



Northern Ireland
Assembly

Research and Library Service Briefing Paper

Paper 23/11

31 January 2011

NIAR 63 -11

Immigration Detention and Removal in Northern Ireland

1 Introduction

Immigration is a reserved matter in terms of the Northern Ireland Assembly, but there are impacts on the devolved administration with regard to immigration operations in this jurisdiction. Immigration operations are undertaken by the UK Border Agency¹ operating under the relevant national legislation, particularly the following:

- Immigration Act 1971²
- Immigration and Asylum Act 1999³
- UK Borders Act 2007⁴
- Borders, Citizenship and Immigration Act 2009⁵

¹ <http://www.ukba.homeoffice.gov.uk>.

² <http://www.legislation.gov.uk/ukpga/1971/77/contents>.

³ <http://www.legislation.gov.uk/ukpga/1999/33/contents>.

⁴ <http://www.legislation.gov.uk/ukpga/2007/30/contents>.

⁵ http://www.legislation.gov.uk/ukpga/2009/11/pdfs/ukpga_20090011_en.pdf.

The Immigration Rules are also an essential source of immigration law, which set out the specific requirements that must be satisfied in order for a person to enter or remain in the UK⁶.

UK Border Agency staff work to specific guidelines and instructions, based on the prevailing legislation and Immigration Rules⁷.

2 The UK Border Agency in Northern Ireland

The UK Border Agency opened an office in Northern Ireland in July 2009 based at Drumkeen in Belfast⁸. Currently, there are no facilities in Northern Ireland for people who are detained under immigration legislation, but there are plans to construct a facility in the grounds of a police station in Larne for this purpose⁹, although questions have been raised as to the future of this project¹⁰. Consequently, people detained for deportation are removed to holding centres in Britain, particularly Dungavel in Scotland.

The Northern Ireland Human Rights Commission¹¹ carried out an investigation into the powers of detention of the UK Border Agency¹². This report raised the following concerns from a human rights perspective:

- Domestic legislation and policy leave too much to the discretion of individual immigration officers who make recommendations for detention
- Greater training in human rights is needed for those involved in enforcement and magistrates who issue warrants
- Serious concerns are raised about the way in which immigration officers engage with individuals and the way in which they arrive at recommendations for detention
- There is a lack of consistent practice in informing detainees of the right to access to legal advice
- Official government documentation given to detainees fails to serve the purpose of clarifying detainees' rights and the reasons for their detention
- Resource considerations determine whether a detainee has access to an interpreter

Operation Gull is undertaken by the UK Border Agency and Police Service of Northern Ireland (PSNI) in co-operation with the Garda Síochána to identify people who may be

⁶ <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules>.

⁷ <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance>.

⁸ <http://www.ukba.homeoffice.gov.uk/contact/contactspage/?item=225141>.

⁹ <http://www.lametimes.co.uk/news/Illegals-will-be-detained-in.6430477.jp>.

¹⁰ <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/plans-for-detention-centre-in-larne-are-put-on-ice-14950302.html>.

¹¹ <http://www.nihrc.org>.

¹² Nazia Latif and Agnieszka Martynowicz, *Our Hidden Borders: The UK Border Agency's Powers of Detention*, April 2009.

passing through Northern Ireland with a view to entering the Republic of Ireland illegally or vice versa. The Northern Ireland Human Rights Commission investigation report described the operation as follows¹³:

The purpose of Operation Gull has not been officially made public. Its purpose was explained to the investigators, by some [Immigration Officers], as protecting the Common Travel Area, through detecting people who may attempt to cross the land border with the Republic of Ireland.

Concerns have been raised about the speed by which people detained are removed from Northern Ireland and the resulting loss of access to local legal advice¹⁴.

3 The Process of Detention and Removal from Northern Ireland

The process for removing people who are not allowed to be in the UK is as follows:

- Powers to remove an illegal entrant are found in Schedule 2 to the Immigration Act 1971¹⁵
- Authority required to remove an illegal entrant is, with some exceptions, a Senior Caseworker¹⁶
- Administrative removal¹⁷ is empowered under Section 10(1) of the Immigration and Asylum Act 1999 where a person¹⁸:
 - Does not observe a condition on leave to remain or overstaying
 - Uses deception in seeking leave to remain
 - Belongs to the family of someone who is to be removed
- Non-UK nationals who have been convicted of a criminal offence can be deported under the following criteria¹⁹:
 - Non-EEA nationals: a single sentence of 12 months or aggregate of 12 months over 5 years or a custodial; sentence of any length for a serious drugs offence
 - EEA nationals: a sentence of 24 months (or 12 where the offence involves sex, drugs or violence)

¹³ Nazia Latif and Agnieszka Martynowicz, *Our Hidden Borders: The UK Border Agency's Powers of Detention*, April 2009, p.62.

¹⁴ For example, see briefing by the Law Centre (Northern Ireland): <http://www.lawcentreni.org/policy/policy-briefings/203.html>.

¹⁵ UKBA Enforcement Instructions and Guidance (updated August 2010), Section 47

(<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals>).

¹⁶ Section 47.1.

¹⁷ Immigration Rule HC321 allows for mandatory refusal of re-entry for a period of ten years in cases of removal or deportation where there has been a breach of immigration law.

¹⁸ UKBA Guidance Section 50.

¹⁹ Section 55.1.2.

- Section 28A of the 1971 Act gives a police officer or authorised immigration officer powers to arrest without warrant a person suspected of an immigration offence
- The welfare of children being removed is governed by Section 55 of the Borders, Citizenship and Immigration Act 1999²⁰
- An individual is issued a notice indicating immigration status and liability to removal (IS151A), which includes information on the right of appeal, to which the Secretary of State can add a detention order or an order restricting residence or employment²¹
- Powers of detention are set out under Paragraph 16(2) of Schedule 2 to the 1971 Act, Paragraph 2 of Schedule 3 to the 1971 Act, Section 62 of the Nationality, Immigration and Asylum Act 2002 and Section 36 of the UK Borders Act 2007
- There is a presumption in favour of release or alternatives to detention unless there are strong reasons for detention²², which must be indicated to the individual (IS91R)²³
- Detention is reviewed immediately and at least every 28 days, depending on the length of detention²⁴
- Detention space allocation is the responsibility of the Detainee Escorting and Population Management Unit (DEPMU) and the Family Detention Unit (FDU) for families²⁵
- The detention estate comprises eleven removal centres and four short term holding centres, none of which are located in Northern Ireland, to which the following applies²⁶:

Individuals who are detained in Northern Ireland are moved on the day of detention, or within 24 hours, to a removal centre in Great Britain. Initial detention will be in a police cell until transfer arrangements for the transfer are in place.

Prison accommodation in Northern Ireland is now used on the same basis as prison accommodation in England and Wales. Individuals will only be detained in prisons in Northern Ireland for purposes of security and control.

²⁰ Section 50.13.

²¹ Section 51.

²² Obtaining bail is not necessarily easy in practice, as only 22% of bail applications were granted in the UK in 2007: Bail for Immigration Detainees, *Immigration Detention in the UK: Frequently Asked Questions* (2008), p.4.

²³ Section 55.3.

²⁴ Section 55.8.

²⁵ Section 55.13.

²⁶ Section 55.13.1.

- Arrangements for the Common Travel Area notwithstanding, notice of removal can also be served on individuals entering the UK via the land border between the Republic of Ireland and Northern Ireland under the Immigration (Entry Otherwise than by Sea or Air) Order 2002²⁷
- Once authority for removal is obtained, a notice of removal is issued (IS151A Part 2 for administrative removal, IS151B for a failed asylum or human rights claim), which includes information on the right of appeal²⁸
- Internal checks are made to ascertain that appeal rights have been exhausted and there are no barriers to removal, including compassionate grounds
- After at least 10 working days (or 5 for people in detention), Removal Directions are issued (IS151D), copied to legal representatives (ICD 2599)
- Removal from the UK takes place via the removal contractor²⁹ or through voluntary departure³⁰

Immigration detention is a contested topic in the UK, which has kept pace with a general global trend of migration-related detention³¹. The UK Government has committed to end the detention of children³² and pressure from groups in Scotland has led to the ending of child detention at Dungavel³³, meaning that families detained in Northern Ireland have to travel on to Yarl's Wood detention centre in England, but only until the practice of detaining children is ended in May 2011³⁴.

Alternatives to detention have been promoted as a more effective and humane approach to immigration cases³⁵, indeed, Scotland has adopted a more integrative approach to working with refugees and asylum seekers with the Scottish Refugee Integration Forum³⁶. In addition, the impact of detention from the point of view of the detainee can challenge the reality behind the intent or procedure of UK Border Agency guidelines, evidenced in the Northern Ireland context, for example, by a recent report of case studies by the Refugee Action group³⁷.

²⁷ Section 48.7.

²⁸ Section 51.

²⁹ Use of force for removal by contractors has been the subject of some controversy: <http://www.guardian.co.uk/uk/2010/oct/14/deportation-death-jimmy-mubenga>.

³⁰ Chapter 48.

³¹ See, for example, the Global Detention Project: <http://graduateinstitute.ch/globalmigration/GlobalDetention.html>.

³² Proposals were under consultation to July 2010:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/>.

³³ http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/may/04detention_of_children.

³⁴ http://www.libdems.org.uk/news_detail.aspx?title=Nick_Clegg_confirms_end_to_child_detention&pPK=f497afc5-04ef-4197-81b3-342bc46dba78.

³⁵ See, for example, Amnesty International, *Irregular Migrants and Asylum Seekers: Alternatives to Asylum* (2009) or Ophelia Field and Alice Edwards, *Alternatives to the Detention of Asylum Seekers and Refugees* (2006).

³⁶ <http://www.scotland.gov.uk/Topics/People/Equality/Refugees-asylum/integration>.

³⁷ Robin Wilson, *Distant Voices, Shaken Lives: Human stories of immigration detention in Northern Ireland* (2010).