

6 November 2014

Director:  
Professor Sir Jeffrey Jowell, KCMG, QC

Bingham Centre

## Parliamentary inquiry into the use of immigration detention in the UK SUPPLEMENTARY EVIDENCE

1. The Bingham Centre for the Rule of Law submits the below as supplementary evidence of maximum time limits on immigration detention in Europe.
2. As stated at today's oral evidence session, the UK is now the only EU country which does not have a maximum time limit on immigration detention.
3. The time limits in the rest of the EU countries vary, although many of them have chosen to adopt the maximum set forth in the EU Returns Directive 2008/115/EC. The limit set in the Returns Directive under Article 15(5) is six months, but that can be extended under Article 15(6) by twelve months only where removal "is likely to last longer owing to" a lack of cooperation by the foreign national concerned, or delays in obtaining the requisite documentation from third countries.
4. The limits adopted by other European states, may depend on the context at issue. For example, lower time limits might apply to asylum seekers than apply to unauthorised non-nationals. Examples of EU member state time limits include:
  - a. Belgium: two months;<sup>1</sup>
  - b. France: 45 days;<sup>2</sup>
  - c. Hungary: 12 months;<sup>3</sup>
  - d. Ireland: 21 days;<sup>4</sup>
  - e. Portugal: 60 days;<sup>5</sup>
  - f. Spain: 60 days.<sup>6</sup>

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<sup>1</sup> Royal Decree on the access, stay, establishment and removal of foreigners of 2 August 2002, arts 7, 74/5, s 3 and 74/6 s 2.

<sup>2</sup> Law 2011-672 of 16 June 2011, art L 561-2 (renewable once).

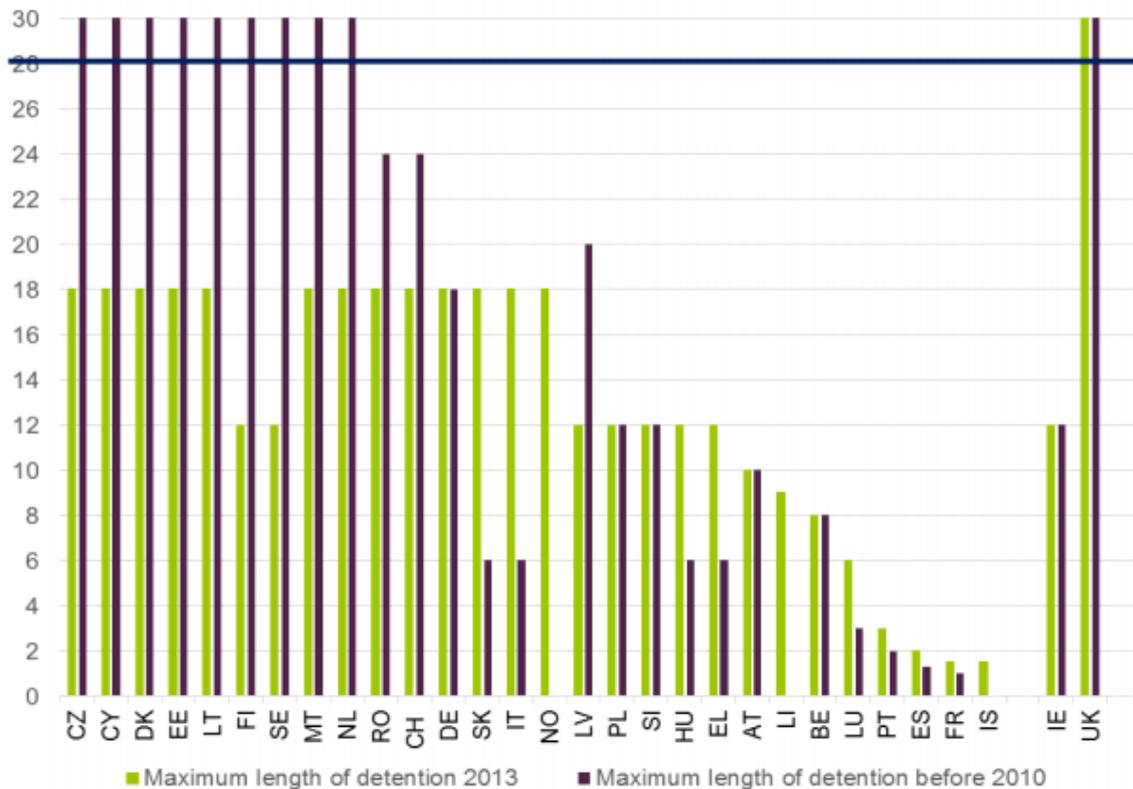
<sup>3</sup> Third-Country Nationals Act, s 54(4)-(5) and 58(1)-(2)

<sup>4</sup> Refugee Act 1996, s 9(8) and (9), as amended by section 11(1) of the Immigration Act 1999, section 9 of the Illegal Immigrants (Trafficking) Act 2000, section 7 of the Immigration Act 2003, section 16 of the Immigration Act 2004 and section 75 and Schedule 6 Part 15 of the Health Act 2004.

<sup>5</sup> Act 23/2007 of 2007, art 146(3).

<sup>6</sup> Aliens Act, art 62.2.

5. The table below provides an overview of the outward limits in each of the member states following the deadline for implementation of the Returns Directive.<sup>7</sup>
6. It is clear that several member states used the Returns Directive as an opportunity to increase what were previously lower limits on the duration of detention. It must therefore be underscored that any limit which might be adopted by the UK should not operate so as to become a default minimum.



7. Further information regarding maximum time limits for immigration detention, including relevant case law and international commentary, can be found in the Bingham Centre’s report on Safeguarding Principles for Immigration Detention and the Rule of Law.<sup>8</sup>

<sup>7</sup> Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, 28.3.2014, p 17, available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/docs/communication\\_on\\_return\\_policy\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/docs/communication_on_return_policy_en.pdf).

<sup>8</sup> M Fordham QC, J Stefanelli, S Eser, *Immigration Detention and the Rule of Law: Safeguarding Principles* (BIICL 2013) pp 82-87.