy.³ Stephen Shaw reported that 'people with serious mental illness continue to be held in detention' and argued that 'their treatment and care does not and cannot equate to good psychiatric practice... Such a situation is an affront to civilised values.' Shaw called on the Home Office to consider introducing an independent element into detention decision-making and strengthening of legal safeguards against 'excessive length of detention'.

In their two-paged response to Stephen's Shaw report, the government accepted 'the broad thrust' of the report's 63 recommendations.⁴ However, **six months after Stephen Shaw submitted his report⁵ the government has still not published a full response or clarified which recommendations it accepts.**

In this context, **it is vital that Parliament ensures that reform of immigration detention has a basis in legislation, rather than relying on the Home Office to reform itself.** While the clause does not introduce a time limit, or provide automatic judicial oversight for all those who are detained by the Home Office, it is an important step forward in providing the basic minimum of safeguards.

While migrants in detention have the right to apply to the Tribunal for bail, this is not a right that is accessible in practice to everyone. In the most extreme case, someone in full psychological collapse will be unable to instruct a solicitor, let alone make a bail application. Many people in detention are unrepresented, speak little or no English, and do not understand the system that has locked them up. Many more are too confused or depressed to avail themselves of the right to apply for bail. The fact that the Home Office has five times in recent years been found to have breached the Article 3 rights (torture and inhuman or degrading treatment) of mentally ill migrants in detention, demonstrates the need for automatic judicial scrutiny.

Lords amendment 84 would create a norm that detention should generally not last more than 28 days. This would support the government's attempts to reduce the numbers in detention and the lengths of time that they are detained, whilst allowing flexibility in the

³ Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

⁴ Government Response to Stephen Shaw's Review into the Welfare in Detention of Vulnerable Persons https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492227/gov_paper_2_.pdf

⁵ Stephen Shaw submitted his report on 24 September 2015, see House of Lords written question 5791 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-02-02/HL5791/>

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most difficult cases. It is regrettable that ex-offenders and people facing deportation are excluded from the Lords amendment, as they frequently face the longest periods of detention. The exclusion is also unnecessary as the Lords amendment introduces an element of judicial oversight rather than an absolute time limit, allowing for flexibility based on the facts of the individual case.

The Detention Forum encourages MPs to support Lords Amendment 84

Lords Amendment 85: Absolute exclusion on the detention of pregnant women

Lords Amendment 85 introduces a duty on the Home Secretary to produce statutory guidance on the detention of vulnerable people. This was added to the Immigration Bill by the Government as part of their response to Stephen Shaw's review. In addition, sub-clause (1) of Lords Amendment 85 reflects another of Stephen Shaw's recommendations— that there should be an absolute exclusion from immigration detention for pregnant women.⁶

The Government has refused to accept Stephen Shaw's recommendation of an absolute exclusion for pregnant women. Current Home Office policy is that pregnant women should only be detained in exceptional circumstances, but the HM Inspectorate of Prisons has said that this policy is not being followed.⁷ This has led to 169 pregnant women being detained in the past two years.⁸

Furthermore, Stephen Shaw found that "in the vast majority of cases, the detention of pregnant women does not result in their removal" despite detention having an "incontrovertibly deleterious effect on the health of pregnant women and their unborn children."⁹ The House of Lords agreed with Stephen Shaw and voted to introduce sub-clause (1) to Lords Amendment 85.

The Detention Forum encourages MPs to vote to keep the absolute exclusion on the detention of pregnant women

⁶ Recommendation 9 of Stephen Shaw's report was: "I recommend the Home Office amend its guidance so that the presumptive exclusion from detention for pregnant women is replaced with an absolute exclusion." Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

⁷ See paragraph 4.27 of Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw

⁸ Lord Keen of Elie, Immigration Bill Third Reading debate, House of Lords, 12 April 2016, c139

⁹ Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw