

## Detention in the Asylum System

November 2020

### When is detention used?

[Guidelines on detention](#) issued by the United Nations High Commissioner for Refugees state that it should be used for very specific reasons and should only exceptionally be resorted to. In an individual case the reasons include:

- There are strong grounds for believing that an asylum seeker is likely to abscond or refuse to cooperate with authorities
- For initial identity/security verification
- In connection with accelerated procedures for manifestly unfounded or abusive claims.

United Kingdom Home Office [guidance to staff](#) states that detention is usually appropriate on similar grounds to the first two points above, but also to effect removal. Cases where the Home Office believes that another country should be responsible for dealing with the asylum claim often result in detention.

In addition cases in which a quick decision can be made used to be referred to the Detained Fast Track (DFT). Although the DFT was suspended in July 2015, some asylum seekers are still detained for the duration of the examination of their claim.

The Home Office also states that special consideration should be given to family cases where it is proposed to detain one or more family members and the family includes children, and has a policy on the detention of unaccompanied children.

### Where are people detained?

The Home Office has 7 detention centres, known as Immigration Removal Centres (IRC), and 3 Short Term Holding Facilities (STHF). In total the bed capacity of these centres is about 3000. The largest is Harmondsworth, near to Heathrow airport, which has a bed capacity of over 600. Other large IRCs include Brook House, near to Gatwick airport, and Colnbrook, near to Heathrow. The residential short term holding facilities have small numbers of beds.

Some IRCs, such as Harmondsworth, accommodate male detainees only. The IRC which is the main one used when women are detained prior to removal is Yarl's Wood.

From 2011 until late 2016 the Cedars Pre-Departure Accommodation facility provided secure pre-departure accommodation for families and could accommodate up to 9 families, with 44 bed spaces. It was a short term detention facility, not classified as an IRC or STHF. The IRC generally used for families is Tinsley House, near to Gatwick, which has a family unit which can accommodate up to 8 families.

## How many asylum seekers are detained?

During 2019 there were 14,086 occurrences of asylum seekers entering detention and 14,424 occurrences of them leaving detention. Within these figures there are some instances of someone who has been detained more than once but exactly how many people this applies to is not shown in the asylum statistics. Figures for the total number of detainees, both asylum and non-asylum cases, suggest that 3 – 4% of detainees are detained more than once. The figures include those detained before and after the determination of their asylum claim.

The totals include dependants who were detained along with the principal applicant. For comparison the number of asylum applicants in 2019, excluding dependants, was 35,566. In addition there were 8,928 dependants, the majority of whom were children.

What these figures suggest is that a significant proportion of those who claim asylum will be detained at some point during, or at the end of, the asylum process.

At the end of 2019 there were 944 asylum seekers in detention.

## How long are people detained?

Home Office statistics include the length of detention, but do not give separate figures for length of detention for asylum and non-asylum detainees.

For all those leaving detention in 2019, a total of 24,512 people, 39% had been detained for 7 days or less, and a further 35% for between 8 and 28 days. 2% had been detained for 6 months or more, including 6 people who had been detained for two years or more.

## Why do people leave detention?

Of the people who left detention during 2019 there were 9,071 who were removed from the UK when they left detention.

The majority of those leaving detention were not being removed from the UK. 12,542 were bailed by the Secretary of State (which used to be recorded as having been granted temporary admission or released), and a further 2,528 were released as a result of bail applications to courts. It is likely that in most of these cases involving asylum seekers, where people were not being removed, the asylum claim was still to be determined.

A small number (73) were granted leave to remain and so were released.

Detainees have the right to make a bail application. However they may have difficulty in obtaining legal support and sureties. [Bail for Immigration Detainees](#) (BID) offers support in bail applications. If bail is granted then the person may have conditions attached, such as reporting on a regular basis to the Home Office.

Rule 35 of the Home Office detention centre rules requires the centre's medical practitioner to report to the centre manager any cases in which there are concerns that continued detention may be injurious to the detainee's health, concerns that the detainee may be a suicide risk, or may have been a victim of torture.

A [report](#) published by Medical Justice in 2012 examined the operation of Rule 35. The cases of 50 people who had medical evidence of torture, but had been detained, were investigated. In only one case was

the person released under Rule 35 even though 14 had later been given leave to remain in the UK by the time the report was written, and all but two of the detainees were eventually released, after an average time in detention of 226 days.

The Home Affairs Select Committee in its [report](#) of October 2012 on the work of the former UK Border Agency noted that of 109 Rule 35 reports made to UKBA by healthcare managers at Harmondsworth IRC only 5 resulted in the release of the detainee. The Committee recommended that UKBA should carry out an independent review of the application of Rule 35 in IRCs.

In January 2016 a [report](#) was published following a six month review into the welfare of immigration detainees by Stephen Shaw, former prisons and probation ombudsman. He commented widely on the findings and made 64 recommendations. In addition to commenting on how conditions could be improved, Shaw called for the Government detain fewer people, 'boldly and without delay'. The Government's short [response](#) stated that reforms would be made that should result in 'to lead to a reduction in the number of those detained, and the duration of detention before removal, in turn improving the welfare of those detained'.

The government, having asked Stephen Shaw to review its progress against his recommendations, published the second review and made a [statement](#) in response to outline further commitments to explore alternatives to detention and measures aimed at improving the dignity of people held in detention.

## **Detention of children**

In May 2010 the new coalition government announced that child detention would end. In December 2012 a new process for the removal of families with children from the UK was announced. The secure pre-departure accommodation at Cedars, to be used where families did not cooperate with removal directions, opened in September 2011. Cedars has now been closed.

The number of children in detention has dropped significantly since 2010. However there were 73 occurrences of children entering detention at some point during 2019. 44 of these were children under the age of 11.

55 of the children detained were held at Gatwick Pre-departure Accommodation or Tinsley House (Family Unit) IRC. Both of these facilities have accommodation designed for families.

Some asylum claimants where there is an age dispute, as to whether the person is under the age of 18, may be detained as adults, and then released when they are recognised as children. There are no available statistics of how many age disputed cases result in detention.

The Refugee Council works to get these children released and in 2012 wrote a report of this work. Following a successful [Court of Appeal Judgment](#) in February 2017 the instances of age disputed young people in detention have reduced.

## **Oversight of detention**

Each IRC has an Independent Monitoring Board, made up of local unpaid volunteers, who work 2 – 3 days a month. The Board is responsible for monitoring day to day life in the IRC, listening to the problems of individuals, and ensuring standards are maintained. Each Board publishes an [Annual Report](#).

The 2011 report by the Board at Harmondsworth IRC highlighted the failings in the treatment of detainees suffering from mental health problems. In addition in a number of legal cases brought against

UKBA the High Court found in favour of the former detainees who had suffered mental health problems, finding that they had been falsely imprisoned and subject to inhuman and degrading treatment. The Home Affairs Select Committee expressed concern at the Court's findings and asked UKBA to apologise to the former detainees and to set out the steps to be taken to prevent reoccurrence of such incidents.

Visitor Groups of volunteers have been established, usually linked to one or more IRCs. They provide support and practical advice to detainees. The [Association of Visitors to Immigration Detainees](#) (AVID) is an umbrella organisation, acting as a membership network for all volunteer visitors to immigration detainees.

## **Inspection of IRCs**

The responsibility for the inspection of IRCs rests with the HM Inspector of Prisons in relation to the physical conditions and human rights of detainees.

In December 2012 a [joint report](#) by HM Inspector of Prisons and the Independent Chief Inspector of Borders and Immigration examined the effectiveness and impact of immigration detention casework. Among the recommendations in their report were that detainees should be informed in writing of the reasons for their detention, that detainees should be informed of their legal right to apply for bail, and that detainees' asylum claims should be determined in a timely manner.

There was a specific recommendation that torture survivors should only be detained in exceptional circumstances. The Inspectors commented that the Rule 35 process did not provide sufficient safeguards for vulnerable detainees, and quoted an example of a torture survivor who had been detained without a clear explanation of the reason.

## **Comparison with other countries**

The use of detention is widespread across the EU but there are significant variations from country to country. Some countries, such as Greece, use detention as a matter of routine, including the regular detention of unaccompanied children seeking asylum. Other countries, including Denmark and Sweden, are increasingly examining alternatives to detention, with open accommodation centres and detailed case management. The UK is the only EU country which allows indefinite immigration detention.

[EU policy](#) is well defined, but legislation across the EU member states covers only a few minimum standards.

## Links

### Home Office Statistics

<https://www.gov.uk/government/publications/immigration-statistics-year-ending-september-2020/list-of-tables>

### UNHCR Detention Guidelines

<http://www.unhcr.org/505c33199.html>

### UKVI Instructions to Staff

<https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>

### Bail for Immigration Detainees

<http://www.biduk.org/>

### Medical Justice Report on Rule 35

<http://www.medicaljustice.org.uk/healthcare-in-detention/adults-at-risk-and-rule-35/>

### Report of the Home Affairs Select Committee on the Work of UKBA

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/603/60302.htm>

### Joint Inspector's Report on Detention Casework

<http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

### Association of Visitors to Immigration Detainees

<http://www.aviddetention.org.uk/>

### EU Policy on Detention

[http://www.detention-in-europe.org/index.php?option=com\\_content&view=article&id=92&Itemid=213](http://www.detention-in-europe.org/index.php?option=com_content&view=article&id=92&Itemid=213)

## About the Refugee Council

The Refugee Council is one of the leading organisations in the UK working with asylum seekers and refugees. We give help and support to asylum seekers and refugees, and also work with them to ensure their needs and concerns are addressed by decision-makers.

British Refugee Council, (commonly called the Refugee Council) is a company limited by guarantee registered in England and Wales, [No 2727514] and a registered charity, [No 1014576].

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