

Lords’ Regret Motion Debate on The Short-term Holding Facility (Amendment) Rules 2022 (SI 2022/1345) on 18 April 2023

Briefing by Medical Justice and Freedom from Torture – Update on Developments and Suggested Questions

28 March 2023

1. Details of debate

1.1 A motion to regret the Short-term Holding Facility (Amendment) Rules 2022 will take place on Tuesday 18 April. The motion has been tabled by Baroness Lister of Burtersett.

1.2 The wording of the motion is *“that this House regrets that the Short-term Holding Facility (Amendment) Rules 2022 (SI 2022/1345) remove important safeguards and reduce the standards for the lawful detention beyond 24 hours of migrants, including children and vulnerable adults, at the immigration detention facility in Manston, Kent; that the Home Office has not provided an adequate policy justification for, nor consulted on these changes; and that this potentially contentious legislation was brought into effect while the House was in recess.”*

1.3 **The changes brought in by the Amended Rules constitute a dangerous withdrawal of the safeguards that apply to detained people, and a substantial downgrading of the conditions in which people are held.**¹

1.4 This briefing provides an update on developments since the Amended Rules came into force on 5 January 2023, and suggests a number of questions that Members may wish to raise during the debate on 18 April. **It should be read in conjunction with our joint evidence submission to the House of Lords’ Secondary Legislation Scrutiny Committee, which provides a detailed analysis of the changes brought in by the Amended Rules and explains key concerns.**²

2. Background

2.1 Short-term Holding Facilities (STHFs) are places used by immigration authorities for detaining people under immigration powers for short periods: for example, to conduct security checks, to carry out initial processing, or immediately prior to a person’s removal.

2.1 The pre-existing STHF Rules 2018 create two categories of STHF – (1) a residential STHF, at which people can be detained for a normal maximum of 5 days (and an absolute legal maximum of 7 days); and (2) a Holding Room (HR), at which people can be detained for a maximum of 24 hours.³

2.2 The Amended Rules introduce a new category of STHF – a Residential Holding Room (RHR), at which people can be detained for 96 hours (4 days), or longer “in exceptional circumstances”.⁴ The effect of the legislation is that key rules relating to safeguards and standards in detention have either been downgraded or disapplied entirely for RHRs, as compared to normal residential STHFs.⁵

¹ For a detailed analysis of the changes made and explanation of key concerns, please see: Medical Justice et al (2023) [Evidence to the Secondary Legislation Scrutiny Committee](#)

² Medical Justice et al (2023) [Evidence to the Secondary Legislation Scrutiny Committee](#)

³ [The Short-term Holding Facility Rules 2018](#)

⁴ [The Short-term Holding Facility \(Amendment\) Rules 2022](#)

⁵ For a detailed analysis of the rules that have been changed, please see: <https://committees.parliament.uk/publications/33593/documents/182873/default/>

2.3 The Home Office has stated that the new category of STHF has been created for Manston⁶, the former RAF base in Kent where people who have crossed the Channel in small boats – including children and other vulnerable individuals – are detained and undergo initial processing and security checks.

2.4 Both the Secondary Legislation Scrutiny Committee (SLSC)⁷ and the Home Affairs Committee⁸ have raised concerns about the Amended Rules.

3. Update on developments since 5 January 2023 and suggested questions for debate

3.1 Residential STHF vs. RHR

In its report on the legislation, the SLSC noted that “(e)xisting legislation... already provides for a residential facility with a maximum ordinary stay of five days and sets out the amenities appropriate to such a stay” and that the Home Office “has not provided an adequate policy justification for creating the new category (of RHR) or consulted on it. Nor has it explained why the amenities available for a four-day stay should be less than for a five-day stay”. This left the Committee “with the strong impression that the new category is designed for the operational convenience of the Home Office, rather than for good reasons of public policy”.⁹

Thus it appears the Home Secretary has not designated Manston as a normal residential Short Term Holding Facility either because the facilities are too inadequate to meet the requirements of the Rules, or because she does not wish for those detained at Manston to be covered by the safeguards contained in the Rules, including requirements on healthcare staff to identify particularly vulnerable people such as torture survivors (see section 3.4).

Q: Does the Minister accept that, rather than creating a new category of STHF at Manston, the Home Office should ensure Manston meets the existing standards for residential STHFs? Will he commit to reversing the Amended Rules and abolishing the category of RHR?

3.2 Opening date and capacity of RHR Manston

In relation to the capacity of Manston RHR, the Immigration Minister stated in late January that “ongoing works are expected to deliver capacity for around 100 residents by late March and expand to circa 600 beds by the Summer”.¹⁰

Q: Can the Minister confirm whether these dates and numbers are still accurate? What form will the sleeping accommodation take e.g. single rooms, twin rooms, or dormitories with multiple beds? Will 600 beds be an absolute maximum at the RHR or does the Home Office anticipate expanding capacity further? If so, what number will it expand to, and will the Home Office consult before proceeding?

⁶ The Short-term Holding Facility (Amendment) Rules 2022 Explanatory Memorandum <https://www.legislation.gov.uk/ukSI/2022/1345/memorandum/contents>

⁷ Secondary Legislation Scrutiny Committee (2023) [25th Report of Session 2022-23](#) at paras 80-81

⁸ Home Affairs Committee (2023) [Letter to the Minister for Immigration on Short Term Holding Facility \(Amendment\) Rules, dated 18 January 2023](#)

⁹ Secondary Legislation Scrutiny Committee (2023) [25th Report of Session 2022-23](#) at para 81

¹⁰ Minister for Immigration (2023) [Letter from the Minister for Immigration on the Short Term Holding Facility \(Amendment\) Rules, dated 31 January 2023](#)

3.3 Switching between HR and RHR at Manston

The Home Office has stated that “(w)hile small boats arrivals remain within manageable levels, and staff are able to process individuals within the 24-hours, the majority of the Manston site will continue to operate as a holding room... However, a residential holding room will provide the required flexibility at this site and will only be used when required by operational needs”.¹¹

It therefore appears that parts of the site at Manston will switch between being used as an HR and an RHR, depending on the number of people arriving. This has implications for the people detained there, in terms of knowing which type of facility they are being held in and therefore what legal rights they hold.

Q: Can the Minister explain how this switching process will take place – who will decide, on what basis, and will the decision be made public? Will the RHR at Manston be a separate physical space, compared with the HR, or will the two be combined?

Q. Can the Minister explain how detained persons will know a) which part of the site they are in at any given time, b) when/if they have been moved to a different part of the site, and crucially c) what set of legal rules are operating in that part of the site and what legal rights they therefore hold (e.g. to not be detained beyond 24 hours if in an HR; to be afforded access to a lawyer (albeit only by telephone) if in an RHR, etc.)?

Q: Can the Minister explain how staff at the site a) will know which part of the site is which (HR v RHR) at any given time, and b) will organise and operate the different services and facilities required for each part of the site (HR v RHR)?

3.4 Safeguards for vulnerable people

There is consistent evidence that detention is damaging to a person’s health and well-being.¹² The harm can occur rapidly and is in some cases permanent. Detention can damage the health of anyone who experiences it, but children, pregnant women, and those with a history of torture, trafficking, and serious mental health conditions are known to be at particular risk.¹³ Many of the people detained in Manston will fall into such categories, given the high rate of such vulnerabilities in asylum-seeking populations.

The need to ensure vulnerable people are not detained inappropriately is recognised by the Home Office.¹⁴ For this reason, mechanisms to achieve such safeguarding – e.g. Rule 30 (medical screening within 2 hours of arrival at a STHF) and 32 (duty on healthcare providers to identify vulnerable people at risk in detention, including torture survivors) - are included in the STHF Rules 2018.

¹¹ See Home Office (2023) [Further information from the Home Office](#) at A.1

¹² See for example Verhulsdonk, I., Shahab, M., & Molendijk, M. (2021) Prevalence of Psychiatric Disorders Among Refugees and Migrants in Immigration Detention: Systematic Review with Meta-analysis. *BJPsych Open* 7(6); Bosworth M. (2016) Appendix 5: The Mental Health Literature Survey Sub-Review. Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office; M von Werthern, K Robjant, Z Chui et al. (2018) The Impact of Immigration Detention on Mental Health: A Systematic Review, *BMC Psychiatry* 18: 382; and Royal College Psychiatrists [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21, (April 2021)

¹³ [Statutory Guidance: Adults at Risk in Immigration Detention](#)

¹⁴ [Statutory Guidance: Adults at Risk in Immigration Detention](#)

However, under the Amended Rules, the safeguards offered by Rules 30 and 32 have been drastically weakened in RHRs.¹⁵ Rule 30 has been changed such that the medical screening must be carried out at an RHR within 24 hours of admission – as opposed to within 2 hours at a residential STHF – and even this deadline may be missed if it is not possible due to “exceptional circumstances”.¹⁶ Regarding Rule 32, healthcare professionals in RHRs are only required to identify “any immediate risk to the detained person’s health”, rather than the more comprehensive three categories of ‘at risk’ person in the unamended Rule 32 applied in a residential STHF.¹⁷ It is also not clear whether, when dealing with a vulnerable person held at an RHR, healthcare professionals and Home Office must follow the key formal processes and deadlines that apply to Rule 32 in normal residential STHFs.¹⁸

The Home Office has sought to justify these changes to safeguarding mechanism on efficiency grounds, stating that “there is a balance to be achieved between ensuring (the site) operates as efficiently as possible whilst addressing immediate healthcare and vulnerability concerns for any individuals”. Thus, it appears the Home Office is prioritising the operational efficiency of RHRs above the safety and well-being of detained people.

Q: Does the Minister agree that prioritisation of operational efficiency over safeguarding at RHRs is simply unacceptable? Will he commit to prioritising the safety and well-being of all people held in detention?

3.5 Access to legal advice

Prompt access to legal advice is vital for those held in detention. Concerns have been raised that individuals held at Manston last year did not have sufficient access to justice.¹⁹

In Immigration Removal Centres, individuals can book one free 30-minute in-person appointment with a legal aid firm via the Detained Duty Advice Scheme. The absence of such a scheme for people detained under immigration powers in prisons was recently found to be unlawful.²⁰ It is not yet clear whether such a scheme will be available for people held in RHRs.

Under the Amended Rules, there is no guarantee that an individual in an RHR can meet with their legal adviser face-to-face – while individuals are permitted telephone contact, face-to-face meetings will take place only “if it is practicable”.²¹

¹⁵ See Medical Justice et al (2023) [Evidence to the Secondary Legislation Scrutiny Committee](#) at part 5

¹⁶ See [The Short-term Holding Facility \(Amendment\) Rules 2022](#) at s2(5) (part relating to Rule 30)

¹⁷ The three categories are any detained person: (1) whose health is likely to be “injuriously affected” by continued detention or any conditions of detention; (2) whom they suspect of having suicidal intentions;

(3) whom they are concerned may have been a victim of torture. See [The Short-term Holding Facility Rules 2018](#) at s32

¹⁸ These processes and deadlines are laid out in [Detention services order 09/2016: Detention centre rule 35 and Short-term Holding Facility rule 32](#). The DSO requires, for example, that healthcare professionals must notify the Home Office of their concerns via a ‘Rule 32 report’ and provides the relevant report templates and guidance. The DSO also sets out the process to be followed by the Home Office upon receipt of such a report, including the requirement for the Home Office to consider the report; conduct a review of the person’s detention, and take prompt action to release them if appropriate; and to issue a response to the report – both to the detained person in question and their legal representative (if they have one). These actions must be completed within a specified timeframe (2 working days of receipt of the report) and in line with the Home Office’s Adults at risk in immigration detention guidance.

¹⁹ Bail for Immigration Detainees (2022) [BID challenges Home Office over access to justice failure at Manston asylum centre](#)

²⁰ Matrix Chambers (2021) [Detained Duty Advice Scheme held to be discriminatory towards detainees in prison](#)

²¹ [The Short-term Holding Facility \(Amendment\) Rules 2022](#) at s2(5) (part relating to Rule 27)

Q: Can the Minister confirm what provisions will be available at Manston and other RHRs to enable people held to access legal advice and representation? Will this provision include a Detained Duty Advice Scheme or similar? Can he provide an unconditional guarantee that individuals will be able to meet with their legal advisor – whether from the Scheme or outside it – face-to-face?

3.6 Face-to-face visits / access to independent medical advice and other organisations

Subject to certain limitations, individuals held in residential STHFs are allowed to have both telephone contact and face-to-face visits with people outside the facility.²²

Under the Amended Rules, individuals held at an RHR are allowed telephone contact with people outside the facility, but it is unclear whether face-to-face visits are permitted.

Q: Can the Minister confirm whether people held at RHRs will be permitted face-to-face visits from people outside the facility? Will this include visits by independent medical doctors, and representatives from other organisations?

3.7 Length of detention

In a residential STHF, there are time limits on detention - a normal maximum of 5 days, and absolute legal maximum of 7 days where removal directions can be set within a further 2 days.

In an RHR, under the Amended Rules, people can be detained for 96-hours (4 days). However, the Rules also state that the period can be “extended” in “exceptional circumstances”.²³

The Home Office has stated that “exceptional circumstances” are not defined in law, but “is likely to include, for example, days of unexpected and very large numbers of small boat arrivals, or making arrangements for onward transfer from Manston”.²⁴

Q: Can the Minister explain why a maximum legal time limit is applied in a residential STHF but not in an RHR? Will he commit to introducing a limit?

Q: Does the Minister agree that such “exceptional circumstances” are not in fact exceptional at certain times of year (for example, during summer months when weather conditions lead to an increase in the numbers of small boat crossings) and can be expected to occur on a fairly frequent basis. Does he therefore agree that detention beyond 96 hours may occur on an equally frequent basis at Manston, but that facilities to meet the predicted needs could be put in place, obviating the necessity for any extended period of detention?

3.8 Additional RHRs beyond Manston

The Home Office stated in January 2023 that there were “no plans to apply RHRs to other sites at this current time”, but also that “(o)ther detained sites could operate as RHRs as long as they meet the required standards set out in the STHF Rules”.²⁵

²² [The Short-term Holding Facility Rules 2018](#)

²³ [The Short-term Holding Facility \(Amendment\) Rules 2022](#) at s2(2)

²⁴ Home Office (2023) [Further information from the Home Office](#) at A.11

²⁵ Home Office (2023) [Further information from the Home Office](#) at A.9

In recent weeks, it has emerged that two MOD sites, MDP Wethersfield near Braintree in Essex and RAF Scampton in Lincolnshire, are being considered for use by the Home Office.²⁶ No official announcement or confirmation of plans has been provided by the Home Office itself.

In both cases, reports so far suggest that the sites are being considered for use as ‘asylum accommodation’ (like at Napier Barracks in Kent). Such usage would be highly inappropriate.²⁷ It is also possible some or all of each site may be used as a detention facility. Local campaigners discovered that a mixture of asylum accommodation *and* detention was planned at RAF Linton-on-Ouse, another site targeted for use by the Home Office in summer 2022.²⁸

Q: What plans does the Minister have to classify other sites beyond Manston as RHRs? What process or selection criteria will be applied to that classification? What consultation with the local community, agencies, civil society and the Legal Aid Agency will take place ahead of any classification?

Q: Will the Minister confirm what the Home Office’s plans are at MDP Wethersfield and RAF Scampton? Will the sites be used, in whole or in part, as detention facilities – either as RHRs or other forms of detention (HRs, residential STHFs or Immigration Removal Centres (IRCs))? Has work already begun at the sites? If so, what planning permission was required, and has that already been secured? What is the planned capacity for each site?

3.7 Costs

In response to a request from the Chair of the Home Affairs Committee in November 2022, the Immigration Minister stated in early December 2022 that “a costing exercise to encompass the whole of Government cost, for the operation of Manston has been commissioned”.²⁹ As of 23 February 2023, the costing information was still not available.³⁰

Q: Can the Minister give a planned timetable for providing this information to Parliament?

3.8 Publication of updated guidance on the Amended Rules

The Home Office has stated that it will publish updated guidance on the new Rules “when Manston RHR is operationalised”. Such guidance provides information on how the Rules are to be applied in practice, including for example safeguarding mechanisms contained in Rules 30/32, and is therefore crucial for understanding exactly how the RHR will operate.

Q: Will the Minister commit to publishing the updated guidance on the Amended Rules now, to enable as detailed as possible an understanding of how the site will operate once it is open?

3.9 Equality Impact Assessment

²⁶ See for example: <https://www.theguardian.com/uk-news/2023/mar/04/ministers-urged-to-drop-plans-for-asylum-centre-at-former-raf-base-in-essex-mdp-wethersfield>; <https://www.bbc.co.uk/news/uk-england-lincolnshire-64890522>

²⁷ For a detailed discussion of the inappropriateness of using former military sites as asylum accommodation, see All-Party Parliamentary Group on Immigration Detention (2021) [Report of the Inquiry into Quasi-detention](#)

²⁸ See: <https://www.change.org/p/stop-linton-on-ouse-asylum-centre-and-help-facilitate-dialogue-between-all-stakeholders>. The Home Office neither confirmed nor denied the possibility of detention at Linton in parliamentary question on the topic: <https://www.theyworkforyou.com/wrans/?id=2022-05-24.8033.h&s=linton+AND+detention#g8033.q0>

²⁹ <https://www.theyworkforyou.com/wrans/?id=2022-11-30.99773.h&s=Manston>

³⁰ <https://www.theyworkforyou.com/wrans/?id=2023-02-17.147297.h&s=Manston>

The Amended Rules are likely to have a particularly negative impact on protected groups, including those who are disabled as a result of their mental illness. We are also particularly concerned about the impact on women and children, since the Amended Rules extend the period of time during which they can be held without single sex sleeping accommodation or in sleeping accommodation shared with unrelated adults.³¹

As far as we are aware, however, no Equality Impact Assessment or similar has been carried out in relation to the changes. We note that in the case of Short-term Holding Facility Rules 2018, the government published a Policy Equality Statement.³²

Q: Can the Minister confirm whether an Equality Impact Assessment has been completed for the new Rules? If so, will he commit to publishing this as soon as possible?

3.10 Publication of statistics

Currently, the number of people detained at RAF Manston are not included in the government's quarterly immigration statistics. This hampers effective scrutiny: it is important to understand how many people are held at Manston, and particularly so given the deeply concerning recent events at the site, including severe overcrowding, subsequent outbreaks of infectious disease and the death of a man held.

The reason for the figures' absence from the government's statistics is not clear. The number of people held at residential STHFs³³, and in those parts of IRCs that act as STHFs³⁴ are included in the statistics: in the period from October to December 2022, the number of people detained in those sites was 1,109.³⁵ The government has stated that the throughput at Manston for the same period was "approximately" 10,600 people.³⁶ Following its inspection of Manston in July 2022, HMIP reported that the "inconsistent and fragmented" nature of data collection at the site was a key concern.³⁷

Q: Will the Minister commit to including the number of people held at Manston in the quarterly immigration statistics going forward? Can he explain what steps his department has taken to ensure accurate and timely collection of data at Manston?

3.11 Significance of the Illegal Migration Bill (IMB) and other legislative changes

On 7 March 2023, the Home Secretary introduced the new Illegal Migration Bill (IMB). Provisions in the Bill grant the Home Secretary wide new powers to detain people she has or may have a duty to remove, together with their family members including children, and removes limits on

³¹ Medical Justice et al (2023) [Evidence to the Secondary Legislation Scrutiny Committee](#) at para 6.1

³² Home Office (2018) [Policy Equality Statement \(PES\): Short-term Holding Facility Rules 2018 \(SI 409/2018\)](#)

³³ The three residential STHFs are Larne House STHF in Belfast, Manchester STHF and Swinderby STHF in Lincolnshire. For figures see: "[How many people are detained or returned?](#)" (detention-datasets-dec-2022) available at [Immigration system statistics, year ending December 2022](#)

³⁴ Yarl's Wood STHF and Colnbrook STHF. For figures see: "[How many people are detained or returned?](#)" (detention-datasets-dec-2022) available at [Immigration system statistics, year ending December 2022](#)

³⁵ For figures see: "[How many people are detained or returned?](#)" (detention-datasets-dec-2022) available at [Immigration system statistics, year ending December 2022](#)

³⁶ Home Office (2023) [Further information from the Home Office](#) at A.10

³⁷ HM Chief Inspector of Prisons (2022) [Report on an unannounced inspection of the short-term holding facilities at Western Jet Foil, Lydd Airport and Manston](#) at para 2.2

detaining unaccompanied children and pregnant women. The Bill also restricts judicial oversight of the lawfulness of a person's detention, and limits individuals' access to bail.³⁸

Additionally, provisions in the Levelling-Up and Regeneration Bill (LURB), currently in Committee stage in the Lords, will allow the government to circumvent local planning processes for developments they wish to pursue on Crown land (e.g. MOD sites).³⁹ We believe the provisions have been included in the Bill, at least in part, to enable the opening of asylum accommodation centres on such sites – but they could also be used by the Home Secretary to open detention facilities, or indeed facilities that comprise both asylum accommodation and detention.

Thus, if the relevant provisions in both the IMB and LURB pass, there will shortly exist:

- a) via the IMB – **wide new powers for the Home Secretary to detain people arriving irregularly to the UK, including children and pregnant women, with drastically reduced judicial oversight.**
- b) via the LURB – **the ability for the government to obtain planning permission for detention (and other) facilities much more easily**
- c) via the Amended Rules – **a new 'lawful' category of detention facility where safeguarding mechanisms are weakened and the standards in which people held are reduced.**

This is a profoundly concerning combination of factors, which look set to create an amount and form of detention not seen in the UK in modern times – with vastly larger numbers of people, including children and vulnerable people, detained for far longer in significantly worse conditions with fewer safeguards and protections. It seems clear that the changes planned will lead to a dramatic increase in suffering amongst those subjected to them.

Q: Can the Minister confirm that the current legislative changes will lead to a dramatic change in the amount and form of detention used in the UK in the coming months and years? Is he concerned that the changes risk leading to an increase in breaches of human rights in particular for example, the right to be protected against arbitrary detention (Art 5, ECHR) and torture and inhumane and degrading treatment (Art 3, ECHR)?

³⁸ For further details see: ILPA (2023) [Illegal Migration Bill: Second Reading, House of Commons](#)

³⁹ The relevant provisions are contained in Clause 101 of the LURB. The Clause relates to developments that the government considers to be of “national importance” and that take place on Crown land (e.g. MOD sites). In such cases, under Clause 101 the government will be able to grant itself planning permission for the development, rather than applying for permission via the local planning process. It is important to note that local planning process have been a key obstacle preventing the government from opening additional asylum accommodation centres, as seen at RAF Linton-on-Ouse in 2022, Yarl's Wood in 2021 and elsewhere. For a full briefing on the topic, please see Asylum Matters, Medical Justice, Helen Bamber Foundation and Ripon City of Sanctuary (2023) [Joint Briefing to the House of Lords – Committee Stage of the Levelling Up and Regeneration Bill](#)