BiD Bail for Immigration Detainees

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Home Office consultation: Reforming support for failed asylum seekers and other illegal migrants, August 2015

Response from Bail for Immigration Detainees (BID)

About BID

BID is an independent national charity established in 1999 to improve access to release from immigration detention for those held under Immigration Act powers in immigration removal centres and prisons. BID provides immigration detainees with free legal advice, information, representation, and training, and engages in research, policy and advocacy work, and strategic litigation. BID is accredited by the Office of the Immigration Services Commissioner (OISC), and won the JUSTICE Human Rights Award 2010. Between 1 August 2014 to 31 July 2015, BID supported 3,708 people held in immigration detention.

In 2014 BID established the Accommodation & Release Project to gather evidence for use in policy work with Home Office civil servants and with other lawyers and organisations that support or advise detainees. The project undertakes specialist casework, outreach, and policy work on bail addresses more broadly, including NOMS Approved Premises and licence address checks, and supports BID's more complex applications for release from detention. In 2014 BID published a research report '*No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation*', (2014), available at http://bit.ly/1DqTEQL

BID strongly opposes the proposed repeal of Section 4(1) of the 1999 Act for the reasons set out below.

A note on the use of language in the consultation documents

The language used in both the consultation document and impact assessment document is inaccurate and inflammatory, and its use by the Home Office as a government body is disappointing. The United Nations, the Council of Europe, the European Commission and Parliament and several media organisations support the need for humane terminology for undocumented migrants and asylum seekers.

The consultation document and the impact assessment document both make repeated and gratuitous use of the phrase 'illegal migrant'. At paragraph 9 the document states "failed asylum seekers are illegal migrants", paragraph 12 states that the Home Office expects "applicants to…not

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make unfounded claims", and paragraph 13 refers to "failed asylum seekers and other illegal migrants".

'illegal migrant'	• This phrase is inaccurate. • Migrants cannot be 'illegal'. • Being undocumented is not of itself a criminal offence. • It is inaccurate to use the term 'illegal' to describe those who have crossed borders through unofficial routes as it violates their right to due process before the law. • This type of use of the word 'illegal' by the Home Office works to categorise migrants as criminals. • The Home Office as a government body, and a body which plays a role in the determination of protection claims, should take care to use neutral language in all communications.
"**reforming support for failed asylum seekers and other illegal migrants"** **"failed asylum seekers are illegal migrants"**	• This highly misleading form of words has been used for the title of this consultation. • Seeking asylum is not a criminal offence; these phrases suggest that it is an offence. • There is no such thing as an 'illegal migrant'
"the Home Office expects "applicants to…not make unfounded claims"	• Individuals are free to make a claim for protection to the UK authorities. A proportion of such claims are deemed by the Home Office to be unfounded upon examination, and a proportion of Home Office refusal decisions are then overturned on appeal. • The Home Office is surely aware that is not for applicants to pre-determine the validity of their asylum claim. The language used here suggests wilful submission of asylum claims by people who know their claim to have no substance. This approach is misleading and unhelpful.

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1. The proposed repeal of section 4 (1) of the 1999 Act

BID's response to this consultation deals solely with the proposal to repeal the power of the SSHD to provide a bail address to persons in detention under Section 4(1)(c) of the Immigration & Asylum Act 1999.

a. Consultation document misrepresents the purpose of Home Office Section 4(1)(c) bail support which is to enable the essential safeguard of an application for release on bail to an independent tribunal

A proportion of people held in immigration detention without family or friends in the community are reliant on the Home Office to provide them with bail accommodation under Section 4(1)(c) of the 1999 Act to enable them to lodge an application to the First-tier Tribunal (Immigration & Asylum Chamber).

The consultation document says:

> _Section 4(1) of the 1999 Act_
> *"16. These provisions are unrelated to the support needs of destitute asylum seekers. We therefore propose to repeal section 4(1) of the 1999 Act. Asylum seekers granted bail, temporary admission or temporary release or otherwise released from detention will remain able to access support under section 95 of the 1999 Act if they are destitute."*[1]

These statements are incorrect in a number of respects.

The consultation document misrepresents the purpose of Section 4(1)(c) support. The document states "these provisions are unrelated to the support needs of destitute asylum seekers" without stating what the provisions are used for, including Section 4(1)(c) bail support.

While Home Office Section 4(1)(c) bail support does provide accommodation and financial support on release for destitute immigration detainees, in BID's view the primary purpose of Section 4(1)(c) support is to enable detainees without access to private accommodation in the community to be able to lodge and have heard an application for release on bail.

[1] Home Office, (August 2015a), '*Reforming support for failed asylum seekers and other illegal migrants*'

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For detainees who are unable to propose a private address to propose to the immigration tribunal and who can no longer obtain an bail address via Section 4(1)(c) bail support, release from detention on bail would be impossible in our view.

Immigration detainees seeking release on bail from the First-tier Tribunal (Immigration & Asylum Chamber) must propose a bail address at the time of lodging a bail application. This may be private accommodation offered by family or friends, but, where this is not available, a detainee can apply to the Home Office for Section 4 (1)(c) bail support. Once this is granted the detainee can lodge their application for release on immigration bail to the specified address.

Without the grant of Section 4 (1)(c) support from the Home Office, a detainee who must rely on a Section 4(1)(c) bail address will be unable to lodge their application with the FTTIAC for release on bail. In BID's extensive experience it is normal practice for HMCTS hearing centres to refuse to list bail applications for a hearing without a bail address, save in very unique circumstances.

b. Detained asylum seekers cannot get bail first then seek s95 support if destitute, as the consultation document incorrectly suggests

The consultation document states:

> *"16…Asylum seekers granted bail…will remain able to access support under section 95 of the 1999 Act if they are destitute"*[2]

This is incorrect. If it were possible for detained asylum seekers to apply for release on bail first, and subsequently seek financial support and accommodation via s95 support, as the proposal document suggests, then such detainees would already be doing so. They would not need to wait in detention, for periods of up to 24 months in extreme cases, for a bail address to be granted by the Home Office. On November 4 2014 there were 165 outstanding applications for Section 4 (1)(c) support where the applicant was deemed by the Home Office to require Standard Dispersal bail accommodation. 12% of this group of applicants had been waiting for a Home Office bail address for six months or more. One of these applicants had been waiting in immigration detention for 24 months to date for the Home Office to provide a bail address.[3]

[2] *Ibid.*
[3] Source: Letters to BID from UK Visas and Immigration, Home Office dated 2 September 2014, in response to request for disclosure of information under the FOIA 2000, reference FOI 33434.

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c. Non-asylum seekers are ineligible for s95 support and they comprise over 50% of those leaving immigration detention

In addition, detainees leaving detention who are not asylum seekers have always been ineligible for s95 support. Home Office migration statistics show that those ineligible for s95 support on leaving immigration detention comprised 53% of detainees leaving detention during 2014, 51% of detainees leaving during 2013, 53% of detainees leaving during 2012, and 50% of detainees leaving during 2011.[4]

d. The consultation document fundamentally misunderstands the immigration bail process: the proposed bail address is a core part of bail decision making by the First-tier Tribunal (IAC)

It is to fundamentally misunderstand the immigration bail process to suggest, as the consultation document does at paragraph 16, that "*asylum seekers granted bail, temporary admission or temporary release or otherwise released from detention will remain able to access support under section 95 of the 1999 Act if they are destitute*." Without a bail address, under the current system, it is inconceivable that an immigration detainee whether an asylum seeker or not, could reach the point of release from detention on bail.

A core part of the bail decision making process by First-tier judges is the consideration of the suitability of the proposed bail address. In the words of current bail guidance to judges, the Home Office, as a party to the bail application, is also asked "to take a view as to whether they can maintain reasonable control of the person at that address." The guidance to judges states at 38i, that:

> *"The proposed place of residence must be set out clearly in the application for bail so that the immigration authorities can consider its suitability and make representations if they believe it is not suitable."*[5]

The bail decision making process takes into account the nature of the accommodation, other residents at that accommodation, and the geographic distance between the accommodation and any sureties. Immigration detainees who are on a NOMS release licence as a result of criminal convictions must seek the approval of their probation officer for any proposed immigration bail

[4] During the year January to December 2014, 29, 556 adults left immigration detention of which 15, 652 were non-asylum seekers. Source: Home Office, Immigration Statistics January to March 2015, Table dt_08: People leaving detention by country of nationality, reason, sex and age. Available at http://bit.ly/1NuAxG3

[5] Tribunals Judiciary, (2012), '*Bail guidance for judges presiding over immigration and asylum hearings*'

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address. FTTIAC judges must satisfy themselves that probation approval for a proposed bail address has been given.

Any grant of immigration bail by the FTTIAC is a grant to a stated address. Bail cannot, therefore, be granted pending the provision of a bail address. The consultation document seems to suggest this could be sought after release in some cases under section 95 of the 1999 Act. This is an option for detainees granted TA/TR by the Home Office, but is irrelevant for immigration bail since bail cannot be achieved without an address being proposed to the FTTIAC.

A grant of bail in principle, where the absent (but shortly to be supplied) secondary element of the process is the bail address, is inconceivable in our view, given that consideration of the bail address is a primary and essential part of any bail decision.

We suggest that the Home Office take advice from the tribunal judiciary on this matter prior to publishing any further proposals or legislation.

The proposed repeal of Section 4(1) support, including Section 4 (1)(c) bail support, will have the consequence that immigration detainees who are unable to rely on private accommodation for a bail address will simply be unable to use the immigration bail mechanism to seek release from detention.

e. Significant numbers of detainees would be affected by the proposed repeal of Section 4(1)(c) bail support

The consultation document refers to Section 4(1)(a) and (b) support, stating at paragraph 14 that “these provisions have rarely been used”, and goes on to state:

> *“15. Section 4(1) (c) [support] has been used more frequently, principally to provide a bail address for persons released from immigration detention.”*[6]

This statement gives the impression that Home Office Section 4(1)(c) support is also little used. In reality however, the proposed repeal of Section 4(1)(c) bail support would affect several hundreds, even thousands, of immigration detainees each year who rely on the safeguard of a bail application to the First-tier Tribunal (IAC) as a check on their ongoing detention.

[6] Home Office, (August 2015a), ‘*Reforming support for failed asylum seekers and other illegal migrants*’

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Data obtained by BID from the Home Office via FOI requests indicates that between 3000 and 4000 applications are made to the Home Office each year for Section 4(1)(c) bail accommodation. In 2014 the Home Office made 2860 grants of Section 4(1)(c) bail accommodation for the purpose of lodging a bail application, although it should be noted that not all of these grants will have resulted in i) a bail application being lodged, or ii) if lodged a grant of release subsequent to that.

Home Office Section 4 (1)(c) bail accommodation: applications, grants by accommodation type, and refusals of support since January 2010

	Number of APPLICATIONS RECEIVED for s4 (1) (c) bail accomm[7]	Number of grants for **Initial Accomm**	Number of grants for **Standard Dispersal Accomm**	Number of grants for **Complex Bail Accomm**	Total number of grants for the year
2010	3,367	1,916	66	19	2001
2011	3,138	1,568	218	55	1841
2012	3,465	1,961	382	35	2378
2013	3,841	2,081	529	14	2624
2014	3635	2233	613	14	2860

(Source: Data obtained from the Home Office by BID through a series of FOI requests since 2011)

Among BID's caseload, primarily long term and severely mentally ill detainees, 53% of our clients were reliant on a Section 4(1)(c) bail address in the bail applications we prepared during 2013, and 36% of clients during 2014.

Data on the number of applications for release on immigration bail submitted to the First-tier Tribunal (IAC) and the success rate of these applications is shown below.

Immigration bail at the First-tier Tribunal (IAC) January – December 2013[8]			
		% of total number of applications received	% of applications fully heard (i.e. not withdrawn)
Bail applications received	12, 373		
Bail applications heard	12, 248		
Grants of bail	2, 717	22.18	34.68
Refusals of bail	4, 973	40.60	63.47
Withdrawals	4, 538	37.05	

[7] Some individuals made more than one application during this period.
[8] Source: HM Courts &Tribunals Service, '*Bail management information period April 2012 to March 2013*' & '*Bail management information period April 2013 to December 2013*', produced for HMCTS Presidents' stakeholder meeting. This is the most recent full year for which data is available.

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f. The consultation document misrepresents the typical beneficiaries of Section 4(1)(c) bail support

The consultation document states:

> *"Public money should not be used to support illegal migrants, including failed asylum seekers, who can leave the UK and should do so" "We propose to…curtail the scope for such support…and to remove incentives for migrants to remain in the UK where they have no lawful basis for doing so"*[9]

The consultation document is couched in terms of reform to support for 'failed asylum seekers' and 'illegal migrants'. It proposes to abolish Section (4)(1)(c) bail support, apparently on the grounds that along with Section 4(1)(a) and (b) support it is "*unrelated to the support needs of destitute asylum seekers*"[10]

It is simply incorrect to characterise the recipients of Section 4(1)(c) support as being only 'failed asylum seekers' or 'illegal migrants'. In BID's legal casework experience, detained bail applicants may be neither asylum seekers nor 'illegal migrants'.

Section 4(1)(c) bail support, while clearly essential support for destitute individuals, is first and foremost the key to seeking and achieving release from detention for a proportion of detainees unable to rely on private accommodation.

Immigration detainees granted Section 4(1)(c) bail support may have entered the UK lawfully and then resided in the UK entirely lawfully with some form of leave to remain, for years and sometimes decades. A proportion of immigration detainees who are bailed from detention using Home Office Section 4(1)(c) bail accommodation are not necessarily on their way out of the UK but go on to be granted leave to remain, or to successfully appeal their deportation. A number of people in immigration detention and who may need to seek release on bail via Section 4(1)(c) support have successfully appealed their deportation order but are detained pending the outcome of a further appeal by the Home Office.

[9] Home Office, (August 2015a), '*Reforming support for failed asylum seekers and other illegal migrants'. P:2.*
[10] Ibid. p: 5

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Eligibility for Home Office Section 4 (1)(c) bail accommodation is broad: an applicant must simply be detained under immigration powers, or be on immigration bail[11]. Home Office guidance[12] makes it clear that applications for this support can be made by refused asylum seekers as well as individuals who have never made a protection claim.

Immigration detainees may be reliant on Home Office Section 4(1)(c) bail accommodation in order to seek release from detention under a number of circumstances where their home address in the UK is unavailable to them as a bail address. For example:

- Where a detainee is still within the period of their NOMS release licence and their probation officer will not approve their former home as an immigration bail address
- Where a parent is detained, the other parent is in a council property, and there is no route to adding the detained parent to the tenancy agreement (e.g. the detained parent has no extant leave to be in the UK)

Applications for Section 4(1)(c) bail support can therefore be lodged by detainees who have never made a protection claim and have one of a range of immigration statuses: irregular entrants to the UK, visa overstayers, people liable to deportation who may variously be appealing their deportation order, have successfully appealed their deportation order but are detained pending the outcome of a further appeal by the Home Office, or who have failed to overturn their deportation order and are waiting to be removed from the UK. Individuals holding each of these types of immigration status are represented in BID's caseload.

The 'Principles of reform' in the consultation document (page 4) make reference to the provision of protection for those who need it and the provision of adequate support to asylum seekers who would otherwise be destitute while their case is being considered. These principles make no mention of bail support under Section 4(1)(c) of the 1999 Act, indeed the consultation document proposes its repeal. In BID's view the 'Principles of reform' should include the principle that the Home Office 'will continue to provide detainees with the means of applying to the independent First-

[11] Bailed former-detainees can also apply for Section 4 (1)(c) support post-release on the same basis as if they were detained if for some reason their original private accommodation arrangement is no longer available to them. See Home Office, (July 2014), '*Section 4 bail accommodation', Version10.*0', Section 18: Section 4 Bail Address Applications by Applicants Already Released on Immigration Bail. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf

[12] UK Border Agency '*Guidance Notes for 'Application for support under section 4 of the Immigration and Asylum Act 1999 for Bail Addresses'* states that the application form for Section 4(1)(c) bail support is to be used if: "you are a failed asylum seeker, a dependant of a failed asylum seeker, or have never had an asylum application but you are otherwise in detention under any provision in the Immigration Acts; and you wish to apply to the UKBA for section 4 support and a UKBA accommodation address for the purposes of a bail application."

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tier Tribunal (IAC) for consideration of release on bail as an essential independent check on the use of detention' or similar. BID strongly opposes the proposed repeal of Section 4(1) support, including Section 4(1)(c) bail support.

g. Consequences of repeal of Home Office Section 4(1)(c) bail support and resulting inability to access the First-tier Tribunal

i. Unlawful detention of individuals without a bail address

In broad terms, the Secretary of State has the power to detain people for the purpose of examination, administrative removal or deportation. There is no power or provision for the use of immigration detention solely for the purpose of accommodation. If detained individuals are unable to access the immigration bail mechanism for want of a bail address, their detention may become unlawful.

The Home Office's own Enforcement Instructions & Guidance (EIG)[13] states at Chapter 55 that:

> "*55.1 The power to detain must be retained in the interests of maintaining effective immigration control. However, there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are used (see 55.20 and chapter 57). Detention is most usually appropriate:*
> - *to effect removal;*
> - *initially to establish a person's identity or basis of claim; or*
> - *where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.*
>
> *To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with stated policy"*

The guidance continues:

> "*55.1.4. Implied Limitations on the Statutory Powers to Detain*
> *In order to be lawful, immigration detention must be for one of the statutory purposes for which the power is given and must accord with the limitations implied by domestic and*

[13] Home Office, *Enforcement Instructions & Guidance*, chapter 55 'Detention & temporary release'. Available at http://bit.ly/1hDTCMl

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ECHR case law. Detention must also be in accordance with stated policy on the use of detention."[14]

Immigration detention solely for want of a release address has the potential to be arbitrary and unlawful. Any such period of detention may engage detainees' rights under Article 5 of the European Convention on Human Rights as well as under the common law. In the absence of any other bail address, the removal of Section 4(1)(C) bail accommodation by the SSHD frustrates the ability of detainees who would otherwise rely on Section 4(1)(c) support to apply for release on bail.

ii. Removal of access to bail as a safeguard against arbitrary and long term detention

A sizeable minority of people remain in detention for long periods of time, anything up to five years in extreme cases. These detainees are typically unremovable for the foreseeable future yet continue to be held by the Home Office in immigration detention[15]. The majority of BID's clients for whom we provide legal advice and information on Section 4(1)(c) applications have one or more legal or practical barriers to their removal and have been detained for periods of over one year.

Examples of the circumstances under which a detainee cannot be removed from the UK and may wish to seek release from detention if not released by the Home Office:

- *Where there are practical barriers to removal (lack of travel document, no enforced removals to their country of origin)*
  Absence of a travel document to enable their removal is a common characteristic of BID's clients making Section 4(1)(c) bail support applications. This may be for a number of reasons, including the inability of an individual to provide adequate information to support the issue of a travel document if they first came at a young age to the UK many decades ago, *de facto* statelessness, or delays with particular foreign authorities in the issuance of travel documents (e.g. for returns to Algeria). There are currently no enforced removals to a small number of countries such as Somalia and Zimbabwe. BID has detained clients who the Home Office seeks

[14] *Ibid.*

[15] The Independent Chief Inspector of Borders and Immigration (ICIBI) carried out an inspection of the Home Office travel document processes and noted in 2014: "*despite recommendations I have made previously, I was concerned to find that the Home Office was still keeping foreign criminals, who had completed their prison sentences, in immigration detention for months or even years in the hope that they would eventually comply with the re- documentation process. Given the legal requirement only to detain individuals where there is a realistic prospect of removal, this is potentially a breach of their human rights*" (ICIBI, 2014: 2). (Source: Independent Chief Inspector of Borders & Immigration, (2014), '*An Inspection of the Emergency Travel Document Process May-September 2013*.' Available at http://icinspector.independent.gov.uk/wpcontent/uploads/2014/03/An-Inspection-of-the-Emergency-Travel-Document-Process-Final-Web-Version.pdf

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to return to these countries, and who are reliant on Section 4(1) (c) accommodation in order to apply for release on bail pending their eventual removal.

Case study
Mr A who was held in immigration detention for several months before release to Section 4(1)(c) bail accommodation. He has been detained by the Home Office four or five times, and has had a deport order in place since 2005 although removal directions have never been set. He is currently unremovable due to lack of a travel document, and no enforced returns to a particular region in his country of origin. He has no family in the UK to support him, no other visible means of financial support, and is appeal rights exhausted. During a recent period on immigration bail he became depressed, was eventually sectioned under the Mental Health Act 1983, and then re-detained by the Home Office when his period in hospital ended.

- *Where there are legal barriers to removal*
  These include: outstanding family court matters; pending judicial review hearings including unlawful detention challenges; pending appeals against deportation orders; and pending Home Office appeals against successful overturning of deportation orders.

For such individuals the quickest and simplest way to seek release from administrative detention is to apply for bail from the First-tier Tribunal of the Immigration & Asylum Chamber. If Section 4(1)(c) bail support is repealed such detainees with no access to a private address (up to 50% of cases in BID's caseload) will be unable to seek release on bail if not released by the Home Office, despite facing barriers to their removal from the UK.

Home Office migration statistics[16] demonstrate the greater reliance on bail as a means of getting released from detention by those detainees held for longer periods: For the full year 2014, 47% of those people detained for any period from one day to 12 months were released into the community; only 15% of them achieved this through bail and the majority (81%) were granted Temporary Admission or Temporary Release by the Home Office. Of those people leaving detention who had been held 12 months or more, 57% were released into the community and of these 58% were bailed.

In 2011 the Independent Chief Inspector of the UK Border Agency criticised the then-UK Border Agency for not releasing people from detention when the Agency's own guidance suggests it should be doing so under certain circumstances, for example at the point at which it becomes apparent that

[16] Source: Home Office, (updated 29 August 2014), *Immigration Statistics April to June 2014*.

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removal within a reasonable time will not be possible[17] compared to the number of people released from detention on application to the Tribunal. The inspection report notes:

> *"There was also a disparity between the number of people released from detention by the Agency and the number released on bail by the courts. Between February 2010 and January 2011, the Agency released 109 foreign national prisoners from detention compared with 1,102 released on bail by the courts"*[18]

Set against these perspectives, immigration bail is an essential safeguard for detainees against arbitrary and indefinite detention, whether their detention is measured in weeks, months, or years.

Section 4 (1)(c) bail support is essential for people detained long term, whose ties with family and friends who could otherwise offer accommodation and support have been eroded by months or years spent in detention. Detainees in this position will often be reliant on Home Office Section 4(1)(c) bail accommodation if they wish to seek release on bail.

Removal by the Home Office of access to bail accommodation by means of the proposed repeal of Section 4(1)(c) of the 1999 Act would remove the most accessible form of independent scrutiny of ongoing detention for those detainees who arguably require it the most.

9. Any information or evidence that will help us to assess the potential impacts of the changes proposed in this consultation document and to revise the consultation stage Impact Assessment

Somewhat surprisingly the Impact Assessment document does not address Section 4(1)(c) bail support specifically, and makes no mention of detention, detainees, or immigration bail. This is despite the fact that the Home Office receives over 3000 applications for Section 4(1)(c) support and makes over 2000 grants of bail addresses each year.

[17] Home Office, *Enforcement Instructions &Guidance, Chapter 55 'Detention and Temporary Release*, "55.3.2.4 In all cases, caseworkers should consider on an individual basis whether removal is imminent. If removal is imminent, then detention or continued detention will usually be appropriate. As a guide, and for these purposes only, removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks. Cases where removal is not imminent due to delays in the travel documentation process in the country concerned may also be considered for release on restrictions". Available at http://bit.ly/L6Lhwm

[18] Independent Chief Inspector of the UK Border Agency, (2011), '*A thematic inspection of how the UK Border Agency manages foreign national prisoners, February – May 2011*'. P: 4. Available at http://bit.ly/rT6UuL

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Notwithstanding the apparent absence of any assessment by the Home Office of the impact of the removal of Section 4(1(c) support we offer the following observations.

a. Removal of Section 4(1)(c) bail support will not of itself encourage or enable an individual to leave the UK if they are unable to leave as a result of practical barriers to their removal, such as the lack of a travel document. Detainees unable to apply for release on bail in the absence of a Section 4(1)(c) bail address, even if minded to can no longer avail themselves of AVR packages since the Home Office decision to end Assisted Voluntary Return (AVR) for immigration detainees from April 2014. The Impact Assessment document states that it is reasonable to expect behaviours to change as a result of proposed changes, but offers no evidence for this in relation to immigration detainees.

b. The impact assessment document makes no mention whatsoever of enforcement activities or costs (p:13), yet if the Home Office intends to continue to use immigration detention centres it is likely that a proportion of existing IRC beds will be 'blocked' as a result of unremovable detainees' inability to apply for FTT bail, for so long as the Home Office maintains their detention. Under these circumstances, enforcement costs outside detention are likely to increase. A benefit of the existence of a number of 'blocked' IRC beds may be that initial decisions to detain made by the Home Office will need to be limited to those individuals whose removal is known to be imminent. We know from Home Office migration statistics[19] that for the full year 2014, 47% of those people detained for any period from one day to 12 months were released into the community; this figure rose to 57% release without removal for those detained for 12 months or more.

c. Greater use by the Home Office of Temporary Admission or Temporary Release for longer term detainees may result in release to destitution. Destitution is a risk for released detainees under current provisions: if Section 4(1) support in its entirely is repealed, destitution rates can be expected to rise still further. This would surely undermine Home Office efforts to keep in touch with individuals about their ongoing immigration matter and/or enforce their removal from the UK. Destitute individuals will be less able or unable to report regularly, and may turn to criminal behaviour or be subjected to exploitative activities in order to feed and house themselves. These situations are not without cost to the public purse.

d. If additional detention beds are felt to be required by the Home Office, either purchased in the prison estate or via an IRC building programme, this will incur additional costs.

[19] Source: Home Office, (updated 29 August 2014), *Immigration Statistics April to June 2014*.

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e. It is possible that detainees with no route to seeking release via FTT bail may attempt unlawful detention challenges at the High Court which, even if poorly prepared, weak or unarguable will still have an impact on the court system.

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