



## A 28 day statutory time limit on immigration detention

*The Cross-Party Time Limit on Immigration Detention Amendment to the Immigration and Social Security Coordination (EU Withdrawal) Bill*

### Briefing for MPs with Q&A

July 2019

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1. Indefinite immigration detention in the UK has come under increased scrutiny, with urgent calls for a time limit coming recently from the Home Affairs Select Committee, the Joint Committee on Human Rights and HM Inspector of Prisons. The Home Affairs Select Committee “***found serious problems with almost every element of the immigration detention system.***”<sup>1</sup>
2. The ***Cross-Party Time Limit on Immigration Detention Amendment*** to the Immigration and Social Security Coordination (EU Withdrawal) Bill currently before Parliament seeks to implement straightforward reforms to immigration detention that would introduce key safeguards that command widespread support inside and outside Parliament.
3. Supported by several Conservative and Change UK backbenchers as well as the Labour Party, Scottish National Party, DUP, Liberal Democrat, Plaid Cymru and Green Party frontbenches, these reforms would set down in law, for the first time: a system for early and automatic judicial oversight of decisions to detain; a 28 day statutory time limit on detention; and safeguards against unjustified re-detention.
4. A 28-day time limit on immigration detention could save the taxpayer up to £35million per year, according to recent analysis by Liberty and Cambridge Econometrics.<sup>2</sup>

### Overview of Immigration Detention

5. The UK currently detains around 25,000 people per year for immigration purposes. There is no limit on the amount of time a person can be held in immigration detention in the UK.
6. In stark contrast to even the most serious cases in our criminal justice system, decisions to detain are made by individual Home Office immigration officers, with no automatic judicial oversight.
7. Serious problems recently identified range from “Home Office caseworking inefficiencies” and “serious lack of judicial oversight” to people “being wrongfully detained, held in immigration detention when they are vulnerable and detained for too long.”<sup>3</sup>

8. Stephen Shaw's July 2018 review of immigration detention raised further grave concerns regarding the physical and mental health of immigration detainees. He found that thousands of vulnerable people are being locked in "unacceptable" conditions in our immigration detention centres.<sup>4</sup>
9. The Home Office's overuse of detention, and "*detain first, ask questions later*" approach, has been damaging and a huge waste of public money. The majority of those held in immigration detention are eventually released into the community, their detention having served no purpose.<sup>5</sup>
10. The total cost of this ineffective and inefficient system is currently £108 million per year. In addition, it was revealed last year that the Home Office paid out £21m in just five years for wrongfully detaining 850 people in immigration removal centres.<sup>6</sup>

### **Cross-party support for reform**

11. The ***Cross-Party Time Limit on Immigration Detention Amendment*** has been tabled to the Immigration Bill by a cross-party group of MPs, including several Conservative and Change UK backbenchers as well as the Labour Party, Scottish National Party, DUP, Liberal Democrat, Plaid Cymru and Green Party frontbenches.
12. The time limit is supported by organisations across civil society, including the Equality & Human Rights Commission, Bail for Immigration Detainees, the Bar Council and Stonewall.
13. A time limit has been recommended by the Home Affairs Select Committee, the Joint Committee on Human Rights and by HM Chief Inspector of Prisons<sup>7</sup> in three scathing reports into immigration detention in recent months.

### **The proposed reforms**

14. Through the ***Cross-Party Time Limit on Immigration Detention Amendment***, MPs are seeking to implement the following straightforward reforms:
  - (a) **Setting a time limit** of 28 days detention for anyone detained for immigration purposes.
  - (b) **Setting general criteria for detention** to ensure that detention will be used only when it is really necessary to effect deportations or removals from the United Kingdom.
  - (c) **Introducing judicial oversight of decisions to detain**, with automatic bail hearings after 96 hours
  - (d) **Ensuring that the Home Office can use its powers effectively** and efficiently, but with safeguards against unjustified re-detention.
15. These reforms would ensure that individuals are only detained for short periods either to examine their immigration status or to effect lawful removals in circumstances where removal from the UK is genuinely imminent.

## Q&A

### Why set the time limit at 28 days?

16. There is a clear consensus that 28 days is a reasonable timeframe for immigration detention. The ***Cross-Party Time Limit on Immigration Detention Amendment*** reflects that consensus, as well as recent recommendations for a time limit of 28-day time from the Home Affairs Select Committee and the Joint Committee on Human Rights.
17. A time limit set at 28 days, accompanied by early judicial oversight, would provide a reasonable and realistic timeframe for immigration detention. It ensures there is sufficient time for the Home Office to proceed with deportation and removal in circumstances where impediments to these processes, such as outstanding legal appeals or unavailability of travel documents, have been overcome.
18. It also reflects current Home Office guidance on detention, which states: *“Removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.”*<sup>8</sup>
19. In recommending a 28 day time limit, the Home Affairs Select Committee recently concluded that ***“[t]he power to detain can sometimes be necessary but should be used only if there are no other options, as a last resort prior to removal ... This policy and guidance is too often not being followed.”***<sup>9</sup> Setting the time limit of 28 days in law will ensure that this power is used properly.
20. A May 2019 study by Liberty and Cambridge Econometrics found that a 28-day time limit could save the taxpayer up to £35m per year. The study analysed the costs of detention (£108m last year) against potential savings that could be achieved with a 28-day time limit and community-based alternatives to detention. ***“On a per-day basis, this form of alternative provision is around one-tenth the cost of immigration detention.”***<sup>10</sup>

### Can people simply ‘run down the clock’ in order to frustrate removal and affect release?

1. A time limit will not act as a clock to be run down, but a system of safeguards designed to ensure that detention powers are used effectively and efficiently. By way of comparison, the ending of indefinite detention of children or pregnant women has not undermined immigration controls, rather it has had a positive effect on the work of the immigration service.
2. Together with proposed safeguards such as criteria for detention and judicial oversight, a 28-day time limit would ensure that individuals are only detained for short periods either to examine their immigration status or to effect lawful removals in circumstances where removal from the UK is genuinely imminent. By incorporating these safeguards, the amendment will ensure that the significant number of those detained where removal is clearly not imminent, will be released from detention well before the 28 day cut off so that the clock stops ticking unless removal is genuinely imminent. The amendment also permits re-detention, so that removal can be enforced even in circumstances where

someone has previously been held for up to 28 days where there has been a material change in circumstances.

3. To put the issue in context, currently, more than half of planned removals from the UK are cancelled by the Home Office.<sup>11</sup> Furthermore the lack of urgency in progressing removals of those detained is well documented. The Home Affairs Select Committee found “lengthy delays” in Home Office Casework which are “unnecessarily prolonging individuals’ detention”. It concluded that “***[w]hile the indefinite nature of detention traumatises those who are being held, it also means that there is no pressure on the Home Office and on the immigration system to make swift decisions on individuals’ cases.***”<sup>12</sup>

### **Would the proposed reforms put unreasonable strain on the Immigration Tribunal and the judiciary?**

4. When asked by the Joint Committee on Human Rights what additional resources the Tribunal would need if all immigration detention decisions were reviewed and authorised by a tribunal judge after 7 days in detention, the President of the First Tier Tribunal (Immigration Appeals Chamber) stated that “***very few additional resources***” would be needed.<sup>13</sup> He also said “*We would support review to ensure that those detained who may not have recourse to legal advice or fail to understand the process, are detained for the least time necessary.*”
5. The ***Cross-Party Time Limit on Immigration Detention Amendment*** allows for a 6-month implementation period for implementation to allow the Tribunal adequate time to adjust to hearing more regular automatic bail hearings.

### **Would setting a time limit pose public protection issues if those with criminal convictions are released?**

6. The statutory purpose of immigration detention is to effect removal, not to serve as indefinite preventative detention to ensure that those with criminal convictions do not re-offend. Immigration Removal Centres are not designed or equipped to manage ex-offenders.
7. The criminal justice system is designed to manage any ongoing risk that an offender may present on completion of their criminal sentence. Those who have committed a more serious offence will be subject to licence conditions. These are designed to manage risk, protect the public and prevent re-offending. These provisions apply to non-nationals in the same way that they apply to British citizens.
8. For ex-offenders who are liable to deportation, there is no reason why deportation proceedings cannot be commenced over the course of their custodial sentence. Prisons are already required to notify the Home Office within 10 days of a foreign national offender’s arrival. Under the existing system the Home Office can then consider deportation and notify those it intends to deport of its decision. Subject to adequate immigration advice being made available to those facing deportation, the period that someone serves in custody provides sufficient time for cases to be resolved and for the Home Office make arrangements, including obtaining travel documents, to facilitate deportation on release from prison.

9. National security cases are exempt from the proposals under the ***Cross Party Time Limit on Immigration Detention Amendment***.

**Would a time limit of 28 days make it impossible to obtain travel documents for many people subject to removal?**

10. There is no reason for requiring a person to be in detention in order for an Emergency Travel Document interview to take place. Detaining someone purely to ensure that they attend an ETD interview is unlikely to be lawful, and is not the purpose of immigration detention.
11. The time it takes to obtain travel documents varies very widely and depends on many factors including the country concerned and the documents the person already has.<sup>14</sup> The length of time taken to obtain an ETD is not a useful basis for assessing a time limit.
12. The Secretary of State for the Home Department has existing powers to compel a person to attend an interview at an embassy or consulate, namely section 35 of the Asylum and Immigration Act 2004, under which they can prosecute for failure to do so. Attendance at an interview can also be made a condition of bail under section 2(1)(d) or (f) of Schedule 10 to the Immigration Act 2016.

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<sup>1</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

<sup>2</sup> [https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform\\_Final-report.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform_Final-report.pdf)

<sup>3</sup> [https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform\\_Final-report.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform_Final-report.pdf)

<sup>3</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

<sup>4</sup> <https://www.independent.co.uk/news/uk/home-news/immigration-detention-centres-review-stephen-shaw-removal-a8461901.html>

<sup>5</sup> <https://www.biduk.org/posts/411-bid-s-response-to-the-government-s-statement-on-the-second-shaw-review>

<sup>6</sup> <https://www.theguardian.com/uk-news/2018/jun/28/wrongful-detention-cost-21m-as-immigration-staff-chased-bonuses>

<sup>7</sup> <https://publications.parliament.uk/pa/jt201719/jtselect/jtright/1484/1484.pdf>

<sup>8</sup> 55.3.2.4 of HO Enforcement Instruction and Guidance, updated September 2016

<sup>9</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

<sup>10</sup> [https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform\\_Final-report.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform_Final-report.pdf) P.27

<sup>11</sup> <https://www.independent.co.uk/news/uk/home-news/immigration-removal-uk-home-office-deportation-detention-latest-a8828596.html>

<sup>12</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

<sup>13</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/immigration-detention/written/95028.html>

<sup>14</sup> See the Country Returns Documentation Guide

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/357661/32521\\_Country\\_returns\\_documentation\\_country\\_guide\\_Aug\\_2014\\_FOI\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/357661/32521_Country_returns_documentation_country_guide_Aug_2014_FOI_.pdf)