Detention - Netherlands

Overview

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Relevant EU legislation

The Netherlands is bound by the 2024 Reception Conditions Directive, the Asylum Procedures Regulation and the Asylum Migration Management Regulation and has transposed or operationalised their provisions through the Aliens Act 2000 (Vreemdelingenwet, 2000).

National legislation

The relevant national legislative provisions are the following:

- Article 6 and Chapter 5 of the Aliens Act 2000 | Vreemdelingenwet 2000
- Chapter 5 of the Aliens Decree 2000, Vreemdelingenbesluit 2000
- Chapter A5 of the Aliens Circular 2000 (A), Vreemdelingencirculaire 2000 (A)
- Regulation on the border accommodation regime | Reglement regime grenslogies

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority

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Detention decision	Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar) Aliens Police, Identification and Human Trafficking Department | Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM) The Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst The Repatriation and Departure Service | De Dienst Terugkeer en Vertrek (DT&V)	
Administration and management of detention facilities	Custodial Institutions Agency | Dienst Justitiële Inrichtingen, DJI	
Information provision in detention	Custodial Institutions Agency | Dienst Justitiële Inrichtingen, DJI	Dutch Council for Refugees | VluchtelingenWerk Nederland (VWN)

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Interpretation services in detention	Custodial Institutions Agency | Dienst Justitiële Inrichtingen, DJI arranges for interpretation via telephone for matters related to detention. For other procedures, either the Immigration and Naturalisation Service or the Repatriation and Departure Service will cover the costs of the interpretation service.	
Access to the procedure and provision of asylum information in detention	Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar) The Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst Dutch Council for Refugees | VluchtelingenWerk Nederland (VWN)	

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Detention for the Dublin procedure	Royal Netherlands Marechaussee | KoninklijkeMarechaussee (KMar) Aliens Police, Identification and Human Trafficking Department | Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM) The Repatriation and Departure Service | De Dienst Terugkeer en Vertrek (DT&V)	
Processing of asylum applications of applicants who are in detention	The Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst	
Legal assistance and representation in detention	Legal Aid Board | Raad voor Rechtsbijstand	
Review of detention	Court of the Hague | Rechtbank Den Haag	

Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

Article 59b (1a) of the Aliens Act 2000 foresees the detention of asylum seekers when it is necessary to identify the foreigner’s identity or nationality when there

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is a risk of absconding.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

Article 59b(1b) of the Aliens Act 2000 foresees the detention of asylum seekers when it is necessary to determine the required elements for an asylum application and there is a risk of absconding.

The criteria to assess if there is a risk of absconding are listed under Article 5.6(2) of the Aliens Decree:

a. has not entered the Netherlands in the prescribed manner, or has attempted to do so, whereby the foreign national has evaded supervision for some period of time or moves between the Member States of the European Union without permission;
b. has previously received a decision, notification, or notice indicating an obligation to leave the European Union or the Netherlands and has not complied with this voluntarily within the period specified or implied therein;
c. does not, or does not sufficiently, cooperate in establishing their identity and nationality;
d. in connection with their application for admission, has provided incorrect or contradictory information concerning their identity, nationality, journey to the Netherlands or another Member State, or has used a visa issued to them for a different purpose than the purpose for which it was granted;
e. has unnecessarily disposed of their travel or identity documents;
f. has used false or forged documents in legal dealings in the Netherlands;
g. has been declared an undesirable foreign national as referred to in Article 67 of the Aliens Act, has been issued an entry ban pursuant to Article 66a (7) of the Aliens Act, or Article 67a of the Aliens Act has been applied;
h. has indicated that they will not comply with their obligation to return;
i. at the border, indicated that they wished to submit an application for an asylum residence permit, and their application was not processed under the asylum border procedure, was declared inadmissible, or was rejected as manifestly unfounded;
j. has submitted an application for an asylum residence permit that was declared inadmissible or rejected as manifestly unfounded;
k. has eceived a transfer decision and does not cooperate with the transfer to the Member State responsible under the Asylum and Migration Management

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Regulation;

l. has received a transfer decision, has been given a period of time at their own request to leave voluntarily for the Member State responsible under the Asylum and Migration Management Regulation, and has not left voluntarily within that period; or
m. has received a transfer decision and immediate transfer, or transfer within a very short period, is necessary in order to carry out the transfer within the time limit applicable under the Asylum and Migration Management Regulation following the agreement of the Member State responsible under that Regulation;
n. has failed to comply with a measure imposed on them restricting their freedom of movement, as referred to in Article 56 (1) of the Aliens Act;
o. is no longer available because they have failed to report their absence from a particular reception centre or designated area of residence;
p. has failed to comply with one or more other obligations applicable to them under Chapter 4 (border, surveillance and monitoring) of the Aliens Decree;

Asylum seekers can only be detained if at least two of these grounds are applicable to their specific situation.

Article 5.6(3) stipulates that parts g, i, m and p need further individualized clarification.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

Articles 6 and 6a of the Aliens Act form the legal basis for border detention. Asylum applicants can be detained based on Article 6(3) and their claim is assessed within the framework of the border procedure. During the border procedure, a decision on entry to the Schengen area is postponed. Registration and identification typically take place at the airport or in harbour areas, after which applicants are transferred to the Justitieel Complex Schiphol for the time of the border procedure.

The border guard of the Royal Dutch Constabulary orders the applicants' detention based on Article 6(3) of the Aliens Act. The guard must assess if there are compelling reasons not to order a detention decision based on the applicant's obvious circumstances or submitted information.

If the claim is dismissed as manifestly unfounded or inadmissible, the foreigner is refused to enter the Schengen area and the detention continues based on Article

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6(1) and (2) in combination with (6).

Article 6a provides for the possibility to impose or uphold detention for the purposes of a transfer to the responsible Member State under the AMMR. Article 6a is only applied to AMMR applicants after access has been denied. During the asylum procedure at the border, Article 6 (3) of the Aliens Act applies.

If a decision on an asylum application being inadmissible or manifestly unfounded is not taken within five weeks, the applicant will be granted access to the Netherlands.

Detention in the context of a return procedure

Article 59 of the Aliens Act provides the legal basis for the territorial detention of people without a legal right to stay in the Netherlands, with the objective of carrying out the person's removal. Article 5.5(1) of the Aliens Decree specifies that detention may be imposed only when there is a risk of absconding or when the person tries to evade or obstruct the removal procedure. If the person applies for a residence permit (other than the asylum residence permit), the decision must be made within 4 weeks, during which time the detention can continue. Otherwise, the time limit for detention is 6 months, which can be exceptionally extended with an additional 12 months when the person does not cooperate with the authorities or when the authorities await documents from a third country which are necessary for the removal.

In the framework of border detention, once the application is rejected and a decision refusing entry to the Schengen area has been taken, the detention continues based on Article 6(1) and (2) in combination with (6) of the Aliens Act. The time limits follow the same scheme, as for territorial detention which is 6 months and can be exceptionally extended by 12 months, when the person does not cooperate with the authorities or when the authorities await documents from a third country which are necessary for the removal.

Article 59(b)(1)(c) of the Aliens Act provides the ground for detention which transposes Article 10(3)(e) of the RCD 2024. This provision applies to a foreign national who is lawfully residing in the Netherlands pursuant to Article 8 as they have submitted a request for asylum. Accordingly, they may be placed in immigration detention by the Minister if they were held in immigration detention as part of a return procedure pursuant to the Return Directive, have already had the opportunity to access the asylum procedure, and may reasonably be considered to have submitted the application solely for the purpose of postponing

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or frustrating the enforcement of the return decision

Detention in the context of national security and public order

Article 59b(1d) of the Aliens Act 2000 foresees the detention of an asylum seeker who poses a threat to national security or public order. The detention order can be issued by the Immigration and Naturalisation Service, Royal Netherlands Marechaussee, the Aliens Police, Identification and Human Trafficking Department or the Repatriation and Departure Service.

The application of this ground does not require for there to be a risk of absconding. The Aliens Circular A, Section A5/Ad d/ 6.3, lists the circumstances to be taken into consideration when applying this ground for detention, including:

- There are indications that the foreign national has committed conduct as described in Article 1F of the Refugee Convention;
- There is an individual designation as referred to in Article 48(2) of the Aliens Act, from which it appears that the foreign national is a danger to national security or public order;
- There is an (individual) official report from the AIVD or MIVD; or
- Suspicion or conviction in connection with a crime.

Detention for the purpose of a Dublin transfer

Article 59a of the Aliens Act stipulates that a foreign national to whom the AMMR applies may be placed in immigration detention with a view to their transfer to the responsible Member State, in accordance with Article 44 of the AMMR.

Article 5.5 (4) of the Aliens Decree notes that with a view to transfer a foreign national to the responsible Member State in accordance with Article 44 of the AMMR, the person may be subjected to a deprivation of liberty measure or placed in administrative detention if there is a risk of absconding, or if its necessary for the purpose of the protection of national security or public order.

Less coercive measures (alternatives to detention)

The obligation to consider alternatives to detention in the context of territorial detention is established in Article 59c of the Aliens Act 2000. A decision order a deprivation of liberty or immigration detention must state the reasons why no less coercive measures can be applied effectively.

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The less coercive measures that are possible under Dutch law include:

- Reporting requirements (Article 54(1f) Aliens Act 2000);
- Financial deposit (Article 54(1h) Aliens Act 2000);
- Surrendering documents (Article 52(1) Aliens Act 2000);
- Freedom-restricting measures (Article 56 Aliens Act 2000, Article 6(1) Aliens Act 2000).

Application for international protection and processing while in detention/impact on the asylum procedure

According to Article 3(3) of the Aliens Act 2000, if a foreign national expresses their wish to apply for asylum at the border, the application shall be assessed at the location where the asylum border procedure is carried out, to examine whether another Member State is responsible for examining the application under the AMMR, whether there are grounds for declaring the application inadmissible, or for rejecting the application as manifestly unfounded.

In such cases, a decision concerning the refusal of entry into the Netherlands is postponed, and the foreign national shall be informed of the postponement without delay. A measure is also issued depriving the applicant of their liberty.

Applicants first undergo screening at the border by Kmar. The applicants are transferred to the Schiphol Application Centre, located in the Schiphol Judicial Complex, for further processing and registration/lodging of the asylum application by the IND. The IND carries out ‘triage’, which involves an assessment of whether the detention measure is proportionate, whether the application can be declared inadmissible or manifestly unfounded within five weeks, whether the application should be prioritized and which further investigations are necessary. If it is determined that the application will not be processed under the border procedure, the applicant is granted access to the territory and referred to the screening location (Ter Apel). Throughout the border procedure, the IND continuously assesses whether the application should be processed under the border procedure, and the main principle is that at the latest after the personal interview, the IND informs the applicant, based on complete information, if their application can no longer be processed under the border procedure. This timeline may change in case relevant information becomes available at an earlier or later stage.

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According to C2/2.2 of the Aliens Circular C, the IND must process an application under the asylum border procedure expeditiously with a personal interview carried out as soon as possible, following which, the applicant is provided with one day for submitting correction and additions.

A lawyer is automatically appointed to applicants in detention (border procedure) from the start of the asylum procedure to provide legal aid related to their asylum case and for the review of detention.

In the border procedure, the IND has five weeks following the registration of the application to take a decision on whether the application will be examined, its admissibility or whether it is manifestly unfounded. If this period elapses without a decision, then the applicant is granted entry into the Netherlands and registered with the COA by no later than 18:00 for placement elsewhere, and the processing of the asylum application is continued on the territory. This period may be extended by four weeks where the foreign national is relocated to the Netherlands in accordance with Article 67(11) of the AMMR.

If the IND concluded on an individual basis international protection is to be granted to the applicant, the applicant will be granted access to the territory and the deprivation of liberty measure will be repealed. Where possible, the positive decision is communicated at the location where the border procedure is carried out. The applicant is then registered with COA by 18:00.

Aliens Circular C1/3.4 describes three scenarios in regard to asylum in immigration detention. A foreign national may submit a first asylum application while in immigration detention, and in that case, after registration and submission of the application, the IND performs the triage. Secondly, a foreign national may enter into immigration detention during the processing of their asylum application. In this scenario, several steps may have already been taken in the processing of the asylum application. A triage is carried out and takes into account all the steps that were already carried out in the treatment of the asylum procedure. Finally, if immigration detention is lifted while the asylum application is still pending, an additional triage takes place to determine which procedure is applicable and which subsequent steps are necessary to process the application.

Aliens Circular C2/4 describes policy rules for the processing of asylum application for foreign nationals subjected to a deprivation of liberty measures imposed on the basis of Article 59 (for the purpose of carrying out a return) or 59a (transfers under the AMMR) of the Aliens Act. Applications must be submitted at the Schiphol application centre or at the location where the detention measure

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is being enforced, and the time limits referred to in Article 35 of the Procedures Regulation apply. After the application has been submitted, the IND carried out triage. A lawyer is appointed to the applicants and helps them to be prepared for their personal interview. A personal interview is carried out as soon as possible. The IND liaises either with the DTenV, the official responsible for border control, or the official responsible for supervising foreign nationals, whether that applicant should be transferred temporarily to the Schiphol application centre for the processing of their application for an asylum residence permit, in connection with the personal interview. As a rule, after the personal interview and discussion with their legal representative, the applicants is returned to the location where they were detained before being transferred to the Schiphol application centre. In consultation with the DTenV, the IND may decide they conduct the entire asylum procedure from the detention location.

Procedural safeguards

Access to information and interpretation

According to Article 59c, in the decision ordering deprivation of liberty or immigration detention pursuant to Articles 6, 6a, 59, 59a or 59b, the Minister shall state the factual and legal grounds on which the immigration detention is based, as well as the reason why no less coercive measures can be applied effectively.

Pursuant to Article 5.8 of the Aliens Decree, a foreign national is heard before being placed in immigration detention or detention in the border procedure. This does not apply in the case of applicants in the border procedure. A measure imposing detention states the reasons on which it is based. The foreign national receives a copy of the measure. They are informed in writing in language which they can understand or reasonably can be assumed to understand. They are informed of the grounds for detention and of the legal remedies available to them, and the possibility of receiving free legal aid and representation.

A detention order can be issued by the Royal Netherlands Marechaussee, Aliens Police, Identification and Human Trafficking Department, the IND and the Repatriation and Departure Service.

General information on detention is also available in written and available in more than 40 languages on the DT&V website:

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- Information sheets on detention under the Aliens Act, Article 59;
- Information leaflet on deprivation of liberty measures after (rejection of) asylum application at the border.

Legal assistance and representation

The Legal Aid Board has been using a border detention schedule for legal assistance to asylum applicants who enter the country through Schiphol Airport and are taken into custody pursuant to Article 6 of the Aliens Act.

For a judicial review of the detention measure, the Aliens Act provides under Articles 100 and 101 of the Aliens Act for the assistance of a counsel during the proceedings at the request of the foreign national. When the assigned counsel cannot attend the hearing or other procedure related to the judicial review of the detention, another counsel shall replace and assist the applicant.

For remuneration of the counsel, Article 102 and 103 of the Aliens Act provide that an Order in Council establishes the modalities and whether remuneration and expenses are to be recovered from the property of the applicant.

Article 103 of the Aliens Act provides for the free access of the counsel to the premises where the applicant stays.

Length of detention

Different timeframes apply to the different types of detention, depending on the legal basis for ordering the detention:

- Detention during the assessment of the asylum application in the border procedure (Article 6(3) Aliens Act): 5 weeks.
- Detention after a decision refusing entry concluding the border procedure (Article 6(1) and (2) Aliens Act): 6 months, which can be prolonged with an additional 12 months when the foreigner does not cooperate or when the authorities await documents from a third country which are necessary for the removal (Article 59(5) and (6) of the Aliens Act).
- Detention in the framework of a transfer to the responsible Member State: Immigration detention or a deprivation-of-liberty measure under Article 6a or Article 59a of the Aliens Act may, in accordance with Article 45 of the AMMR, continue for a maximum of five weeks after the date on which the request for a takeover has been accepted or the notification concerning a

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take-back has been confirmed by the responsible Member State, depending on whether an appeal has been lodged and whether that appeal has suspensive effect (Aliens Circular A5/6.9.

- Immigration detention of asylum seekers: Immigration detention on the grounds stipulated in Article 59b(1) shall be maintained for as short a period as possible and only for as long as the grounds in that article apply, and for no longer than six months. Immigration detention on such grounds may only be extended by a maximum of six months if there are complex factual or legal issues or the dela in processing the application for an asylum residence permit is attributed to the fact that the applicant has failed to comply with their obligations under Article 9 of the Procedure Regulation.

Judicial review of detention

In accordance with Article 94 (1) of the Aliens Act, the court is immediately notified if a foreign national receives a measure imposing a deprivation of liberty. The court immediately determines the date and time of the hearing, which takes place in person. A judgment must be issued within 15 days, or a maximum of 21 days in exceptional circumstances. If this period elapses without a judgment, the deprivation of liberty measure is lifted.

Specific conditions relating to detention

Conditions of detention

Detainees have access to outdoor space, during the free time period typically between 8.00-12.00 and 13.00-22.00. The time allotted for detainees to be permitted to move around the common living areas of the detention centre differs by location.

Detainees are free to make phone calls during the free movement period. All centres have access to the Internet. They are allowed to meet external visitors, up to 2 hours a week. The so-called privileged contact persons can visit the detainee at any time. Spiritual guidance is accessible from representatives of all major religious beliefs.

Legal assistance/representation must be provided by law to all detainees. Lawyers are appointed and their fees are covered by the state.

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Lawyers, NGOs, UNHCR, family members, members of the parliament and the National Ombudsperson can access detention centres.

According to Article 5 of the Regulation for the Border Accommodation Regime, the admission of visitors may be conditional on their willingness to be examined for the presence of goods or substances which pose a security threat. The regulation stipulates that a visitor can be refused access for security purposes.

Interpretation assistance is provided (often by phone).

Access to healthcare is guaranteed both in the territorial and border detention either through a doctor appointed by the centre or one chosen by the detainee. No specialised healthcare is provided (including for vulnerable categories) and the service is the same as that available to asylum seekers outside of detention. Access to psychological support and special care for asylum seekers with mental health issues is often provided in dedicated wings of the detention centre or psychiatric hospitals in prisons, where asylum seekers are accommodated separately from the rest of the detainees.

Leisure activities are organised.

In accordance with Article 4 of the Regulation for the Border Accommodation Regime, “The foreigner shall not be subject to any restrictions other than those which are absolutely necessary to ensure his stay in the border accommodation and to ensure the security and security of the to maintain order there”.

Detention conditions at the border are monitored by a Supervisory Committee.

Detention of applicants with special needs

Legislative overview

The Aliens Act, Article 59c underlines that immigration detention can only be applied as a last resort, when no other, less coercive measures are available.

Article 5.9 of the Aliens Decree specifies that when detaining in immigration detention pursuant to Article 59a or 59b of the Aliens Act, or in the case of a deprivation of liberty at the border pursuant to Article 6 and 6a of the Aliens Act, account shall be taken of visible signs, statements or behaviors that indicate that the foreign national has special reception needs. If an asylum application has

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been submitted but the assessment of special reception needs has not been completed, it must be completed without delay and the results must be taken into account when deciding whether the immigration detention or detention at the border should be continued or whether the conditions of detention should be adjusted. Detention is not imposed if it would seriously endanger the physical or mental health of a foreign national with special reception needs. If persons with special needs are detained, they are subject to regular monitoring and shall receive, in a timely manner, the necessary assistance in view of their specific situation and their physical and mental health.

Article 59b(5) of the Aliens Act stipulates that a minor applicant shall generally not be placed in immigration detention. Immigration detention may only be imposed on a minor in exceptional circumstances only as a measure of last resort and after it has been established that less coercive alternative measures cannot be applied effectively. An assessment on the applicants best interest must also be carried out pursuant to Article 26 of the Reception Conditions Directive. They must also be detained for the shortest possible period. Exception circumstances include the case of accompanied minors where their parents or primary caregiver is in immigration detention, or in the case of unaccompanied minors where the minor is protected by being placed in immigration detention.

Article 5.15 of the Aliens Decree states that minor foreign national cannot be accommodated in an institution as referred to in Article 1 of the Juvenile Justice Institutions Principles Act. The provision notes that every effort is made to detain minors for as short as possible and place them in accommodation suitable for minors. Unaccompanied minors as referred to in Article 17 OF THE Return Directive are held in immigration detention or deprived of their liberty at the border as a last resort and for the shortest possible period. They are assigned to areas where they are separated from adults.

Families with minor children cannot be detained at the border, as a main rule, based on Chapter A1/7.3 of the Aliens Circular. They are taken to the IND Application Centre in Ter Apel instead of keeping them at the border in Schiphol. Applications from families with minors can only be dealt with in the border procedure if there are doubts as to the relationship between the alleged parent or primary care giver and the minor and the placement of the minor in a regular reception centre does not offer sufficient protection; there are indications that the minor is a victim or involved in human trafficking or smuggling, there are reasonable grounds to believe that the parent or primary caregiver or the minor, poses a danger to national security or public order and the detention protects the

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minor from further involvement or exploitation, or if there are any doubts related to the minor of the application or an age assessment has not been determined by the IND.

If a family with minor children are imposed with a deprivation of liberty measure within the context of the asylum border procedure, they are detained in the Secure Family Facility (GGV) in Zeist.

If there are risks to the mental and physical well-being of the minor and no further investigations are required into the relationship between the family and the relationship is not assumed, a deprivation of liberty measure is not imposed on the minor and is only imposed on the adult.

The Aliens Circular, A5/2.4, provides detailed policy rules on placement of unaccompanied minors and families with minor children in immigration detention.

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