

**HOUSE OF COMMONS: REPORT**

**January 2014**

**IMMIGRATION BILL (HC Bill 110)**

**Dr Julian Huppert - Immigration detention of children – Amendment 74**

Clause 1, page 2, line 34, at end add—

(7) The Secretary of State shall by order—

- (a) Ensure that children are not detained for immigration purposes; except in the following circumstances -
  - (i) Where the Home Secretary reasonably believes they are a threat to national security
  - (ii) In port or border cases where departure is the following day and no application for a visa or asylum has been made
  - (iii) To provide pre-departure accommodation under (7b)
- (b) Ensure that if a child requires accommodation prior to departure it is —
  - (i) Dedicated pre-departure accommodation which is subject to inspection by HMIP.
  - (ii) For a maximum period of 72 hours
  - (iii) Following a recommendation made by the Independent Family Returns Panel.
  - (iv) With their family

(8) Where (7) applies, the officer responsible must ensure that children are only separated from their parents and carers for the purposes of child protection.

**Presumed purpose**

To limit the immigration detention of children, and to ensure that children are not separated from their parents other than for the purposes of child protection.

**Briefing**

In May 2010, the coalition Government committed to ending the immigration detention of children. BID and others welcomed this change, and would support legislation to prevent children being detained, given the considerable evidence that detention can cause serious harm to children.<sup>1</sup> In spite of the Government's commitment, 242 children were detained in 2012.<sup>2</sup> 130 of these children were subsequently released, raising serious questions about why they were detained in the first place.<sup>3</sup>

In 2011 the Government opened a new 'Pre-departure Accommodation' facility for families. The facility is actually a detention centre; it has areas where families and individuals can be held in isolation, and is inspected by the Prisons Inspectorate. The centre's amenities are a marked improvement on other detention facilities, and families are held there for a maximum of seven

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<sup>1</sup> 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*

<sup>2</sup> Home Office *Immigration Statistics April to June 2013* <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2013/immigration-statistics-april-to-june-2013#detention-2>

<sup>3</sup> Home Office *Immigration Statistics April to June 2013* <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2013/immigration-statistics-april-to-june-2013#detention-2>

days, whereas there was previously no time limit on their incarceration. However, in some cases grave concerns have been raised by the treatment of families, including regarding the use of force against children and pregnant women. In the first three quarters of 2013, 14 individuals in 'Pre-departure Accommodation' were on formal watch because there was a serious risk that they would self-harm.<sup>4</sup> In 2012, a pregnant woman reported that during her removal from the UK she was dragged through corridors. The woman's treatment was criticised by the Prisons Inspectorate,<sup>5</sup> and *The Guardian* reported that:

*'[The woman] said her body was covered in bruises after the incident... an independent doctor warned that putting the woman on the plane without adequate monitoring while she was bleeding could lead to premature labour and ruptured membranes.'*<sup>6</sup>

It was only in the face of a legal challenge that the Home Office ceased to use force to remove children and pregnant women from the UK.<sup>7</sup> The Government's response to a parliamentary question last year suggested that the use of force to remove children may resume after consultation.<sup>8</sup> During Committee debates, Mark Harper stated that:

*'The new family returns process... gives families with no right to be in the UK every opportunity to leave without the need for enforcement action, which, as the hon. Member for Hackney South and Shoreditch said, involves extensive work involving legal advice and social workers. I have met some of the immigration officers involved in such work, and I am sure that in a previous life she did too. They are skilled in and used to dealing with families and children.'*<sup>9</sup>

We do not recognise this account of the Family Returns Process. Since April 2013, there has been no legal aid for the vast majority of immigration cases, including children's claims.<sup>10</sup> In addition, families with asylum claims may not be able to access competent legal advice, for example if they are in an area where there is an advice 'desert'.<sup>11</sup> We are not aware that social workers have any routine involvement in the family returns process, unless there are specific reasons for a referral. A Home Office commissioned evaluation found that in some cases children found encounters with Immigration Officers 'distressing' and that 'older children felt that they had not been listened to'.<sup>12</sup>

## **Separation of families**

Section 8 of this amendment would require that children are only separated from their parents for the purposes of child protection. BID welcomes this measure. However, other parts of the Bill would allow children to be separated from their parents in a wide variety of circumstances. The Bill includes measures to 'ensure foreign criminals can be deported first and appeal after'<sup>13</sup> (Clause 12, Subsection 3), and to restrict the circumstances in which people can appeal their deportation on the basis of private and family life (Clause 14). Both these provisions would greatly increase the circumstances in which families could be separated for the purposes of immigration control.

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<sup>4</sup> Information obtained by Freedom of Information Act request from the Home Office <http://www.no-deportations.org.uk/Media-1-2012/Self-Harm2013.html>

<sup>5</sup> HM Inspector of Prisons (2012) *Report on an announced inspection of Cedars Pre-Departure Accommodation*

<sup>6</sup> *The Guardian* (Friday 11<sup>th</sup> January 2013) 'UK Border Agency rejects calls to stop using force on pregnant detainees'

<sup>7</sup> *R (on the application of Yiyu Chen and ors) v Secretary of State for the Home Department* CO/1119/2013

<sup>8</sup> *Hansard* HL Deb, 10 April 2013, c313W

<sup>9</sup> *Hansard* Immigration Bill Deb, HC Committee, 5 November 2013, c147

<sup>10</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>11</sup> Refugee Action (2008) *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*; Smart, K. (2008) *Access to legal advice for dispersed asylum seekers*

<sup>12</sup> Home Office (December 2013) *Evaluation of the new family returns process*, p31

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