



Home Office

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Caroline Lucas MP
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Dear Caroline,

Thank you for your letter of 16 July about immigration detention.

Detention plays a vital role in maintaining effective immigration control. It may be used in the following circumstances: initially to establish a person's identity or basis of claim; where there is reason to believe that the person will fail to comply with the conditions attached to the grant of temporary admission or release; as part of a fast track asylum process; or to effect removal. The power to detain in these circumstances flows from the Immigration Act 1971. The Immigration Act 2014 has not introduced any changes to this aspect of detention.

The decision on whether detention is necessary is made on a case by case basis, taking account of all the individual circumstances. There is a presumption in favour of temporary admission or temporary release and all reasonable alternatives must be considered before detention is authorised.

Immigration detention is not subject to a fixed time limit but, in line with Article 5 of the European Convention on Human Rights and associated caselaw, it must not last for longer than is reasonable and must not be prolonged unduly. Each case is reviewed at regular intervals to ensure detention continues only for as long as it remains necessary and reasonable. Reviews are conducted routinely after 24 hours, at days 7, 14, 21, 28 and every 28 days afterwards. There is no requirement for detainees to apply for these reviews.

Detainees are able to challenge the lawfulness of detention in court through judicial review or habeas corpus. They can also apply for bail. The majority (80%) of people who left detention in 2013 had been detained for no more than two months. Very few people spend several years in detention. As of 31 March 2014, the latest date for which published statistics are available, 14 people had been detained for between 24 months and 36 months, three for between 36 months and 48 months and one for 48 months or more. Such lengthy periods of detention are exceptional.

Detention can be prolonged when detainees submit very late, or multiple, applications or appeals. It may also be prolonged as a result of individuals wilfully refusing to comply with the documentation process to assist their return, including deliberately providing incomplete, inaccurate or false information. These individuals would in effect benefit from the imposition of an arbitrary upper time limit on detention and such a limit may also increase non-compliance. This is because individuals could simply continue to disrupt the removal process until the maximum period of detention was reached and they had to be released.

With regard to the cost of detention, the Home Office always seeks to ensure value for money for the taxpayer. There has been a reduction in the cost of detention as a result of active policy decisions concerning re-tendering contracts for the operation of immigration detention facilities. This has attracted innovation and new suppliers to the market which has, in turn, reduced the cost, per bed, across the immigration removal centre estate.

The Government is not persuaded that the EU Returns Directive delivers the strong returns regime that is required for dealing with irregular migration. We prefer to formulate our own policy in line with retaining control over conditions of entry and stay, including the returns procedure. Current practices on the return of illegal third country nationals are in line with the prescriptions of the Directive.

The Home Office is committed to removing those who have no legal basis of stay in the UK and detention is a necessary part of that process.

I hope that you find this information useful.

Yours ever,

A handwritten signature in blue ink, appearing to read 'James Brokenshire', with a long, sweeping flourish extending to the right.

James Brokenshire