

Refugee Children's Consortium

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

Report 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 AMENDMENT

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 ensure that an independent assessment of the welfare, educational and developmental needs of each detained child is carried out after seven days in detention, wherever they are detained. 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 **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 and the Ministerial responses given in Committee on 27 April 2004³ 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. The recently appointed Commissioner for Children and Young People in Scotland, Professor Kathleen Marshall has recently expressed concern about the detention of children at Dungavel and stated:

*"Detention itself is inherently against the welfare of children and you cannot expect children's welfare to be served in that situation."*⁴

While the policy remains that children may be detained, we would urge the Government to ensure that mechanisms exist to protect the needs of detained children.

KEY POINTS

- 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.
- 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.
- Following considerable pressure, the Government has finally included statistics on child detention in the quarterly asylum statistics⁵. 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. During Committee in the House of Lords, the Minister gave some more recent information⁶.
- In keeping with the UK's obligations towards children under Article 37(b) of the UNCRC which the Government purport to accept⁷ HMIP has recommended that children should only be detained in exceptional circumstances and then for the shortest time. HMIP has also stated that the welfare and development of children is likely to be compromised by detention and has recommended that an assessment of children's needs should be undertaken to *"advise on the compatibility of detention with the welfare of the child"*⁸.

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

² Home Office Stat054/2003, 16 December 2003

³ House of Lords Official Report, Vol 660, No.74 27 April 2004, Cols 712-714

⁴ *"Children's Tsar Questions Tagging"*, Monday 25 April 2004, BBC News online

⁵ *"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.

⁶ *"At Dungavel, as at 26 April, we have six families and 10 children, with four of school age. At Oakington, currently, we have 11 families and 14 children, with six of school age. That is a total of 17 families and 24 children, with 10 of school age. As regards detention of families, between 27 February and 25 March 2004, 95 families were taken into detention. Of 99 other families, 69 families were removed and 30 were released. There have been 134 children removed or released. The average time that those 134 children spent in detention was 9.8 days."* (Baroness Scotland) House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col.714

⁷ Home Office Reference: 106/2003 - Date: 8 Apr 2003

⁸ 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.

- During debates on the Bill so far Ministers have sought to reassure both Houses about the detention of children. On 16 December 2003, the Home Office announced measures designed to respond to criticisms of child detention⁹. The then 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 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. It far exceeds the limit of a ‘few days’ recommended by Her Majesty’s Chief Inspector of Prisons.
- **The Refugee Children’s Consortium considers these measures woefully inadequate, as the Konan case¹¹ referred to extensively by Lord Avebury in Committee¹² illustrates. Ms Konan who fled the Ivory Coast was detained for more than 6 months with her young child. The period of detention was subsequently ruled to be unlawful for all but the initial two-week period, despite repeated authorisation by the Minister.**
- 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. 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”¹³. **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.**

PASSAGE OF THE BILL SO FAR

The Government rejected amendments in Committee in the House of Commons 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 in the Commons but not discussed due to lack of time.

During Committee in the House of Lords on 27 April 2004, the amendment was laid to probe how, and when, the Government intended to give effect to the recommendation of Her Majesty’s Chief Inspectorate of Prisons relating to assessments. Concern was expressed from across the House about the detention of children. The Government was unable to provide evidence that they have made progress towards implementing the recommendation of HMIP regarding assessments and the Minister opposed the proposals for assessments, stating that; “*In all probability, it would add an additional layer of bureaucracy*” and questioning “... *whether it is necessary or workable*”¹⁴.

GOVERNMENT RESPONSE

Ministerial Authorisation

In response to the representations made by Lord Avebury in respect of the Konan case in Committee, the Baroness Scotland of Asthal argued that, “*systems are in place to prevent a recurrence*” and further that “*The detention procedures have been tightened up since the time of that case [Konan]*”¹⁵. The Minister referenced the system of ministerial authorisation of detention of cases involving children beyond 28 days which was announced on 16 December.

This demonstrates an alarming degree of complacency about the needs and rights of children who may still be detained for long periods without any independent scrutiny. It envisages detention for the lengthy period of 28 days before any special measures kick in; the protection afforded children would be ineffectual even if the requirement were on the face of the Bill. It is clear that apart from this inadequate measure, there are no meaningful changes to the detention

⁹ Home Office Stat 054/2003 16 December 2003

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

¹¹ Case No:CO/4926/2002 (2004) EWHC 22 Admin

¹² House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col.706-707

¹³ Hansard Official Report House of Lords, 30 March 2004, column 1304

¹⁴ House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col 712

¹⁵ House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col 714

procedures that would prevent a recurrence of a case like Konan where Ministers were completely aware of the situation, yet all but 14 days of the detention were subsequently declared unlawful.

Assessments

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:

"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 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."*¹⁶

In December 2003, one year after the report was written, the Government stated that the welfare and educational needs of children in Dungavel detained for more than 21 days would be "assessed satisfactorily".¹⁷ This position was confirmed in Committee by the Baroness Scotland:

*"We have indicated that we have been exploring the scope for enhancing welfare and educational assessment for children who, exceptionally, have been detained for longer periods than the norm. That remains the case. Much good work has been done already...for example, we are discussing arrangements with South Lanarkshire Council to conduct a welfare assessment for any child detained at Dungavel for 21 days..."*¹⁸

This response provides no safeguards for children in other centres and falls far short of the HMIP recommendation. 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 Minister has stated that *"At Oakington, arrangements for educational provision are being put in place"*¹⁹ but failed to specify what measures have been taken, or to address why there are currently six children of school age at Oakington²⁰ when no educational facilities are currently available.

Despite the commitment from the then Minister, Beverley Hughes in a letter to the Home Affairs Committee, written on 6 January 2004²¹, *"to consider ways in which the assessment of the welfare and educational needs of children detained for more than just a short period might be improved"*, the Baroness Scotland stated that the recommendation from HMIP had been rejected²².

¹⁶ An Inspection of Dungavel Immigration Removal Centre, October 2003, HMIP, August 2003, p 45

¹⁷ Home Office Stat 054/2003 16 December 2003

¹⁸ House of Lords Official Report, Vol 660, No.74 27 April 2004, Col.713

¹⁹ House of Lords Official Report, Vol 660, No.74 27 April 2004, Col.714

²⁰ House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col.714 (Baroness Scotland)

²¹ Home Affairs Committee, Second Report of Session 2003-04, *Asylum Applications* Vol. 2 Ev 260, Beverley Hughes, 6 January 2003

²² House of Lords Official Report, Vol 660, No.74 27 April 2004, Col.713

Unnecessary and bureaucratic?

The Minister opposed the introduction of assessments through the amendment on the basis that most children were not detained for very long. She stated: *"More than likely, the children would have been removed or released from detention before the assessor had a chance to do anything much if anything at all"*²³

The Minister said that between 27 February and 25 March 2004, 134 children taken into detention were removed or released and that the average time that those children spent in detention was 9.8 days.²⁴ On the basis of this average figure all of the children detained during this time would receive an independent assessment under the amendment. If the child had been removed or released within seven days then there would be no role for the assessor, however in cases involving prolonged detention – in two recent cases single mothers and their children were detained at Oakington for 143 days and 114 days – the assessment would provide safeguards for children.

The Minister's main reason for opposing the amendment seems to be that it is bureaucratic²⁵; she argued that the welfare of children is "monitored constantly"²⁶. The amendment takes as its starting point the recommendation from HMIP which was based on observations of the situation and experiences of children in detention. Protection of a child's needs and rights is of the utmost importance and a reluctance to create additional bureaucracy is not an acceptable reason for failing to protect children. Immigration officers are not required to consider the Children Act 1989 or the principles of the UNCRC before making decisions to detain. No-one is actively considering the best interests of the child.

The findings of HMIP accord with the experience of member organisations of the Refugee Children's Consortium. In recent cases, children's medical complaints have included eczema, anaemia, headaches, nosebleeds, lack of appetite, asthma and trouble sleeping. **The experience of detention can be very distressing and frightening for children and inadequate healthcare and treatment can have damaging physical and emotional consequences;** some children become withdrawn and silent, others exhibit distress through physical symptoms or a change in their behaviour. It is the general experience of the Medical Foundation for the Care of Victims of Torture that seriously troubled families have not been identified in detention and adequate assessment of children's needs have not been made, partly due to the lack of skills in the centres to carry out complex assessments of children's needs. **The importance of an independent assessment of children's needs cannot be overstated.**

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. The Government have failed to make significant progress in implementing changes that would provide an independent check on the welfare and needs of detained children. The measures proposed in this amendment would oblige the Government to speedily implement a mechanism for increased scrutiny by a body independent of the detaining authority. It is the very least that should be in place for children who are deprived of their liberty for the administrative convenience of the state, without any evidence that this is proportionate or necessary. We believe that the evidence from such scrutiny could only strengthen our argument that children should never be detained.

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²³ House of Lords Official Report, Vol 660, No.74 27 April 2004, Col.713

²⁴ House of Lords Official Report, Vol 660, No.74 27 April 2004, Col.714

²⁵ House of Lords Official Report, Vol.660, No 74, 27 April 2004, Col.712

²⁶ *ibid*