

The Detention Forum



Briefing Paper: Immigration Bill, Government Amendment to Lords Amendment 84 April 2016

The Detention Forum (www.detentionforum.org.uk) is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention.

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The Government Amendment would require the Secretary of State to arrange a bail hearing in the Tribunal where a person is detained for six months without making a bail application themselves. This period would run from the start of detention or from the last time the person initiated a bail application. The UK is currently unique in Europe in having no time limit on detention and no automatic judicial oversight of detention. The Government amendment is not an adequate response to this lack.

A key purpose of Lords Amendment 84 is to create a norm as to the appropriate period of detention absent exceptional circumstances. This reflects widespread cross-party concern at the over-use of detention, expressed in the report of the Parliamentary Inquiry held by the APPGs on Refugees and Migration and subsequently echoed by the Shaw Review, which called for a strengthening of legal safeguards against excessive lengths of detention.¹

The Government amendment loses sight of this aim, by restricting itself to one aspect of the Lords Amendment: the absence of any judicial oversight of long-term detention where the person does not make a bail application themselves. In the vast majority of cases, migrants in detention make bail applications within six months of being detained, and subsequently within six months of each bail application. The Government amendment would change nothing for these people. It would not require any intensified scrutiny of detention after six months has elapsed, as the Lords intended would happen after 28 days.

Lords Amendment 84, by contrast, would substantially increase judicial oversight for a large proportion of migrants in detention. **We urge parliamentarians to support it.**

¹ Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

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It is welcome that the Government now acknowledges that long-term detention without judicial oversight is unacceptable. However, it is difficult to see how it can justify a period of six months before judicial oversight is required.

The great majority of migrants in detention apply for bail at intervals of less than six months. In general, those who do not apply for bail are in two categories: a) highly vulnerable people who are unwilling or unable to instruct a solicitor to make a bail application; b) people without a private address who face long delays or refusals of a Section 4 bail address from the Home Office. The Bill's abolition of Section 4 and the changes to the bail address process, outlined by the Minister at Commons Committee, should remove the latter category.

Consequently, the vast majority of those affected by the Government amendment will be vulnerable people who are unable to challenge their detention for reasons related to their mental or physical health. If the new Home Office policy on 'adults at risk' is effective, the numbers should be very small. **If the Home Office continues to fail to keep highly vulnerable people out of detention, it is entirely inappropriate that these cases should only be seen by the courts after six months.**

Where vulnerable people slip through the cracks of this policy, their detention must be scrutinised by the court much sooner. In calling for a time limit of 28 days, the Parliamentary Inquiry relied on medical evidence that 'the extent of mental health problems could be directly correlated to detention beyond one month.'² The detention of vulnerable people for six months without judicial oversight is likely to cause serious long-term damage to mental health and cannot be justified. **We urge parliamentarians to ensure automatic judicial oversight of detention with a much shorter period.**

² The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom – A Joint inquiry by the All Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, p19 www.detentioninquiry.com