

Briefing on amendments 30 and 31 to the Prisons and Courts Bill: Investigation by the Prisons and Probation Ombudsman where immigration detention lasts for more than 28 days

Amendment 30

Clause 4, page 9, line 6, at end insert—

() Investigating cases where a person is detained in immigration detention facilities for longer than 28 days.”

Amendment 31

Clause 11, page 12, line 37, at end insert—

“(1A) The Secretary of State must request the Ombudsman carry out an investigation relating to detention of any person for over 28 days in immigration detention facilities including, but not restricted to, the effect on the individuals detained.”

Effect

Amendment 30 would include, as a function of the Prisons and Probation Ombudsman, investigation of cases where a person has been held in immigration detention for more than 28 days. Amendment 31 would require the Secretary of State to request that the Ombudsman carry out an investigation in each case where an individual is detained for over 28 days in a detention facility, which would include consideration of the effect of prolonged detention on the individual detained.

Briefing

Liberty believes that the use of limitless detention – unashamedly for administrative convenience and far removed from the enforcement of removal decisions – represents one of the greatest stains on this country’s human rights record in recent decades.

There is now a growing consensus that a time-limit on immigration detention is desperately needed. In March 2015, the cross-party Parliamentary Inquiry into Immigration Detention in the UK (“the Inquiry”) recommended a 28-day limit, concluding:

The United Kingdom is an outlier in not having a time limit, both within the EU and further afield, on the length of time an individual can be detained for immigration purposes...detainees are held indefinitely, which creates a stressful and anxious environment. This has significant mental health costs for detainees. Additionally, long-term detention is not correlated with an increase in the likelihood that the Government will be able to effect removal – indeed the opposite is true.¹

The Inquiry’s recommendations were endorsed by the House of Commons following a detailed debate on 10 September 2015. Since then, the Shaw Review has demonstrated the severe human rights problems generated by the immigration detention of vulnerable people and strongly recommended its limitation.² However, despite widespread support for real change, a time-limit on immigration detention has not been achieved. Further, a provision of the Immigration Act 2016 which requires bail hearings after 4 months for some of those in detention has still not been enacted.³ This – yet to be commenced - provision further does nothing to provide any real-time limit, leaving bail hearings free to result in prolonged indefinite detention as before. The longer an individual is detained, the less likely it is that that person’s detention will end in removal.⁴

In the absence of a time-limit, independent investigation of cases of prolonged detention is critical. A recent report of conditions at Morton Hall Immigration Removal Centre highlighted the fact that:

Too many detainees were held for prolonged periods; 31 men had been held for over a year, including three who had been detained for two years. An additional two men had been detained on separate occasions totalling more than three years. Our

¹ All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, ‘The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom’, 3 March 2015, page 24, available here: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>.

² Stephen Shaw, ‘Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw’, January 2016, available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf.

³ See Schedule 10, Paragraph 11.

⁴ All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, ‘The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom’, 3 March 2015, page, page 23.

casework analysis showed some substantial delays in immigration decision-making.”⁵

A report of an Inspection of Brook House Immigration Removal Centre shortly before revealed:

The average length of cumulative detention was three months, which was too long. The length of detention had increased substantially and no work had been undertaken to understand this. Some detainees had been held for excessive periods. Our casework analysis revealed cases of detention being prolonged by unreasonable delays in immigration decision making.⁶

In relation to both detention facilities, HMIP recommended that *“all casework should be progressed promptly. The reasons for lengthy detentions should be analysed and appropriate remedial action taken.”*⁷ Routine inspection by the Ombudsman of prolonged detention would facilitate greater analysis of Home Office delay and help to prompt remedial action where concerns are raised in individual cases. It would also respond to Stephen Shaw’s recommendation that further consideration be given to *“ways of strengthening the legal safeguards against the excessive length of detention.”*⁸

Liberty urges Committee Members to support amendments 30 and 31 in the name of Stuart C. McDonald.

⁵ HMIP, *Report on an unannounced inspection of Morton Hall Immigration Removal Centre 21 – 25 November 2016*, p. 18. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/03/Morton-Hall-IRC-2016.pdf>.

⁶ HMIP, *Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons*, p. 18. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/03/Brook-House-Web-2016.pdf>.

⁷ HMIP, *Report on an unannounced inspection of Morton Hall Immigration Removal Centre 21 – 25 November 2016*, p. 18 and HMIP, *Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons*, p. 18.

⁸ Stephen Shaw, ‘Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw’, January 2016, Recommendation 62.