

BRIEFING: Immigration Bill - House of Commons consideration of Lords' Amendments.

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

This briefing covers Lords Amendment 84, on a time limit and judicial oversight for detention, and Amendment 85, on the detention of vulnerable people. We also include general comments on the group of amendments (183-215) on electronic monitoring conditions for those on immigration bail.

Amendment 84

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 have noted 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 minor children	72 hours (extendable to 7 days with ministerial authority)	Immigration
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. **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.**

Amendment 84 will introduce a time limit of 28 days, extendable upon application to the First-tier Tribunal. We welcome this as a positive first step.

BID strongly supports the need for judicial oversight, and recognises this amendment as a means of ensuring that access to the judicial system is automatic for some people 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.

We strongly urge MPs to accept Amendment 84. In doing so, however, we note the following shortcomings, which we believe must be addressed in future legislation.

Firstly, by excluding people who have been sentenced to a term of imprisonment of 12 months or more, as well as those people who the Secretary of State has “determined shall be deported”, the new clause will discriminate against those categories 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 and to deny them access to the benefits of judicial oversight of the decision to detain them would be unjust.

Similarly, even for those people who have exhausted their appeal rights, the question of removal is not always straightforward. The UK will not remove people to certain countries, and the Home Office’s own travel document guidance recognises a number of countries where there is “no established timescale” for arranging the appropriate travel documents. By being excluded from the protection of this clause, people in this situation will continue to face an indeterminate and potentially indefinite time in detention, often through no fault of their own.

Finally, although we recognise the desire from the Home Office to have flexibility to deal with exceptional cases, we are concerned that the provision for the 28 day time limit to be extended does not contain a definitive upper limit. Again, we are concerned that this oversight will, in many cases, render the 28 day limit meaningless, and allow for the current regime of indefinite detention to continue.

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. Many of our clients have mental health issues ranging from psychosis, to post-traumatic stress disorder and depression.

Amendment 85

Amendment 85 requires the Secretary of State to issue guidance on the detention of vulnerable people, and introduces an outright ban on the detention of pregnant women. **BID strongly supports this amendment, and urges MPs to accept it.**

The Shaw Review highlighted major shortcomings in the way that vulnerable people are treated within immigration detention, and recommended the introduction of a presumption against detention of several categories of people – as well as a complete end to the detention of pregnant women. We are concerned that the Government’s new “Adults at Risk” strategy does not go far enough, particularly in regard to those with mental health issues, and shortcomings in the current Rule 35 procedures for suspected victims of torture. We believe that independent assessment of vulnerability must be an integral part of the decision to detain process, and hope that this amendment will give the Government the opportunity to review the Shaw recommendations in further detail.

We strongly agree that the detention of pregnant women should be ended, and refer to the briefing on this subject prepared by Women for Refugee Women.

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 amendments that would mean a grant of immigration bail must include such a condition for people who have served a criminal sentence, even where the Tribunal believes that they present no risk of harm or of reoffending if released from detention.

BID strongly opposes this series of amendments. We are extremely concerned that blanket tagging of this group of people on immigration bail will reinforce the public perception that all people on immigration bail are dangerous 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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