



## Why a 28 day time limit on immigration detention? Working paper – 7 September 2018

This document outlines why a 28 day time limit on immigration detention for all is a credible and practical proposal. A 72 hour time limit on immigration detention already exists for pregnant women and children with asylum seeking families.

### Introduction

The UK's practice of indefinite immigration detention was hardly a hot issue when the Detention Forum was formed in 2009. Now, in 2018, a call for a time limit on detention has gained momentum and is supported by a broad range of individuals and communities directly affected by detention, as well as many institutions and organisations in and outside the UK.<sup>1</sup> Many political parties' recent election manifestos have also included commitments to end indefinite detention.<sup>2</sup>

*'The UK is the only country in Europe to detain migrants indefinitely - a human rights abuse that undermines the whole immigration system. It allows staff to act with impunity, as though they have licence to assault and abuse. It is psychological torture: even people who go in without mental health issues come out traumatised.'*

Freed Voices, a group of experts-by-experience, writing in The Guardian<sup>3</sup>

The recently published follow-up review by Stephen Shaw shows that the Home Office's various efforts to improve the immigration detention system are still failing to address the problem of long-term detention. Shaw's progress report found that, since his initial review, while the average length of detention and the number of people detained have decreased since 2015, the number of people detained for longer than six months has increased.<sup>4</sup>

A 28 day time limit would drastically reduce the UK's use of detention both in scale and length. For example, on 30 June 2018, there were a total of 2,226 people detained in Immigration Removal Centres and prisons. If there were a 28 day time limit, 59% of those who were in detention on that day (1,316 people) would not have been there, indicating the significant difference a 28 day time limit would make. We also expect it would lead to changes in immigration processes with more robust detention decision-making, closure of some detention centres, and cost savings.

<sup>1</sup> See, for example, Bar Council (2017), *Injustice in Immigration Detention*, p.9, [www.barcouncil.org.uk/media/623583/171130\\_injustice\\_in\\_immigration\\_detention\\_dr\\_anna\\_lindley.pdf](http://www.barcouncil.org.uk/media/623583/171130_injustice_in_immigration_detention_dr_anna_lindley.pdf); British Medical Association (2017), *Locked up, locked out: Health and human rights in immigration detention*, p.11, <https://www.bma.org.uk/collective-voice/policy-and-research/ethics/health-and-human-rights-in-immigration-detention>; European

<sup>2</sup> The 2017 manifestos of the Labour Party (<https://labour.org.uk/manifesto/>), Liberal Democrats ([www.libdems.org.uk/manifesto](http://www.libdems.org.uk/manifesto)) and Scottish National Party ([www.snp.org/manifesto](http://www.snp.org/manifesto)) all include a commitment to ending indefinite detention.

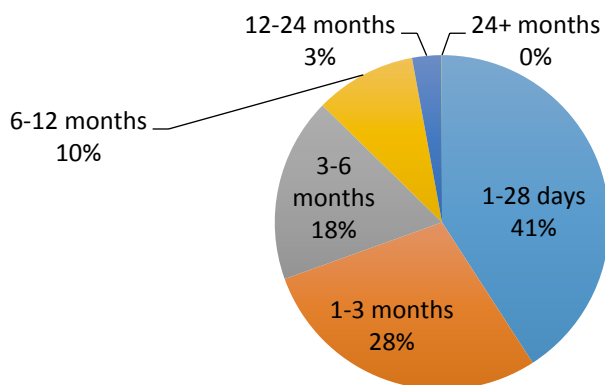
<sup>3</sup> Freed Voices (5 September 2017), *The Guardian*, 'Immigration detention is pointless abuse', <https://www.theguardian.com/uk-news/2017/sep/05/immigration-detention-is-pointless-abuse>

<sup>4</sup> While Mr Shaw described a call for a 28 day time limit on immigration detention a 'slogan', stakeholders were not invited to comment specifically on the need for a time limit and to articulate their policy position as this was not part of his review. See Stephen Shaw (2018), *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons*, pp.vii-viii, <https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report>

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Distribution of length of time spent in detention among 2,226 individuals detained on 30 June 2018



Hypothetical outcomes of other time limit options based on the data above are summarised in the table below. Obviously, the introduction of a time limit will require changes to other parts of the immigration system and the table below must be understood with that caveat in mind.

A hypothetical time limit	Reduction in the number of people in detention on 30 June 2018
28 days	59%
3 months	31%
6 months	13%
12 months	3%
24 months	>0%

## Consensus among parliamentary groups

There is a growing consensus on the need for a time limit among politicians. Cross-party parliamentary groups which examined the UK's practice of indefinite immigration detention have recommended a 28 day time limit. They considered this to be reasonably achievable by the Home Office, having examined evidence from a broad range of sources and stakeholders.

In 2006/07, the **Joint Committee on Human Rights** conducted an inquiry into the treatment of asylum seekers and examined written and oral evidence submitted by number of organisations and individuals. The Committee were *'concerned that there is currently no maximum time limit'* because *'this can - and does - lead to protracted periods of detention whilst various steps are taken to secure removal'*. The Committee further noted this created *'a significant risk that a period of detention which IND [the Immigration Nationality Directorate] initially intended to last for a few days can turn into weeks, months and even years.'*<sup>5</sup>

In conclusion, the Committee said:<sup>6</sup> *'We recommend that where detention is considered unavoidable to facilitate the removal of asylum seekers who are at the end of the process, subject to judicial oversight the maximum period of detention should be 28 days. In our view this is sufficient time in which to make arrangements for return, especially if*

<sup>5</sup> Joint Committee on Human Rights, *The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, Volume 1 – Report and formal minutes*, para.275, <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

<sup>6</sup> *Ibid.*

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*appropriate steps are taken prior to detention to secure travel documents. For families with children, the maximum length of detention should be 7 days.*<sup>7</sup>

In 2014/15, a **Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration into the Use of Immigration Detention in the United Kingdom** took place.

The panel's report published after its eight-month in-depth inquiry states: *'we recommend that a maximum time limit of 28 days should be introduced and that this should be set in statute.'* It continues, *'To prevent the 28 day time limit from becoming the default period individuals are detained for, we also recommend that the Government should introduce a robust system for reviewing the decision to detain early in the period of detention. (...) To accommodate these changes, the Government will need to introduce a much wider range of alternatives to detention affecting the entire process of the immigration system.'*<sup>8</sup>

## Significant impact on mental health

Detention generally has a damaging mental health impact, and after 30 days of incarceration there is a rise in the severity of harm. Setting a time limit under 30 days can protect people in detention from this significant level of harm.

Backed by research, it is by now widely acknowledged that immigration detention has a negative mental health impact on individuals.<sup>9</sup> Research led by Dr Katy Robjant found that mental health deteriorated after 30 days in immigration detention in the UK.<sup>10</sup>

Incidents of suicide and self-harm in detention centres and prolonged detention of particularly vulnerable people have received much criticism. A 28 day time limit will go some way to addressing these concerns around the welfare and safety of individuals in the immigration system.

## The Home Office's capacity to decide whether removal is imminent

The Home Office's Enforcement Instructions and Guidance indicates that they can predict, with a sufficient degree of confidence, that removals can take place within a time period of 28 days (four weeks) when certain conditions are met, even in complex cases dealt with by the Criminal Case Directorate.

The Home Office deals with immigration cases according to published rules. The current rule regarding detention decision-making for individuals with previous convictions, one of the types of cases regarded as complex, shows the Home Office believes it has capacity to ascertain whether removal or deportation can take place within 28 days.

<sup>7</sup> After the introduction of the Family Returns Process and establishment of the Family Returns Panel, the maximum length of time children with families whose asylum claims have been refused has been set at 72 hours, extendable to 7 days with ministerial authorisation.

<sup>8</sup> The APPG on Refugees and the APPG on Migration (2015), *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, pp.9-10, <https://detentioninquiry.com/report/>

<sup>9</sup> See, for example, British Medical Association (note 1); Mary Bosworth, 'The impact of immigration detention on mental health: A literature review', Appendix 5 to Stephen Shaw's 2016 *Review into the welfare in detention of vulnerable persons*, p.305, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf)

<sup>10</sup> K. Robjant, I. Robbins and V. Senior (2009), 'Psychological distress amongst immigration detainees: A cross-sectional questionnaire study', *British Journal of Clinical Psychology* 48: 275-286, p.282. See also 1<sup>st</sup> Oral Evidence Session of Joint Inquiry by the APPG on Refugees and the APPG on Migration (17 July 2014), [https://detentioninquiry.files.wordpress.com/2015/02/first-evidence-session\\_transcript.pdf](https://detentioninquiry.files.wordpress.com/2015/02/first-evidence-session_transcript.pdf); Centre for Mental Health (2017), *IRCs in England: A mental health needs analysis*, pp.8 and 36, <https://www.centreformentalhealth.org.uk/Handlers/Download.ashx?IDMF=5dae67a1-03a4-4687-936e-495b14708296>

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*'55.3.2.4: In all cases, caseworkers should consider on an individual basis whether removal is imminent. If removal is imminent, then detention or continued detention will usually be appropriate. As a guide, and for these purposes only, 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>11</sup>*

## **28 days or lower is an upper limit for detention without charge in other areas of law**

In the public health, counter-terror and criminal justice systems, where individuals face the possibility of detention without charge, 28 days or lower is considered an acceptable upper limit, providing sufficient time for the government to achieve its aims while recognising that there should be limits on its power to deprive individuals of their liberty.

In the **public health system**, section 2 of the Mental Health Act 1983 (MHA) allows for individuals to be detained up to 28 days. This is thought to be sufficient time to decide on a diagnosis and treatment plan. If longer treatment is required and the person is assessed to be a danger to themselves or others, they can be detained for up to 6 months under section 3 of the MHA, which can be extended for further periods if necessary.<sup>12</sup>

**Current counter-terror legislation** allows for individuals suspected of terror offences to be detained without charge for 14 days.<sup>13</sup> This period was extended to 28 days under the Terrorism Act 2006, with a safeguard that it would be reduced to 14 days after one year without an affirmative order<sup>14</sup> by Parliament to renew it.<sup>15</sup> The 28 day time limit was renewed four times until 2011, when it was allowed to lapse back to 14 days.<sup>16</sup> The reversion to 14 days was made permanent by the Protection of Freedoms Act 2012.

In the **criminal justice system**, the police can hold individuals suspected of a crime in custody without charge up to 24 hours. If suspected of a serious crime, individuals can be held in custody up to 36 or 96 hours.<sup>17</sup> In 2017, the Government ended the practice of indefinite police bail, where individuals could be placed under conditions restricting their liberty while police continued their enquiries, by limiting it to 28 days.<sup>18</sup>

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[www.detentionforum.org.uk](http://www.detentionforum.org.uk)

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<sup>11</sup> Enforcement Instructions and Guidance, Chapter 55, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721605/Chapter-55-detention-v25.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721605/Chapter-55-detention-v25.pdf). At 55.3.2.4, the guidance refers to its application of the factors outlined in 55.3.1 to criminal casework cases (CCD cases) when making decisions to detain. Emphasis added.

<sup>12</sup> See <https://www.rethink.org/living-with-mental-illness/mental-health-laws/mental-health-act-1983/sections-2-3-4-5>

<sup>13</sup> See <https://www.libertyhumanrights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention>

<sup>14</sup> For an explanation of affirmative procedure, see <https://www.parliament.uk/site-information/glossary/affirmative-procedure/>

<sup>15</sup> The then Home Secretary Theresa May stated that “the 28-day maximum period should be a temporary measure and one that we will be looking to reduce over time.” Written Ministerial Statement from Secretary of State for the Home Department (24 June 2010), <https://publications.parliament.uk/pa/cm201011/cmhansrd/cm100624/wmstext/100624m0001.htm>

<sup>16</sup> Evidence showed that most people were being released or charged within 14 days, meaning that a longer time limit was not required. BBC News (20 January 2011), Damian Green announces terror detention change, <https://www.bbc.co.uk/news/uk-12241148>

<sup>17</sup> See <https://www.gov.uk/arrested-your-rights/how-long-you-can-be-held-in-custody>

<sup>18</sup> The then Home Secretary Amber Rudd said: “Pre-charge bail is a useful and necessary tool but in many cases it is being imposed on people for many months, or even years, without any judicial oversight – and that cannot be right.” Home Office press release (3 April 2017), 28 day pre-charge bail limit comes into force, <https://www.gov.uk/government/news/28-day-pre-charge-bail-limit-comes-into-force>