

## Medical Justice Briefing on Amendment 70, Illegal Migration Bill

### Amendment Prohibiting the Use of Force on Pregnant Women and Children

Baroness Lister of Burtersett, The Lord Bishop Of Gloucester, Baroness Gohir, Baroness Chakrabarti

#### Amendment

After Clause 10, insert the following new Clause —

#### **“Prohibition of use of force against children and pregnant women**

- (1) The use of force against a person to whom this section applies cannot be justified in any proceedings on the ground that such force was reasonably necessary-
  - (a) to effect that person’s detention under a relevant detention power; or
  - (b) to effect that person’s removal from the United Kingdom pursuant to a direction given under a relevant removal power.
  
- (2) This section applies to-
  - (a) a person who is pregnant; or
  - (b) a person who is under the age of 18.
  
- (3) In this section, “relevant detention power” means a power to detain under-
  - (a) paragraph 16(2), (2C) or (2D) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
  - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
  - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal); or
  - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
  
- (4) In this section, “relevant removal power” means a power to give directions for a person’s removal under-
  - (a) paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (removal of persons refused leave to enter and illegal entrants);
  - (b) paragraph 1 of Schedule 3 to that Act (removal of persons liable to deportation);
  - (c) section 10(7) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom)
  - (d) or section 7 of this Act.”

#### Briefing

##### What is “use of force” in context of immigration detention and removals

Use of force is an umbrella term which includes restraining or laying hands on a detained person including before or during an escorted move, whilst in detention, and the use of restraint equipment such as handcuffs, leg restraints and waist restraint belts.

Force can be used on people detained under immigration powers, both by Detention Custody Officer in immigration removal centres (IRCs) and by escort staff during removals. Rule 41 of the Detention Centre Rules (DCR) 2001 provides that force shall not be used “unnecessarily”, and that when the application of force is deemed necessary, “no more force than is necessary shall be used”.<sup>1</sup>

Home Office policy permits force if it is “necessary”, “reasonable” and “proportionate to the threat being faced or the intended aim”.<sup>2</sup>

The excessive use of force is unlawful.<sup>3</sup>

For the general detained population, policy provides that restraints may be used<sup>4</sup>:

- to reduce the risk of escape or absconding
- to prevent harm to the public, other detained individuals or staff
- to prevent damage to property
- to prevent an individual from self-harming
- to prevent an individual obstructing their removal
- during escorted moves, including to court appearances and medical appointments
- on detained people who display non-compliant behaviour or resist the planned use of restraints.

Where force is used, Rule 41 DCR 2001 further requires the that the detail of the use of force to be recorded and reported to the Secretary of State.<sup>5</sup>

#### [What is the current government policy on use of force against pregnant women and children](#)

In effect, the Home Office policy prohibits force from being used on pregnant women and children to secure their compliance, including to effect detention and removal. It is only allowed in a narrow set of circumstances.

**Pregnant women:** The Home Office’s current policy prohibits the use of force on pregnant women, save where necessary “to prevent her from harming herself, any member of her family, other persons present, or any member of staff”.<sup>6</sup> Force for the purpose of securing compliance is prohibited on pregnant women.<sup>7</sup> It is also prohibited to place a detained pregnant woman in a waist restraint belt, leg restraints or in the mobile chair for the purpose of restraint.<sup>8</sup> Handcuffs should only be used in exceptional circumstances.<sup>9</sup>

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<sup>1</sup> [Detention Centre Rules 2001](#) SI 2001 no 238 Rule 41.

<sup>2</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 6.

<sup>3</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 6.

<sup>4</sup> Home Office (November 2022) [Detention Services Order 07/2016 Use of Restraint\(s\) for Escorted Moves – All staff](#) para 8-13.

<sup>5</sup> [Detention Centre Rules 2001](#) SI 2001 no 238 Rule 41.

<sup>6</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>7</sup> Home Office (November 2016) [Detention Services Order 05/2016 Care and Management of Pregnant Women in Detention](#) para 12.

<sup>8</sup> Home Office (November 2016) [Detention Services Order 05/2016 Care and Management of Pregnant Women in Detention](#) para 12.

<sup>9</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 11.

Home Office detention policy states that *“Any force used on a pregnant woman must be appropriate, justified and proportionate”*.<sup>10</sup>

**Children:** The Home Office’s current Use of Force guidance requires the use of force on children and young people to be *“limited to circumstances where it is necessary for an officer to use physical intervention to prevent harm to the child or any individual present”*.<sup>11</sup> Where physical intervention is deemed absolutely necessary to prevent harm, policy requires officers and contractors to ensure that any intervention is *“limited to the minimum level of force required in that particular circumstance”* and *“justifiable”*.<sup>12</sup> It must only be used for the shortest possible period and must be de-escalated at the earliest opportunity.<sup>13</sup>

It is prohibited for physical intervention to be used to effect removal of children.

Home Office policy further states that handcuffs and limb restraints should only be used in exceptional circumstances.

The *unnecessary* use of force against a child violates Article 3 of the European Convention on Human Rights (ECHR) and Article 37(c) of the Convention on the Rights of the Child (UNCRC).

#### History of the policies on use of force on pregnant women and children

Prior to 2012, it had been government policy that force should only be used on pregnant women to *“prevent her from harming herself, any member of her family or any member of staff”*.<sup>14</sup>

For children, government policy pre-2012 had limited the control and restraint to where it was necessary to *“to prevent harm to the child or any individual present whilst ensuring they comply with a requirement to leave to UK”*.<sup>15</sup> It was prohibited to exercise physical interventions to enforce removal.<sup>16</sup>

This guidance on the use of force on pregnant women was revoked in March 2012, when Chapter 45 of the Enforcement Instructions and Guidance (EIG) was revised.

In 2012, HMIP recommended that force should never be used on pregnant women.<sup>17</sup> This was rejected by the government.<sup>18</sup>

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<sup>10</sup> Home Office (November 2016) [Detention Services Order 05/2016 Care and Management of Pregnant Women in Detention](#) para 12 and Home Office (November 2022) [Detention Services Order 07/2016 Use of Restraint\(s\) for Escorted Moves – All staff](#) paras 14-15.

<sup>11</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>12</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>13</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>14</sup> [Chapter 45 as of 16/1/09 \(nationalarchives.gov.uk\)](#)

<sup>15</sup> [Chapter 45 as of 16/1/09 \(nationalarchives.gov.uk\)](#)

<sup>16</sup> [Chapter 45 as of 16/1/09 \(nationalarchives.gov.uk\)](#)

<sup>17</sup> HMIP (2012) [Report on an announced inspection of Cedars predeparture accommodation](#), 30 April – 25 May 2012.

<sup>18</sup> UKBA Service Improvement Plan (2012) Cedars pre-departure accommodation – Announced Inspection, 30 April – 25 May 2012, Section 5.1.

In 2013, a judicial review on behalf of a pregnant woman and four children in the case of *Chen*<sup>19</sup> challenged the legality of using force against pregnant women and children under immigration powers, in circumstances where there was no policy in place. The Home Office agreed to reinstate the policy prohibiting the use of force on pregnant women and children in immigration detention, save for where it is absolutely necessary to prevent harm.

Mr Justice Turner commented, in granting interim relief prohibiting the use of force against the claimants in the case: *“It is not appropriate that policies of this importance should disappear and then reappear in light of these proceedings”*.

We believe it to be unacceptable for a policy to be removed without notification, and only reinstated following a legal challenge.

### Reality of the use and misuse of force

#### *Jimmy Mubenga*

The misuse of force has been a longstanding and highly distressing issue. In 2010, the dangers of the misuse of force were highlighted by the case of Jimmy Mubenga who, subjected to excessive use of force, was unlawfully killed during deportation.<sup>20</sup>

#### *Brook House Inquiry*

A public inquiry into the mistreatment and abuse that occurred at Brook House Immigration Removal Centre in 2017, which heard evidence over 10 weeks 2022-2023, has provided an unusual and revealing insight into the reality of how force was used on detained people during detention and removals.

Video footage, including body-worn cameras, as well as use of force forms from Brook House IRC in 2017 demonstrated how force was used routinely and excessively for the purpose of removals. It showed the multiple and extreme ways in which vulnerable detained persons were subject to the coercive misuse of force.

Evidence revealed how the unlawful and/or inappropriate use of coercive measures, such as restraint, force, deliberate pain-inducing measures and segregation was used frequently to manage mentally unwell detained individuals including those who lack mental capacity.

Dr Brodie Paterson, an expert in restraint reduction, who also provided evidence to the Brook House Inquiry, expressed the view that the use of high-tariff and pain-based techniques on those in mental distress and/or who lack mental capacity is particularly problematic, since they may have impaired responses to the use of pain, thereby risking prolonged/more extreme force. This could be a terrifying re-enactment of past abuse, for example, for torture survivors.

Jon Collier, the Inquiry’s use of force expert to the Brook House Inquiry reviewed forms relating to 43 use of force incidents and identified recurrent concerns of force not being used as last resort, lack

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<sup>19</sup> R (on the application of Chen and Others) v SSHD CO/1119/2013

<sup>20</sup> Paul Lewis, Matthew Taylor and Cécile de Comarmond in Luanda (2010) [Security guards accused over death of man being deported to Angola](#), The Guardian.

of de-escalation attempts, and inappropriate blanket use of PPE (riot gear and shields). Most critically, Mr Collier identified the inappropriate use of force, including the use of prison methods of control and restraint methods, including the deliberate infliction of pain to get compliance, on those with mental illness. He found that there was no guidance in the training or policy then, or now, on the use of force in the context of mental illness.<sup>21</sup>

The evidence illustrated the recurrent pattern of misuse of force. Force was used as a first-line response to episodes of acute distress and self-harming, without sufficient attempts at de-escalation or clinical input, and/or executed with unsafe/incompetent techniques. For example, for one person, who officers were aware suffered from a serious heart condition and self-harm history, on entry of the Control & Restraint team, was found lying half-naked, pleading “*I’m sick, I die*”. He suffered a clinical episode mid-restraint, yet force continued. Mr Collier considered force completely unjustified. The incident was a medical move and should have been treated as such.<sup>22</sup>

There was evidence that there was very poor governance of the use of force, which facilitated the persistent misuse of force and abusive practices. These failings in oversight by both G4S managers and the Home Office officials contributed to a climate of impunity where the abusive use of force and excessive force persisted unchecked. There were patterns of officers not using body-worn footage cameras as required, which could be to avoid accountability.<sup>23</sup>

The role of healthcare in planned decisions to use force is to raise any clinical concerns which may contra-indicate restraint. Healthcare must attend any planned use of force, and indeed all incidents of force where practicable. Evidence to the Brook House Inquiry shows cases in which apparent clinical concerns and contraindications to restraint were not raised, leading to clinically incorrect reassurance being provided to both IRC and Home Office staff as to the appropriateness of restraint practices being used or maintained against vulnerable detainees.<sup>24</sup>

This was an important context for and contributed to the conditions leading to mistreatment and abuse at Brook House IRC. Jon Collier, the Inquiry’s Use of Force expert, was of the view that what he was able to review was likely just the “*tip of iceberg*”.<sup>25</sup>

### *Manston*

Responses to Freedom of Information requests for the use of force forms from October 2022 at Manston, obtained by Liberty Investigates, revealed concerning incidents of force.<sup>26</sup> The documents reveal incidents of detained people being pinned to the ground and beaten after hitting their heads against a wall, detained people being forcibly restrained after asking for food.

It further revealed incidents of staff working for a private security contractor on site, Interforce, using force but apparently completing no documentation after such restraint. For private security staff to use force despite not having the necessary training, accreditation and qualifications poses

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<sup>21</sup> [Jon Collier, 30 March 2022, 140/3-24](#)

<sup>22</sup> [Jon Collier, 30 March 2022, 127/11-20 and 128/8-12](#)

<sup>23</sup> [Jon Collier, 30 March 2022, 157/3-25 and also 158/1-2](#)

<sup>24</sup> [First Witness Statement of Dr Rachel Bingham](#), §§133-134.

<sup>25</sup> [Jon Collier, 30 March 2022, 138/14-24](#)

<sup>26</sup> Lizzie Dearden, Aaron Walawalkar and Eleanor Rose (4 February 2023) [Revealed: Shocking accounts of migrants handcuffed and self-harming in UK’s chaotic asylum system](#), The Independent.

dangerous risks for the detained people involved. If performed incorrectly, use of force techniques can have devastating consequences. Not completing use of force forms is extremely concerning because it prevents accountability, means abuse is not detected and lessons cannot be learned.

#### *Rwanda*

Restraints were used on some individuals to force them from detention to the flight. Use of force forms, obtained by Liberty Investigates through FOI requests, revealed that there were six incidents of force, including force being used against one individual who was found self-harming.<sup>27</sup> Another incident was reported where a detained person was put in a waist restrain belt and physically attached to the seat of the plane.<sup>28</sup>

It is unclear how many of the four individuals who were on the plane the 6 incidents apply to.

#### *HMIP report on Derwentside IRC, 2022*

HMIP's report on Derwentside IRC following an inspection revealed concerning trends that reflected the evidence to the Brook House Inquiry, indicating that little has changed.

HMIP stated that *"Bodyworn camera footage was not available for all of these incidents and records were not properly collated or retained. It was not clear that use of force was in every case, in every respect necessary and proportionate; derogatory comments were made by staff on some occasions; and there was not always sufficient planning in those cases that were not spontaneous."*

They further indicated that *"Governance of the use of force was weak, on the part of Mitie and Home Office compliance staff alike. Learning from incidents had not been effectively identified or disseminated."*

#### *HMIP report on Short Term Holding Facilities, 2023*

HMIP's report following their inspection of all Short Term Holding Facilities run by Border Force at five airports and ten seaports, revealed that children were sometimes restrained unnecessarily or inappropriately.

HMIP reported *"some inconsistency in the use of handcuffs on detainees who were found in insecure areas, and at some facilities, older children were routinely handcuffed"*.<sup>29</sup>

They further reported that having seen *"documentation showing how Border Force staff at Tilbury took a child to foster accommodation in handcuffs"*, staff told HMIP that *"all detainees, including children, were risk assessed for the use of handcuffs while being escorted to release accommodation"*.<sup>30</sup> HMIP stated that the *"use of handcuffs for this purpose was disproportionate and unacceptable"*.<sup>31</sup>

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<sup>27</sup> Aaron Walawalkar, Eleanor Rose and Lizzie Dearden (5 September 2022) [Revealed: Horrors of Self-Harm and Desperation on Failed Rwanda Flight](#), Liberty Investigates.

<sup>28</sup> Aaron Walawalkar, Eleanor Rose and Lizzie Dearden (5 September 2022) [Revealed: Horrors of Self-Harm and Desperation on Failed Rwanda Flight](#), Liberty Investigates.

<sup>29</sup> HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.3.

<sup>30</sup> HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.24.

<sup>31</sup> HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.24.

Evidence suggests that the misuse of force may be ongoing across the detention estate. Through Medical Justice's casework, we know that there have long been complaints from detained people about the excessive use of force. However, it is very difficult to prove given the difficulties in obtaining CCTV and other video footage, to be able to compare to use of force forms. The Brook House Inquiry brought the footage, use of force forms and expert opinion together, so the dots could be joined up.

Therefore, the snippets of information that are obtained, may indicate that there has been little learned from the Brook House Inquiry evidence and raises serious questions about what oversight there is regarding the use of force.

#### What are known impacts of use of force on pregnant women and children specifically

Prior to the case of *Chen*, including when government policy that force should only be used on pregnant women to prevent harm was in existence, the use of force was not a rare occurrence.

The impact that the use of force has on individuals is essential for the Home Office to determine whether such force is proportionate and necessary.

#### **Pregnant women**

Research by Medical Justice in 2013 show that the use of force was routinely applied for with respect to pregnant women, with no adequate justification and was approved without questioning.<sup>32</sup>

Pregnant women are particularly at risk of developing serious conditions if subjected to the use of force. The Royal College of Midwives (RCM) submitted a statement to the case of *Chen*, explaining the clinical impacts of using force on pregnant women. These include:

- Pregnancy changes a woman's physiology and can cause specific pregnancy related conditions such as, the softening of the ligaments and fragility of the musculo-skeletal system. Placing the woman in a particular position can cause damage to any of her joints or spine due to over extension of ligaments, spinal injuries or fractures.
- Pressure on her chest/body could restrict her breathing as the growing uterus in the later pregnancy restricts the ability of the diaphragm to expand the lungs thus affecting oxygen supply to the foetus.
- Compression on her abdomen can cause her to vomit and put her at high risk of aspiration of the stomach contents – induced Mendelsohn syndrome or aspiration pneumonia. A known cause of maternal death.
- Trauma to the abdomen can cause placental abruption – separation of the placenta which is a life-threatening condition for both mother and foetus, where in some instances the bleeding is concealed. This imperils the lives of both mother and child.
- The practice of restraining pregnant women is stressful and can increase the blood pressure level in a pregnant woman. A raised blood pressure in pregnant women can induce fits. A known cause of maternal death.
- Pregnant women have a variety of vulnerabilities and restraining can lead to miscarriages, premature labours, still births or the onset of a serious illness.

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<sup>32</sup> Medical Justice (2013) [Expecting Change](#) 51.

Cases of force used against pregnant women have had serious implications.

HMIP reported, following their 2012 inspection of Cedars,<sup>33</sup> that one pregnant woman “was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area. When she resisted, it was tipped-up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant.” HMIP advises that there “is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk.”<sup>34</sup>

The dangers of the use of force are highlighted by the experience of **Sarah**,<sup>35</sup> a client of Medical Justice.<sup>36</sup> Force was authorised to be used on her, despite being pregnant. She was an asylum seeker, who was pregnant for the entire 27 weeks that she was in detention for. Following two failed removals, an application to use force was submitted to the Director of Detention Services. This was approved and removal directions were re-set. However, the flight did not go ahead because “... escorts were not willing to use force as the subject is 19 weeks pregnant”. This shows that despite having Home Office Director-level support to use force, the escorts chose not to deploy it and were unwilling to use force.

A similar incident happened to Sarah on another occasion where use of force was authorised for removal, but according to the case record sheet, “removal directions had to be cancelled as subject is heavily pregnant and any further use of force would put the baby in further danger”. The G4S incident note records the following: “Even though we had permission to use force, the job was stopped as Team Leader was very concerned for the safety of her unborn child”.

## Children

The Home Office’s own Use of Force guidance recognises the serious harm that the use of force can have on children.<sup>37</sup> It requires Home Office staff and authorised contractors to “promote the welfare of the child concerned” and “consider any potential adverse impact to the their [the child’s] physical or emotional wellbeing”.<sup>38</sup> It acknowledges that children with medical conditions, learning and/or physical disabilities, may also be more adversely affected by the use of force.<sup>39</sup>

Medical Justice’s 2010 report, *State Sponsored Cruelty*, revealed cases of children being subjected to force during their period of detention.<sup>40</sup> The report highlights six cases of children being injured because of force.<sup>41</sup> In three of the cases children were said to have been injured inadvertently amidst wider commotion during which it is alleged that force was being used against other

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<sup>33</sup> HMIP (2012) [Report on an announced inspection of Cedars predeparture accommodation](#), 30 April – 25 May 2012 page 12.

<sup>34</sup> HMIP (2012) [Report on an announced inspection of Cedars predeparture accommodation](#), 30 April – 25 May 2012 page 12.

<sup>35</sup> Name has been changed for confidentiality.

<sup>36</sup> Medical Justice (2013) [Expecting Change](#) 52.

<sup>37</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>38</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>39</sup> Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 16.

<sup>40</sup> Medical Justice (2010) [State Sponsored Cruelty](#) 35.

<sup>41</sup> Medical Justice (2010) [State Sponsored Cruelty](#) 35.

detainees.<sup>42</sup> In the other three cases, it is reported that the children were injured as force was used against them in order to try and effect their removal. Following one such incident, the children who had been harmed were traumatised to such an extent that, they were seen by an independent doctor for panic attacks.<sup>43</sup>

### Implications of the Illegal Migration Bill

Clause 2 of the Illegal Migration Bill creates a duty to remove anyone who has entered the UK in breach of immigration rules, which will result in vast numbers of people becoming liable to removal.

Clause 10 creates new powers to detain someone if they *are* or are *suspected* to be subject to the duty to remove. The Bill also removes the time limits of how long children and pregnant women can be detained for. The Bill will remove the current 72-hour time limit<sup>44</sup> on the detention of pregnant women, and the current time limits on the detention of children and families (72 hours<sup>45</sup>) and unaccompanied children (24 hours). This will increase the number of pregnant women and children who are liable to detention and lengthen how long they can be detained for.

Whilst the Illegal Migration Bill does not authorise the use of force on pregnant women and children, official government documents have revealed that using force against children could be “*necessary*”.<sup>46</sup> A Home Office factsheet states: “*The law already allows immigration officers and detainee custody officers (including escorts) to use reasonable force to exercise their powers - this is not age restricted*”.<sup>47</sup> This overlooks the current Home Office policy, that force can only be used on children if necessary to prevent harm. It points to the Home Office ability to change policies without justification and therefore points to the important that the prohibition of using force to secure compliance, is put on a statutory footing.

The factsheet goes on to state: “*Using force on children would be an absolute last resort and would only be used if completely necessary*”.<sup>48</sup> It should be noted that it is current Home Office policy that the use of force on anyone should be an absolute last resort, whether the detained person is vulnerable or not. This was also the case with Jimmy Mubenga, who was killed in the process of force being used.

Given that the new provisions in the Bill disapply the time limit for the detention of pregnant women and children, and create a new duty to remove, it is likely that more pregnant women and children will be at risk of force being used on them.

The current policy prohibiting the use of force to secure compliance (ie to carry out detention or removal) was introduced in recognition of the particular harm that force can cause to pregnant women and children, as outlined above. Such prohibition was introduced to take into account the

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<sup>42</sup> Medical Justice (2010) [State Sponsored Cruelty](#) 35.

<sup>43</sup> Medical Justice (2010) [State Sponsored Cruelty](#) 35.

<sup>44</sup> The limit is extendable up to 7 days with Ministerial authorisation.

<sup>45</sup> The limit is extendable up to 7 days with Ministerial authorisation.

<sup>46</sup> Lizzie Dearden (30 March 2023) [Child asylum seekers will be forcibly restrained if they ‘resist’ deportation, Home Office says](#), The Independent.

<sup>47</sup> Home Office (2023) [Policy paper: Illegal Migration Bill: children factsheet](#).

<sup>48</sup> Home Office (2023) [Policy paper: Illegal Migration Bill: children factsheet](#).

overwhelming evidence of the harmful effect it can have. Force is not just used on those who are non-compliant with removals. Force is a routine part of maintain detention, for example using handcuffs for external medical appointments to prevent absconding.

Force has to be necessary, reasonable and proportionate. The harm that force can cause is likely to render it disproportionate to the purpose of securing compliance, including effecting detention and removal.

Whilst force is currently prohibited, save for the purpose of preventing harm, there is nothing preventing the Home Office from amending or retracting this policy following the passing of the Bill. This is a particular risk given:

- The Home Office have in 2012, removed the policy prohibiting using force on pregnant women and children except to prevent harm, by removing it from their website without notification. As explained above, this policy was only reinstated in 2013 following litigation.
- Official government documents have revealed that using force against children is being considered potentially “*necessary*”.<sup>49</sup>
- The recent reports from HMIP outlined above the misuse of force and lack of governance.

## Effect of the amendment

The amendment introduces a new clause to ensure that a person carrying out a detention or removal of a pregnant person or a child, if prosecuted or sued, could not rely on the defence that the use of force was reasonably necessary to carry out the detention or removal.

The amendment does not mean that no force can be used in any circumstances. This is because everyone has a right to use reasonable force in certain circumstances (e.g. self-defence, defence of property, prevention of crime under s 3 CJA 1967, etc). However, the amendment does mean that force cannot be used on pregnant women and children in order to effect detention or removal from the UK.

The amendment aims to ensure that the policy prohibiting force to effect detention or removal is not removed by the Home Office on a whim, as was previously the case prior to the case of *Chen*.

The amendment prohibits the use of force for anyone who *is* a pregnant woman or a child, regardless of whether such status is known. Therefore, it is irrelevant whether the person using force reasonably believed that the individual was not pregnant or was not a child.

## Suggested questions to ask the Minister during debate:

1. Does the government acknowledge the evidence of the Brook House Inquiry which showed how vulnerable detained persons were subject to the widespread misuse of force, which was excessive and disproportionate?
2. Does the government acknowledge how harmful force can be for pregnant women and children?

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<sup>49</sup> Lizzie Dearden (30 March 2023) [Child asylum seekers will be forcibly restrained if they ‘resist’ deportation, Home Office says](#), The Independent.

3. How will the government ensure that force is not misused or excessive given the poor governance and oversight of the use of force and restraint?
4. What are the government's plans for the use of force on pregnant women and children?
5. Will the current policy prohibiting the use of force on pregnant women except to prevent harm be altered to allow force to be used in the process of removals or any other reason?
6. Will the government commit to maintaining the current policy prohibiting the use of force on pregnant women and children, save to prevent harm?
7. Can the minister explain in what circumstances force would be deemed "*necessary*"<sup>50</sup> for children, as stated in official government documents.

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<sup>50</sup> Lizzie Dearden (30 March 2023) [Child asylum seekers will be forcibly restrained if they 'resist' deportation, Home Office says](#), The Independent.