

# The Detention Forum



## Briefing Paper: Immigration Bill, Report Stage in the House of Commons – 1 December 2015

The Detention Forum ([www.detentionforum.org.uk](http://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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### **Amendment 32 – A time limit on detention**

*This amendment introduces a maximum time limit of 28 days on the amount of time an individual can be detained for immigration purposes.*

Amendment 32 would give effect to one of the key recommendations of the cross-party Parliamentary Inquiry into immigration carried out by the APPG on Refugees and the APPG on Migration.<sup>1</sup> The inquiry panel consisted of parliamentarians from the Conservatives, Labour and the Liberal Democrats, as well as two crossbench members of the House of Lords. After examining nearly 200 written submissions of evidence from individuals affected by detention, lawyers, clinicians, international experts and NGOs over eight months and a study visit to Sweden, the panel concluded that the UK currently detains far too many people and for far too long. On their report, the panel call for significant reform of the way in which the UK uses immigration detention, including introducing a 28 day limit on the length of time anyone can be detained in a detention centre.

Currently, there is no statutory maximum time limit on how long an individual can be held in immigration detention. This makes the UK is an outlier amongst EU member states, most of whom are signatories to the EU Returns Directive, which specifies a six month time limit.<sup>2</sup> Many member states operate a shorter time limit. For example, if France the time limit is 45 days, Spain and Portugal 60 days and in Belgium it is two months. In Ireland, which along with the UK is the only EU member state not signed up to the Returns Directive, the maximum time limit is 21 days.

The Parliamentary Inquiry panel concluded that the lack of a time limit has “several negative consequences, including, in far too many cases, protracted detention.”<sup>3</sup> The panel highlighted the medical evidence that showed the detrimental impact on mental health of prolonged detention and the lack of a time limit, says that without a time limit “[d]etainees are left counting the days they have been in detention, not knowing if tomorrow their detention will continue, if they will be deported, or if they will be released.”

There is also evidence that the lack of a time limit is an incentive to effective case-working on behalf of Home Office officials. Hindpal Singh Bhui, a member of the Chief Inspector of

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<sup>1</sup> The *Inquiry into the Use of Immigration Detention in the UK*. The report and its executive summary are available at <http://detentioninquiry.com/report/>

<sup>2</sup> The Directive does allow for detention to be extended for a further 12 months in some circumstances

<sup>3</sup> APPGs on Refugees and Migration, *Inquiry into the Use of Immigration Detention in the UK*, p.33

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Prison's inspection team, told the inquiry, a quarter of cases of prolonged detention examined by the inspection team were a result of inefficient case-working.<sup>4</sup> Given the lack of automatic bail hearings for individuals who have been detained, and without the initial decision to detain being sanctioned by any kind of legal proceeding, the lack of effective case-working has serious and damaging consequences.

Both the UK's capacity to detain and its use of detention has expanded rapidly in the last twenty years. In 1993, there were just 250 places available, rising to 2,665 in 2009. Now, in 2015, the capacity of the immigration detention estate is over 3,500 and the UK is home to some of the largest detention centres in Europe. The last twelve months have also seen the UK detain more people than at any other time for which records exist. In the year ending September 2015, 32,741 people were detained, an 11% increase on the preceding twelve months.

The inquiry panel highlighted the financial cost of such extensive use of detention. According to the House of Commons Library, the cost of running the immigration detention estate in 2013/14 was £164.4million, with a cost of detaining one person for one year of £36,026.<sup>5</sup> In addition, between 2011 and 2014 the UK Government paid out nearly £15million in compensation following claims for unlawful detention.<sup>6</sup>

The Home Office's own immigrations statistics show that radical reform of immigration detention is drastically needed. Despite being called Immigration Removal Centres, in the last quarter for which statistics are available, only 40% of people who left detention did so because they were removed from the UK. For the majority of people, their detention ends with them being released back to their communities, having potentially spent months, if not years, needlessly being locked up indefinitely. For those detained for longer than four months, the percentage drops considerably. Between June and September this year, only a quarter of those people who left detention after being held for more than four months were removed from the country.<sup>7</sup>

The statistics also show that a 28 day limit, which would reflect best practice internationally, is achievable by the Home Office. As the parliamentary panel highlighted, the majority of people spend less than 28 days in detention currently. Between June and September, two thirds of those peopled detained were released within 28 days, and eight in ten were held for less than two months.<sup>8</sup> The report recommended that the Home Office should form a working group to oversee the implementation of the inquiry's findings, and this is reflected in **New Clause 13 – Review of Immigration Detention.**

Since the report was published, there has been further support for a time limit on detention. The UN Human Rights Committee, a body of 18 international experts who monitor the implementation of the international covenant on civil and political rights, issued a recommendation to the UK to introduce a time limit on immigration detention, echoing the inquiry panel's key recommendation.<sup>9</sup> In August, the Chief Inspector of Prisons added his

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<sup>4</sup> See page 19 of the report.

<sup>5</sup> House of Commons Library, 'Immigration Detention in the UK: an overview', Briefing Paper Number 7294, 7 September 2015

<sup>6</sup> House of Commons Written Question 214974, 1 December 2014

<sup>7</sup> Home Office, Immigration Statistics July to September 2015, table dt\_06\_q

<sup>8</sup> Home Office, Immigration Statistics July to September 2015, table dt\_06\_q

<sup>9</sup> <http://detentioninquiry.com/2015/07/30/un-committee-back-british-parliamentarians-call-for-a-time-limit-on-immigration-detention/>

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voice to those calling for a time limit in a report on an inspection of Yarl's Wood Immigration Removal Centre. In the report, the Chief Inspector, Nick Hardwick, said "Some periods of detention were prolonged as a result of unreasonable delays in decision-making and women reported considerable stress as a result of open-ended detention", adding that "there should be a strict time limit on the length of detention".<sup>10</sup>

Most notably, the recommendations of the parliamentary inquiry have been endorsed by the House of Commons. Following a backbench business debate on 10 September, Members of Parliament unanimously passed a motion calling on the Government to respond positively to the panel's recommendations.<sup>11</sup> **Amendment 32 and New Clause 13 would be the first step in introducing the reform of the UK's use of detention recommended by the parliamentary panel and endorsed by the House of Commons.**

**The Government's response to the Inquiry's findings has been unsatisfactory.** To date, their response has hinged on the sudden announcement of the *Review into the Welfare in Detention of Vulnerable Persons*<sup>12</sup> (the 'Shaw Review') to be conducted by the former Prisons and Probation Ombudsman, Stephen Shaw. However, the Shaw Review will be unable to deal with the issues raised in the Inquiry Report, as its terms of reference do not include a consideration of the decision to detain. As such, it falls far short of being an appropriate response to the Inquiry's findings.

## **New Clause 8 – Detention of person-exempted persons**

New Clause 8 also seeks to put some of the recommendations of the parliamentary inquiry into immigration detention into effect. New Clause 8 would mean that pregnant women as well as individuals who had claimed asylum as victims of either human trafficking, torture and sexual violence, could no longer be detained under the powers contained within Schedule 2 to the Immigration Act 1971.

The Home Office's policy is that pregnant women should only be detained where removal is imminent and medical advice suggests that the baby is not due before the removal date. However, the inquiry panel were concerned that this policy was not being followed, concerns that were backed up by the Chief Inspector of Prison's report on Yarl's Wood Immigration Removal Centre, which recorded that of 12 cases of pregnant women, eight of them should never have been detained or should have been released at an earlier stage. Additionally, the Chief Inspector reported that 99 pregnant women were detained at Yarl's Wood during 2014, and 90% of them were released.<sup>13</sup>

Victims of trafficking or torture should, according to Home Office policy, only be detained in very exceptional circumstances. Yet evidence received by the parliamentary panel showed that the screening processes that are meant to identify victims frequently fail to do so. Staff employed to work in detention centres were, the panel were told, frequently unaware of how the National Referral Mechanism works. One of the women who gave evidence to the inquiry

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<sup>10</sup> Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre (13 April – 1 May 2015), <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/yarls-wood-immigration-removal-centre/>

<sup>11</sup> HC Deb 10 Sep 2015, c559

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/402206/welfare\\_in\\_detention\\_review\\_tors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf)

<sup>13</sup> Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre (13 April – 1 May 2015), <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/yarls-wood-immigration-removal-centre/>

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said that when she first arrived at Yarl's Wood, she was asked if she had been through any kind of trauma. Despite saying that she was a victim of trafficking, she was accused of fabricating her experiences and her detention continued. She was subsequently released from detention and then formally recognised as a victim of trafficking.<sup>14</sup>

## **The Review into the welfare in detention of vulnerable persons (Shaw Review)**

In February 2015, the Government asked Stephen Shaw to carry out a review into the welfare in detention of vulnerable persons (the Shaw Review). The Shaw Review, as set out in its terms of reference, is based on the premise that the principle of detention is 'not in question'<sup>15</sup>. It is a distinct piece of work with a focus on the safeguarding issues in relation to the application, and 'appropriateness of current policies and systems'. As such it will not address the Inquiry's findings of a disconnect between the official guidance on detention – which states that it should be used sparingly and for the shortest period of time – and the current practice, which involves holding many thousands of people each year, with many instances of unlawful detention.

While the Shaw Review will look at how the most vulnerable in detention are treated, and as such is to be welcomed, it will by definition deal with the issues arising once someone is already held. Put simply, there is a risk that the Shaw Review will divert resources to a review of existing policies, leaving the broader questions regarding the appropriateness or otherwise of our current use of detention unanswered. The Government have announced that they have received Stephen Shaw's report and are considering their response. During the Committee Stage debate on the bill, James Brokenshire, the Immigration Minister committed to publishing the report along with the Government's response before the Immigration Bill completes its passage through Parliament. The report should be published as soon as possible so that it can inform future debates on the bill.

## **Independent Review of Serco's work at Yarl's Wood by Kate Lampard CBE**

Similarly, the response by Serco to the findings of the Channel 4 News investigation was to appoint Kate Lampard CBE to review 'their work'<sup>16</sup> at Yarl's Wood detention centre. Yarl's Wood has been a media story for some time now, with legitimate reasons. There are many vulnerable women held, many of whom have experienced sexual violence, and a review of their conditions and treatment is long overdue, particularly as the Government has been reticent to allow observers, including the UN Special Rapporteur on the rights of women<sup>17</sup>, into the Centre in the past. However welcome this review is, it is unfortunate that in focusing on one aspect of the detention system it will once again become part of a piecemeal approach, bypassing the fundamental questions asked by the Inquiry report in relation to the absence of a time limit and the need to investigate community based alternatives.

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<sup>14</sup> See page 60 of the Inquiry into the Use of Immigration Detention in the UK

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/402206/welfare\\_in\\_detention\\_review\\_tors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf)

<sup>16</sup> [http://www.serco.com/Images/013\\_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review\)\\_tcm3-46380.pdf](http://www.serco.com/Images/013_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review)_tcm3-46380.pdf)

<sup>17</sup> <http://www.theguardian.com/uk-news/2015/jan/03/yarls-wood-un-special-rapporteur-censure>

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## Case study

**Jacques** was detained for the purposes of removal to Denmark where he had previously claimed asylum. He had a traumatic history as a child soldier and was severely impacted by PTSD. Despite being visibly unwell, and despite anecdotal evidence of staff feeling unable to manage the situation, he was detained for over two months before being removed to Denmark.

During detention, Jacques suffered periodic blackouts and dizziness, which at least once led to injury. He was unable to communicate with staff or other detainees and exhibited erratic behaviour, at times running naked out of his room or speaking in what was understood by staff as gibberish. In response, Jacques was regularly placed in isolation, which appeared to exacerbate his confusion and paranoia.

The local visitors' group made efforts to raise concerns with the detention centre staff, but got no response from the healthcare centre. Attempts to support Jacques were made by a fellow detainee who spoke the same language as well as a solicitor who was willing to represent him for a temporary admission application and for unlawful detention. Jacques' paranoia made him unwilling to enter the room with the solicitor, and so it was impossible to represent him. Communication was so difficult that his fellow detainee was unable to do much to support him either.

(Taken from *Rethinking 'Vulnerability' in Detention; a Crisis of Harm*<sup>18</sup> by the Detention Forum)

### About the Detention Forum:

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<sup>18</sup> <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2015>