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Winner of the JUSTICE Human Rights Award 2010

BRIEFING: Immigration Bill House of Lords Committee Stage.

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

Amendment 216ZC would introduce a presumption against detaining certain categories of people – including people with mental illness and possible victims of trafficking, torture or sexual violence. It would also introduce an absolute ban on the detention of pregnant women. BID supports this amendment.

Time limit for immigration detention

Amendments 218, 218A and 218B all 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 218** in preference to 218A and 218B. Amendments 218A and 218B seek to allow exemptions to the 28 day time limit in certain circumstances. We believe Amendment 218B, in excluding individuals convicted of or charged with certain types of offences from the time limit, unfairly discriminates against that category of people. 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.

Amendment 218A would allow the Secretary of State to apply to the First-tier Tribunal to extend a person's detention beyond the 28 day limit. While **BID strongly supports Amendment 218** that would provide an absolute time limit, we recognise Amendment 218A as an alternative that would allow for the Secretary of State to apply to extend detention in exceptional circumstances. BID

believes that, if Amendment 218A were to be agreed upon, further amendments would be needed to require the Secretary of State to further extend detention for each 28-day period, and to provide a maximum upper time limit beyond which extension was not possible.

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 contests this position. It is as at best misleading, and at worst dishonest. There is no time limit and bail tribunals do not have the jurisdiction to consider lawfulness of detention. To secure release from detention, the onus is on the detainee to apply for release. 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.

CASE STUDY

Ms R is a 29 year old woman facing deportation to a country she left when she was 4 years old. Her entire family lives in the UK and since arriving in the UK she has never returned to her country of origin. She suffers from serious mental and physical ill-health and has learning difficulties. She was convicted of a crime and detained following the completion of her sentence in May 2015. While in prison her mental health deteriorated significantly. She made multiple suicide attempts. She regularly self-harmed and was constantly tearful.

While in prison, R was served with a deportation order. However, she had no access to legal aid, nor any funds to instruct a private solicitor. She therefore enlisted the help of some prison staff to assist her in putting together an appeal against her deportation. She successfully challenged her deportation order on the grounds that due to her health issues and severe learning difficulties there was no possibility of her surviving long if deported.

Despite winning her deport appeal, she was not released as the Home Office decided to appeal the decision and continued to detain her. They maintained that she was an absconding risk. BID took on her case for bail after she wrote to us. It was a slow process due to limited communication with R to take instructions, together with probation address check delays and listing delays at the tribunal. Eventually her case was heard, and R was granted bail. If we had not intervened, R would be like many other detainees who are languishing in prison or detention despite succeeding in their deportation case. It is by no means unusual that vulnerable detainees with serious mental health issues are still being kept in detention. Most of our clients have mental health issues ranging from psychosis, to post-traumatic stress disorder and depression.

Amendment 216 seeks to require a formal review of immigration detention policy, to consider the process for introducing a 28 day time limit on detention, reducing the number of people held in immigration detention, and other associated matters. 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. We do not believe that **Amendment 216ZA** would lead to significant improvements being made.

Matters to be considered when considering the granting of bail

Amendment 221B seeks to stop the Secretary of State or First-tier Tribunal from having regard to whether a person's detention is necessary in that the person's interests when considering a grant of immigration bail. BID strongly supports this amendment. Research has repeatedly demonstrated that any period of detention can be harmful to a person's mental wellbeing, physical wellbeing and family and home life, and, as referred to in detail in the briefing provided to Members by ILPA, the Home Office has repeatedly been found in breach of Article 3 of the European Convention on Human Rights for its treatment of mentally ill people under immigration act powers.

Judicial oversight for immigration detention

Amendment 217 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. Without independent scrutiny any limits on the length of detention are only assessed by the Home Office, itself the detaining authority.

Bail Addresses

Amendment 224 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, particularly as both the common law and the European Convention on Human Rights do not allow immigration detention to be used for the purpose of providing accommodation.

Amendments 224A and 224B would amend the power created in the Bill as it stands into a duty. BID does not believe that this would substantively improve upon the problems that will be created with Clause 7 (1)-(3) as it stands, and so **strongly support Amendment 224** in preference to these amendments.

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.