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Winner of the JUSTICE Human Rights Award 2010

BRIEFING: Immigration Bill House of Lords Report 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 end to the separation of families for immigration purposes and of 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 the four biggest areas of concern for BID – a time limit for detention, judicial oversight, bail addresses for detainees, and the Government's recent proposal that there should be a presumption towards electronic tagging for people on immigration bail.

Time limit for immigration detention

BID strongly supports the introduction of a time limit on detention. The government's current operational procedure, as well as language used in redefining immigration bail in this Bill, demonstrates that the current attitude towards detention is that it is to be used as a default for people with irregular immigration status. This is unacceptable. Immigration detention is not a criminal enforcement measure, and must not be used as such. It is not acceptable to deprive a person of their liberty for administrative ease. Nor is it acceptable to do so as a speculative administrative measure in an attempt to prevent possible future crime.

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	**72 hours (extendable to 7 days with ministerial authority)**	**Immigration**

minor children		
Immigration detention of adults	**None**	**Immigration**

During the full year 2015, a total of 296 people leaving detention in an IRC had been detained for longer than twelve months. 41 of those had been detained for two years or more. 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. **Statistics released in February show that in the full year 2015, the number of people entering detention increased by 7% to 32,446. At the same time, the proportion of detainees being removed from the UK on leaving detention fell for the fourth consecutive year. Just 45% of people leaving detention in 2015 were removed from the UK.**

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 the associated impact 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.

BID strongly supports proposals to introduce a single, 28-day time limit to detention. We believe that this is in line with other powers to detain, and would ensure that detention is and can only be used for the limited purposes for which the power to detain is intended.

We recognise, however, that concerns have been raised through the course of considerations of this Bill about the lack of flexibility that a fixed time limit would create if exceptional circumstances were to arise. With that in mind, BID believes that if the case for a single, 28-day time limit is not accepted, a positive alternative approach would be to allow the Secretary of State to apply to the First-tier Tribunal to extend a person's detention beyond the 28 day limit.

BID does not believe that any amendment that introduces a time limit, but that excludes certain categories of people – those facing deportation, or those with criminal convictions – from its scope is acceptable, and that in practice such exceptions would render the time limit effectively meaningless. In excluding individuals convicted of or charged with certain types of offences from the time limit, such an amendment would unfairly discriminate against that category of people. 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.

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.

Judicial oversight for immigration detention

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.

Amendments to introduce a form of judicial oversight for immigration detention in the form of automatic bail hearings 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.

Bail Addresses

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 9 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 qualify as 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 for bail. **BID believes that abolishing this provision will 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.

Electronic tagging

The Government has, in response to concerns raised by some over the ability of the Secretary of State to override the First-tier Tribunal's decision to impose an electronic monitoring condition on people on immigration bail, introduced an amendment that would mean a grant of immigration bail must include such a condition.

BID strongly opposes this amendment. We are extremely concerned that blanket tagging of people on immigration bail will reinforce the public perception that people on immigration bail are criminals. It will inevitably prove to become another tool by which "immigrants" are publicly labelled as such in an officially sanctioned and systematic manner. We believe that, particularly in mind of recent events including the controversy over red doors in Middlesbrough and wristbands in Cardiff, the Government's proposed approach is unwarranted, unwelcome, and at odds with any fair and inclusive society.

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