

## HOUSE OF LORDS: SECOND READING

February 2014

### IMMIGRATION BILL: Clause 12

**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. Over the last year BiD has assisted 3,367 immigration detainees.

#### CLAUSE 12 STAND PART

Clause 12 (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.’<sup>1</sup> In BiD’s view, Clause 12 should not stand part of the Bill. In practice, it will prevent people from challenging their deportation, including where they would have won their appeal if they had been able to bring one in the UK. This would have grave consequences for child welfare. The clause has been criticised by the Joint Committee on Human Rights.<sup>2</sup>

There are serious problems with the quality of Home Office decision-making and in 2012/13, 32% of deportation appeals were successful.<sup>3</sup> A number of these will have concerned parents with British or settled children who would be significantly harmed by their parent’s deportation. The Home Office already has the power to prevent repeated appeals by certifying claims as clearly unfounded – the changes proposed in the Bill will prevent people with arguable cases from accessing justice.<sup>4</sup> The Bill’s appeals ‘Impact Assessment’<sup>5</sup> **entirely ignore the needs of children** in the UK who would be split from their parent by deportation.

There will be huge **practical barriers** to individuals appealing their deportation from abroad. Such cases often turn on issues of credibility, and appellants will be severely disadvantaged by not appearing in court. They will not have access to UK charities who could signpost them to advice, and will not be able to meet lawyers in person. Social workers will not be able to assess the parent-child relationship by observing their interactions, and experts in risk assessment will not be able to meet the parent to evaluate their risk of reoffending.

Even in cases where parents are able to bring an appeal from abroad, children will be subjected to damaging and unnecessary disruption while this happens. They will either accompany their parent or be separated from them. Children of two parent families may have strong ties to another parent in the UK, and be in the appalling position of having to choose between their parents.

The Government claims that appeals could be partly replaced by a system of ‘**administrative review**’ whereby the Home Office would correct its own errors. However, the Home Office already has a system whereby senior staff review decisions to detain and deport parents, and this does

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

<sup>2</sup> Joint Committee on Human Rights 18/12/13 *Legislative Scrutiny: Immigration Bill* Eighth Report of Session 2013-14

<sup>3</sup> Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>

<sup>4</sup> Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cygmWm>

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

not prevent parents being separated from their children unlawfully.<sup>6</sup> If staff know their decisions are unlikely to be scrutinised by a court, because individuals will be deported before they can appeal, the quality of decision making is likely to deteriorate.

The Government argues that where necessary individuals will be able to challenge their deportation via **judicial review**. However, the Government is simultaneously seeking to impose a residence test which would prevent potential deportees from accessing legal aid for judicial review, and to restrict the circumstances in which people can bring judicial reviews.<sup>7</sup> Furthermore, it is not acceptable for the Government to produce a flawed process and argue that the problems it throws up can be resolved by judicial review. Judicial reviews are time-consuming and costly for the taxpayer – this could be avoided by retaining in-country appeals.

In April 2013, BID produced *Fractured Childhoods*, a report on the cases of 111 parents who were separated from 200 children by immigration detention. The Home Office repeatedly failed to safeguard children when making decisions to detain and deport parents – see case study below.

The Home Office detained and planned to deport Christine, a single mother who had served a criminal sentence. Her two children were left in the care of their elderly and seriously ill grandfather. Her 15 year old daughter ‘Beth’ left school and missed her GCSEs while caring for her brother and grandfather. She struggled to look after her seven year old brother, who has very limited motor control and severe behavioural problems. A Children’s Services assessment found that the younger child was at risk of emotional and physical harm; he was later hit by a car while playing alone in the street. The children’s welfare was not taken into account by the Home Office, but after the mother’s release on bail she was reunited with her children and successfully appealed her deportation through the courts. **If Clause 12 becomes law, people in Christine’s situation will be deported before they can appeal.**

### Questions for the Minister

1. What assessment has the Government made of the practical barriers to deportees making appeals from abroad, including access to legal advice and evidence collection?
2. What data does the Government have on the success rates for appellants who appear in court, compared against those whose cases are heard in their absence?
3. Has the Government assessed the impact on children who are settled in the UK with another parent, if their parent is deported for a lengthy period and then wins an appeal?
4. What estimate has the Government made of the numbers of deportees who will lodge judicial reviews, the cost of this, and the delays this will lead to in concluding cases?
5. How long does the Government estimate a parent who eventually returns to the UK might spend abroad? What are the current typical timescales for such deportation cases?
6. What estimate has the Government made of the cost involved in removing people who successfully appeal their deportation from abroad, and then bringing them back to the UK?

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<sup>6</sup> See for example *NXT, R (on the application of) & Ors v Secretary of State for the Home Department* [2011] EWHC 969 (Admin). BID is aware of a number of recent unlawful detention cases which have settled outside court. In one case which settled in early 2013 the parent and child were given £68,500 in compensation.

<sup>7</sup> Ministry of Justice (3/10/13) *Transforming Legal Aid: Next Steps* <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>; Ministry of Justice 5/2/13 *Criminal Justice and Courts Bill Factsheet: Reform of Judicial Review* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277730/fact-sheet-judicial-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277730/fact-sheet-judicial-review.pdf)