

Clause 14 - Article 8 ECHR – Right to private and family life: Amendments 33 & 40 to 45

Purpose of amendments

Amendment 33 would require that, when the courts consider whether an immigration decision breaches a person's right to respect for private and family life, they must first establish the best interests of any affected child, before going on to consider any countervailing factors.

Amendments 40, 42 and 45 would allow for proper consideration of the best interests of children who have lived in the UK for less than 7 years, and are not British citizens. These children do not fall within the Bill's current definition of '*qualifying children*' whose welfare is taken into account.

Clause 14 requires the courts to consider whether a '*foreign criminal*' parent's deportation would have an '*unduly harsh*' effect on their child or partner. **Amendment 43** would instead require the court to consider whether the effect would be '*disproportionate*.'

Amendments 41 and 44 would remove a section of Clause 14, which states that '*the public interest requires*' the deportation of '*foreign criminals*' (as defined by Clause 14 new 117D(2)) in all but very limited circumstances. In particular, new 117C(6) states that where a '*foreign criminal*' has been sentenced to 4 years or more in prison, '*the public interest requires deportation unless there are very compelling circumstances*' and that these are '*over and above*' this deportation having an '*unduly harsh*' effect on their child.

Briefing

Clause 14 seeks to limit the circumstances in which someone can successfully appeal their removal or deportation on the basis of the right to private and family life. Clause 14 suggests that in a very wide range of circumstances, the best interests of children should be routinely subordinated to considerations of immigration control. This is at odds with the provision in Article 3(1) of the UN Convention on the Rights of the Child that the best interests of children should be a primary consideration.

Wide powers already exist for the state to remove migrants without leave and deport foreign national ex-offenders. According to Home Office figures only 65 appeals against deportation in 2013 succeeded on the basis of human rights, including Article 8 (right to private and family life).¹ Clause 14 seeks to further narrow the circumstances in which appeals can succeed.

'Qualifying' children – Amendments 40, 42 & 45

Children who have lived in the UK for less than 7 years and are not British do not fall within the Clause's definition of '*qualifying children*' whose welfare is taken into account. A parent's deportation or removal may create a desperate situation for a 6 year old. For example, they may be severely disabled, or their other parent may be unwell and unable to care for them adequately.

¹ *Hansard* HC Deb, 17 January 2014, c719W

The Government is arguing that it will normally be straightforward for children who have lived in the UK for less than 7 years to accompany their parent and adapt to life abroad. This ignores the fact that, in two parent families, the parents may well be divorced, and children often face the appalling choice of leaving one parent behind in the UK or being split from the removed or deported parent for the rest of their childhood.

BID's 2013 report *Fractured Childhoods* looked at the impact on children who were separated from parents for the purposes of immigration control. Children described losing weight, having nightmares, suffering from insomnia and crying frequently. Some children were split from single parents, moved between care arrangements, were neglected and placed at risk of serious harm.

Parents 'using' children

It has been argued that the provisions in the Bill protect children by stopping parents from using their children as a means to remain in the UK.² This argument is illogical. Children cannot be protected by ignoring their best interests out of concern that parents might benefit from action to safeguard children. The courts must consider every child's best interests, even when their parent's immigration history is poor. Any proper assessment would look at whether their parent had a genuine, caring relationship with the child or was simply claiming to have family ties to serve their own interests. In 2013, 87% of deportation appeals did not succeed.³ Clause 14 does not adequately protect children, and disregards entirely the best interests of 'non-qualifying' children.

Impact on fostered children

Clause 14 invites judges to consider whether an individual has a '*genuine and subsisting parental relationship*'⁴ with a child when deciding whether to deport or remove them. However, this does not take account of children who are fostered. The removal or deportation of their carer would have serious consequences for these children, and this ought to be taken into account.

Law-abiding migrants – new 117B

Public rhetoric on Article 8 focuses on cases where migrants have committed criminal offences, but Clause 14 new 117B would affect anyone involved in an immigration claim based on private and family life, including law-abiding migrants and British family members. BID has dealt with cases where the Home Office has sought to remove non-criminal parents from the UK without their children, and this clause seeks to further curtail families' ability to appeal such action.

Questions for the Minister

1. If the Government believes that children's best interests will be properly considered within Clause 14, why shouldn't the need to safeguard children be made explicit in the Bill?
2. How does Clause 14 take account of the best interests of children who are under seven?
3. Will the Government carry out a child welfare impact assessment of Clause 14?
4. Has the Minister assessed how many children might be separated from their parents as a result of the provisions in this Bill?

Bail for Immigration Detainees (BID) is a national charity that provides immigration detainees with free legal advice, information and representation to secure their release from detention.

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² *Hansard* Immigration Bill Deb, HC Committee, 5 November 2013, c213

³ *Hansard* HC Deb, 17 January 2014, c719W

⁴ See Clause 14 new 117B(6)(a) and new 117C(5)