

Children's best interests & immigration detention of children – Clauses 2, 3 & 71

Detention of children

Parts of clauses 2, 3, 5 and 6 would create a legislative basis for improvements which have been made to Government policy on child detention since 2010, for example by setting a time limit on child detention in law. However, BID is gravely concerned that the clauses would allow for children to be separated from their parents in a wide variety of circumstances. On 14th May, Sarah Teather plans to table a number of amendments to address this problem. We anticipate that one amendment to Clause 2 will insert at the end of page 3, line 28:

“() Parents must only be separated from children where this is necessary for the purposes of child protection.”

As currently drafted, Clause 2 allows that one parent in a two parent family, and even single parents may be removed without their children as long as there is a *'relevant carer'* remaining in the UK with the child. New 78A (2) (b) states: *'a relevant parent or carer may not be removed from or required to leave the United Kingdom if, as a result, no relevant parent or carer would remain in the United Kingdom.'*

On 28th April 2014, Barnardos published *Cedars: two years on*, a review of the charity's experience of providing welfare and social work services to detained families since 2011. The report finds that one sixth of families detained in the first two years of Cedars' operation were separated in the course of enforcement action. In certain cases single parents were split from their children. In some cases Barnardos found that there were legitimate reasons for separation, such as health emergencies or child safeguarding. However, the report is critical of the Home Office's practice of separating families for the purposes of immigration control. In certain cases one parent in a two parent family was returned on a different flight from their partner and children, potentially creating barriers to reunification. At p13, the report documents a case where the children were in local authority care as a result of their mother's detention, and raises serious concerns that the Home Office breached their own policy in this case.

Case study: family separation

After almost 10 years in the UK, Benjamin was picked up working illegally. His wife has mental and physical health problems, and needs Benjamin's help to care for their two small children. After Benjamin had been detained for over a month both he and his wife applied for voluntary return. They were extremely concerned that the Home Office was apparently planning to return the family separately. The Home Office had a travel document for Benjamin but not his wife or children.

During Benjamin's detention, the couple's toddler began refusing to speak to other children, was scared in the night and cried frequently. He poured boiling water over himself and was very seriously burned. Benjamin's wife explained that she was fearful of returning to her country of origin without her husband as she had nowhere to live, and had been threatened by family members before coming to the UK. The only mention of Benjamin's children in the Home Office bail summary is a statement that *'a family split was agreed'* on the same day that he was encountered working illegally. The summary also advises that Benjamin's removal is *'imminent.'* Benjamin was released on bail, despite Home Office opposition. **Clauses 2 & 3 would have allowed for Benjamin to be removed alone - he was not living in a household with his children while detained, and his children would have been left with one parent in the UK.**

Children are likely to be seriously damaged by separation from a parent. In April 2013, BID produced *Fractured Childhoods*, a report on the cases of 111 parents who were separated from 200 children by immigration detention. Children lost weight, had nightmares and suffered from insomnia during their parent's detention. **Clause 9 of the UN Convention on the Rights of the Child** sets out children's right: "...not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child... [and]...In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

Lord Wallace stated at Committee that families may be split 'where the presence of one of the parents was not conducive to the public good.'¹ This appears to refer to cases where parents have been convicted of criminal offences. However, the fact that a parent been convicted, for example, of working illegally, is not a sufficient reason to deport or remove them without their children. **There is an urgent need for guidance to delineate the circumstances families may be separated in.**

On the first day of House of Lords Report, Lord Taylor stated that 'common sense would prevail'² in Home Office decision making on family separation. However, as is set out above, there is considerable evidence that, if decision-makers are not given proper direction, very poor decisions will be made.

Children not 'living in a household' with their parent

Clauses 2 and 3 define family returns cases, and limit the definition of a 'relevant parent or carer' to somebody who is 'living in a household in the United Kingdom with a child.'³ A child may be seriously affected if a parent who is not living in their household is removed, and may need to leave the UK with them. For example, single parents in immigration detention are not living a household with their child. Sarah Teather plans to table amendments to remove the requirement for parents to be living with children in order to take part in the family return process.

Clause 71 – Children's Best interests

BID welcomes Clause 71, which reasserts the Secretary of State's duty to safeguard child welfare. However, we believe that further changes to the Bill are needed. Sarah Teather plans to table an amendment to Clause 71, inserting the phrase: 'The best interests of a child in the United Kingdom continue to be a primary consideration in all cases involving children.'

Clause 17 (3) of the Bill proposes that 'foreign criminals' and people the Home Secretary deems not conducive to the public good 'can be deported first and appeal after, unless that would cause serious irreversible harm.'⁴ In practice, it would prevent challenges to deportation, including where deportees would have won their appeal if they had been able to bring one in the UK. In 2012/13, 32% of deportation appeals succeeded.⁵ A number will have concerned parents with British children who would be significantly harmed by their parent's deportation. There will be huge practical barriers to parents appealing from abroad. Social workers will not be able to assess the parent-child relationship to determine where children's best interests lie. In the context of Clause 17(3), it is particularly vital that Clause 71 sets out the need to consider children's best interests in the clearest possible terms, as proposed by Sarah Teather's amendment.

Question for the Minister:

1. How will the Government consider a child's best interests before separating them from their parent?
2. Will the Government produce statistics on the number of families separated for the purposes of immigration control? Without such information, how can compliance with the duty to safeguard children be monitored?

Bail for Immigration Detainees 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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¹Hansard HL Deb, 3 March 2014, c1132

²Hansard, HL Deb, 1 April 2014, c858

³See Clause 2 New 78A(1)(b); Clause 3 New 54A (3)

⁴Home Office October 2013 *Immigration Bill Factsheet: appeals (clauses 11-13)* <http://bit.ly/1gOp7y8>

⁵Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>