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Winner of the JUSTICE Human Rights Award 2010

BRIEFING: Immigration Bill Report Stage, 1st December 2015.

About BID

Bail for Immigration Detainees is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation.

While detention exists, BID aims to challenge long-term detention and to improve access to justice for immigration detainees. We seek an immediate to end the separation of families for immigration purposes and to the detention of vulnerable people.

BID believes that asylum seekers and migrants in the UK have a right to liberty and access to justice. They should not be subjected to immigration detention.

This Briefing

The Immigration Bill proposes a wide range of measures covering illegal working, border security, and access to services. This briefing focuses on proposed amendments relating directly to immigration bail, detention and the provision of support to individuals seeking bail.

Exemptions from immigration detention

New Clause 8 would prevent Immigration Officers from detaining certain categories of people – including pregnant women and possible victims of trafficking, torture or sexual violence. BID supports this amendment, but notes concerns raised by the Immigration Law Practitioners' Association that the clause is limited in its scope and would only prevent the detention of these categories of people by Immigration Officers. The Secretary of State has the power to detain any individuals for immigration purposes, and her powers would not be affected by this exemption.

Time limit for immigration detention

New Clause 9 and Amendment 32 both seek to introduce a time limit of 28 days on detention.

BID strongly supports the introduction of a time limit on detention. **We urge Parliament to support Amendment 32** in preference to New Clause 9. New Clause 9 seeks to exempt, we believe unfairly, individuals convicted of criminal offences from the time limit. Immigration detention is not a criminal enforcement measure, and must not be used as such. It also must not be used as a speculative administrative measure in an attempt to prevent possible future crime. Many immigration offences involve documentation, illegal entry or overstaying offences, and to categorise and exclude all such offenders from the protective measure of a time limit would be unjust.

In arguing for the introduction of a time limit, we note the following comparison between different powers to detain available to the Government:

TYPE OF DETENTION	MAXIMUM PERIOD	POWERS
Following arrest by the police	24 hours (extendable to 36 hours by police superintendent, to 96 hours by a magistrate)	Criminal
Pre-charge (arrested under the Terrorism Act)	14 days (in stages)	Terrorism
Post-charge custody time limit (remand)	56 – 182 days	Criminal
Immigration detention of parents with their minor children	**72 hours (extendable to 7 days with ministerial authority)**	**Immigration**
Immigration detention of adults	**None**	**Immigration**

During the full year 2014, a total of 857 (2.9%) of those people leaving detention in an IRC had been detained for longer than six months. Among the 857 detainees held for over 6 months by the time they were released, 26 people had been detained for between 2 and 4 years, and 1 person had been detained for over 4 years. These figures do not include those held in prisons under immigration powers.

During Committee stage, the Minister stated that:

> "There is a common misconception that detention under immigration powers is indefinite. I want to make it clear to the Committee that that is not the case. Although there is no fixed statutory time limit on the duration of detention under immigration powers, it is not the case that there is no time limit. It is limited by statutory measures, the European convention on human rights, the common law, including principles set out in domestic case law, and the legal obligations arising from the Home Office's published policy, which states:
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> > "Detention must be used sparingly, and for the shortest period necessary.""

BID strongly refutes this position as at best misleading, and at worst dishonest. As of September this year, there were 325 people in immigration detention in the UK who had been detained for more than 6 months, 18 of them having been detained for more than 2 years. During the full year 2014, in the majority of cases of prolonged detention, that detention served no purpose. Of the 161 people who left detention having been detained for more than 12 months, just 70 (43%) were removed from the UK, while 86 were granted temporary admission, temporary release or bail.

The Government does not currently abide by its own stated policy of detaining sparingly and for the shortest period necessary. Rather, people are detained under immigration powers as a matter of routine, and frequently for periods that are simply unacceptable. The power to deny a person's liberty - with all of the impacts on health, mental health and personal and family life that brings – cannot be left reliant on the good will or good intentions of a government to self-regulate. Britain is alone in Europe in not having a time limit on immigration detention, and immigration detention is alone in Britain in not having a time limit on powers to detain. This illiberal anomaly must be rectified.

New Clause 13 seeks to require the creation of an independent panel to consider the process for introducing a 28 day time limit on detention. BID supports this clause, and notes that it reflects the unanimous view of the House of Commons in endorsing the recommendations of the Joint Inquiry into Immigration Detention carried out by the APPGs on Migration and Refugees.

Judicial oversight for immigration detention

Amendment 37 seeks to introduce a form of judicial oversight for immigration detention in the form of automatic bail hearings. It would place a duty on the Secretary of State to arrange for regular bail hearings – by the eighth day of detention and every 28 days thereafter – rather than placing the burden of applying for bail (and all the administrative obstacles that entails) on the detainee. Such a provision would also help to focus the Secretary of State on the need to provide reasons for maintaining detention while switching the burden from the administratively detained person's need to argue why they should be released.

BID strongly supports the need for judicial oversight, and recognises this amendment as a simple but effective means of ensuring that access to the judicial system is automatic for any person detained under immigration powers.

Bail Addresses

Amendment 38 places a duty on the Secretary of State to provide accommodation for people released on immigration bail where required. This would replace the power that currently exists in Section 4(1)c of the Immigration and Asylum Act 1999. BID strongly supports this amendment.

The powers proposed in this Bill as new section 95A would not be accessible to people who have not previously claimed asylum, and the powers in section 7 of schedule 7 of this Bill would be exercised only when "the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power." It remains to be determined what will quantify an exceptional circumstance, **however the likelihood appears to be that the removal of section 4(1)c of the 1999 Act will result in a large number of detainees denied access to a bail address.**

For detainees who are unable to propose a private address to support their application for bail and who can no longer obtain such an address via Section 4(1)c bail support as it stands, release from detention on bail would be impossible. Without section 4(1)c support from the Home Office, a detainee who would otherwise have relied on such a bail address will be unable to lodge their application 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.

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[1]	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)

53% of BID's clients rely on a section 4(1)c bail address to support their application. Abolishing this provision would leave thousands of detainees unable to apply for bail, with the potential for their detention to become unlawful as a result.

For further information please contact John Cox, Policy and Research Manager for BID on 020 7456 9762 or at john@biduk.org

[1] Some individuals made more than one application during this period.