

**Nationality and Borders Bill: House of Commons Committee Stage  
Women for Refugee Women briefing on detention and quasi-detention:  
Clauses 11, 24, and 26/Schedule 3**

***Background***

Women for Refugee Women (WRW) works with women seeking asylum in the UK, to challenge the injustices of the UK's asylum system. Since 2014 we have been leading the Set Her Free campaign, which aims to end the use of immigration detention for women – and overall – in the UK.

Our research has demonstrated that the **majority of women locked up in detention are survivors of rape and other gender-based violence**, such as domestic violence, forced marriage, and sexual exploitation. Locking these women up in detention retraumatises them and has a devastating effect on their mental health. **Forty per cent of the women interviewed for our 2015 report *I Am Human* said they had self-harmed in detention.**

As well as being harmful, detention is also often pointless. The stated purpose of detention is removal from the UK. **Yet, in 2019, just 122 of the 1,550 asylum-seeking women released from detention were removed from the UK. That's 8%.** The vast majority – 1,428 women, or 92% – were released back into the community, to continue with their cases. **Women's immigration cases can be resolved more humanely, and at far less cost, in the community.**

We are particularly concerned about Clause 24 of the Nationality and Borders Bill, which would introduce an **accelerated appeals procedure for people in detention**. We are also very concerned by Clause 26/Schedule 3, which legislates for the **UK's use of 'offshore' detention centres.**

Clause 11, which provides for the introduction of **large-scale asylum accommodation centres**, is also very worrying. Though not formally 'detention', such accommodation centres are very similar to detained settings and thus amount to 'quasi-detention'.

We consider Clauses 11, 24, and 26/Schedule 3 in detail below.

***Detailed consideration of Bill clauses***

*Clause 11: Accommodation centres*

1. Clause 11 provides for the introduction of large-scale asylum accommodation centres, where people seeking asylum will be housed while their claim is processed. Under Subsection (8), the maximum time that asylum claimants can be housed in an accommodation centre, six months, is removed. **This means that people seeking**

**asylum could remain in accommodation centres for the entire time their claim is being considered – which can be many months, and even years.**

2. Since April 2020 the Home Office has been using two large-scale accommodation centres for asylum-seeking men who have arrived in the UK by boat: Napier Barracks in Kent, and Penally Camp in Wales. A recent short report by the APPG on Immigration Detention, which is conducting an inquiry into these sites, notes that – although, legally-speaking, they are not detention centres – they nonetheless ‘replicat[e] many of the features found in detained settings, including visible security measures, shared living quarters, reduced levels of privacy, and isolation from the wider community’.<sup>1</sup>
3. Residents of Napier and Penally who have given evidence to the APPG inquiry have described these sites as feeling ‘prison-like’. This has a retraumatising effect on people who are already vulnerable, as a result of the previous experiences that have forced them to seek protection. **We are therefore very concerned about the potential use of such accommodation centres for asylum-seeking women, many of whom are survivors of rape and other forms of gendered violence.**
4. We are also concerned by the lack of privacy that characterises such sites. The APPG report notes that in Napier and Penally, ‘the lack of private space was forcing residents to hold sensitive discussions, for example with lawyers, within earshot of other residents and/or staff’. For many asylum-seeking women who have experienced rape and other gender-based violence, disclosure of their previous experiences can be very difficult, including because of the shame and stigma they feel. **Thus, accommodation centres’ lack of privacy is likely to have a specific impact on them, and make it particularly difficult for them to get their claims for protection recognised.**

*Clause 24: Accelerated appeals procedure for people in detention*

5. Clause 24 reintroduces an accelerated appeals procedure for people whose cases, including asylum claims, are being processed while they are in detention. Under this clause, cases will be subject to the accelerated procedure if it is considered that ‘any appeal ... would likely be disposed of expeditiously’. **People subject to the accelerated procedure will have just five days to lodge an appeal against a negative decision on their case.**
6. The previous accelerated appeals procedure for detained asylum claimants operated as part of the Detained Fast Track (DFT). Like the new appeals procedure provided for by Clause 24, the DFT was also supposed to deal with ‘straightforward’ cases which could be processed quickly. However, **the DFT was abolished in 2015, following a series of legal challenges and a Court of Appeal finding that it was ‘structurally unfair and unjust’.** The central problems with the DFT were: a) complex cases, including those involving women who had experienced rape and trafficking, were routinely being routed into it, because of inadequate screening; and b) the accelerated timescale for lodging an appeal made it almost impossible for these vulnerable individuals to meaningfully challenge a refusal of their asylum claim.<sup>2</sup>

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<sup>1</sup> APPG on Immigration Detention (2021) *Inquiry into Quasi-detention: Interim Report*;

<https://appgdetention.org.uk/wp-content/uploads/2021/09/210907-APPG-Inquiry-Interim-report-Summary-of-oral-evidence-sessions.pdf?x87756>

<sup>2</sup> Detention Action (2016) *The Fast Track is Dead*; <https://detentionaction.org.uk/2016/05/24/the-fast-track-is-dead/>

7. Even though the DFT has not operated since 2015, **the Home Office continues to detain women with active asylum claims, under Detained Asylum Casework (DAC)**. DAC is used for, amongst others, people who have claimed asylum after they have been detained. Many women do not claim asylum until this point because of the difficulties with disclosing their experiences of gendered violence, which we have highlighted above. It can also be because they simply do not realise that such experiences may form the grounds for a protection claim. **WRW has worked with many women whose asylum claims have been processed under DAC, who are survivors of rape and other forms of gendered violence, including sexual exploitation.**
8. Given the DFT's failure to identify 'straightforward' cases and ensure it was not dealing with complex claims by vulnerable individuals, we have no confidence that only those cases that really can be dealt with swiftly will be subject to the accelerated appeals procedure set out by Clause 24. Indeed, a number of recent reports on detention – including Stephen Shaw's 2018 review,<sup>3</sup> and the Home Affairs Committee's 2019 report<sup>4</sup> – testify to the **Home Office's ongoing inability to develop and implement adequate screening mechanisms**. A number of women we have supported whose cases were processed under DAC have now been granted leave to remain, including refugee status. **Had they been subject to an accelerated appeals procedure, it is more likely they would have been wrongfully deported.**

*Clause 26/Schedule 3: Offshore processing and detention of people seeking asylum*

9. Clause 26 introduces Schedule 3, which allows the government to remove people seeking asylum to countries outside the UK, and hold them in detention there, while their asylum claims are processed.
10. If implemented, women who have survived rape, sexual exploitation and other forms of gendered violence will be subject to these measures. **This is because the key objective of 'offshore' detention is supposed to be deterrence**. There can be no exceptions to this policy, otherwise the objective of deterrence is undermined.
11. Thus, when offshore detention was reintroduced by the Australian government in 2012, all people seeking asylum who arrived by boat were liable for removal to Nauru or Manus Island, 'even if they ... had characteristics warranting special consideration, such as being an unaccompanied minor, a survivor of torture and trauma, or a victim of trafficking'.<sup>5</sup> **As such, by introducing such a provision the UK government must be willing to subject children, pregnant women, survivors of trafficking and other vulnerable people to offshore detention.**
12. It is important to highlight, however, that even though deterrence is the formal objective of offshore detention, there is no empirical evidence to support its effectiveness as a deterrent strategy. A recent report by The Kaldor Centre for

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<sup>3</sup> Shaw, S. (2018) *Assessment of Government Progress in Implementing the Report on the Welfare in Detention of Vulnerable Persons*; <https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report>

<sup>4</sup> Home Affairs Committee (2019) *Immigration Detention*; <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

<sup>5</sup> Kaldor Centre for International Refugee Law (2021) *Offshore Processing: An Overview*; [https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/factsheet\\_offshore\\_processing\\_overview.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/factsheet_offshore_processing_overview.pdf)

International Refugee Law highlights that in the year following the Australian government's reintroduction of offshore detention, 'more than 24,000 asylum seekers arrived in Australia by boat. This number was considerably more than at any other time since the 1970s, when boats of asylum seekers were first recorded in Australia. Moreover, as the months passed, and news of the policy presumably reached some of those who were contemplating travelling by sea to Australia, there was no noticeable change in the rate of arrivals, with boats of varying numbers of people (from two to more than 200) continuing to arrive on average several times per week.'<sup>6</sup>

13. Policy measures that rely on deterrence assume that people have a choice in the decisions they make. **People who are forced to flee their countries because of violence and persecution have no such choice.** Therefore, deterrent measures will not stop them from making journeys to find safety.
14. As well as being ineffective, offshore detention is harmful. **We are extremely concerned about the conditions in which women would be held, and in particular the risk to them of sexual violence and abuse.** In detention centres in the UK, where there are a range of safeguarding mechanisms in place, this has not been enough to protect people in detention from abuse. The 2015 Lampard Report on Yarl's Wood – which up until last year was the main detention centre for women in the UK – highlighted that between 2007-15, 10 members of staff were dismissed for incidents involving 'sexual impropriety' towards women held there. Such 'impropriety' included the repeated sexual harassment and abuse of 29-year-old woman by a male healthcare worker.<sup>7</sup>
15. The UK government will have even less control over the treatment of detainees in offshore detention centres. **Thus, the risk to women of sexual violence and abuse in such centres will be increased.** The sexual harassment and violence that women detained offshore by the Australian government were subjected to has been well documented.<sup>8</sup>

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<sup>6</sup> Kaldor Centre for International Refugee Law (2021) *Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia*; [https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy Brief 11 Offshore Processing.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy%20Brief%2011%20Offshore%20Processing.pdf)

<sup>7</sup> Lampard, K. (2016) *Independent Investigation into Concerns about Yarl's Wood Immigration Removal Centre*; <https://www.verita.net/wp-content/uploads/2016/04/Independent-investigation-into-concerns-about-Yarls-Wood-immigration-removal-centre-Serco-plc-Kate-Lampard-Ed-Marsden-January-2016-1.pdf>

<sup>8</sup> See, for instance, Refugee Council of Australia (2020) *Australia's Man-made Crisis on Nauru*; <https://www.refugeecouncil.org.au/nauru-report/>