Submission to the Joint APPG (Refugees and Migration) inquiry into the use of immigration detention in the UK

October 2014

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Introduction:

1. Amnesty International UK (AIUK) has long expressed concerns regarding immigration detention in the UK. Nearly ten years ago, we published *Seeking asylum is not a crime: detention of people who have sought asylum* (2005 report);[1] more recently *Out of control: The case for a complete overhaul of enforced removals by private contractors* (2011 briefing).[2] Much of our work has focused in the intervening period on destitution among those who have sought asylum. However, throughout we have been represented on the National Asylum Stakeholder Forum (NASF)[3] and its predecessors, at which forums detention is often a focus. For a short time we were represented on the Home Office detention stakeholding group disbanded by the Home Office in 2011 ('Detention Users Group'). We welcome that the Home Office is now taking steps to reinstate such a group, and have participated in a meeting in September 2014 that we understand to be preliminary to its formal establishment.

2. Our 2005 report focused on experiences of people in the asylum system. Among our key research findings were that detention was used despite little prospect of removal within a reasonable time. Many people were left languishing in detention, which was often protracted, caused significant suffering and ultimately shown to have been unnecessary. Decisions to detain were not based on evidence or understanding of the risks (e.g. of absconding) that were asserted as justification. Obtaining competent legal assistance, securing effective or any judicial oversight and isolation from family were other key concerns. The unfair impact of the Detained Fast Track (DFT) on asylum claims stood out.

3. These concerns remain largely outstanding, and in several respects are now more acute. Many other people are also subjected to immigration detention. Since 2005, the numbers of such people has risen considerably.[4] One reason has been increased focus upon deportation of foreign national offenders following the crisis, which led to the then Home Secretary's resignation in 2006.[5] This led not merely to an increase in the numbers of immigration detainees, but also an increase in the use of immigration detention in non-immigration places of detention – particularly prisons.[6]

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[1] See http://www.amnesty.org.uk/sites/default/files/asylum_not_a_crime_0.pdf

[2] See http://www.amnesty.org.uk/sites/default/files/out_of_control_1.pdf

[3] This is the main Home Office national stakeholder forum on asylum issues.

[4] In twelve months to June 2014, 29,124 people entered immigration detention. At 30 June 2014, there were 3,079 people in immigration detention. These figures only relate to those detained at an immigration removal centre, a residential short-term holding facility or pre-departure accommodation. They do not include those held under immigration detention powers at a prison (see fn. 5). By comparison, at 31 December 2005, there were 1,950 people in immigration detention. Figures are taken from *Home Office: Immigration Statistics* (August 2014) and *Home Office: Control of Immigration Statistics* (August 2006).

[5] The crisis which led the Rt Hon Charles Clarke MP to resign was succinctly summarised in HM Chief Inspector of Prison's introduction to her thematic report on foreign national prisoners in November 2006. She wrote: "*…it emerged that many foreign nationals leaving prison had neither been identified nor considered for deportation. This was not because of a gap in legislation or powers. It was an acute symptom of the chronic failure of two services* [the prison and immigration services] *to develop and implement effective policies and strategies for people who were not seen as a 'problem': though in fact, as this report shows, they were people who had many problems, which were not sufficiently addressed.*" These people's problems as then identified by HM Chief Inspector of Prisons remain not addressed, but rather have been exacerbated by the extended use of immigration detention and the taking of more legislative and other powers to fill what the inspectorate had identified as a non-existent gap.

[6] At 30 September 2013, there were 1,946 'non-criminal' prisoners. This included 773 detainees held at three prison service-run immigration removal centres. Of the remaining 1,173 prisoners, 94% were foreign nationals,

4. AIUK acknowledges that immigration purposes may justify the use of detention in exceptional cases. However, immigration detention should never be routine or prolonged. To be justified, detention must be proportionate to a specific and lawful purpose, its use subject to appropriate regulation and oversight (including judicial oversight), and conditions and circumstances of its use adequate to ensure the safety, welfare and rights of all those detained. Immigration detention in the UK is not meeting these standards.

5. At the close of this submission we briefly set out certain of our more serious concerns regarding immigration detention in the UK and responses to certain of the Inquiry's questions. That something is not included does not indicate we have no concerns regarding it. The main body of the submission is intended to supply context for the Inquiry. Immigration detention is a wide-ranging subject; and we anticipate that others may choose to focus in more detail on discrete matters and questions. While there is clear purpose to such an approach, there is a risk that viewing such matters in isolation may detract from the scale and nature of the Home Office use of these powers, and depth and longstanding nature of concerns regarding this. The annexe, which provides a concise explanation of the range of immigration detention usage is intended to assist the Inquiry to have regard to the full range of people, circumstances and places to which immigration detention relates.

Submission:

6. Whereas discrete changes of law, policy or practice are needed, we would caution against an overly sanguine view about how much can be achieved by such changes in the absence of a wider recognition that leadership within the Home Office and at Ministerial level, and the wider culture which is encouraged or permitted by that, must also change. There has been nothing so damaging to the safety, welfare and rights of individual men, women and children as a persisting attitude that these concerns, which should be paramount, are secondary or even illusory in the face of the more politically and internally immediate and tangible aims of immigration control.

7. There are many examples of the current culture and inadequate leadership. We briefly highlight some judicial rulings and findings of independent inspectorates:

    7.1. In December 2008, the High Court found the Home Office had been operating an unlawful policy on immigration detention of foreign national offenders.[7] That policy, reversing the presumption of release in published policy, had been kept secret from detainees, their representatives, tribunals and courts, and Home Office Counsel, in numerous proceedings over about a two years period. The judgment sets out Home Office internal correspondence spanning the period of the policy's operation including internal legal advice warning correctly that the substance and secrecy of the policy was unlawful.

    7.2. In February 2009, the High Court found a detained Ugandan asylum-seeker had been unlawfully returned to Uganda in circumstances intended to avoid his having

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nearly all time-served prisoners held under immigration detention powers. Figures are taken from *Ministry of Justice: Prison population* (October 2013).

[7] *R (Abdi & Ors) v Secretary of State for the Home Department* [2008] EWHC 3166 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2008/3166.html

opportunity to contact his lawyers and challenge removal.[8] The policy purportedly relied upon to deprive him of that opportunity, later found in any event to be unlawful,[9] had no application to his circumstances. Following the judgment, the Home Office was required to facilitate his return to the UK. Thereafter he was recognised as a refugee at risk of persecution in Uganda by reason of his sexual identity.

7.3. In July 2009, the High Court found a Dutch national to have been unlawfully detained under immigration powers for 128 days.[10] The purpose of detention was to deport him to Somalia. The Home Office persisted with detention and that intention despite, as was repeatedly drawn to their attention, his Dutch passport being held on the prison file while doing nothing to retrieve the passport or otherwise confirm his nationality. Whereas the Court of Appeal upheld an appeal against the more serious finding of misfeasance in public office, Sir Scott Baker concluded "*It might be said that the Secretary of State is fortunate that the finding against his Department must be of incompetence and negligence rather than reckless indifference to legality.*"[11] Sir Andrew Morritt agreed, adding: "*The circumstances... demand, in my view, urgent investigation and action by the Secretary of State.*"[12]

7.4. In January 2011, the High Court found a Malaysian family's detention unlawful as having been authorised in direct conflict with Home Office policy.[13] Proper regard had been had neither to the Home Office duty regarding the safety and welfare of children,[14] nor the requirement to consider alternatives to detention, nor that detention be a last resort to be used only exceptionally. A key procedural step, intended to ensure such matters were considered, was the completion and retention of a family welfare form on the Home Office file. It took the Home Office four months in the course of the proceedings to locate the form, which was then found "*to be inconsistent* [with the Home Office defence of the claim] *and incomplete in crucial respects.*"

7.5. In October 2011, the Chief Inspector of Borders and Immigration, on inspecting foreign national offenders' casework, concluded "*...the sheer weight of cases resulting in detention is a concern and, in our view, there remains a culture that detention is 'the norm'...*"[15] While highlighting unwillingness to consider release because of general fears about reoffending, he found "*...no evidence that a detailed assessment* [of this risk] *had taken place in each case.*" (The following year, HM Chief Inspector of Prisons and the Chief Inspector of Borders and Immigration jointly

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[8] *R (N) v Secretary of State for the Home Department* [2009] EWHC 873 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2009/873.html

[9] *R (Medical Justice) v Secretary of State for the Home Department* [2011] EWCA Civ 1710

[10] *R (Muuse) v Secretary of State for the Home Department* [2009] EWHC 1886 (Admin), available at http://www.bailii.org/ew/cases/EWHC/QB/2009/1886.html

[11] *R (Muuse) v Secretary of State for the Home Department* [2010] EWCA Civ 453, available at http://www.bailii.org/ew/cases/EWCA/Civ/2010/453.html

[12] *ibid*

[13] *R (Suppiah & Ors) v Secretary of State for the Home Department* [2011] EWHC 2 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2011/2.html

[14] Section 55, Borders, Citizenship and Immigration Act 2009

[15] *A thematic inspection of how the UK Border Agency manages foreign national prisoners*, available at http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf

found key information for such an assessment from the National Offender Management Service was either not sought or inadequately considered.)[16]

7.6. In October 2011, the High Court found immigration detention of a mentally ill man to have violated the prohibition on inhuman and degrading treatment in Article 3, European Convention on Human Rights (ECHR).[17] This means particularly severe mistreatment involving actual bodily harm or intense physical or mental suffering; and such as would humiliate or debase a person or arouse feelings of fear, anguish or inferiority such as to put at risk a person's physical or moral integrity.[18] The judgment records "*…a deplorable failure, from the outset, by those responsible for BA's detention to recognise the nature and extent of BA's* [mental] *illness*"; and "*…a combination of bureaucratic inertia, and lack of communication and co-ordination between those who were responsible for his welfare. The documents disclosed by the Secretary of State have also shown, on one occasion, a callous indifference to BA's plight.*"

7.7. In August 2012, the High Court found another Article 3 violation where: "*…treatment (or rather absence of proper psychiatric treatment) which was provided to D at Brook House and Harmondsworth lasted for many months and caused, or rather exacerbated, D's mental suffering. It was 'premeditated'… in the sense that those with responsibility for the well-being of detainees in the two institutions knew that D had a history of mental illness and persisted in a medical regime for him which involved neglect (particularly in relation to the taking of anti-psychotic medication and denial of access to a psychiatrist) and recourse to what were in effect disciplinary sanctions under rules 40 and 42 which were unsuitable for a person with his condition.*"[19]

7.8. In December 2012, the conclusions of HM Chief Inspector of Prisons and the Chief Inspector of Borders and Immigration, on jointly inspecting immigration detention casework, included "*…there was a failure to consider evidence of post-traumatic stress and mental disorder in case reviews.*"[20] They questioned whether the length of detention they observed was proportionate or necessary; and reported on their interviews with detainees, identifying the most prominent themes as "*physical and mental health problems, lack of contact with families, and the stress of long-term detention in the context of difficulties faced accessing good quality legal services.*"

7.9. In August 2013, the Probation and Prisons Ombudsman published his report on the death of Jimmy Mubenga. He stated as underlying his concerns, "*…serious disquiet about the standard of the use of force training that was delivered to escort staff in*

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[16] *The effectiveness and impact of immigration detention casework*, available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf

[17] *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2011/2748.html

[18] *ibid*

[19] *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2012/2501.html (Rules 40 and 42, Detention Centre Rules 2001, SI 2001/238 concern removal from association and temporary confinement.)

[20] *The effectiveness and impact of immigration detention casework*, available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf

2010. It is very worrying that UKBA were aware of the inadequacy of the training… before the man's death, yet two years after his death, the training has still not been adapted."[21] The previous month, the Coroner's Rule 43 report included the finding that "*…nearly three years after Mr Mubenga's death no changes* [in respect of constraint and control techniques and training] *have yet been introduced.*"[22]

7.10. In December 2013, the National Audit Office found, in relation to foreign national offenders, "*Home Office staff prioritise cases according to release dates, irrespective of* [the ability to remove the person], *and rarely abandon a case even if it is unlikely to result in a removal.*"[23]

7.11. In March 2014, the Chief Inspector of Borders and Immigration reported that "[t]*he Home Office was applying for too many* [emergency travel documents] *that had little prospect of being used, rather than focusing resources on cases where re-documentation was likely to result in removal.*"[24] He found several thousand such documents had been obtained and not used, and expressed concerns that Home Office claims about the nature and scale of individuals' non-compliance with re-documentation processes were not supported by any clear understanding of the stated problem or adequate evidence of it; and that detention, including of foreign national offenders, was being used for prolonged periods of months and years.

7.12. In January 2014, the High Court again found an Article 3 violation in the immigration detention of a mentally ill man, making the general finding of "*…extensive failures to apply and comply with the various applicable policies, some of which can only be described as wilful or grossly negligent.*"[25] The Court added that shortcomings identified in earlier judgments relating to the mental healthcare and welfare of detainees had not been rectified and appeared to have deteriorated.

7.13. Three further judgments of the High Court in July 2014 demand mention. Firstly, the Court expressed "*unease*" at an increased prospect that asylum-seekers are being detained in the DFT when they should not.[26] In this case, among other findings, the Court found a key procedural protection, whereby victims of torture (and others whose health may be harmed by detention) unsuitable for this process should be identified, is not working;[27] and found the DFT to be unlawful by reason of a

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[21] See http://www.ppo.gov.uk/wp-content/ReddotImportContent/117-10-Brook_House12-10-2010-death-of-a-male-detainee-in-hospital.pdf#view=FitH (Whereas the report is anonymised, there is sufficient information in the public domain to readily identify this death as that of Mr Mubenga – see e.g. fn. 22)

[22] *Report by the Assistant Deputy Coroner, Karon Monghan QC*, available at http://inquest.gn.apc.org/pdf/reports/Mubenga_R43.pdf (Rule 43 refers to Rule 43, Coronors Rules 1984 (as amended), and concerns the remit of the coroner to make a report with findings and recommendations to prevent future deaths.)

[23] *Managing the prison estate*, available at http://www.nao.org.uk/wp-content/uploads/2013/12/10304-001-Full-Report.pdf

[24] *An Inspection of the Emergency Travel Document Process*, available at http://icinspector.independent.gov.uk/wp-content/uploads/2014/03/An-Inspection-of-the-Emergency-Travel-Document-Process-Final-Web-Version.pdf

[25] *R (S) v Secretary of State for the Home Department* [2014] EWHC 50 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2014/50.html

[26] *R (Detention Action) v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html

[27] This relates to rule 35, Detention Centre Rules 2001, SI 2011/238

longstanding failure to ensure early and adequate legal representation for those transferred into this process. Secondly, the Court identified a case where detention for successive interviews was used at a port of entry to seek to intimidate someone arriving on a valid visa to confirm the ill-founded suspicions of the immigration officer that she intended to work in breach of her visa conditions.[28] Finally, the Court found the detention and treatment in detention of someone refused entry despite arriving on a valid refugee family reunion visa to have caused her severe mental illness, resulting in psychotic episodes and self-harming in response to which force and disciplinary measures were inappropriately used during her 17 months detention.[29] Again, the Court found this to have breached Article 3.

8. These examples are among the most serious findings of courts and inspectorates. Taken together, they indicate a pattern of unwillingness or inability to focus upon the safety, welfare and rights of detainees, even in extreme cases where an individual's mental health is so deteriorated that his or her suffering is clear. They also suggest those responsible are too ready to find justification for maintaining detention once commenced, while too relaxed about the need to make progress on such matters as re-documentation or establishing nationality, or the prospect of removal within a reasonable period or at all.

9. The DFT continues to be a particular cause for concern. In 2010, Stonewall conducted research including interviewing officials working in this process. Their report highlighted the response of a Home Office senior caseworker: "*In fast-track there's pretty much an expectation that almost everyone will be refused. We don't put any old case into fast track. We put ones which are removable and don't appear to have an asylum claim.*"[30] We have heard similar statements, including by very senior Home Office officials at the NASF. Yet, asylum claims are not selected on grounds of no merit, and there is no process by which such an assessment could reasonably be arrived at prior to a case being placed in the DFT. At NASF, when corrected, officials have generally acknowledged their error. But the underlying problem persists. These cases are treated as poor by the very reason of their having been placed in the process, and that process significantly impairs the prospects of the asylum-seeker being able to show the merits of his or her claim – e.g. because the process is too fast for him or her to spend significant time with a legal representative or gain the confidence to disclose a history of torture, or for his or her mental ill health difficulties to be identified. (This is not a complete list of difficulties in the DFT.)

10. It is not clear that the Home Office has or exercises any real or effective capacity to monitor or consider such examples as these in the round so as to assess the true impact of immigration detention and related Home Office policy and practice. However, courts and inspectorates are variously limited in their capacity to do so. For example, the Chief Inspector of Borders and Immigration is limited by his statutory remit to review the efficiency and effectiveness of Home Office policy and practice, and in any event is only sporadically able to devote

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[28] *R (Radha Naren Patel) v Secretary of State for the Home Department* [2014] EWHC 501 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2014/501.html (There were considerably greater abuses of power by immigration officers in this particular matter, including the falsification of evidence presented to the Court in an attempt conceal the mistreatment to which they had subjected the claimant.)

[29] *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2014/2249.html

[30] *No Going Back* (2010), available at http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp

attention to matters relating to detention.[31] HM Chief Inspector of Prisons is limited to considering the conditions of detention, and not caseworking decisions to detain and maintain detention.[32]

11. The examples we have cited are far from complete. We include neither all High Court rulings since 2011 of inhuman and degrading treatment by detention[33] nor all deaths in immigration detention;[34] and have not dwelt on all significant findings in the various judgments and inspectorate reports listed. There have been many other High Court findings of unlawful detention. Other cases may not have come to light either if a claim has been settled out of court, or an individual has been unable or unwilling to make a complaint or has not had any or adequate legal advice or representation necessary for effectively identifying and pursing a claim or complaint.

12. Save in respect of children,[35] the most significant policy and statutory developments bearing upon detention have over the period outlined above tended to widen the scope for exercising powers of detention and reduced the protections available to those detained. We touch on some of these in the following section.

Inquiry's questions:

13. We provide brief answer to three questions to which responses are expressly invited.

14. As regards access to advice and services, AIUK is especially concerned at the inadequate or lack of access to legal advice and representation in immigration detention. This is especially

[31] The inspectorate's remit is established under section 48, UK Borders Act 2007. It focuses on the efficiency and effectiveness of immigration officers, other officials and the Secretary of State in relation to functions of immigration, asylum and nationality. This includes efficiency and effectiveness of Home Office casework in relation to detainees. The inspectorate has carried out five inspections with particular relevance to detention since 2010 – family removals (2010), foreign national prisoners (2011), the Detained Fast Track (2012), jointly with HM Chief Inspector of Prisons on immigration detention casework (2012), and emergency travel documents (2014).

[32] The inspectorate's remit is established under section 5A, Prisons Act 1952. It focuses on treatment of detainees and conditions of detention. The inspectorate aims to inspect every immigration removal centre and residential short-term holding facility at least once every four years, and non-residential short-term holding facilities at least once every six years. The inspectorate regularly reports specifically on the treatment and conditions relevant to any foreign nationals in a prison; and aims to inspect each prison at least once every five years. More information is available at http://www.justiceinspectorates.gov.uk/hmiprisons/about-our-inspections/

[33] There are six of which we are aware. The two not listed in this submission are *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin), and *R (HA) v Secretary of State for the Home Department* [2012] 979 (Admin).

[34] We are aware of ten deaths in immigration detention since 2010. Several remain the subject of outstanding inquests.

[35] From 28 July 2014, section 5, Immigration Act 2014 introduced a 24 hours time limit on the detention of unaccompanied children for the purposes of removal. Sections 2, 3 and 6 placed on the statute book certain aspects of the protection (but not prohibition) against the use of detention in the case of accompanied children, which were first introduced in late 2010 via Chapter 45 (families and children), Home Office enforcement instructions and guidance. These developments build on the UK's withdrawal of its immigration reservation to the 1989 UN Convention on the Rights of the Child in 2008, and the introduction of a statutory duty upon the Home Office regarding the safety and welfare of children by section 55, Borders, Citizenship and Immigration Act 2009.

acute for those detained in prison where there are no advice surgeries.[36] Changes to the availability of legal aid following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have exacerbated these concerns. Without legal assistance with an immigration claim, which many now face, the prospects of successfully challenging detention based on an assertion that the person is not entitled to remain in the UK are profoundly undermined, even though legal aid remains for challenging immigration detention.[37]

15. As regards special needs groups, AIUK is especially concerned at the detention of all persons for whom any period of detention, let alone extended periods, is likely to cause significant harm to the person,[38] impede or preclude disclosure of information relevant to establishing a reason for release and/or immigration status, and impede pursuit of proceedings for attaining release and/or immigration status. This is the case in the DFT, but such concerns are not limited to that process.

16. As regards time limits, AIUK believes statutory time limits upon detention are necessary. These must place a real and effective constraint on detention. Otherwise, there is a risk that time limits not only have no relevance to the great majority of detainees but a lengthy time limit becomes perceived as licencing detention up to the limit in all cases.

Annexe

A1. This annexe is provided to assist consideration of the full range of immigration detention – where it is used, why it is used and who is subjected to it.

Places of immigration detention:

A2. There are three types of immigration detention facility – immigration removal centres, short-term holding facilities and pre-departure accommodation.[39] There is no limit on the duration in which a person may be detained at an immigration removal centre. In Home Office policy and practice, short-term holding facilities may be divided into residential and non-residential facilities. The latter are often referred to as holding rooms, and are places at ports and reporting centres where people may be detained usually for only a few hours.[40] A statutory limit is set of a week on holding someone in a short-term holding

[36] The closure of the Detention Advice Service earlier this year has further exacerbated this longstanding concern.

[37] Key legislative provisions include paragraphs 25 & 30, Part 1, Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012. There are additional difficulties regarding legal aid arising from changes made in respect of judicial review claims; and there would be further difficulties were the Government to pursue its intention to introduce a residence test for legal aid.

[38] See e.g. the statement of the Royal College of Psychiatrists (2013), available at http://www.rcpsych.ac.uk/pdf/Satisfactory%20Treatment%20in%20Detention%20document%20March%202014%20edit.pdf

[39] Statutory provisions relating to the establishment, management and monitoring of these facilities are set out in Part VIII (detention centres and detained persons) of the Immigration and Asylum Act 1999.

[40] But see the following statement in HM Chief Inspector of Prison's December 2013 report on the facility at Stansted: "*The facility is designed for stays of no more than 24 hours and we were concerned to find that a detainee had been held for more than 40 hours shortly before our inspection.*" http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/stansted-airport-2013.pdf

facility.[41] Pre-departure accommodation is the name of the facility at Pease Pottage in which families with children may be held to enforce removal from the UK.[42] Home Office policy proscribes detention in this facility beyond a week's duration.[43]

A3. People are, however, detained under immigration powers in several other places.[44] This includes those detained under escort to and from a place of detention, a court or tribunal or a port; some held in police cells awaiting transfer into the hands of immigration officials; and some held in hospital. Of particular significance, given the rise in numbers there detained, are prisons.

Purposes of immigration detention:

A4. There are essentially two immigration purposes for which a person may lawfully be detained – to examine whether the person should be admitted to the UK; or to effect the person's removal from the UK.[45]

Immigration processes/types of immigration case in which people are detained:

A5. There are many ways by which one might categorise immigration detention. The following nine categories relate to the most ubiquitous processes/immigration case types by which cases may be divided: (i) those being examined at a port of entry to the UK; (ii) those facing removal immediately on arrival (sometimes referred to as 'port-turnarounds'); (iii) those whose asylum claims and appeals are being considered in the DFT; (iv) those whose asylum claims are being considered in the detained non-suspensive appeal process (i.e. where the Home Office anticipate refusal of asylum will be accompanied by a decision to preclude any in-country appeal against that refusal); (v) other asylum claimants detained by reason of concerns they may abscond; (vi) those refused asylum and facing removal from the UK; (vii) those facing removal from the UK having breached a condition of their permission to be in the UK, or having overstayed that permission; (viii) those facing removal from the UK having entered without permission; and (ix) those facing deportation (most but not all of whom after a period of imprisonment in the UK).

Types of person detained under immigration powers

A6. Men, women and children are detained under immigration powers. Unaccompanied children may be detained for up to 24 hours for removal from the UK.[46] Children in

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[41] Section 147, Immigration and Asylum Act 1999; see also paragraph 4, Immigration (Places of Detention) 2014 (No. 2) which restricts detention in these facilities to five days, but allows for a further two days period where there are directions for the person's removal within that period.

[42] See e.g. https://www.gov.uk/government/publications/guidance-on-cedars-pre-departure-accommodation/cedars-pre-departure-accommodation-information

[43] Section 55.9.4, Chapter 55 (detention and temporary release), Home Office enforcement instructions and guidance stipulates that the maximum period of detention in pre-departure accommodation shall be 72 hours, but this may be extended up to a week by Ministerial authority.

[44] See further the Immigration (Places of Detention) Direction 2014 (No. 2), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338585/detention_direction-2014-07-23.pdf

[45] See Article 5(1)(f), 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, and e.g. see paragraph 16, Schedule 2 to the Immigration Act 1971

[46] See fn. 35

families may be detained in the pre-departure accommodation for up to a week.[47] Such children may also be detained overnight at Tinsley House,[48] or at a port or while under escort. There are no general restrictions on the detention of men or women, save under Home Office policy which provides that certain groups are "*normally considered suitable for detention in only very exceptional circumstances…*" These groups relate to, but do not include all, the elderly, pregnant women, those suffering from serious medical conditions or mental illness, torture survivors, those with serious disabilities, or victims of human trafficking. The reach of this protection for these groups is limited. In relation to victims of torture or human trafficking, that limitation relates to specification as to how the person is identified as a victim or potential victim. In relation to age, illness or disability, that limitation is generally framed by reference to whether the person's needs relating to their age, illness or disability can be "*satisfactorily managed within detention.*"[49]

[47] See Immigration (Places of Detention) Direction 2014 (No. 2), *op cit*

[48] See e.g. section 55.9.4, Chapter 55 (detention and temporary release), *op cit*

[49] See section 55.10, Chapter 55 (detention and temporary release), *op cit* (The reference to whether a person's needs can be satisfactorily managed within detention came from an amendment to the policy in August 2010 which has been widely criticised – e.g. the statement of the Royal College of Psychiatrists (see fn. 38), which provides an extended criticism of the current formulation, includes: "*This amendment effectively reversed the presumption against detaining mentally ill people. The secretary of state did not consult on this change of wording, nor did she undertake an equality impact assessment (EIA).*"