

**Submission for General Comment on Migrants' Right to Liberty.
Written input to the Committee on the Protection of the Rights of All Migrant Workers
and Members of Their Families**

Introduction

Refugee Rights Europe (RRE) is grateful for the opportunity to submit information on immigration detention in the United Kingdom. The date of submission is 1 April 2019. Refugee Rights Europe may be contacted on: Info@RefugeeRights.org.uk.

Executive Summary

In this submission, we will cover the following topics:

1. About Refugee Rights Europe
2. General Information
3. Legal Treatment
4. Impact on Detainees
5. Alternatives to Detention
6. Conclusion

1. About Refugee Rights Europe

- 1.1.** Refugee Rights Europe (RRE) is a human rights organisation and registered UK charity. Founded in late 2015, the organisation researches and documents the situation for refugees and displaced people seeking protection in Europe, with a particular focus on human rights violations and inadequate humanitarian conditions experienced.
- 1.2.** The organisation uses its field and desk research findings to advocate for human rights-centered policy development, to ensure the rights of refugees and displaced people are upheld on European soil, in accordance with the Universal Declaration of Human Rights.
- 1.3.** Refugee Rights Europe is independent of any political ideology, economic interest or religion. We believe in the indivisibility of human rights and we are united by our aim to defend the rights of some of the world's most vulnerable individuals.

2. General Information

2.1. The process by which asylum-seekers are detained in the UK

2.1.1. The powers of officials to detain people for immigration purposes are found in the Immigration Act 1971.¹ While the 1971 Act has been amended and supplemented by several further Immigration Acts, it still provides the fundamental framework under which immigration detention decisions are made.

1.1.1. The Government has discretionary power to detain individuals at any stage of their immigration process, including upon arrival in the UK, when reporting to an immigration

¹ <https://www.legislation.gov.uk/ukpga/1971/77/contents>

office, when signing in with immigration officials; after a decision to remove has been issued; and after a prison sentence or following arrest by a police officer.²

- 1.1.2.** According to a research study by Amnesty International, it has transpired that detention sometimes appears to take place based on flawed decision-making. In their study, decisions to detain were often based on “a limited search for and application of information about the person’s case-history; a lack of rigour in applying policy and law when justifying detention decisions; a failure to consider alternatives to detention; and an at-best cursory engagement with the wider context of a potential detainee’s history and circumstances, including the best interests of children affected by the decision.”³

2.2. About the companies that operate detention facilities in the UK

- 2.2.1.** There are seven Immigration Removal Centres (IRCs) in the United Kingdom: Colnbrook, Harmondsworth, Tinsley House, Brook House, Yarl’s Wood, Morton Hall, and Dungavel.⁴
- 2.2.2.** In addition, there are two separate Residential Short-Term Holding Facilities (STHFs): Manchester Residential STHF (formerly the Pennine House), and Larne House.
- 2.2.3.** At Colnbrook and Yarl’s Wood, there are also short-term units within the IRC.
- 2.2.4.** There are an additional 19 Holding rooms at ports and 11 at reporting centres.
- 2.2.5.** IRCs Dover and Haslar closed in 2015, the Verne closed in December 2017, and Campfield House IRC was closed down on 14 December 2018.⁵
- 2.2.6.** The Home Office has outsourced the management of all IRCs (except IRC Morton Hall which is managed by the Prison Service) to private firms: Mitie, GEO, G4S and Serco.
- 2.2.7.** Between these private companies, G4S in particular has faced frequent criticism. A global corporation with operations in more than 90 countries⁶, G4S provides a variety of services worldwide, including security management, prisons, detention centres and asylum seekers’ accommodation.
- 2.2.8.** G4S has been at the centre of multiple high-profile scandals around abuses at its facilities stretching back over more than a decade, as covered by the BBC, The Guardian, The Times, and others. These have included several deaths, which have occurred on deportation flights; prison vans; and in one instance, a child at a juvenile detention centre.⁷
- 2.2.9.** Journalists from the ‘Shine a Light’ project have aimed to expose G4S as a ‘serial human rights abuser’ through investigative journalism,⁸ and a legal challenge⁹ to force the government to designate G4S as a “high risk” supplier has been launched by UK charity Bail For Immigration Detainees. Other contractors have also received criticism as being unsuitable to handle immigration detention of vulnerable individuals.

² <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

³ Amnesty International (2017), p. 1 : [https://www.amnesty.org.uk/files/2017-](https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO)

<12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

⁴ <https://www.gov.uk/immigration-removal-centre>

⁵ <https://www.gov.uk/government/news/campfield-house-immigration-removal-centre-to-close>

⁶ <http://www.g4s.com/>

⁷ <https://www.opendemocracy.net/shinealight/g4s-securing-whose-world>

⁸ <https://www.opendemocracy.net/shinealight/john-grayson/pregnant-woman-g4s-asylum-housing>

⁹ <http://corporate-responsibility.org/bid-take-legal-action-uk-government-designate-g4s-high-risk-supplier/>

3. Legal Treatment

3.1. The legal basis for immigration detention

- 3.1.1.** The powers of officials to detain people for immigration purposes are found in the Immigration Act 1971.¹⁰ While the 1971 Act has been amended and supplemented by several further Immigration Acts, it still provides the fundamental framework under which immigration detention decisions are made.
- 3.1.2. Immigration detention in the UK is a Home Office practice of detaining asylum seekers for ‘immigration-related purposes’.
- 3.1.3. It is thus an administrative process rather than a criminal procedure.

3.2. The purpose of immigration detention

- 3.2.1.** The Immigration Act allows for the use of immigration detention for three purposes:
- In order for officials to examine a person’s immigration status;
 - In order to implement a person’s administrative removal from the UK;
 - In order to implement a person’s deportation from the UK.
- 1.1.3.** Amnesty International has warned that immigration detention in the UK has become “a matter of routine for the UK government and the Home Office immigration service”.¹¹
- 1.1.4.** According to the same source, Ministers have repeatedly acknowledged their department’s use of ‘routine detention’.¹²
- 1.1.5.** Meanwhile, frontline organisations report that detention oftentimes serves no purpose, as asylum-seeking individuals are often released back into the community to continue with their claims.¹³

3.3. Time limitations

- 3.3.1. There is no legal limit on how long individuals can be held in immigration detention; the UK being the sole country in Europe without such a time limit.
- 3.3.2. According to leading organisation Liberty, among those who left detention in June 2017, 17% had been detained for 29 days to two months and 11% had been detained for two to four months. 2,000 individuals had been detained for more than four months, and 172 people had been held for one to two years, with 28 individuals being incarcerated for two years or more. One person had been held for 1,514 days – more than four years – without an indication of when they might be released.¹⁴
- 3.3.3. In 2015, a UNHCR report recommended the introduction of a maximum time limit of 28 days on the length of time anyone can be detained under immigration powers in the UK. This recommendation sought to address one of the shortcomings UNHCR had identified in the UK’s immigration detention framework.

¹⁰ <https://www.legislation.gov.uk/ukpga/1971/77/contents>

¹¹ Amnesty International (2017), p. 1 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

¹² Amnesty International (2017), p. 1 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

¹³ <https://www.refugeewomen.co.uk/campaign/research/>

¹⁴ <https://www.libertyhumanrights.org.uk/campaigning/end-indefinite-detention/immigration-detention-faqs>

- 3.3.4. 28 days would appear to be a reasonable statutory time limit to enforce, given that the Home Office's own Enforcement Instructions and Guidance confirm that detention should only be maintained when removal is imminent.
- 3.3.5. Various actors such as HM Chief Inspector of Prisons (2017) and the All-Party Parliamentary Group on Migration (2015) have argued for a maximum time limit on immigration detention.¹⁵
- 3.3.6. Most recently, the Home Affairs Select Committee (HAC) released a report on 21 March 2019¹⁶, unequivocally calling on the Government to bring an end to indefinite immigration detention and to implement a maximum 28-day time limit with immediate effect.

4. Impact on Detainees

4.1. Impact on detainees' physical and mental health

- 4.2. Countless organisations have reported that both *extensive* length of time spent in detention and the *uncertainty* of lengths of detention are harmful for individuals.¹⁷
- 4.3. In a rigorously researched report from December 2017, Amnesty International concluded that "Harm is being done to detainees' mental and physical health. Interviewees specifically cited the uncertainty of indefinite detention, and their vicarious exposure to the long-term detention of others, as a source of harm."¹⁸
- 4.4. Investigative journalism and *ad hoc* inspections have shown that immigration removal centres are often "chaotic, filthy and overcrowded and rife with abuse and neglect", and have highlighted cases of the unlawful use of restraint and the denial of medical care.¹⁹
- 4.5. Liberty reports the following deeply alarming facts about the impact of immigration detention on detainees in the UK²⁰:
- 4.5.1. UK courts have found that the Home Office has violated Article 3 of the European Convention on Human Rights (the right not to be tortured) on at least six occasions since 2010;
- 4.5.2. Self-harm and suicide attempts are common within immigration detention. 393 suicide attempts in UK detention centres were reported in 2015, with 2,957 people (including 11 children) reported to be on suicide watch in the same year;
- 4.5.3. In April-June 2017, 663 people in detention were referred to the Home Office under Rule 35, which requires medical professionals to report cases where people's health is likely to be harmed by continued detention, detainees have suicidal intentions or a person may have been a victim of torture. Only 145 of them were released by the Home Office.
- 4.6. A refugee who had fled the Darfur region in Sudan and was detained three times during his asylum process in the UK (up to three months on each occasion) explained to Refugee Rights Europe in March 2019: "It's just like you're a criminal, but you don't know why – you ask yourself – why you're there in detention. Am I criminal? If I had done something wrong,

¹⁵ <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91308.htm>

¹⁶ https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91310.htm#_idTextAnchor138

¹⁷ <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

¹⁸ Amnesty International (2017), p. 1 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

¹⁹ <https://www.libertyhumanrights.org.uk/campaigning/end-indefinite-detention/immigration-detention-faqs>

²⁰ <https://www.libertyhumanrights.org.uk/campaigning/end-indefinite-detention/immigration-detention-faqs>

I would be okay with that, and take my responsibility for it. But when you have done nothing wrong, why are you in detention? [...] It makes you feel bad, and makes you feel like you are criminal and sometimes maybe you think it's because you're a refugee and you are black. This is really, really crazy, unacceptable – completely!”.

4.7. Children in detention

4.7.1. Children may be detained in the UK for a period of up to one week in specialist accommodation called ‘pre-departure accommodation’, detained with other family members.

4.7.2. Where children are unaccompanied, they may be detained for periods up to 24 hours.²¹

4.7.3. According to the Migration Observatory, the estimated number of children detained with their families in 2005-2009, was up to 2,000 per year. Home Office statistics suggest that more than 1,100 children entered detention in 2009.²²

4.7.4. However, after a subsequent policy change, and the opening of Cedars pre-departure accommodation near Gatwick in 2011, the number of detained children fell to 127 in 2011. The numbers fell to 42 children detained in 2017.²³

4.7.5. However, children continue to be detained in immigration removal centres when they are wrongly age-assessed as adults.

4.7.6. The damaging effects on children placed in immigration detention have been widely reported.

4.7.7. In addition, a report published by Amnesty International highlights the harmful effects of indefinite immigration detention on children who are not detained *themselves*, but who have a *parent being held* in immigration detention.²⁴

4.7.8. A father interviewed by Amnesty International, who was detained for over a year, said: “I’m sick of telling my children, ‘Listen, Daddy’s gonna be with you soon. Daddy’s gonna be with you soon.’ Every time, when they come and visit me, sometimes my son he doesn’t want to go. I have to say to him, ‘Listen, Daddy’s gonna be with you in a few hours.’ I have to lie to my son. It kills me. It kills me. My children used to be really good in school, but now they have changed completely.”²⁵

4.8. Women in detention

4.8.1. In 2017, 4,059 women entered immigration detention in the UK.²⁶

4.8.2. Women are held in detention at three centres: Yarl’s Wood IRC, to a limited extent at Dungavel IRC and for a limited time period at Colnbrook IRC (separate unit).

4.8.3. Statutory immigration powers do not generally make distinctions between men and women, with the exception of pregnant women (see below).²⁷

²¹ Amnesty International (2017), p. 24 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

²² <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

²³ <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

²⁴ Amnesty International (2017), p. 2 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

²⁵ Amnesty International (2017), p. 24 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

²⁶ <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

²⁷ Amnesty International (2017), p. 10 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

- 4.8.4.** Leading organisation Women for Refugee Women has demonstrated through multiple research studies the harm that immigration detention does to asylum seeking women. Their reports suggest that the majority of asylum-seeking women who are detained are survivors of sexual or gender-based violence. Detention risks re-traumatising them.²⁸
- 4.8.5. In September 2016, largely in response to the Stephen Shaw review published in January 2016²⁹, the UK Government introduced an ‘Adults at Risk’ policy, which stipulates that individuals who are vulnerable or particularly ‘at risk’ of harm should generally not be detained. Under the policy, survivors of sexual or gender-based violence are recognised as ‘at risk’ and so unsuitable for detention. The Government also introduced a 72-hour time limit on the detention of pregnant women.
- 4.8.6. While the ‘Adults at Risk’ policy is a positive step forward, it is unclear how the Home Office would be monitoring the impact of the policy.
- 4.8.7. Women for Refugee women conducted research with the aim of assessing the effectiveness of this policy in May-September 2017. Based on interviews with 26 women who had claimed asylum and been detained in Yarl’s Wood in Bedfordshire since the Adults at Risk policy entered into force, the research illustrates that the new policy is ineffective in safeguarding and protecting women. Specifically, the report found:
- There is no screening process that actively identifies if someone is vulnerable or “at risk” before they are detained. This means that survivors of sexual and gender-based violence would enter detention before any attempt is been made to assess their vulnerability;
 - Survivors of sexual and gender-based violence are typically not believed when disclosing their experiences. They tend to find it difficult to obtain supporting evidence the Home Office will accept;
 - Even when evidence is obtained and accepted by the Home Office, survivors of sexual and gender-based violence are being kept in detention;
 - Even when women’s mental and/or physical health is deteriorating, and they are becoming significantly more vulnerable, survivors of sexual and gender-based violence appear to be kept in detention.³⁰
- 4.8.8.** A woman who spent 6 months in detention during her asylum process, and who was later granted Leave to Remain in the UK, told the Baobab Women’s Project in an interview: “When I applied for asylum, I was sick, I was stressed, I felt depressed... before my life was not good, but when I applied for asylum it got worse because they took me to detention but I was very ill at that time. [...] Maybe because they thought I was lying, they were treating me like a criminal [...] I [still] feel really sick and I panic and I stress because of that time in detention when I wasn’t feeling well.”³¹

5. Alternatives to Detention

5.1. The use of alternatives to detention

²⁸ <https://www.refugeewomen.co.uk/campaign/research/>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

³⁰ Women for Refugee Women (2017), p. 5: <https://www.refugeewomen.co.uk/wp-content/uploads/2019/01/women-for-refugee-women-reports-we-are-still-here.pdf>

³¹ Refugee Rights Europe (2019): http://refugeerights.org.uk/wp-content/uploads/2019/02/RRE_SeekingAsylum.pdf

5.1.1. Where detention is supposed to be used as a last resort, then alternatives to detention would have to be either exhausted or ruled inappropriate. However, in 14 cases out of 28 examined by Amnesty International in 2017, it was not possible to identify any consideration of alternatives to detention at all. In most of the cases examined, detention had been authorised because the person was considered ‘removable’ or ‘suitable for the DAC’.³²

5.1.2. In the remaining cases assessed by Amnesty, the consideration of alternatives to detention appeared to have been “cursory and formulaic”; mentioned briefly and then dismissed. Oftentimes, the range of alternatives was reduced to one option; so-called ‘voluntary’ departure. In some cases, these ‘offers’ of voluntary return were made through a generic refusal letter, and in others, the option was raised during the asylum interview but without further context, support or access to legal advice. If a person was not willing to return to their country of origin voluntarily, this would be interpreted as having exhausted the alternatives to detention.³³

5.2. Proposed alternatives

5.2.1. As part of the government’s further response to Stephen Shaw’s review of immigration detention, a pilot scheme was announced in December 2018 in collaboration with the Action Foundation charity. 21 ‘vulnerable women’, otherwise be liable for immigration detention at Yarl’s Wood, would be supported in their communities instead.

5.2.2. The pilot, named ‘Action Access’ is set to run for two years and would support up to 50 women during that time.³⁴

5.2.3. Civil society organisations have called on the Home Office to also consider the International Detention Coalition’s Community Assessment and Placement (CAP) model³⁵, which is based on more than 250 examples of alternatives to detention in over 60 countries around the world.³⁶

6. Conclusion

6.1. The United Kingdom has one of the largest immigration detention regimes in Europe, and it is the sole European state without a maximum time limit on immigration detention.

6.2. The harmful impact of immigration detention on detainees’ mental and physical health has been widely reported by a range of actors over the years.

6.3. The Home Office is currently faced with an opportunity to align its practices with international standards and to demonstrate commitment to a fair and humane system which upholds the human rights and dignity of those seeking sanctuary in the United Kingdom. It can do so, firstly, by introducing a 28-day time-limit, and secondly, by exploring alternatives to detention.

³² Amnesty International (2017), p. 33 : <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

³³ Ibid.

³⁴ <https://www.gov.uk/government/news/new-pilot-schemes-to-support-migrants-at-risk-of-detention>

³⁵ <https://idcoalition.org/cap/>

³⁶ http://refugeerights.org.uk/wp-content/uploads/2019/03/Letter-to-Home-Secretary-re-Detention.pdf?fbclid=IwAR1zUah9st23zILSHjXhUOy_o2G4tDk11toH4Ys--7B0iqZUbgCwknhuHNI