

Refugee Children's Consortium

The Asylum & Immigration (Treatment of Claimants etc...) Bill

Committee Stage - House of Lords

DETENTION OF CHILDREN

This amendment is supported by the members of the Refugee Children's Consortium: The Asphaelia Project, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, British Agencies for Adoption and Fostering (BAAF), Children's Legal Centre, Children's Rights Alliance for England, The Children's Society, FSU, The Immigration Law Practitioners' Association (ILPA), The Medical Foundation for the Care of Victims of Torture, NCB, NCH, NSPCC, Redbridge Refugee Forum, Refugee Council, Refugee Arrivals Project and Save The Children UK. The British Red Cross, UNICEF UK and UNHCR all have observer status

THE AMENDMENTS

Before Clause 18

New Clause: Detention by Secretary of State

(1) Section 62 of the Immigration, Nationality and Asylum Act 2002 (c41) (detention by the Secretary of State) shall be amended as follows.

(2) In subsection (1) insert the words "over the age of eighteen" after the word "person" in the first line

(3) After subsection (3) insert-

"(3A) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall only apply to a person over the age of eighteen.

PURPOSE: The purpose of these amendments is to ban the detention of children under the age of 18 under immigration act powers.

Before Clause 18

New Clause : Detention of Children: Assessment

(1) Section 62 of the Immigration, Nationality and Asylum Act 2002 (c41) (detention by the Secretary of State) shall be amended as follows.

(2) After subsection (9) insert the following new subsection:

(9A) Where a 'detained person' within the meaning of s.147 of the Immigration and Asylum Act 1999, as amended by this section, is under the age of 18

(1) An independent assessor appointed by the Department for Education and Skills or the appropriate executive body in the country must visit the detained person as soon as practicable after detention and at seven day intervals thereafter for as long as the person remains detained to carry out on each visit an assessment into the welfare, developmental and educational needs of the detained person;

(2) All assessments under this section shall be guided by the principles set out in the United Nations Convention on the Rights of the Child, and The Children Act 1989, The Children (Scotland) Act 1995 or The Children (Northern Ireland) (Order) 1995 (S.I. 1995/755);

- (3) Reports of the assessment shall contain advice on the compatibility of detention with the welfare of the child and must be sent to the Chief Immigration Officer responsible for reviewing the detention, the detained person, and the detained person's legal representative, if any;
- (4) When a Chief Immigration Officer receives a report of an assessment carried out under this section he must review the decision to continue detention in the light of the advice contained in the assessment and send his decision on review, with the reasons for the decision, to the independent assessor who carried out the assessment, the detained person, and the detained person's legal representative, if any.

PURPOSE: To probe how, and when, the Government intends to give effect to the recommendation of Her Majesty's Chief Inspectorate of Prisons, as set out in the Inspectorate's report of October 2002 (published August 2003) into Dungavel Removal Centre.

INTRODUCTION

The Asylum and Immigration Bill contains proposals that will significantly reform the asylum and immigration system in the UK. **Yet the Bill fails to address the considerable concerns about children being held in immigration removal centres that have been highlighted most recently in reports by Her Majesty's Inspectorate of Prisons (HMIP)¹.** Government announcements made on 16 December 2003² do little to allay concerns about detention and in fact seem to reinforce current practice that children are held for long periods of time and not just prior to removal, contrary to stated Government policy.

The Refugee Children's Consortium is opposed to the detention of any child under immigration act powers on the grounds that this is incompatible with the principles of the United Nations Convention on the Rights of the Child (UNCRC) and other human rights instruments.

We wish to probe how, and when, the Government intends to give effect to the recommendation of Her Majesty's Chief Inspectorate of Prisons to ensure an independent assessment of the child's health and welfare. The Government has given a commitment to considering how the assessment of welfare needs may be improved³. While the Government continues to detain children the measures proposed in this amendment would provide increased scrutiny. We believe that the evidence from such scrutiny could only strengthen our argument that children should never be detained.

This Bill is passing through the House of Lords at the same time as the Children Bill (HL Bill 35), which aims to improve, services and safeguards for all children. The Bill includes proposals to extend duties to safeguard children and promote their welfare in the exercise of their functions to a range of bodies including the police and prisons (clause 7). Significantly immigration removal centres are not included in this duty. This is particularly alarming given that the Government has stated that social services have no formal role in removal centres and that local authorities currently have no access to them⁴. The Minister has indicated that it is not Government intention to include them in the duty and that doing so would "cut across existing procedures"⁵. We call upon the Government to explain why, if it considers it appropriate to detain children, those responsible for their care should not fall under this duty.

BACKGROUND TO THE DETENTION OF CHILDREN

- UNHCR Guidelines on Refugee Children state that refugee children should not be detained.
- The decision to detain is an administrative one. There is no automatic judicial supervision.

¹ Inspection of Five Immigration Service Custodial Establishments, HMIP, April 2003

² Home Office Stat054/2003, 16 December 2003

³ The Government Reply to the 2nd Report from the Home Affairs Committee Session 2003-04, HC 218, CM 6166, para 48

⁴ Hansard Commons Official Report: 12 June 2002; Column 888

⁵ Hansard Official Report House of Lords, 30 March 2004, column 1304

- Many families have no, or very poor, legal representation and many experience great difficulty in accessing an independent review of their detention by way of a bail application.
- Detention is without limit of time, and can be for prolonged periods.
- Detention can take place at any stage of a person's case: from arrival to just before removal.
- There are currently around 150 spaces for families in the detention estate.
- Very limited statistics are now published on the detention of children. Following considerable pressure, the Government has finally included statistics on child detention in the quarterly asylum statistics⁶. The information is of limited use as the figures do not show how old the children are, at what stage of the case they were detained, or for how long and give no indication of the outcome of their detention.
- The Government confirmed during debates on the Nationality Immigration and Asylum Act 2002 that local authorities currently have no formal role within detention centres despite local authorities' responsibilities under the Human Rights Act 1999 and the Children Act 1989.
- HM Inspectorate of Prisons carried out inspections of five immigration removal centres in 2002. In Dungavel in Scotland, HMIP were accompanied by HMIE who conducted a follow up visit in the summer of 2003. HMIP recommended that: "...the detention of children should be an exceptional course, and only for a very short period – no more than a matter of days. We also believe that the guiding principles that underlie international and domestic law on children should be brought into decisions to detain, and to continue to detain, children and families."⁷
- The Home Office announcement on assessments of children's welfare and educational needs after 21 days will apply only to Dungavel and are not extended to other detention centres.
- Ministerial authorisations of the detention of children over 28 days do not provide safeguards for children.

The KONAN Case⁸

The Minister stated in Committee: "...I authorise continued detention only where the issues are clear and where detention is necessary because there is no alternative." (Col 416)

Ms Konan, who had fled the Ivory Coast, was detained for more than six months in 2002 with her young child. Repeated submissions in particular by Lord Avebury were made to the then Home Office Minister, Beverley Hughes, requesting release. An application for judicial review was pending and there was evidence that the health of the mother and child were damaged by detention. The Minister repeatedly refused to authorise release.

Ms Konan was finally granted bail. She has gone on to be recognised as a refugee in the UK. The High Court (Case No: CO/4926/2002 [2004] EWHC 22 Admin) ruled that all but the initial two week period of her detention was unlawful. The judge stated that detention in this case was "manifestly contrary to the ... policy" (para 28) and noted that "...the fact that J(...)'s detention would involve the detention too of her very young child ought to have led to a recognition that detention must be for as short a time as possible".

*In relation to the detention of mother and child, solely on the grounds that they were imminently removable and had not enough family ties in the UK, the judge said:
"The claimant had never moved from the address at which she was required to live and her past record showed that she had complied with conditions of temporary admission, which included an obligation to report to the police...certainly [the child's] and probably [the mother's] health was being adversely affected by detention, the failure to release becomes the more inexplicable".
(para 25)*

⁶ "As at 27 December 2003, 10 people (1) (the majority being asylum detainees) who were detained solely under Immigration Act powers were recorded as being under 18 years old. Two thirds of those had been in detention for 14 days or less and the remainder had been detained for less than 3 months. These individuals were all detained as part of families whose detention as a group was considered necessary." Home Office, Asylum Statistics: 4th Quarter 2003.

⁷ An Inspection of Dungavel Immigration Removal Centre, October 2003, HMIP, August 2003, p 45

⁸ Case No: CO/4926/2002 [2004] EWHC 22 Admin

PASSAGE OF THE BILL SO FAR

During Committee in the House of Commons the Government rejected amendments seeking to ban the detention of children under immigration powers and amendments to ensure that children would only be detained for a maximum of 7 days. There was cross-party concern about the detention of children. Amendments were tabled at Report but not discussed due to lack of time.

During the debate at Commons Committee, the Minister sought to reassure members about the detention of children. On 16 December 2003, the Home Office announced measures designed to respond to criticisms of child detention⁹. The Minister argued that the requirement for Ministers to “*expressly authorise*” the detention of any child in excess of 28 days would provide protection for children¹⁰. The Refugee Children’s Consortium considers these measures woefully inadequate. They fail to protect children.

GOVERNMENT RESPONSE: MINISTERIAL AUTHORISATION & ASSESSMENTS

HMIP has urged the Government to ensure that the detention of children is always a measure of last resort, to be used only in exceptional circumstances and then for the shortest possible time. This is in keeping with the UK’s obligations towards children under Article 37(b) of the UNCRC. The Government purport to accept this¹¹. However a requirement for the ‘express authority of the immigration minister’ to maintain detention after 28 days does not meet the UK’s domestic and international obligations towards children and is no guarantee that the rights of the child will be upheld. A period of 28 days far exceeds the limit of a ‘few days’ recommended by Her Majesty’s Chief Inspector of Prisons. **Thus, even if the requirement for ministerial authorisation at 28 days were on the face of the Bill, the protection afforded children would be ineffectual. It envisages detention for the lengthy period of 28 days before any special measures kick in.**

In any event, in the Konan case, ministerial authorisation proved to be a wholly inadequate safeguard. Ms Konan and her child have now been awarded substantial compensation for illegal detention that was nonetheless authorised by the Minister.

In the report of the inspection into Dungavel Removal Centre, dated October 2002, and published in August 2003, Her Majesty’s Chief Inspectorate of Prisons stated:

“We therefore believe that there should be an independent assessment of the welfare, developmental and educational needs of each detained child, guided by the principles set out in international and UK domestic law in relation to children. This should be carried out as soon as practicable after detention and repeated at regular intervals thereafter, to advise on the compatibility of detention with the welfare of the child, and to inform decisions on detention and continued detention.”

In December 2003, one year after the report was written, the Government stated that:

“...the Home Office will ensure that the welfare and educational needs of any child who is detained at Dungavel for 21 days are assessed satisfactorily so that we can be assured that these needs are being met”.¹²

Measures to provide for assessments of children after 21 days fall far short of the HMIP recommendation and, moreover, apply only to Dungavel; they provide nothing for children in other centres. In two recent cases, single mothers and their children were detained at Oakington for 143 days and 114 days. There is no provision whatsoever for an *independent* and prompt review of detention.

In a letter to the Home Affairs Committee, written on 6 January 2004¹³, the Minister restated the “*commitment to consider ways in which the assessment of the welfare and educational needs children detained for more than just a short period might be improved*”.

⁹ Home Office Stat 054/2003 16 December 2003

¹⁰ Official Report, Standing Committee B, 27 January 2004, Column 413

¹¹ Home Office Reference: 106/2003 - Date: 8 Apr 2003

¹² Home Office Stat 054/2003 16 December 2003

¹³ Home Affairs Committee, Second Report of Session 2003-04, *Asylum Applications* Vol. 2 Ev 260, Beverley Hughes, 6 January 2003

The Government has made a “commitment to consider”, but 16 months after HMIP wrote the Report on Dungavel, what has been done? And what of children detained in other centres? At present, children over 12 detained at Oakington receive no education. Children under 12 may use the playroom where there are structured play activities but no formal education.

The amendment on assessments probes the “commitment to consider” the HMIP recommendations and we hope that it will provoke some sense of urgency. HMIP said in their report:

“HMIE [Her Majesty’s Inspectorate of Education] considered that even the improved educational facilities they found in July 2003 were acceptable only for a short period - no more than two weeks... This is solely in relation to educational needs: there is also the wider question, which we also address in this report, of the development and welfare of children held for an indefinite period in a secure facility, without the possibility of normal social life, and exposed to the general feelings of insecurity evident in the centre. We note HMIE’s view that in general terms ‘the positive development of children was compromised by the secure nature of the facility and the uncertainty surrounding the length of stay.’ This confirms our view, expressed in other reports, that the detention of children should be an exceptional measure, and should not in any event exceed a very short period – no more than a matter of days. The key principle here is not the precise number of days – It is that the welfare and development of children is likely to be compromised by detention, however humane the provisions, and that this will increase the longer detention is maintained.”

We call on the Government to:

- § **Give assurances that it intends to implement the recommendation of HMIP for an independent assessment of the welfare, educational and developmental needs of each detained child**
- § **Give assurances that implementation will apply to all centres and not just Dungavel**
- § **Set out a timescale for implementation of the recommendation**

THE BEST INTERESTS OF THE CHILD

Key points

- Detention damages the physical and emotional health of children.
- Detention gives rise to a range of child protection concerns.
- The best interests of the child must be a primary consideration when deciding whether to detain a child, as required by Article 3 of the UNCRC. Compliance is not achieved by deciding whether to detain a parent and then subsequently looking at whether the child is better off locked up with the parent or left alone on the outside. We are not dealing with people who have been convicted of any criminal offence or following the judgement of any court: the best interests of the child must be weighed as part of the initial decision on whether to detain the parent/carer.

Case Study: W

W arrived in the UK in 2001 and was granted a visitor’s visa for one year. She failed to extend this visa and claimed asylum some months after her visa expired. By this point, she had a baby son, born in spring 2003. When W claimed asylum she was told to return to the Home Office after one week. When she returned as directed, she was detained with her son at Oakington, She comes from a country subject to the non-suspensive appeal procedure.

W’s asylum claim was refused after 10 days in detention. Detention was then maintained while a travel document application was made for W’s son. Delays in obtaining travel documents for nationals of W’s country are well known. Despite this, and the fact that medical records for W’s child show that he suffered a fever and vomiting, detention was maintained.

W had no legal representative willing to make a bail application for her release. BID, a small charity that makes free bail applications for those without representation, was able to list a bail application after 3 ½ months of detention. This was the first occasion that W’s detention would have been subject to independent review and the reasons for maintaining detention would have had to be put before the court by the Home Office. As soon as the bail application was listed, instead of contesting the bail application, the Immigration Service released W and her son on temporary admission. Since being released, W has not heard anything from the Immigration Service. She is reporting as required.

A CASE FOR DETENTION OF FAMILIES?

In Committee the Minister argued that the ability to detain families was needed to address parents' past behaviour and the immigration risks that they present. However the Government has produced no research into the profile of families who are detained nor the likelihood of families absconding. There is no statistical or other evidential basis for concerns that families are unlikely to comply with the terms of temporary admission or release¹⁴. Only a proportion of those seeking asylum are detained and nothing suggests that families are in a group at high risk of absconding.

The Minister also argued that families who are detained are in the main "*very unlikely to have a positive decision on their asylum claim*"¹⁵. Member organisations work with families who have won a right to remain in the UK having spent long periods in detention.

In debate on 8 May 2003, the Minister stated that "*...Most families who are detained...go on to be removed.*"¹⁶ Of a sample of 15 cases dealt with by Bail for Immigration Detainees (BID) in 2003, detention resulted in removal in only 3 cases. All 12 other families were released on bail or temporary admission.

CONCLUSION

It is now two years since the change in policy to allow for longer detention of families and despite assurances by the Government and the recommendation of HMIP, children are still being detained for long periods. This is in violation of internationally recognised human rights standards and apparently without consideration of the alternatives to detention. These amendments will ensure that children are not detained and that their welfare and needs are safeguarded.

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¹⁴ None of the families in the report *A Few Too Many* (March 2003) by BID had absconded or lost contact with immigration authorities

¹⁵ Official Report, Standing Committee B, 27 January, Column 413

¹⁶ Hansard Commons Official Report, 8 May 2003, Col.927