

House of Lords: Report - Immigration Bill

March 2014

Immigration Detention of Children: Clauses 2, 3, 5 & 6

Lord Judd has laid **amendments 4*, 5*, 6* and 8*** to safeguard children who are subject to immigration detention. As is outlined below, BID supports these amendments.

Clause 5 - Amendment 8*

Page 4, line 28, at end insert—

“() Children must only be held in immigration detention as a last resort, and for the shortest possible time.”

In May 2010, the Government committed to ending the immigration detention of children. BID and others welcomed this change; there is considerable evidence that detention can seriously harm children.¹ There have been significant improvements in Government policy on child detention since 2010. Far fewer children are detained for much shorter periods. The Government’s amendments would create a legislative basis for some of these improvements, for example by setting a time limit on child detention in law.

However, we are disappointed to see that the Government’s amendments do not prohibit or even properly limit child detention. They do not state that detention should be a last resort, as is the current policy,² or that detention should be for the shortest possible time. One concern is that, in practice, it may become normalised for children to be detained for the maximum permissible period, where this is administratively convenient. Amendment 8* would address this concern.

Separation of families: Clause 2 – Amendment 5*

Page 3, line 9, at end insert—

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

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.

Case study: family separation

In 2010, BID dealt with a family who were separated for removal. The father was detained when reporting, and the mother and young children were asked to make their way to the airport to leave the UK with him the following week. The family had previously complied with the Home Office and reported regularly as required. Following the father’s arrest, the family did not have access to financial support, and the mother was not able to buy food for her children, including milk for her baby. The mother did not speak English, and her very distressed eldest child had to translate when an Immigration Officer telephoned the family. Her younger child began waking up in the night crying hysterically. The mother was not offered any practical or financial assistance to travel across the UK to an airport with several young children for an early morning flight.

¹ See for example Lorek, A. Entholt, K. et al. (2009) “The mental and physical health difficulties of children held within a British immigration detention center: A Pilot Study” *Child Abuse and Neglect* Vol. 33 Issue 9, pp573-585; Children’s Commissioner for England (2010) *Follow up report to: The arrest and detention of children who are subject to immigration control*

² Home Office *Enforcement Instructions and Guidance* Chapter 45

Clause 2 states: 78A (2) (b) '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.' This clause envisages that one parent may be split from a two parent family and forcibly removed from the UK. It also allows that single parents may be removed without children as long as there is a 'relevant carer' remaining with the child. In many cases, children are likely to be seriously damaged by such separation. In committee debate, Lord Wallace of Tankerness stated that separations would occur 'in exceptional circumstances... for example, where there is a public protection concern or a risk to national security.'³ However, the clause itself does not state that any specific circumstances are needed to justify separation. Amendment 5* would address this concern by providing that families must only be separated where necessary for child protection.

Lord Wallace also stated at committee that families may be split 'where the presence of one of the parents was not conducive to the public good.'⁴ This appears to refer to cases where parents have committed criminal offences. However, the fact that a parent has committed, for example, a false document offence, is not a sufficient reason to deport or remove them without their children.

Separation of families: Clause 2 – amendment 4* and Clause 3 – amendment 6*

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.'⁵ A child may be seriously affected if a parent who is not living in their household is removed, and indeed may need to leave the UK with them. For example, single parents who are in prison or immigration detention are not living a household with their child. Furthermore, there will be cases where children are living in households with other family members, for example for financial reasons, but would be very seriously affected if their parent was removed from the UK. Amendments 4* and 6* would remove the requirement for parents to be living in a household with their children in order to take part in the family return process, and would safeguard the welfare of children in the situations described above.

Detention of unaccompanied children: Clause 5

Current Home Office policy states that unaccompanied children should only be detained for removal 'on the day of the planned removal to enable the child to be properly and safely escorted to their flight and/or to their destination.'⁶ However, Clause 5 would allow for unaccompanied children to be detained overnight for removal, potentially multiple times.⁷

28 day 'grace' period – Clause 2

A 28 day period is proposed between families exhausting their appeal rights and enforcement. However, Clause 2(4)(a) states that removal directions may be set in this period. This would prevent families having a meaningful reflection period. Furthermore, there is evidence this timeframe is too short for families who have been in the UK for years to consider voluntary return.⁸

Questions for the Minister

1. Why does the Bill not state child detention should be a last resort for the shortest possible time?
2. How will children whose parents are in detention or prison be safeguarded, given that Clause 3 defines a 'relevant parent or carer' as 'living in a household in the United Kingdom with a child'?
3. May families be separated for removal in any case where a parent has committed a criminal offence? Does this include cases involving non-violent offences such as possession of false documents?
4. A 28 day period is proposed between families exhausting appeal rights and removal. Clause 2, 78A(4)(c) states 'preparatory action' may be taken in this period. May this include detention?

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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³Hansard HL Deb, 3 March 2014, c1124

⁴Hansard HL Deb, 3 March 2014, c1132

⁵See Clause 2 New 78A(1)(b); Clause 3 New 54A (3)

⁶Home Office *Enforcement Instructions and Guidance* Chapter 55

⁷ See Clause 5(4) New 18B(3)(4) and (6)

⁸ Home Office (2013) *Evaluation of the new family returns process* p23; BID and The Children's Society (2009) *An evaluative report on the Millbank Alternative to Detention Pilot*