

UPDATE: What is the future of immigration detention in 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 Scotland. Since 2002, SDV volunteers have visited people in Dungavel twice a week to provide support. We visit over 200 men and women in Dungavel every year and are the only civil society organisation to visit people detained every week.

Purpose of this paper

On 8 September 2016, the UK Government announced that Dungavel, the only detention centre in Scotland, would close toward the end of 2017¹. At the same time it announced its intention to build a new 51 bed residential short term holding facility (STHF) close to Glasgow Airport. On 8 November, 2016, Renfrewshire Council refused planning permission to the new facility, leaving the Government's plans in disarray.

This update paper considers the implications of the latest developments for people at risk of immigration detention in Scotland. Background to the issue can be found in our briefings: "Immigration Detention: the issues for Scotland"² and "The announced closure of Dungavel: what is the future of immigration detention in Scotland?"³.

The current position

At its meeting of 8 November Renfrewshire Council's planning and property board unanimously rejected the UK Government's planning application to build the new facility. They did so on moral and economic grounds and despite a recommendation from officials that the application should be approved⁴. The Government has the right to appeal the decision and has yet to decide whether it will do so.

On 31 October 2016, the Immigration Minister said that GEO's contract to run Dungavel had been extended to September 2017 (and was extendable to September 2019) and that its closure was dependent on planning permission for the new facility being granted.⁵

People subject to immigration control in Scotland remain at risk of indefinite immigration detention either in Dungavel or in one of the eight immigration removal centres in England.

¹ <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-37307435>

² <http://sdv.org.uk/wp-content/uploads/2014/10/SDV-briefing-on-detention-in-Scotland-August-2016.pdf>

³ <http://sdv.org.uk/wp-content/uploads/2014/10/SDV-briefing-on-the-closure-of-Dungavel.pdf>

⁴ <http://www.thenational.scot/news/new-dungavel-immigration-centre-plan-rejected-by-renfrewshire-council.24555>

⁵ <https://www.theyworkforyou.com/wrans/?id=2016-10-24.49894.h&s=speaker%3A11804#g49894.r0>

Four scenarios

The Government has yet to respond substantively to the refusal of planning permission but we can see four possible outcomes. We consider these briefly below, before moving on to reflect on the opportunity that still exists to reframe the debate and think more imaginatively about how we work with people currently living in Scotland and at risk of detention.

1. No STHF and Dungavel remains open

On the face of it, this is the position we are currently in. This means a continuation of the concerns about detention that we and many other organisations and individuals in Scotland have long campaigned to raise awareness about and challenge.⁶

2. The UK Government successfully appeals against the refusal of planning permission, a new STHF opens at Glasgow Airport and Dungavel closes.

The UK Government has said that the proposed facility at Glasgow will remove people with no right to remain in the UK quickly and that the ‘vast majority’ of people would be held there for less than a week. Based on our experience, SDV is sceptical of that claim and believes that a more likely outcome is that many people will be moved to other detention centres. In this scenario, the only possible option would be to move people to England, where they will continue to be held indefinitely with the grave consequences for their physical and mental health and well being that we know this entails.

What is known about the operation of the existing STHFs at Larne House in Northern Ireland and Pennine House at Manchester Airport supports our concerns. Published Home Office figures do not show how many people held in these STHFs are moved to other centres, but information can be gleaned from inspection reports. The latest inspection of Larne House reveals that in the three month period before the inspection in November 2013, 44% of people leaving detention in Larne were moved to another centre⁷. Just 27% were removed from the country. In the report of their May 2013 inspection, inspectors noted that ‘(T)he vast majority of detainees leaving Pennine House in the previous three months went to IRCs [Immigration Removal Centres], particularly Dungavel House and Colnbrook’⁸. SDV regularly visits people in Dungavel who have been transferred from Pennine House and Larne House.

The prospect of people being routinely moved to England after being detained for a few days in the new facility amplifies existing concerns about cross-jurisdictional moves, access to legal representation, and social and family support for people detained in Scotland⁹.

In addition, there are concerns about protections for people detained in STHFs. The Detention Centre Rules (2001)¹⁰ set out what people are entitled to while they are detained

⁶ <http://sdv.org.uk/wp-content/uploads/2014/10/SDV-briefing-on-detention-in-Scotland-August-2016.pdf>

⁷ <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2014/04/2013-larne-house-sthf.pdf>

⁸ <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2014/03/pennine-house-2013.pdf>

⁹ <http://sdv.org.uk/wp-content/uploads/2014/10/SDV-briefing-on-detention-in-Scotland-August-2016.pdf>

¹⁰ http://www.legislation.gov.uk/ukSI/2001/238/pdfs/ukSI_20010238_en.pdf

and the basics around healthcare, access to welfare and privileges, safety and security, and other matters. These rules do not apply to STHFs and the UK Government has never published an equivalent set of rules for them. The Association of Visitors to Immigration Detainees (AVID) has called this ‘a huge protection gap that leaves many at risk’¹¹.

3. The UK Government submits plans to build a STHF at another location and closes Dungavel

Given the very strong terms in which Renfrewshire Council refused planning permission, it is possible that the Government will not seek to appeal the decision there, but will seek a new location, in a different local authority area for its proposed STHF. Its arguments in favour of the proposed Glasgow Airport site focused on the savings to the public purse that would arise from the centre being near the airport. In order to make this case elsewhere, its options for a new site are limited. Nevertheless, should they decide on this course of action, the same concerns would arise for any new site.

4. Closure of Dungavel and no STHF

It remains at least theoretically possible that UK Government continues with its plans to close Dungavel, with no new facility. This seems unlikely as it would go against the Immigration Minister’s recent statement on the subject and in our view, it would be the worst possible outcome. While it would mean there would be no dedicated detention centre on Scottish soil, the result would be that people living in Scotland subject to immigration detention by the UK Government would be moved directly to England if they were detained. This would take them farther away from their families and communities and disrupt their legal support, without even a brief stopgap in a new STHF.

People detained under immigration powers in Scotland currently have greater access to legal aid - and therefore legal advice to challenge their detention - as legal aid is devolved in Scotland and has not been subject to the same level of cuts to funding as in England and Wales. Removing people from Scotland would have the effect of removing them from their legal representatives and hindering their access to justice.

Reframing the debate

Over the last few years, advocacy and campaigning focused on immigration detention in the UK has resulted in the issue being pushed higher up the political agenda, with major inquiries, parliamentary debates, and research calling for urgent reform. The Detention Inquiry report of 2015 concluded that the UK detains too many people for too long and that the system is ‘expensive, ineffective and unjust’. It recommended a time limit and a move towards community based alternatives to detention¹².

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http://www.aviddetention.org.uk/sites/default/files/images/AVID%20response_SHAW%20REVIEW%20MAY2015.pdf

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

The Shaw Review into the detention of vulnerable people echoed many of the findings of the Detention Inquiry and called for a drastic reduction in the number of people detained and the length of detention. In response, the UK Government said that it accepted the broad thrust of Shaw's recommendations and would introduce reforms to the system that would result in less use of detention and a reduction in the length of detention¹³.

The Immigration Act 2016 introduced some limited reforms to detention. It committed to a new process for managing vulnerable people in detention and introduced automatic judicial oversight of decisions to detain for the first time. It also limited the detention of pregnant women to 72 hours (or a week with ministerial approval). This mirrors the situation for families with children since 2010, which has resulted in a large reduction in the number of children entering immigration detention (from 1,119 in 2009 to 163 in 2015).

These developments all suggest that the direction of travel should be towards reduction in the use of detention across the UK. We would argue that the refusal of planning permission in Renfrewshire, and the terms in which it was made sends a very strong signal to the Government that it is time to abandon its current approach and commit to a new one based on the following elements.

1. Developing a range of community based alternatives to detention

There is increasing evidence that working with people subject to immigration control within the community using a case management approach, based on early intervention and tailored to the specific needs of different populations has significant advantages:

- It is more humane;
- It is more cost effective;
- It assists in integration in the event that a person's right to remain in the country is recognised;
- It increases compliance with a negative immigration decision and enables people to return voluntarily in a planned way.

The Detention Inquiry report highlights a number of examples of community based alternatives to detention from Europe and the United States, and argues that a shift to such alternatives would encourage better decision making and move the UK away from its focus on end-stage enforcement. More recently, research from Detention Action has argued that community based alternatives can be successful even with ex-offenders, reducing re-offending and delivering very low rates of absconding¹⁴.

2. Better immigration casework and decision making

We know from official figures that the vast majority of people leaving detention in Dungavel are released back into the community. In the second quarter of 2016, the figure was 80% or 239 people. Just 57 people were removed from the UK. The fact that 239 men and women were detained, at significant cost the public purse and even greater cost to their wellbeing and

¹³ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

¹⁴ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>

that of their families, friends and communities, raises serious concerns. By working with civil society and investing in the development of a range of alternative measures, the UK Government could avoid the costly and harmful impact of detention and enable people to remain in the community.

3. Better end of sentence planning for foreign national offenders

Approximately 40% of people currently in immigration detention across the UK are detained pending removal following a prison sentence. Some are detained in immigration removal centres and others remain in prisons beyond their sentence, detained under immigration powers. Often their detention is prolonged as there are significant barriers to their removal. We would argue that prolonged, costly and harmful detention under immigration powers could be avoided with better planning while people are serving their sentences. Where it is clear that there are barriers to removal or voluntary return, ex-offenders should be released and any potential risks managed within the community, as they would be for UK nationals.

4. Detention as a last resort and for a maximum of 72 hours

The UK Government has recognised the harm that detention causes to families with children and pregnant women, and committed to alternatives to detention beyond 72 hours (or exceptionally a week). We believe that the UK Government can and should be working with civil society and statutory services to explore alternatives to detention for all those currently subject to immigration detention.

There remains a real opportunity for the UK Government to commit to working with the Scottish Government and Scottish civil society to develop effective alternatives to detention, based on international examples of good practice and emerging evidence from existing projects in the UK. With a firm commitment that men and women living in Scotland who are currently at risk of immigration detention will not be removed from their legal and support networks to detention in other parts of the, we and other civil society organisations will be pushing for a rights based approach to working with people in the community that is centred on dignity, fairness and, most importantly, freedom.

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