

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT IMMIGRATION ACT 2016 (CONSEQUENTIAL AMENDMENTS) (BIOMETRICS AND LEGAL AID) REGULATIONS 2017

Tuesday 18 April 2017

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The Committee consisted of the following Members:

Chair: GERAINT DAVIES

Clwyd, Ann (*Cynon Valley*) (Lab)
 † Crabb, Stephen (*Preseli Pembrokeshire*) (Con)
 † Davies, Byron (*Gower*) (Con)
 † Drummond, Mrs Flick (*Portsmouth South*) (Con)
 Dugher, Michael (*Barnsley East*) (Lab)
 † Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)
 † Goodwill, Mr Robert (*Minister for Immigration*)
 † Griffiths, Andrew (*Lord Commissioner of Her Majesty's Treasury*)
 † Harris, Carolyn (*Swansea East*) (Lab)
 Jones, Mr Kevan (*North Durham*) (Lab)

† McLaughlin, Anne (*Glasgow North East*) (SNP)
 † Malthouse, Kit (*North West Hampshire*) (Con)
 † Morris, Anne Marie (*Newton Abbot*) (Con)
 † Pursglove, Tom (*Corby*) (Con)
 † Smith, Henry (*Crawley*) (Con)
 † Snell, Gareth (*Stoke-on-Trent Central*) (Lab/Co-op)
 † Soames, Sir Nicholas (*Mid Sussex*) (Con)

Tamsin Maddock, Mark Etherton, *Committee Clerks*

† **attended the Committee**

First Delegated Legislation Committee

Tuesday 18 April 2017

[GERAINT DAVIES *in the Chair*]

Draft Immigration Act 2016 (Consequential Amendments) (Biometrics and Legal Aid) Regulations 2017

4.30 pm

The Chair: I call the Minister on this auspicious day to move the motion.

The Minister for Immigration (Mr Robert Goodwill): I beg to move,

That the Committee has considered the draft Immigration Act 2016 (Consequential Amendments) (Biometrics and Legal Aid) Regulations 2017.

Thank you for that introduction, Mr Davies; this is indeed an auspicious day—the regulations will no doubt enter the annals of history as we discuss it. I would like to explain the scope of the statutory instrument to the Committee. In short, it makes consequential amendments to two acts: the Legal Aid, Sentencing and Punishment of Offenders Act 2012—known as LASPO—and the Immigration and Asylum Act 1999.

The amendments are made in preparation for the commencement of the new immigration bail powers under schedule 10 to the Immigration Act 2016. The changes to LASPO are made in respect of access to legal aid for individuals liable to detention. The changes to the Immigration and Asylum Act 1999 are made in respect of the collection of biometric information from some individuals in connection with the conditions of their immigration bail.

The broad context of the regulations is the commencement of schedule 10 to the Immigration Act 2016. The powers conferred by schedule 10 will create a new status of immigration bail to replace the complex legal framework that currently exists under the Immigration Act 1971 in respect of individuals liable to immigration detention. There are currently a total of six legal statuses relating to bail or release for individuals liable to detention. It might help the Committee if I list them: temporary admission or release, under paragraph 21 of schedule 2; bail, under paragraph 22 of schedule 2; bail pending appeal, under paragraph 29 of schedule 2; bail pending removal, under paragraph 34 of schedule 2; bail pending deportation, under paragraph 3 of schedule 3; and release on restrictions, under paragraphs 2(5) or 4 of schedule 3. As the Committee must conclude, the situation is unnecessarily complex.

Under schedule 10 to the 2016 Act, those six statuses will be simplified into a single status of immigration bail. The changes to primary legislation made by the statutory instrument are intended to harmonise the legal framework surrounding release from detention in the light of the broader changes that will commence with schedule 10. Accordingly, the regulations are being introduced now so that the commencement of schedule 10

can proceed smoothly. That is because the changes to primary legislation are unnecessary to enable the new bail regime to function.

The amendments to LASPO are being made to ensure that access to legal aid for immigration bail is neither narrowed nor widened following the introduction of the new immigration bail powers. I hope that that will reassure those who might have had concerns about restrictions in legal aid.

When schedule 10 is commenced, the provisions to which LASPO currently refers will be repealed. As a result, changes to LASPO are required in paragraphs 26 and 27 of schedule 1. To give some detail, paragraph 26 provides for a person who is temporarily admitted to the UK to be eligible for legal aid, and paragraph 27 provides for a person who has been released on restrictions to be eligible for legal aid. The statutory instrument amends both paragraphs to reflect the new legal framework.

We are also inserting a new paragraph 27A into the relevant part of LASPO. It represents not a change in substance but a necessary change to ensure that those who are currently eligible for legal aid remain so. It is worth noting that paragraph 25 of schedule 1 to LASPO does not need to be changed, as it relates to people who are being detained. Those in detention are already eligible for legal aid in respect of bail, and the move to the new immigration bail regime will not change that.

In respect of the Immigration and Asylum Act 1999, a minor change to biometrics powers must also be made, because the commencement of schedule 10 will change the reporting requirement applying to some on what will become immigration bail. Section 141 of the Act currently provides the power for an authorised person to take fingerprints from an individual in given circumstances. One of those circumstances concerns individuals who have been refused leave to enter but were instead temporarily admitted. The power is exercised if an immigration officer reasonably suspects that the individual might break the conditions of temporary admission relating to residence or reporting and must therefore have their fingerprints recorded. Section 141 currently refers only to conditions for reporting to the police or an immigration officer. However, the new powers under schedule 10 mean that immigration bail can be imposed subject to a condition requiring a person to report to the Secretary of State or any such other person as may be specified. The statutory instrument makes the necessary amendment to reflect those new provisions.

In summary, the consequential amendments made by the statutory instrument are necessary for the smooth and orderly commencement of schedule 10 to the Immigration Act 2016, as agreed by Parliament. They ensure that the new power of immigration bail will not adversely impact anyone and that there will be no difference in the treatment of individuals who fall under the new encompassing status of immigration bail and who would have fallen into one of the six discrete statuses that I outlined earlier related to bail from detention. Equally, it will ensure that biometrics are taken only from the same cohort of individuals as before, in circumstances as outlined in the legislation. I commend the statutory instrument to the Committee.

The Chair: I now call my illustrious neighbour, Carolyn Harris, to respond on behalf of the Opposition.

4.36 pm

Carolyn Harris (Swansea East) (Lab): Thank you, Mr Davies. Illustrious—you'll have people talking about us.

The Minister will be aware that the amendment we are discussing could well have been included in the body of the 2016 Act, and the fact that we are discussing it today indicates that the Act was prepared in haste. We need to be cautious that that haste is not replicated. We are concerned that legal representatives for bail applications were unaware that the proposed commencement date of the immigration bail provision was 30 April 2017 until they received revised bail forms on 4 April. Charitable organisations working with those on temporary admission, and indeed Members of this House, were left to find out about these changes at third hand.

The term “immigration bail” stigmatises an individual as a criminal, when in reality many on immigration bail are asylum seekers. The terminology risks fuelling hatred and xenophobia, which was arguably the cause of the recent, very vicious attack on a young man in Croydon.

The light in this dark tunnel is that with the new immigration bail provisions will come an automatic judicial review for detainees, in the form of a bail hearing every four months. We need to ensure that those brought before an immigration judge for the lawfulness of their detention receive the appropriate consideration, because getting it wrong is a high price to pay.

The adults at risk guidance brought in as a result of the 2016 Act was intended to increase protection from wrongful detention for those at particular risk, such as survivors of torture and trafficking, and those with mental and physical health problems. Instead, it has been more difficult for those people to secure release. In order to ameliorate the situation, the courts were forced to issue an injunction to require the Home Office to revert to the more inclusive definition of torture used in the old guidance. That is a direct challenge to the restrictive definition used in the new guidance, which means that most survivors of torture are at risk of detention.

We have already seen two fatalities in immigration detention this year: a 27-year-old Polish man was found dead in January—the day after his wife gave birth to their child—and at the beginning of April a 44-year-old man died at the Verne immigration detention centre. I urge the Minister to review the adults at risk policy and lay more proactive guidance before Parliament.

With regard to legal aid, I ask the Minister to place on the parliamentary record the statement in the explanatory memorandum that there is

“no change in policy... The policy intention is that legal aid availability will be maintained as before, ensuring that there is no effective change to the availability of legal aid when the Schedule 10 provisions are commenced and the existing powers repealed.”

It is imperative that the Government's review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, scheduled to commence this year, examines legal aid for those deprived of their liberty. There is legal aid for challenges to immigration detention, but without dealing with the merits of the immigration case it may be difficult to secure release, and there is no legal aid for immigration cases. For those detained in the prison estate, even a challenge to detention may be out of reach in practice.

As of September 2016, 558 prisoners were held under Immigration Act powers in prisons. In February 2017, the charity Bail for Immigration Detainees published “Mind the Gap: Immigration Advice for Detainees in Prison”, which found that less than a quarter of immigration detainees surveyed in prison have access to an immigration solicitor. That situation must be addressed.

Although Opposition Members will cautiously support the Government today, we ask that the issues I have raised receive the appropriate attention and scrutiny they deserve.

4.41 pm

Anne McLaughlin (Glasgow North East) (SNP): Thank you for calling me to speak, Mr Davies, although I am a little disappointed that, unlike the other two speakers, I did not get a special introduction.

The Chair: I do apologise. It is fantastic to see you here on such a great day. I call Anne McLaughlin to speak on behalf of the Scottish National party.

Anne McLaughlin: Thank you very much, Mr Davies.

It will come as no surprise that, again, I want to put on the record my and the SNP's deep concern regarding the UK's current immigration detention system. I am aware that the Minister has agreed, following a Westminster Hall debate on the issue, to meet me to discuss more cost-effective and humane approaches, which I look forward to. In the meantime, I will take every opportunity to reiterate that there are better ways of doing these things. However, while we operate under the current system, it is only right to make it work as well as it possibly can.

The hon. Member for Swansea East has mentioned many of the points I was going to discuss, and I am in full agreement with her. I will therefore focus on three main issues. The first issue relates to automatic bail hearings. The debates and votes that led the Government to make provision for automatic bail hearings during the passage of the 2016 Act focused on the question of a time limit for detention. This would have required the Government to make a case for detention before a tribunal judge after 28 days, whether at a stretch or in aggregate. The amendment would have required the Secretary of State to persuade the tribunal that the case's exceptional circumstances required detention beyond 28 days. The amendment was carried by 187 votes to 170 and I clearly do not understand the workings in this place, because the automatic bail hearing after four months is apparently the Government's compromise response. I want to know what date this schedule will come into force.

The second matter is the automatic judicial oversight, which will not be for all. It does not apply, for example, to those detained pending deportation after serving a jail sentence. These people are often detained for the longest periods. Given the political pressures to keep them locked up, they are probably most in need of a tribunal to consider a review of their detention. They have served their sentence, they are surely equal to others who have served sentences under the law and they should have an equal right to judicial oversight. I want to pre-empt the Minister's response and remind him of the Westminster Hall debate I referred to, where he argued that many of these people pose a risk to the

[Anne McLaughlin]

public. I asked, if that were true, why they were out of jail. He then went on to reassure another Member who expressed concerns that vulnerable individuals are locked up alongside dangerous criminals who, as he said, posed a risk. He said the worst offenders are detained in prison, not in immigration detention centres.

The people we are talking about here have often been locked up for having committed a crime—a crime, but not one of choice, I would say—which is sometimes shoplifting to feed themselves, because they have no other way of doing so. Even in the case of those who have committed a greater crime, judicial oversight would surely pick up on that. It is about respecting the rule of law for everyone and about everyone having equal access to it. I therefore urge the Minister to bring forward legislation to extend automatic judicial oversight to all cases.

The last point I want to make—the hon. Member for Swansea East talked about this, but I want to talk about it as well—is about the adults at risk policy. Parliament succeeded not only in inserting into the 2016 Act provision for automatic bail hearings, but in placing a time limit on the detention of pregnant women. As we have discussed many times, Steven Shaw's report on the welfare of those in detention led the Government to insert provision into that Act for guidance on adults at risk in immigration detention. However, those policies have proven to be less protective than the provisions they replaced. The Royal College of Psychiatrists recently issued a statement saying that the new policy would

“significantly weaken the existing safeguards for vulnerable people with a history of torture, trafficking or other serious ill-treatment” and that it would not

“provide better protection for vulnerable groups against their detention and from the disproportionate adverse effects of such detention”.

So there was the restricting of the definition of torture: the Government wanted torture to be recognised only if it was instigated by a state agent, or an agent of a state-like entity—only that could prevent detention. As we now know, that was challenged by Medical Justice, which is a wonderful charity. Pending the full hearing of the challenge, the court issued an injunction against the Secretary of State requiring her to revert to the inclusive definition of torture.

Then we look at the deaths in detention. As the hon. Member for Swansea East has said, so far this year two people have died in detention. There are many more examples of vulnerable people, and I could cover them, but it is enough to mention again that there is a problem with the adults at risk guidance. Far from implementing Mr Shaw's call for greater protection, the guidance has made it easier to lock people up. I urge the Minister to lay new draft statutory guidance before Parliament.

Finally, as I said at the start, all of this is tinkering around the edges of a system that is very wrong. I am absolutely confident that when I present the evidence of the alternatives to the Minister at our meeting—we are yet to finalise a date—he will agree with me.

4.47 pm

Mr Goodwill: I thank both Members who have made contributions today. Please allow me some time to respond to the issues raised.

Although I cannot give a precise date for the commencement of the new bail provisions in schedule 10, I can assure Members that progress is being made, as this statutory instrument demonstrates. I expect the new immigration bail to be implemented shortly, although the forthcoming general election might delay that further.

Let me point out that immigration detention is entirely different from the detention of criminals in the prison estate. The people who may be foreign national offenders in immigration detention are no longer criminals; they are detained solely for the purpose of removal. Indeed, detainees can be put into detention only in very limited circumstances; there is a presumption against detention.

However, I would point out that last year 5,810 foreign national offenders were removed from this country, and I would make it clear to constituents up and down the country, including in Scotland, that if those people were in the UK, many of them may well have gone on to perpetrate crimes, and in some cases quite horrendous crimes—rape, murder and organised crime. The removal of those people is very good news for constituents.

Anne McLaughlin: I thank the Minister for taking an intervention. Every time we discuss this, I have to make it clear that I am not suggesting that the streets of the United Kingdom should be overrun with people who are likely to commit those terrible offences, regardless of where they come from. We are talking about people who are detained for longer than the prison term they were given, and whether or not they should be allowed to have the same judicial oversight after four months of detention. I ask the Minister to please stop implying that anybody here wants the country to be overrun with criminals who are going to cause harm to our constituents, because that is not what we want.

Mr Goodwill: Since 2010 we have removed around 30,000 foreign national offenders from this country. That is something that our people expect us to do, and I will be proud to stand on that record in the general election campaign. Indeed, Home Secretaries in the previous Administration were forced to resign because people were being released from prison without being considered for detention. I believe that we have a system that works very well, and we maintain all the legal safeguards that need to be in place. We have a very effective voluntary return scheme, so people who have not got legal status here can be helped with their air ticket or given other help if they volunteer to go early. We have an adults at risk policy and we constantly keep these matters under review.

The hon. Member for Swansea East mentioned legal aid. I repeat on the record that there will be no change on policy and no change to those who are eligible. The SNP spokesperson talked about having a time limit on detention. In my view, that would create a perverse incentive to delay the process and would make the system less effective and less operable. Let me give an example of some of the legal processes we have to undertake. In any given year about 18,000 judicial reviews are brought forward, of which fewer than 100 are successful. There is no shortage of access through the various tribunals and appeals processes, and there is judicial review for people who need it.

I was concerned that the hon. Member for Glasgow North East seemed to justify shoplifting—I am sure she will correct me if I am wrong—as something that is perfectly acceptable if the person is hungry. We have a process: if someone has no legal status here and cannot work, they should present themselves and we will work with them to return them to their country of origin.

Anne McLaughlin: I am not sure where to start. I will try to keep it brief. No, I was not saying that shoplifting is okay, and I think the Minister knows fine well that I was not saying that. I was saying that the Minister has used the excuse that people pose a risk to people out there if we do not detain them beyond their prison sentences. He was suggesting that they are dangerous people. If somebody shoplifts because they have no income and no way of feeding themselves, it is not right, it is against the law and it is a criminal act—I say on the record, please do not do it—but it is not the same thing as attacking somebody violently or raping somebody. The Minister puts those things in the same category. Those people do not pose a dangerous threat to members of the public.

Mr Goodwill: I am pleased to have given the hon. Lady the opportunity to put the record straight—I was possibly being a bit mischievous when I suggested that she was making that point. People who commit crimes here and have no status here need to leave the United Kingdom. If they do not do so voluntarily with the help we give them, in many cases immigration detention and the processes we have in place are needed.

The hon. Member for Swansea East talked about informing people that the bail changes in the 2016 Act will be coming into force on 30 April. The bail provisions in the Act are not coming into force on 30 April. I am happy to bring them forward shortly, but the election will lead to a short delay. We are working closely with the Ministry of Justice and the Courts and Tribunal Service. I have confirmed that there will be no changes. This measure does not change policy; it is a technical instrument to ensure that the three instruments interact correctly. The hon. Lady also raised the issue of advice to immigration detainees in prison. We are producing a comprehensive information pack to be given to prisoners setting out how to apply for bail and the appropriate forms to be used.

On the adults at risk policy, which I touched on briefly, I strongly disagree with the hon. Member for Glasgow North East. Concern for vulnerable detainees is at the heart of our decision making, and we expect our policy to lead to a reduction in the detention of vulnerable persons.

I hope I have addressed the points that were raised. This measure makes consequential amendments to the LASPO 2012 legislation and the Immigration and Asylum Act 1999. The amendments to those two pieces of primary legislation are central to facilitating the smooth and orderly commencement of the new immigration bail provisions under schedule 10 to the 2016 Act. I commend them to the House.

Question put and agreed to.

4.55 pm

Committee rose.

