

The Immigration Bill: a time limit on detention?



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Summary

The Immigration Bill is an opportunity for an amendment setting a time limit on immigration detention, in line with the rest of Europe. In March 2015, the first Parliamentary inquiry into the detention system as a whole called for a time limit of 28 days on immigration detention, finding the current system ‘expensive, ineffective and unjust.’ The inquiry concluded that ‘the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk.’

The need for a time limit on detention

The Parliamentary Inquiry called for ‘a time limit of 28 days on the length of time anyone can be detained in immigration detention.’ The report notes that the UK is an ‘outlier’ internationally in not having a time limit, and concludes that ‘decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.’

The vast majority of developed countries limit the maximum period of detention. The UK is unique in Europe in having no time limit and routinely detaining migrants for years. It has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months.

France limits detention to a maximum of 45 days, yet nevertheless enforces 31% more removals of irregular migrants and asylum-seekers than the UK. Italy has recently reduced its time limit from 18 months to three months. In Belgium the time limit is eight months. Sweden has a time limit of 12 months, but only detains migrants for an average of 5 days.

The extent and impact of long-term detention

Large numbers of migrants are detained for long periods. Official statistics show that 435 migrants had been detained for over 6 months at 30 June 2015, excluding those detained in prisons. 137 had been detained for over a year. Of migrants leaving detention in 2015, 1,215 had spent more than six months detained in the last five years.

Detention without time limit damages the UK’s international reputation for defending human rights. In May 2013, the UN Committee against Torture urged the UK to “(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention.”

The Home Office has repeatedly been found to have caused inhuman or degrading treatment to the most vulnerable migrants in long-term detention. Over the last four years, the High Court has on six occasions found that the prolonged detention of mentally disordered detainees amounted to breaches of Article 3 of the European Convention on Human Rights. In the case of BA, the High Court described “callous indifference” on the part of the Home Office, alongside “a deplorable failure... to recognise the nature and extent of BA’s illness.”

The inquiry report cited medical evidence that ‘the extent of mental health problems could be directly correlated to detention beyond one month.’

Case study: MD, a young Guinean woman of 24, arrived in the UK in April 2011 on a family reunion visa to join her refugee husband. She had no history of mental health problems. She was refused entry, and detained for 17 months. In this time, she had six episodes of acutely severe mental distress involving self-harm, was diagnosed with a major depressive disorder and was found to lack capacity to instruct a lawyer. She was eventually released and allowed to rejoin her husband. The High Court in July 2014 found that she had been detained unlawfully, and that her detention constituted inhuman and degrading treatment under Article 3 of the European Convention on Human Rights.

Inefficiency of case working

The inquiry found that the Home Office is failing to follow its own guidance in using detention sparingly and for the shortest possible period. Instead, the ‘enforcement-focused culture’ of the Home Office leads it to detain ‘far too many people unnecessarily and for far too long.’

The lack of time limit was ‘itself an incentive to poor case-working: the lack of any external pressure to complete cases within a set time-frame led to sloppy practice.’ Indeed, statistics reveal that ‘the longer an individual is detained, the less likely it is that the person’s detention will end with their removal from the UK.’ According to Home Office statistics, of migrants leaving detention after more than a year inside in 2014, only 43% were removed or deported; the majority were released back into the UK, their protracted detention having served no purpose.

The dramatic increase in the scale of detention has led to no increase in the numbers or removals. Since 2008, the numbers of migrants in detention have increased by 55% (from 2,250 to 3,418), yet numbers of enforced removals have actually declined by 37% in the same period (from 17,239 in 2008 to 12,627 in 2014). This suggests that increasing the numbers detained and the length of detention simply allows greater inefficiency on the part of the Home Office.

Independent scrutiny has indeed found such inefficiency and poor quality of decision-making in Home Office use of detention. After repeatedly expressing concern about the lengths of time people are detained, in August 2015 the HM Chief Inspector of Prisons echoed the Parliamentary Inquiry’s call for a time limit, citing ‘the rigorously evidenced concerns we have identified’ as requiring that ‘a strict time limit must now be introduced.’

Inefficient use of tax-payers’ money

Independent research by Matrix Evidence has found that £76 million per year is wasted on the long-term detention of migrants who are ultimately released. If the Home Office could identify these unreturnable migrants earlier, the equivalent of three detention centres could be closed without reducing the number of migrants returned. In addition, the Home Office paid out almost £10 million in 2011-13 in compensation following claims for unlawful detention.

Alternatives to detention

Limiting detention through a time limit would enable greater focus on alternatives to detention, which can achieve improved immigration outcomes at a fraction of the cost. The Parliamentary inquiry found that other countries use alternatives to detention that ‘not only achieve high compliance rates, but... are also considerably cheaper than our current system.’ Rather than the traditional enforcement-based alternatives used with limited success in the UK, other countries ‘focus on intensive engagement with individuals in community settings.’

For example, Sweden has achieved high rates of voluntary return, at a fraction of the cost of detention. A case manager works with each asylum-seeker from the start of the process to prepare them for either a positive or negative outcome of their case. Refused asylum-seekers have approximately two months where they are supported by the case worker to leave voluntarily. Detention is used only as a last resort. Sweden secures the return of around 80% of refused asylum seekers, far higher than the British rate. 76% of returns of refused asylum-seekers were voluntary in 2013, against 46% in the UK.

Detention Action

Detention Action provides emotional and practical support to people in immigration detention and campaigns for detention reform.

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