

# IMPROVING LABOUR RIGHTS FOR DETAINED IMMIGRANTS IN ENGLAND AND WALES

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By Charlie Smith and  
Betsy Abbott

## Executive summary

Workers detained in immigration centres in England and Wales are not protected under UK labour law. 'The number of people entering detention in 2020 was 14,773'[1]. This figure demonstrates that there is labour being performed by nearly 15,000 people in this country, yearly, where the workers are not properly protected.

This policy brief will discuss the three following issues with labour in immigration detention centres. Firstly, how the detained people's migration status is used as a form of exploitation through labour. Secondly, how the private companies that own these detention centres are profiting off of the exploitation of workers. Finally, how the fact that these people are not defined as workers, leads to a lack of protection in the areas of minimum wage and working time regulations.

[1]'How many people are detained or returned?' (25/02/21) Gov.uk

# ISSUES

## 1) The Exploitation of Migration Status

Immigration status determines the nature and value of work undertaken by immigrants within England and Wales, which conflicts with international instruments such as the right to just and favourable remuneration (Universal Declaration of Human Rights Art 23).[2] Particularly, detained immigrants' legal status remains uncertain and susceptible to change which renders them precarious and frames their engagement in employment.[3]

The socio-economic position of detainees, weighing on immigration status, forces detainees to sell their labour power and places them under the dominion of detention centres, forcing them to accept exploitative working conditions.[4] Furthermore, their non-citizen legal status removes detainees from legal provisions protecting them from unfair working conditions such as pay and working hours.[5] Thus, detainees are discouraged from challenging their working conditions and are prohibited from doing so due to the lack of legal protection.

The Immigration Act 1971 also prohibits detained migrants from engaging in employment outside of their detention which significantly limits their integration into the labour market and further uses their migration status to discriminate and exploit these workers.

**Reform:** The definition of worker under the Employment Rights Act 1996 should be extended to include workers within immigration detention centres to allow for legal protection and the Immigration Act 1971 should be reformed to allow for detainees' integration into the labour market. This should also be followed with an enquiry into the socio-economic impacts within the labour market.

**"In 2014, nearly 45,000 hours of work totalled to £45,500 in pay which would have been £280,000 if detainees had been paid minimum wage."**

(The Guardian, 2014)[9]

## 2) Privatised Power

Within the UK, there are 10 immigration removal centres run by private companies, such as Serco and G4S.[6] As Michael Flynn notes, the UK is prevalent in contracting out nearly all of its detention estate to private corporations. [7]

The privatisation of these centres allows contractors to set wages and profit off the cheap labour of detained immigrants, allowing private corporations to save up to £1.5m in annual savings. [8] This is due to the poor wages set for detainees and the corporations' ability to reduce working staff due to the amount of labour undertaken by detainees within a centre. Thus the lack of regulation of the privatisation of detention centres allows for the exploitation of detainees to push profits for private corporations.

**Reform:** Nationalise immigration detention centres to remove them from the private sphere and to allow for better regulation of working conditions.

[2] Katie Bales & Lucy Mayblin, 'Unfree labour in immigration detention: exploitation and coercion of a captive immigrant workforce' (2018) 47(2) *Economy and Society*

[3] Nando Sigona, Jotaro Kato & Irina Kuznetsova, 'Migration infrastructures and the production of migrants' irregularity in Japan and the United Kingdom' (2021) 9(31) *CMS*

[4] Katie Bales & Lucy Mayblin, 'Unfree labour in immigration detention: exploitation and coercion of a captive immigrant workforce' (2018) 47(2) *Economy and Society*

[5] Mary Bosworth & Sarah Turnbull, 'Immigration, detention and the expansion of penal power in the United Kingdom' in Keramet Reiter and Alexa Koenig (eds) *Extreme Punishment* (Palgrave Macmillan, 2015)

[6] Katie Bales & Lucy Mayblin, 'Unfree labour in immigration detention: exploitation and coercion of a captive immigrant workforce' (2018) 47(2) *Economy and Society*

[7] Michael Flynn & Cecilia Cannon, 'The privatization of immigration detention: towards a global view' (2009) *A Global Detention Project Working Paper*

[8] Katie Bale & Lucy Mayblin, 'Paid work or underpaid labour? The labour exploitation of detainees within immigration detention' (2017) *Discover Society*

[9] Kevin Rawlinson, 'Private firms are using detained immigrants as cheap labour' *The Guardian* (22 August 2014)

## 3. Not defined as workers

Workers in immigration detention centres are not legally defined as workers under the Employment Rights Act 1996. This excludes them from many protections under UK labour law, including minimum wage and working time provisions.

Section 59 of the Immigration, Asylum and Nationality Act 2006 excludes immigration detainees from minimum wage legislation. The Detainee Services Order 01/2013 sets out their pay rates as follows, 'routine activities will be paid at a rate of £1.00 per hour, and specified projects... will be paid at a rate of £1.25 per hour'[10]. There is no other reward for their work, as 'despite performing this work, those detained [can] not earn qualifications, certificates or other forms of recognition for it.'[11]

The Detainees services Order also specifies that 'Detainees will not be allowed to engage in paid activities for more than 30 hours per week.'[12]. However, it appears that detainees are working more than 30 hours a week, but are only getting paid for 30 hours of work. This is due to the 30 hours per week cap, so the centres cannot record hours over this, and therefore only have to pay the 30 hours. The workers cannot appeal their situation as they are not protected under any labour legislation due to not being classified as workers.

**Reform:** Workers in immigration detention centres should be classified as workers under the Employment Rights Act 1996, and as a result, amend the Detainee Services Order 01/2013. This would ensure that they can be paid minimum wage, at least at the rate of apprentices. In this case, they should be awarded credits towards a qualification, or a certificate recognising their work. They should also be protected under working time regulations and paid for a number of hours that accurately reflects those worked.

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**"One detainee explained in a blog post that he had morning, afternoon and evening shifts, as well as shifts in between. There was so much work for him to do that he ended up cleaning all day, seven days a week. He took pride in his work and received positive feedback from staff but was only paid £1 an hour, and a maximum of £30 a week (for a maximum of 30 hours a week, as the Detention Services Order 01/2013 provides)."**

Virginia Mantouvalou[13]

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[10] Home Office, Detainee Services Order 01/2013 (2019)

[11] Virginia Mantouvalou, 'Labour Exploitation in Immigration Detention' (*UK Labour Law*, 1 June 2020)

[12] Home Office, Detainee Services Order 01/2013 (2019)

[13] Virginia Mantouvalou, 'Labour Exploitation in Immigration Detention' (*UK Labour Law*, 1 June 2020)

# Recommendations

1. Expand the definition of worker under the Employment Rights 1996 to include workers in immigration detention centres
2. Amend Section 59 of the Immigration, Asylum and Nationality Act 2006 to prevent workers in immigration centres from being excluded from minimum wage provisions
3. Amend Detainee Services Order 01/2013 to amend the pay grades and the working time regulations, to ensure these workers are paid a fair wage for hours which accurately reflect those worked.
4. Conduct an inquiry into the socioeconomic impact of labour in immigration detention centres within the labour market
5. Reform Immigration Act 1971 to allow detainees' integration into the labour market
6. Nationalise immigration detention centres to remove them from the private sphere, to reduce the likelihood of exploitation

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## LEGAL

Employment Rights act 1996

Immigration Act 1971

Immigration, Asylum and Nationality Act 2006

Universal Declaration of Human Rights 1948, Art 23