

November 2017

Bail for Immigration Detainees: Submission to the Home Affairs Select Committee's Inquiry on Home Office delivery of Brexit: Immigration

1. 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. We also carry out research, policy advocacy and strategic litigation to secure change in detention policy and practice. Since 2014 we have also provided legal advice, information and representation to time-served foreign national prisoners facing deportation despite long-term residence in the UK and British partners and children, for whom there is no legal aid.
2. BID challenges the unnecessary use of immigration detention and seeks to improve access to justice for immigration detainees. We also seek an immediate end to the separation of families for immigration purposes and to the detention of vulnerable people.
3. 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 submission

4. It is BID's view that freedom of movement within the European Union is a principle that should be protected and enhanced in any future approach to immigration, and that the UK should be – in practice, as well as in principle – welcoming to people of all nationalities who face hardship, danger or persecution in their own country. This submission, however, focuses primarily on the enforcement issues related to immigration that are the major focus of BID's work.
5. We note the general questions that are posed by the Committee, but would emphasise that any debate around immigration must pay heed to enforcement issues. As we explain below, the impact of enforcement measures on British people – as well as migrants – is already extensive, and enforcement cannot be separated from the economic and social issues connected with immigration.
6. After providing some context to the current enforcement regime, the remainder of this submission focuses on EU nationals, and specifically the question **“What challenges does Brexit post to enforcement of the immigration system?”**.

Background

7. During the 12 months to June 2017, 27,819 people entered detention in the UK¹. At the end of June 2017, 2994 people were being held across the Immigration Removal Centres (IRCs) in the UK. In addition, 360 people were being held under immigration powers in prisons.

¹ <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2017/how-many-people-are-detained-or-returned>



8. The United Kingdom is unique among European countries in not having an upper time limit beyond which people cannot be held in immigration detention. Similarly, immigration detention is the only power of detention within the UK that exists without an upper time limit.
9. BID's policy paper *Safeguards against arbitrary and prolonged detention*² compares the lack of time limit in immigration detention with other powers of detention:

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
Immigration detention (parents with their minor children)	72 hours (extendable to 7 days with ministerial authority)	Immigration
Pre-charge (arrested under the Terrorism Act)	14 days (in stages)	Terrorism
Post-charge custody time limit (remand)	56 – 182 days	Criminal
Immigration detention (adults)	None	Immigration

10. During the year ending June 2017, 27,862 people left detention. Of these, 64% had been in detention for less than 29 days, 17% for between 29 days and 2 months, and 11% for between 2 and 4 months. Of the 1,943 (7%) remaining, 172 had been in detention for between 1 and 2 years, and 28 for 2 years or longer. Of the 46 children leaving detention, 38 had been detained for seven days or less, three for between 8 and 14 days, three for between 15 and 28 days and two for between 29 days and 2 months.
11. In the same period, over a third (35%) of people leaving detention had been detained for 7 days or less (9,717). Of these, 56% (5,401) were returned; 42% (4,100) were granted temporary admission or release (TA/TR); and the remainder were either bailed (52), granted leave to enter (LTE) or leave to remain (LTR) (38), or released for other reasons (126). Of the 200 people detained for 12 months or more, 33% were bailed, 32% were returned, and 32% were granted TA/TR.
12. As at 30 June 2017, the longest length of time a person had been currently detained for was 1,514 days.
13. These timeframes refer only to the most recent period of detention. Many people subject to immigration control will experience multiple periods of detention, and the government does not track cumulative time in detention.

2

<http://www.biduk.org/sites/default/files/media/docs/BID%20policy%20paper%20on%20detention%20time%20limits%20015.pdf>

14. There is no automatic bail hearing for detainees, no automatic legal representation, and no time limit. That means that people can be, and are, detained for months or even years and some are re-detained after being released. In the last year, 52% of people in detention were released back into the community, their detention having served no purpose.
15. BID's experience is that the vast majority of long-term detentions serve no purpose, but cause immeasurable hardship and suffering to the detainee and their family.
16. **BID believes that immigration detention exists solely as an administrative convenience, and thus campaigns for its end. People facing removal can be monitored and managed within the community with the same success as they would have been within an IRC, and often at far less cost. We welcomed, as a first step towards this, the recommendation of the 2015 APPG Inquiry – endorsed by the House of Commons – that a maximum period of detention of 28 days should be introduced via statute. We were disappointed that Parliament rejected amendments to this effect during the passage of the Immigration Act 2016.**

EU Nationals

17. The primary context of the Committee's inquiry is, undoubtedly, the decision to leave the European Union. At the minimum, leaving the EU will require the UK to redefine its immigration policies in relation to European nationals.
18. Even before such decisions are made, BID has witnessed a fundamental shift in the approach taken by immigration enforcement agencies to EU nationals over the past few years. In the year ending 30th June 2017, the UK forcibly returned 5,301 EU nationals. In 2009, just 768 EU nationals were detained. The number of EU nationals in detention has increased 15 times faster than the detention population as a whole.
19. The removal rate among EU nationals is significantly higher than among non-EU nationals – in 2015 89% of EU nationals were removed from the UK upon leaving detention, compared with just 40% of non-EU nationals.
20. Government statistics – as well as BID's casework experience – have shown an alarming increase in the number of EU nationals being detained and threatened with removal from the UK. In the period since 2009 – a timeframe roughly analogous to increased media attention on and increased political discourse about immigration and Britain's place in the EU – the number of EU nationals removed from the UK has increased by 256%. The number of EU nationals detained under immigration powers has increased by 381%.
21. The reasons for this dramatic increase are unclear. It would seem likely that a change in attitude towards EU nationals among enforcement agencies is at least partly to blame – whether as a subconscious reaction from government staff to perceived shifts in public opinion, or as a result of direct instruction from the Home Office. What is clear to BID is that enforcement agencies are routinely ignoring Home Office policy when making the decision to detain.



22. One such case that BID has dealt with is that of a Polish national, who was detained in a public park while having birthday drinks. At the time, he was in work in the UK and had the right to be in the UK. The Home Office detained him, stating that he was ‘abusing his EU law rights’ and planned to remove him on that basis. He was in detention for five months, despite there being an injunction stopping his removal.
23. BID is concerned that EU nationals are being seen by enforcement agencies as an “easy target” in order to secure administrative removals. The government’s published statistics have shown a consistent and prolonged decline in the proportion of detainees who are removed from the UK upon leaving detention. Yet the proportion of EU nationals removed remains extremely high. In many cases, our experience has shown that European nationals are liable to face removal on a much lower threshold than non-EU nationals. Another of BID’s Polish clients, for example, was removed despite never having a conviction while in the UK, on the basis of offences committed in Poland more than 20 years before arriving in the country. As with many of our clients, he was denied the right of an in-country appeal and told that he could appear at his appeal and communicate with his representatives using Skype and computer facilities (despite his lack of computer literacy), and told that in the alternative it was not necessary for him to give evidence at his own appeal – a decision currently subject to judicial review.
24. With the current trend of rapidly increasing detention, removal and deportation of EU nationals combined with deficiencies in decision-making, the ongoing uncertainty over how leaving the European Union will affect the rights of EU nationals currently living – legally – within the UK is problematic.
25. The Government’s approach so far suggests that the drive to remove EU nationals from the UK will only increase once the UK’s exit from the European Union has been negotiated. There are currently more than 3 million EU nationals living in the UK and there is a very real concern that, following withdrawal, we will see a dramatic increase in the use of immigration detention, and even greater pressure placed on our already stretched immigration tribunals.
26. This situation is likely to be significantly worsened by the lack of clarity over what EU nationals should do now in order to demonstrate their right to be living in the UK. The Home Office has stated that it is currently advising EU citizens not to apply for permanent residence. But they are given this advice not knowing what terms will be set for EU national residents upon leaving the EU. This advice is therefore at best flawed and, at worst, deliberately misleading. No government agency should be pre-empting the outcome of negotiations, certainly not to the extent of providing advice to certain groups of UK residents, who, naturally, will wish to protect their rights in all eventualities. If, following Brexit, an EU national is faced with removal, and is unable to show evidence of their right to be in the UK – having assumed that they had no need to be able to do so – then there is likely to be only one outcome.



27. It is BID's view that, regardless of the government's ultimate position on migration between the UK and other EU member states post-Brexit, any updated immigration regime must include protections for EU nationals who are already legally resident in the UK. It is vital that safeguards are put in place that will prevent the continued targeting of this population by enforcement agencies.

