

Immigration detention: the issues for Scotland

About Scottish Detainee Visitors (SDV)

SDV is an independent charity based in Glasgow that seeks to influence policy on immigration detention and provides support to people detained in Dungavel Immigration Removal Centre. Since 2002, SDV volunteers have visited people in Dungavel twice a week to provide support. We visit over 200 people in Dungavel every year and are the only civil society organisation to visit people in Dungavel every week.

Purpose of this paper

Immigration is a reserved matter and detention is the responsibility of the Westminster government. However, the Scottish Government, Scottish political parties and civil society organisations in Scotland have expressed concerns about the use of detention and it is very much a current issue in Scottish political discourse. In addition, detention in Scotland operates within a separate Scottish legal system and this, coupled with the fact that Dungavel is isolated from the rest of the UK detention estate, means that people detained in Scotland face particular issues. This paper outlines the policy environment in which detention operates and articulates the specific issues for Scotland.

UK detention policy

The power to detain for immigration purposes was created by the Immigration Act 1971. People are detained under the administrative authority of Home Office officials and, according to the UK Government's own guidance¹, detention is used in the following circumstances: to effect removal; to establish a person's identity or basis of claim; or where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.

The UK detention estate is one of the largest in Europe and has grown considerably in the last two decades. In 1993, there were 250 places available in to detain people. Now there are nearly 4,000.

People who can be detained include: asylum seekers whose applications have been refused; people who have overstayed their visas; people who have breached the terms of their visas; people who have been refused permission to enter the UK; and foreign nationals who have served a prison sentence and have been issued with a deportation order.

Uniquely in Europe, the UK has no time limit on immigration detention, and this issue has been the focus of considerable campaigning and policy attention in recent years.

¹ <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

Detention Inquiry and the Shaw Review

In March 2015, the report of an inquiry by a cross party group of MPs into the uses of immigration detention in the UK was published². It found that:

- The UK detains far too many people for far too long and its detention system is inefficient, expensive and unjust;
- The UK should introduce a time limit on immigration detention in law, bringing it in line with all other countries in Europe. The time limit should be set at 28 days;
- A wholesale reform of the detention system is necessary, as further ‘tinkering’ with the conditions and treatment of certain categories of individuals in detention will not be sufficient to resolve gross failings that have been uncovered.

In the wake of the inquiry report and in the run-up to the 2015 General Election, Labour, the Liberal Democrats, the SNP and the Greens all promised detention reform. Notably, the Conservatives did not.

In January 2016, Sir Stephen Shaw published his review into the welfare of vulnerable people in detention. The review was commissioned by the Home Secretary in February 2015, in what was widely seen as an effort to pre-empt the findings of the detention inquiry. The terms of reference for the review were narrow and, crucially, did not include the decision to detain, or the question of a time-limit. Nevertheless, the review echoed many of the findings of the detention inquiry, including a call for greater use of alternatives to detention. Among his recommendations were: a new definition of ‘vulnerability; an absolute ban on the detention of pregnant women, greater safeguards for people with physical and mental illnesses, and the extension of the presumption against detention to torture survivors, survivors of gender-based violence and other groups.

Immigration Act 2016

The Immigration Act 2016 received Royal Assent in May 2016. The Government said its purpose in bringing forward the legislation was: “to tackle illegal immigration by making it harder to live and work illegally in the United Kingdom”³. The Act can be seen as an extension of the “hostile environment” towards migrants that the UK Government wishes to create.

Detention was barely mentioned in the original bill but in the final stages of its passage through parliament there was very heated debate on detention related amendments and the Act has introduced some limited reform:

- A time limit of 72 hours on the detention of pregnant women. This can be extended for up to a week with ministerial approval, mirroring the situation regarding the detention of families with children

² <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

³ Immigration Bill: Explanatory Notes, Bill 74-EN, at:

<http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0074/en/15074en.pdf>

- An automatic bail hearing after 4 months of detention. This brings automatic judicial oversight into the system for the first time
- A commitment that the Government would introduce new guidance on the detention of vulnerable people. Draft guidance is now in place⁴.

Detention in Dungavel

Dungavel is the only immigration detention centre in Scotland and is one of nine such centres across the UK. It has been operating as a detention centre since 2001 and is managed under contract to the Home Office by GEO Group UK Ltd, the UK arm of a global corporation providing custody, escorting and detention services to governments across the world.

Dungavel can hold up to 249 people – 235 men and 14 women.

A report of an unannounced inspection of Dungavel by Her Majesty's Inspectorate of Prisons (HMIP), published on 7 July 2015⁵, declared Dungavel to be 'a safe place'. Inspectors noted that their main concerns were outwith the control of GEO as contractors, but related to Home Office decisions about who to detain. They expressed particular concerns about the prolonged nature of detention in some cases and the detention of people with documented histories of torture and serious health conditions. The inspectors' comments add further weight to the finding of the parliamentary inquiry that the problems with detention will not be solved 'by tinkering with the pastoral care or improving facilities'⁶ but are systemic.

Number of people in Dungavel

As of 30 June 2016, 136 people were detained in Dungavel (5% of the total of 2,878) detained at that date across the UK). A total of 31,596 people entered detention in the UK in the year to 30 June 2016, 1,423 of them were brought to Dungavel as their first place of detention, although they may have been moved to other places subsequently.⁷

People are detained in Dungavel for too long

A Freedom of Information request by the BBC⁸ revealed that on 7 January 2015, ***41 (22%) of the 185 detainees resident at Dungavel on that night had been there for more than three months. Two had been there for over a year.***

HMIP's latest inspection report of Dungavel⁹ notes that at the time of the inspection (9-20 February 2015), five people had been detained in Dungavel for more than 10 months and the longest period of detention in Dungavel was 13 months and 22 days.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539634/Adults_at_Risk_21_July_2016.pdf

⁵ <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

⁶ <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

⁷ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2016>

⁸ <http://www.bbc.co.uk/news/uk-scotland-31710402>

⁹ <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

Official published figures are not disaggregated to centre level but show that at 30 June 2016, 21% of the 2,878 people in detention had been detained for more than three months, 9% had been detained for more than six months and 3% had been detained for over a year.¹⁰

- *There should be a 28 day time limit on detention*

In October 2014, a man Scottish Detainee Visitors had visited for over two years was released on bail after spending 37 months in detention. At an event organised by SDV for Refugee Festival Scotland, he described his ‘three years in a cage’ and talked of how ‘you have to isolate yourself from everything that makes you human to survive detention’. That meant cutting himself off from his family and friends to minimise the pain of being separated from them for an indefinite period. He is now slowly rebuilding his relationship with his young children.

Detention is expensive

Published figures show that in the first quarter of 2016, the average cost of holding someone in immigration detention was £89.93 per day.¹¹ This is equivalent to **£32,824 per year per person**. The figures are not disaggregated to centre level, but based on this overall figure, *the annual cost of detaining people in Dungavel is more than £8 million*.

- *Reducing the use of detention would save money. The Detention Inquiry found that alternatives to detention used in other countries are far cheaper than detention.*

What being detained in Dungavel means for people

Isolation

Dungavel is in an isolated position. It is not served by a bus route, the nearest railway station is 14 miles away, and it is six miles from Strathaven in South Lanarkshire, the nearest town. The nearest detention centre is Morton Hall in Lincolnshire, 270 miles away.

People are brought to Dungavel from all over the UK, often taking them far from where they have been living before their detention. Dungavel’s remote position, as well as its status as the only centre in Scotland, exacerbates the negative impacts of detention.

Difficulty in maintaining contact with family and social support networks

The location of Dungavel means that maintaining contact with family and friends can be extremely difficult for people detained there. For visitors without access to a car, the journey to Dungavel can be lengthy. For people coming from the south of England or the north of Scotland, a visit to Dungavel is likely to require an overnight stay. SDV visitors frequently talk to people whose families and friends are unable to afford to visit them. This increased

¹⁰ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2016>

¹¹ <https://www.gov.uk/government/publications/immigration-enforcement-data-may-2016>

difficulty in maintaining contact with family and friends exacerbates the mental health impacts already inherent in indefinite detention.

‘Some of my friends from Edinburgh tried [to visit] but they got lost because [Dungavel] is in the middle of nowhere and they tried to Google it and it didn’t come out on the Google map.’

Mr N, detained in Dungavel for two months

Loss of belongings

UK Visas and Immigration Enforcement Instructions and Guidance, in its chapter on the arrest of people for immigration offences states that:

“Where practicable, arrested persons should be allowed to pack their possessions or have a bag packed on their behalf”¹²

The guidance goes on to state that a minimum of 30 minutes should be allowed for someone to gather their belongings.

Despite this guidance, our experience is that people are frequently brought into detention without their belongings. This means that they face long periods of detention without important personal paperwork, mementos, clothes and valuables. They also face removal from the country without ever being reunited with their property.

In 2014 Scottish Detainee Visitors met a man in Dungavel who had been arrested in Portree and brought to Dungavel without being given an opportunity to collect his belongings. Staff in Dungavel asked us to help in reuniting him with his property. The parents of one of our visitors were driving south from Skye after a holiday and were able to assist in this case. As a small charity with limited resources we were only able to help because this was the case. It should not be left to a small charity with limited means to recover detainees’ personal belongings

- *The Home Office and its contractors must take responsibility for ensuring detainees have their belongings*

Vulnerable people in Dungavel

SDV visitors have met people in detention with serious physical health issues including those who had scars that would strongly support their claim to have been tortured. We have also met people in detention suffering from mental ill health. This includes people with pre-

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461021/Chapter_61_EIG_external_v7.pdf (accessed 4 February 2016)

existing serious mental health conditions, such as schizophrenia, and those whose mental health has deteriorated as a result of their indefinite detention. The latest inspection report highlighted concerns about the detention of vulnerable people including a torture survivor and a woman with a serious health condition. The report also had concerns about the variable quality of Rule 35 reports. Rule 35 is the mechanism by which medical staff in detention can report to management on people whose health is likely to be damaged by detention.

In line with the provisions of the Immigration Act 2016, the Home Office has produced Draft Guidance on Adults at Risk in Immigration Detention¹³. The intention is to reduce the number of vulnerable people detained and to ensure that “where detention becomes necessary, it will be for the shortest period necessary”.

The guidance gives a list of “conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention”. This list draws on the recommendations of the Shaw Review. Importantly, it does not limit ‘at risk’ to this list but recognises that there might be other factors that would put someone ‘at risk’. It also gives some recognition of the fact that the nature and severity of risk can change over time. However, all of this must be balanced against immigration control factors.

SDV is concerned that the new guidance still allows scope for extremely vulnerable people to be detained,

- *The Home Office should ensure that the operation of its new guidance is monitored to ensure that the detention of vulnerable people is reduced.*
- *People who have experienced torture, women who have survived gender-based violence and people with serious mental or physical health conditions should never be detained*

Women in Dungavel

There are 14 bed spaces for women in Dungavel compared to 235 for men. In a film made by SDV, one woman who had been detained there described it as being *‘like a chicken surrounded by dogs’*.¹⁴ Over the years that SDV has been visiting, it has not been unusual for just one or two women to be detained at the centre: an isolating and potentially frightening experience, particularly in light of research by Women for Refugee Women showing the histories of gender-based violence of many detained women.¹⁵

The most recent inspection report of Dungavel noted that: ‘there were inevitable risks associated with holding women in a predominantly male centre. There were no specific

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539634/Adults_at_Risk_21_July_2016.pdf

¹⁴ <https://vimeo.com/47544343>

¹⁵ <http://www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf>

policies focusing on this issue’ and recommended that a specific safer custody and safeguarding policy should be developed for women.¹⁶

The Shaw Review called for an absolute bar on the detention of pregnant women. Reform introduced in the 2016 Immigration Act, however, fall short of this recommendation but limit the detention of pregnant women to 72 hours. Shaw also called for a presumption against the detention of women who had been subject to gender-based violence and the ‘Adults at Risk in Immigration Detention’ draft guidance includes such women in its list of “conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention”.

- *Dungavel should ensure that its policies and staff training are gendered and account for the needs of women detainees. It must also ensure an appropriate gender balance in staff is maintained at all times.*
- *The Immigration Act 2016 does not go far enough: pregnant women should never be detained.*
- *Similarly, women who have experienced gender-based violence should not be detained.*
- *The Home Office should monitor the effect of the new Adults at Risk guidance on the extent to which women who are survivors of gender-based violence are detained.*

Legal issues specific to Scotland

Cross-jurisdictional moves

Wherever they are detained, detainees are subject to frequent and arbitrary moves around the detention estate.¹⁷ These moves are disruptive and disorienting to anyone who is detained but when the moves are between Dungavel and centres in England, the consequences can be particularly serious because of the differences in the legal systems between England and Scotland.

A move to England often takes place just before an attempt is made to remove someone. It may then not be possible for a Scottish solicitor to make representations on a person’s behalf in England and there may not be time to find an English solicitor to challenge a possibly unlawful removal.

- *Cross jurisdictional moves around the detention estate should only occur when absolutely necessary and legal representatives should be informed of such moves.*

¹⁶ <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

¹⁷ http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm

Legal representation

In most detention centres in the UK, detainees access legal advice through legal surgeries, provided by legal firms under contracts. This system is not in operation in Dungavel and people detained there are usually able to engage a legal aid solicitor of their own choosing to represent them.

However, the isolated position of Dungavel means that their solicitors are unable to visit them regularly. Communication, where it happens, is often by letter or phone and there are concerns that detainees do not fully understand the legal position they are in or the advice their solicitor is giving them.

The most recent inspection report noted that a new appointments system had been introduced in Dungavel and lawyers had found it to be too inflexible to meet the needs of clients facing imminent removal.

‘It was difficult because even to make a phone call to get a lawyer it costs money, money that I didn’t have. Most of the solicitors were useless, until this one I got. They would tell you okay we’re going to apply for the bail, because everybody wants to get out. They came on Tuesday then we [don’t] hear [from] them again [until] next week Monday because they are busy. You are not kept informed. You could contact them but most of the time I was unlucky they’d be in court dealing with other cases’.

Mr N, detained in Dungavel for two months.

There is inadequate access to interpretation at Dungavel. SDV has witnessed other detainees being brought in to interpret during legal consultations and on at least one occasion, a solicitor asked an SDV visitor to interpret for them. This practice compromises detainees’ confidentiality and in some cases might inhibit them from sharing personal information relevant to their case with their solicitor.

- *The Detention Inquiry recommended that the Legal Aid Agency and the Immigration Services Commissioner carry out regular audits on the quality of legal advice provided by firms under contract in IRCs. A similar system should be introduced to monitor access to and quality of legal advice in Dungavel.*
- *Friends, volunteers and other detainees should not be used as interpreters for legal or health appointments.*

Challenging detention

The isolation of Dungavel creates barriers for detainees seeking to challenge their detention by making an application for bail. It is not possible for a cautioner to give evidence in support of a bail application by video link at their local Tribunal. They are required to attend in person in Glasgow. This is despite detainees in Dungavel having no option but to make their application by video link. Furthermore, there are no provisions for cautioners to attend later

in the day, so they often have to travel early in the morning or the night before to appear at court for 9.30am. This can make the prospect prohibitively expensive for many.

On 16 August 2015¹⁸, the Sunday Herald revealed that as a result of Ministry of Justice cuts, the number of immigration courts sitting in Glasgow has been reduced from five or six a day to just two. This will further restrict people's ability to challenge their detention by applying for bail.

- *People applying for bail should be able to do so in person and arrangements should be made to facilitate the attendance of cautioners.*

Detention doesn't work

According to the government's own guidance¹⁹ a key purpose of detention is to effect removal from the country. The Nationality, Immigration and Asylum Act 2002 formally changed the name of 'detention centres' to 'removal centres' to reflect this purpose.

However, official figures²⁰ show that detention is ineffective in facilitating removal and that Dungavel is even more ineffective than the detention estate as a whole.

In the year ending June 2016, more than three quarters (78%) of those leaving detention in Dungavel were granted temporary admission or were bailed. This compares to 55% for the detention estate as a whole.

Just 20% of people leaving detention in Dungavel were removed from the country compared to 44% for the detention estate as a whole.

Destination of people leaving detention, year ending June 2016, all of UK and Dungavel

	All		Dungavel	
	No	%	No	%
Removed from the UK	14208	44%	269	20%
Granted leave to enter/remain	80	0%	4	0%
Granted temporary admission/release	14300	45%	862	66%
Bailed	3070	10%	162	12%
Other	397	1%	18	1%
<i>Total</i>	<i>32055</i>	<i>100</i>	<i>1315</i>	<i>100</i>

The figures offer no explanation of why people leaving detention from Dungavel are more likely to be released into the community than people across the detention estate as a whole. However, it is arguable that Dungavel detains large numbers of people who should not have

¹⁸ [http://www.heraldscotland.com/news/13599919.Refugees left in legal limbo as UK government cuts Scots immigration courts/](http://www.heraldscotland.com/news/13599919.Refugees+left+in+legal+limbo+as+UK+government+cuts+S+cots+immigration+courts/)

¹⁹ <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

²⁰ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2016>

been detained in the first place. Only the Verne and Yarl's Wood released a higher proportion of people into the community in the year to June 2016 (85% and 80% respectively), and removed a lower proportion (14% and 19%).

- *Detention is ineffective. It should only be used in very limited circumstances, for the shortest possible time with a fixed time limit of 28 days, and the Government should introduce a range of alternatives to detention.*
-