

ILPA BRIEFING**House of Commons – Report, July 2009****Borders, Citizenship and Immigration Bill – Bill 115****Short-term holding facilities****Government Amendments Nos. 15, 16 & NC2****INTRODUCTION**

Clause 25 was introduced by the Government late into the Borders, Citizenship and Immigration Bill (at Committee stage in the House of Lords). The Government now seek to remove the Clause and replace it with New Clause NC2. This would produce a definition of short-term holding facility in immigration law (section 147, Immigration and Asylum Act 1999) as follows:

“a place used –

- (a) for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed, or*
- (b) for the detention of –*
 - (i) detained persons for a period of not more than seven days or for such period as may be prescribed, and*
 - (ii) persons other than detained persons for any period.”*

The Immigration and Asylum Act 1999 does not define ‘detention’, but does provide the following definition in respect of ‘detained persons’:

“persons detained or required to be detained under the 1971 Act [Immigration Act 1971] or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”

In this briefing such persons are referred to as immigration detainees.

DIFFERENCE BETWEEN THE PROPOSED NEW AND CURRENT DEFINITIONS

If the Government amendments are accepted, on enactment the change in law will be that short-term holding facilities will from that point also include places falling within (b) of the proposed definition (set out above). Currently, short-term holding facilities are limited to those places falling within (a) of that definition.

Essentially, this will have two effects:

- A place that is currently defined as a short-term holding facility, in which only immigration detainees are held, could in future also be used to hold non-immigration detainees (under any power of detention).
- A place that is not currently defined as a short-term holding facility, because it is currently used to detain non-immigration detainees for any period (whether shorter or longer than seven days) would in future be reclassified as a short-term holding facility if it was also used to hold any immigration detainee for less than seven days.

JUSTIFICATION OFFERED BY GOVERNMENT

At Committee, the Minister explained the reasons for amending the current definition of short-term holding facility as follows:

“The changes to the definition will simply allow the UK Border Agency and HM Revenue and Customs to use short-term holding facilities to detain persons following arrest, where that is in accordance with the provision we are making in relation to the application of PACE and the codes of practice [that is Clause 22 of this Bill]. In other words, the short-term holding facilities could in future hold a range of individuals, subject to the prescribed period of detention relevant in each case, including individuals arrested on suspicion of committing an immigration or customs offence for up to six hours... The provision could also cover individuals who are the subject of warrants for arrest, or who are otherwise liable to arrest by a police officer, who have been detained under section 2 of the UK Borders Act 2007 for a maximum of three hours...”¹

The remainder of his explanation relates to immigration detainees (i.e. those who currently are or may be held in short-term holding facilities). Accordingly, the intention is to include provision to use these facilities to additionally hold persons under the following powers:

- Immigration and customs powers, to which Clause 22 relates (for a maximum of six hours); and
- Detention at port powers, to which section 2 of the UK Borders Act 2007 relates (for a maximum of three hours).

If so, the new persons that may be held in these facilities should not be held for longer than six hours. The officials who should be using these facilities should only be immigration officers, general customs officials or customs revenue officials.

PROBLEM WITH THE CLAUSE AND NEW CLAUSE

Clause 25 and New Clause NC2 are unsatisfactory because these would allow for the detention of persons other than those to which the Minister has referred, for periods of time much longer than the periods to which the Minister has referred (indeed the periods could be indefinite – “for any period”). The facilities already attract serious criticisms for their inadequacy for holding those immigration detainees they now hold and for periods they hold these people². Extending the type of person held, the length of time some people may be held and mixing those held under various powers and for varying periods would not be safe or meet the welfare needs for anyone (including families and children) held in these facilities.

In addition, by reclassifying places which are not now short-term holding facilities (e.g. police cells where immigration detainees are sometimes held for less than seven days) would impact upon the regulatory powers and rules relating to those other places³.

PROPOSED AMENDMENTS TO GOVERNMENT AMENDMENTS

The concerns expressed here could be addressed by restricting the new definition to be produced by New Clause NC2 by way of the following two amendments to that Clause:

Firstly:

To amend New Clause 2 –

¹ *Hansard* HC, Committee, Second Sitting, 9 June 2009 : Column 59

² see e.g. *Hansard* HL, 6 Jul 2009 : Column 443 (Questions, Immigration: Heathrow Airport)

³ The UK Border Agency has, in June 2009, formally closed a consultation on draft Short-Term Holding Facilities Rules, which would set operational and welfare standards in all such facilities.

In New Clause 2, for “for any period” substitute “for not longer than six hours”.

This would restrict the length of time for which non-immigration detainees could be held to six hours, in line with the clear statement made by the Minister to the Committee. If, for example, the Government wished to extend the period for which persons could be held under powers such as in section 2, UK Borders Act 2007, it would be sensible and appropriate for legislation amending that provision to also amend the short-term holding facilities definition. That way would best ensure proper Parliamentary scrutiny over the use of these facilities. Otherwise, new or amended legislation on powers of detention could extend the length of time persons could be held without making clear to Parliament at the time that this involved extensions to the use of these facilities.

Secondly:

To amend New Clause 2 –

In New Clause 2, after “for the detention” insert “by an immigration officer, general customs official or customs revenue official”

This would restrict the officials who were empowered to detain people in a short-term holding facility to those officials exercising the powers to which the Minister referred in his statement to the Committee. This would ensure that short-term holding facilities were not used by other agencies to hold people under powers other than those referred to by the Minister. It would have the additional effect of ensuring that places (such as police cells) where other officials of the State (e.g. police officers) exercise powers to detain are not reclassified as short-term holding facilities.

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