

Chapter 12: Detention

12.1 Effective enforcement of immigration control requires some immigration offenders to be detained. At any one time, only about 1.5% of those liable to detention under immigration powers are actually detained. The statutory provisions for immigration detention are found in the Immigration Act 1971 and the Immigration (Places of Detention) Direction 1996. A person may principally be detained in the following circumstances under immigration law:

- a) as a passenger who is required to submit to further examination, pending a decision to give or refuse leave to enter; or
- b) as a person who has been refused leave to enter or who is an illegal entrant, pending the setting of removal directions and removal; or
- c) if he has been recommended for deportation by a court and is detained pending the making of a deportation order in pursuit of the court recommendation; or
- d) if he has been given notice of the intention to deport him, pending the making of a deportation order; or
- e) if he is the subject of a deportation order pending his removal or departure from the UK.

Under the Immigration (Places of Detention) Direction 1996 persons may be detained inter alia in:

- secondary examination areas at ports;
- Prison Service establishments;
- Immigration Service detention centres; and
- police cells.

Additionally, a person is in lawful custody when he is being escorted inter alia to or from a place of detention.

12.2 A comprehensive review of detention was commissioned by the Government in August 1997. This review was conducted internally within the Home Office, but views were taken from all the main interest groups, and account was taken of the recommendations from reports by Sir David Ramsbotham, Her Majesty's Chief Inspector of Prisons, on Tinsley House and Campsfield House detention centres.

Detention criteria

12.3 It is regrettable that detention is necessary to ensure the integrity of our immigration control. The Government has decided that, whilst there is a presumption in favour of temporary admission or release, detention is normally justified in the following

circumstances:

- where there is a reasonable belief that the individual will fail to keep the terms of temporary admission or temporary release;
- initially, to clarify a person's identity and the basis of their claim; or
- where removal is imminent.

In particular, where there is a systematic attempt to breach the immigration control, detention is justified wherever one or more of these criteria is satisfied.

12.4 The Government also recognises the need to exercise particular care in the consideration of physical and mental health when deciding to detain. Evidence of a history of torture should weigh strongly in favour of temporary admission or temporary release whilst an individual's asylum claim is being considered.

12.5 The detention of families and children is particularly regrettable, but is also sometimes necessary to effect the removal of those who have no authority to remain in the UK, and who refuse to leave voluntarily. Such detention should be planned to be effected as close to removal as possible so as to ensure that families are not normally detained for more than a few days.

12.6 Unaccompanied minors should never be detained other than in the most exceptional circumstances and then only overnight with appropriate care if they, for example, arrive unaccompanied at an airport. Where they cannot be cared for by responsible family or friends in the community, they should be placed in the care of the local authority whilst the circumstances of their case are determined. But the age of a person is not easily determined in every case. This is especially so where individuals enter the country with documents which suggest that they are an adult and later claim to be a minor. Sometimes people over 18 claim to be minors in order to be released from detention. In all cases, people who claim to be under the age of 18 are referred to the Refugee Council Children's Panel. Where reliable medical evidence indicates that a person is under 18 years of age they will be treated as minors and will therefore not normally be detained.

Reasons for detention

12.7 The Government is satisfied that the decision to detain should remain one for the Immigration Service, against the above criteria. Written reasons for detention should be given in all cases at the time of detention and thereafter at monthly intervals, or at shorter intervals in the case of detained families. Taking into account that most people who are detained are held for just a few hours or days, initial reasons will be given by way of a check list similar to that used for bail in a magistrates' court.

Judicial element in the detention process

12.8 Many more people fit the criteria for detention than are currently held. There is no reason to believe that the administrative process has led to people being improperly

detained. Nonetheless, the Government believes that there should be a more extensive judicial element in the detention process. It is proposed that the judicial element should be by way of bail hearings about seven days after initial detention, followed by a further hearing for those not granted bail on the first occasion. We will consult with the judicial authorities and others on the detail of this proposal. It is not straightforward and will have considerable resource implications as, on present volume, about 200 bail hearings a week would need to be managed.

12.9 It is envisaged that in addition to judicial hearings the existing facility for chief immigration officers to grant bail would be retained. The present right to apply for bail to an Immigration Appeals Adjudicator (used on average about 120 times a month) would need to be modified or subsumed into any new system.

12.10 In addition to any consideration of bail through the judicial process, the Immigration Service will continue its periodic administrative review of detention in each case. Individuals should only be detained where necessary.

Length of detention

12.11 Detention should always be for the shortest possible time, but the Government is satisfied that there should be no legal maximum period of detention. Timing of detention to facilitate removals of those unwilling to depart voluntarily is not easy, because of last minute delays caused by further representations. Often detainees are held for longer periods only because they decide to use every conceivable avenue of multiple appeals to resist refusal or removal. A balance has to be struck in those circumstances between immediately releasing the person and running the risk of encouraging abusive claims and manipulation. The measures proposed earlier in this White Paper, to reduce process delays, should reduce the incidence of this sort of circumvention of the control.

Places of detention

12.12 The Government has welcomed the views of Her Majesty's Chief Inspector of Prisons and others and, as resources become available, is committed to pursuing a strategy of detaining in dedicated detention and holding centres, not prisons. About half of those currently detained are held in Prison Service establishments. Most of these (350) are in the specially dedicated immigration units at Haslar and Rochester.

12.13 It is likely that even in the long term, for reasons of geography, security and control, a number of detainees will need to be held in prisons. However, use of detention centres is preferable to prisons in the vast majority of cases and, in principle, the Government prefers to use detention centres. Where prison establishments hold significant numbers of immigration detainees in specialist units, we try to ensure that facilities mirror the more relaxed regimes in detention centres.

12.14 Consideration of the provision for immigration detention centres will take account of the need to use prison less, to provide for men, women and discrete family units and,

in all cases, to ensure effective health, safety and control. Whilst recognising the need to ensure the current number of places are efficiently used, the Government is considering the need for an increase in the detention estate to facilitate an effective immigration control and the removal of those with no authority to remain in the UK.

Statutory rules

12.15 Immigration detention centres have evolved over a number of years. They are managed under contract between the Government and the private sector. The contract documents set out the requirements and performance standards. These have been refined and, over time, have established a greater degree of continuity of approach.

12.16 The Government accepts that detention centres must be put on a better footing and within a statutory framework. We note particularly Sir David Ramsbotham's view that the safety of centres requires there to be a system of rules and sanctions which are clearly understood and, preferably, set out in a compact – an "agreement" between detainees and the contractor on behalf of the State.

12.17 It is, therefore, proposed to seek powers for statutory rules covering all aspects of the management and administration of detention centres. These will regulate the rights and responsibilities of detainees and of those who manage detention centres.

12.18 Publication of more information about detention centre contracts is envisaged subject to withholding only those details which are commercially confidential. Only a very small part of the material in these contracts is of commercial significance and the rest should be in the public domain. That will be made clear in the negotiation of any new contracts for detention centres.

Powers of detention

12.19 At present contractors' staff derive their authority from the Immigration Acts, Criminal Law Act 1967 and Public Order Act 1986. Whilst these statutes are sufficient for lawful execution of their duties, it would be helpful for the powers of detention custody officers to be set out on the face of a single statute. The Government therefore proposes to seek specific powers for detention custody officers who work in detention centres similar to those provided for prisoner custody officers who work in the privately managed prisons. Such powers would cover the use of force and search powers.

12.20 In pursuing these improvements to the use and management of detention, the Government is mindful that the deprivation of liberty is a grave step which must only be used with great care and when no alternative ways of ensuring compliance are likely to be effective.

12.21 The Government is therefore committed to the faster processing of claims, dealing with the current impediments which restrict removal of those without authority to remain in the UK, and pursuing such alternatives to detention which enable the whereabouts of

immigration offenders and failed asylum seekers to be known and removals to be effected.