

### Immigration Detention of Children: Government Amendments 3, 9, 10\*, 14 & 15

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.<sup>1</sup> We are disappointed to see that the Government's amendments do not actually prohibit or even properly limit child detention. For example, they do not state that detention should be a last resort, as is the current policy,<sup>2</sup> 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.

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, BID has serious concerns about the current wording of the amendments. We therefore urge Ministers to engage in detailed consultation with peers and relevant stakeholders to correct these problems.

#### Separation of families: Amendment 9

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. Amendment 9 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 amendment envisages that, for example, 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. The amendment should therefore state that families will only be separated in specific circumstances, where this is necessary for the purposes of child protection.

Furthermore, amendments 9 and 10\* 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'.<sup>3</sup> 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, there will be cases of single parents who are in prison or detention. These cases should not be automatically excluded from the family returns process and the welfare of these children should not be ignored.

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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 *Enforcement Instructions and Guidance* Chapter 45

<sup>3</sup> See Amendment 9 New 78A(1)(b); Amendment 10\* New 54A (3)

## Detention of unaccompanied children: Amendment 14

Current Home Office policy states that unaccompanied children should only be detained in ‘very exceptional circumstances’ and for the ‘shortest possible time.’<sup>4</sup> Amendment 14 does not reflect this and should at the very least be revised to include these safeguards.

Amendment 14 would allow for unaccompanied children to be detained for removal, potentially multiple times and for up to 24 hours.<sup>5</sup> Currently, returns of unaccompanied children are extremely rare in asylum cases. 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.’ By contrast, amendment 14 would allow for children to be detained overnight. This is a retrogressive and very troubling proposal.

## Family Returns Panel: Amendment 10\*

BID supports the principle that an independent panel should provide advice to the Home Office on child safeguarding and welfare. However, BID has two concerns about the operation of the Independent Family Returns Panel. The first is that the Home Office has control over the membership of the panel, which somewhat compromises the panel’s independence. **The second is that families and their legal representatives do not have any means of presenting information directly to the Family Returns Panel, or of checking that the information presented to the Panel by others is accurate.** This is of particular concern given the evidence that information put forward by the Home Office about immigration and asylum claimants is not always accurate.<sup>6</sup>

## 28 day ‘grace’ period – Amendment 9

A 28 day ‘grace’ period is proposed between families exhausting their appeal rights and enforcement action. However, amendment 9 (4)(a) states that removal directions may be set during this ‘grace period.’ This would prevent families having a meaningful reflection period. Furthermore, there is evidence this timeframe is too short for some families to consider voluntary return,<sup>7</sup> particularly where they have been in the UK for several years, and may, for example, have issues such as continuity of health treatment and children’s education to deal with.

## Questions for the Minister

1. Why do the amendments not state child detention should be a last resort for the shortest possible time?
2. Why do the amendments allow for family separation? What safeguards will be in place for children?
3. Since the new family returns process has been introduced, how many cases have there been where the Minister has refused to authorise the detention of a child for over 72 hours?
4. A 28 day ‘grace’ period is proposed between families exhausting their appeal rights and enforcement action. Will the Home Office be required to inform families when this period begins?
5. New 78A(4)(c) states that ‘preparatory action’ may be taken during this 28 day period. Might this action include detaining the family?

**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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<sup>4</sup>Home Office *Enforcement Instructions and Guidance* Chapter 55

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270032/chapter55.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270032/chapter55.pdf)

<sup>5</sup> See Amendment 14 (4) New 18B (3)(4) and (6)

<sup>6</sup> See for example BID and The Children’s Society (2011) *Last Resort or First Resort? Immigration detention of children in the UK*

<sup>7</sup> 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*