

Medical Justice Briefing on Amendment No. 62, Illegal Migration Bill

Amendment regarding Places of Detention

Lord German and the Lord Bishop of Durham

Amendment

Clause 10, page 14, line 5, leave out “and (3)” and insert “(3) and (3A)”.

Clause 10, page 15, line 13, insert-

“(2IA) But paragraph (2H) does not authorise the detention of a person under sub-paragraph (2C) otherwise than in a place directed by the Secretary of State under paragraph 18(1).”

Clause 10, page 15, line 21, insert-

“(3A) After paragraph 18(1A), insert-

“(1B) Save as otherwise provided by or under any other Act, a direction may not be given in respect of a place under paragraph (1) unless it is-

- (a) a removal centre;
- (b) a short-term holding facility;
- (c) pre-departure accommodation;
- (d) a prison, a young offender institution or a remand centre;
- (e) a place used by an immigration officer for the purposes of their functions at the port at which that person is seeking leave to enter or to enter or has been refused leave to enter, as the case may be, or in a control zone or supplementary control zone, or a control area designated under paragraph 26 of Schedule 2 to the Immigration Act 1971;
- (f) a place specifically provided for the purpose of detention-
 - (i) at any port;
 - (ii) at any place used by an immigration officer for the purposes of their functions;
 - (iii) in a control zone or a supplementary control zone;
- (g) a vehicle which has been specifically designed or adapted for use as a mobile detention facility and approved by the Secretary of State for such use;
- (h) a hospital;
- (i) in respect of a person under 18, a place of safety.

(1C) If the Secretary of State proposes to give a direction in respect of any place mentioned in sub-paragraph (1B)(a) to (c), they must consult residents of the area of the local authority in which the place is situated.

(1D) A detained person shall not continue to be detained in any such place as is mentioned in paragraph (1B)(e), (f) or (g) if a period of 24 hours has elapsed since the time at which the person was first detained.

(1E) A detained person shall not be detained in any such place as is mentioned in paragraph (1B)(e), (f) or (g) unless the Secretary of State or the immigration officer under whose authority the person is detained, as the case may be, is satisfied that-

- (a) that place provides suitable accommodation for the detained person; and
- (b) adequate provision will be made in that place for the safety and welfare of the detained person.

(1F) In section 5A of the Prison Act 1952-

- (a) in subsection (5A)(ba) omit "and", and
- (b) after paragraph (5A)(c) insert
"; and
- (d) in relation to places mentioned in paragraph 18(1B)(e), (f) and (g) of Schedule 2 to the Immigration Act 1971."

(1G) In sub-paragraphs (1B) and (1C)-

"control zone" has the same meaning as in the Channel Tunnel (International Arrangements) Order 1993 and includes a control zone within the meaning of the Channel Tunnel (Miscellaneous Provisions) Order 1994 and the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003;

"hospital" has, in England and Wales, the same meaning as in the Mental Health Act 1983, in Scotland, the same meaning as in the Mental Health (Care and Treatment) (Scotland) Act 2003, and in Northern Ireland, the same meaning as in the Mental Health (Northern Ireland) Order 1986;

"local authority" means-

- (a) in England, a district council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly;
- (b) in Wales, a county council or a county borough council;
- (c) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
- (d) in Northern Ireland, a district council;

"place of safety"-

- (a) in England and Wales, has the same meaning as in the Children and Young Persons Act 1933;
- (b) in Scotland, has the same meaning as in the Children's Hearings (Scotland) Act 2011; and
- (c) in Northern Ireland, means a home provided under Part VII of the Children (Northern Ireland) Order 1995, any police station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18;

“removal centre”, “short-term holding facility” and “pre-departure accommodation” have the meanings given by section 147 of the Immigration and Asylum Act 1999;

“supplementary control zone” and “tunnel system” have the same meanings as in the Channel Tunnel (International Arrangements) Order 1993.”

Clause 10, page 23, line 45, at end insert-

“(2GA) But subsection (2G) does not authorise the detention of a person under subsection (2A) or (2B) otherwise than in a place directed by the Secretary of State under paragraph 18(1) of Schedule 2 to the Immigration Act 1971.”

Briefing

Current legal context

At present, pursuant to paragraph 18(1) of Schedule 2 to the Immigration Act 1971, the Secretary of State may only detain people for immigration purpose in those places specified by her in a Direction (delegated legislation).¹ Detention in places not specified by her in a Direction will be unlawful.

The current Direction is the Immigration (Places of Detention) Direction 2021.² The categories of places specified in it include Immigration Removal Centres (IRCs), Short-term Holding Facilities (STHFs), Pre-Departure Accommodation (PDA), and prisons.

Immigration Removal Centre is defined in s 147 of the Immigration and Asylum Act 1999. Subject to limited exceptions (for unaccompanied children, children with their families, and pregnant women) there is currently no overall time limit on how long people can be detained at an IRC.

Short-term Holding Facility is also defined in s 147 of the Immigration and Asylum Act 1999. There are currently three sub-categories of STHF: 1) non-residential STHFs (also known as a Holding Room) where people can be detained for up to 24 hours; Residential Holding Rooms, where people can be detained for up to 96 hours ie 4 days (extendable in “exceptional circumstances); and residential STHFs, where people can be detained for up to 5 days (extendable to 7 days if removal directions are set to remove the person within those following two days).³

Pre-Departure Accommodation (PDA) is also defined in section 147 of the 1999 Act. Pre-Departure Accommodation is solely for the detention of children and their families, who can be detained at a PDA for a normal maximum of 72 hours prior to the family’s planned removal date, and for up to 7 days in exceptional circumstances, subject to ministerial approval.

In addition, the Places of Detention Directive 2021 sets out that, in the following three types of places (listed under (1B) (e), (f) and (g) in the amendment), people can be detained for up to 5 consecutive days (extendable to 7 consecutive days, if removal directions are set to remove the person within those following two days):

- a place used by an immigration officer for the purposes of their functions at the port at which that person is seeking leave to enter or to enter or has been refused leave to enter, as the

¹ [Schedule 2 to the Immigration Act 1971](#)

² [Immigration \(Places of Detention\) Direction 2021](#)

³ Ibid.

- case may be, or in a control zone or supplementary control zone, or a control area designated under paragraph 26 of Schedule 2 to the Immigration Act 1971;
- a place specifically provided for the purpose of detention—
 - (i) at any port;
 - (ii) at any place used by an immigration officer for the purposes of their functions;
 - (iii) in a control zone or a supplementary control zone;
 - a vehicle which has been specifically designed or adapted for use as a mobile detention facility and approved by the Secretary of State for such use.

Importantly, under ss 153 and 157 of the Asylum and Immigration Act 1999 and s 47 of the Prison Act 1952, the management of IRCs, STHFs and prisons are governed by certain Rules (laid out below),⁴ and PDAs have operating standards in place:

- For IRCs, see the Detention Centre Rules 2001⁵;
- For STHFs, see Short-term Holding Facility Rules 2018⁶, and Short-term Holding Facility (Amendment) Rules 2022⁷;
- For prison see The Prison Rules 1999⁸;
- For PDA see Pre-departure Accommodation Operating Standards⁹

These set out certain minimum requirements that must be met regarding the treatment of detained persons. For example, the Rules for IRCs and STHFs include requirements in relation to healthcare provisions – including safeguarding mechanisms to identify particularly vulnerable individuals¹⁰ – as well as detained persons’ access to legal advice, visitors, correspondence, sleeping accommodation, food, clothing, religious observance, complaints systems, time in open air, the conduct and duties of detention officers, segregation, amongst other issues.¹¹

It is our understanding that the additional three types of places included in the 2021 Direction (listed under (1B) (e), (f) and (g) in the amendment) are not currently governed by any minimum standards.

Impact of the Illegal Migration Bill

Clause 10(2) of the Illegal Migration Bill inserts into paragraph 16 of Schedule 2 of the 1971 Act a subparagraph granting the Secretary of State the power to detain people “*in any place that [she] considers appropriate*”.

The Clause does not, however, disapply the provisions in subparagraph 18(1) of the Schedule, nor those in sections 153 and 157 of the 1999 Act.

⁴ Per ss 153 and 157 of the [Immigration and Asylum Act 1999](#); and per s 47 of the [Prison Act 1952](#)

⁵ [Detention Centre Rules 2001](#) SI 2001 no 238. There are currently seven IRCs in operation in the UK: Brook House, Colnbrook, Derwentside, Dungavel, Harmondsworth, Tinsley House and Yarl’s Wood.

⁶ [Short-term Holding Facility Rules 2018](#).

⁷ [Short-term Holding Facility \(Amendment\) Rules 2022](#).

⁸ [The Prison Rules 1999](#). As at 31 March 2023, 387 people were detained in prisons under immigration powers. See Home Office (25 May 2023) [National Statistics: How many people are detained or returned](#)

⁹ [Pre-departure Accommodation Operating Standards Version 1.0](#).

¹⁰ In particular: Rules 34 and 35 of the Detention Centre Rules 2001, Rules 30 and 32 of the [Short-term Holding Facility Rules 2018](#), and Rule 6A of the [Short-term Holding Facility \(Amendment\) Rules 2022](#). For further information about these safeguards, please see Medical Justice (2022) [Harmed Not Heard](#)

¹¹ See: [Detention Centre Rules 2001](#); [Short-term Holding Facility Rules 2018](#); and [Short-term Holding Facility \(Amendment\) Rules 2022](#).

It is therefore not clear whether the intention of the Bill is to authorise detention in places not specified in a Direction and where minimum standards regarding the treatment of detained person will not necessarily be met.

The potential impact that such wide discretionary powers to detain people anywhere, without adherence to minimum standards, could have, is highlighted by the events at Manston in 2022. Formerly a military base in Kent, Manston opened in early 2022 as a non-residential STHF¹². With a maximum capacity of 1,600, Manston was overcrowded with the number of people detained there nearing 4,000 towards the end of 2022. People were detained beyond the 24 hours' time limit, without a "clear lawful basis for detention of individuals beyond 24 hours in holding rooms (or five days for holding facilities)".¹³ The conditions have been criticised by independent inspectorate bodies¹⁴ and parliamentary committees¹⁵.

There are concerns that the conditions at Manston are likely to have amounted to inhuman and degrading treatment in violation of Article 3 ECHR, including:

- Overcrowded living conditions;
- Lack of beds resulting in people, including children, sleeping on thin mats on the floor;
- Unclean and unhygienic facilities;
- Inadequate food provisions and some days without sufficient food or drinking water;
- Lack of privacy;
- Lack of adequate medical care;
- Spread of infectious diseases, including diphtheria;
- Restrictions on when people detained at Manston could leave tents;
- Unchecked and likely highly dangerous use of force but untrained staff.

Effect of the amendment

The amendment above tabled by Lord German and the Bishop of Durham, along with Lord German's amendments to page 15, line 13 and page 16, line 45, would remove doubt over whether the Bill allows the Home Secretary to establish detention sites anywhere. If passed, they would prevent the Secretary of State from detaining people other than in the categories of places specified in the 2021 Direction, including IRCs, STHFs, prisons and PDAs. As noted above, IRCs, STHFs, prisons and PDAs are - importantly - governed by Rules or operating standards setting out minimum requirements.

In addition, s 1(D) of the amendment places a maximum time limit on detention of 24 hours (instead of the current 5 days (extendable to 7 days)) in the additional three types of places included in the 2021 Direction (listed under (1B) (e), (f) and (g) in the amendment). This 24 hour time limit mirrors the current time limit in place for non-residential STHFs (also known as a Holding Rooms – see 'Current Legal Context').

¹² Since opening, 600 of the 1,600 places at Manston are now planned to be part of a new residential holding room, under the new STHF (Amendment) Rules 2022. The [new STHF \(Amendment\) Rules](#) extended the length of time that people can be held in such facilities from 24 to 96 hours (with a further power to extend the period in exceptional circumstances). For more information, see House of Lords Secondary Legislation Scrutiny Committee [25th Report of Session 2022–23](#).

¹³ [Letter](#) From the Chairs of the Committees on Home Affairs, Women and Equalities, Justice and the Joint Committee on Human Rights (02 November 2022).

¹⁴ See ICIBI (July 2022) [An inspection of the initial processing of migrants arriving via small boats at Tug Haven and Western Jet Foil December 2021 – January 2022](#); HMCIP (November 2022) [Report on an unannounced inspection of the short-term holding facilities at Western Jet Foil, Lydd Airport and Manston](#);

¹⁵ See [Letter](#) From the Chairs of the Committees on Home Affairs, Women and Equalities, Justice and the Joint Committee on Human Rights (02 November 2022). Also see Home Affairs Committee [Oral evidence: Channel crossings, HC 822](#) Wednesday 26 October 2022.

Further, the amendment would put in place minimum standards for the additional three types of places: per s 1(E) of the amendment, a person could not be detained in such a place unless it provided “suitable accommodation” for them and “adequate provisions” were in place for the person’s safety and welfare. In addition, s 1(F) of the amendment would also bring the additional three types of places within the remit of HM Inspectorate of Prisons, ensuring they are subject to independent external scrutiny.

Finally, per 1(C) the amendment would place the Secretary of State under a duty to consult local residents before authorising the use of any new detention facility.

Suggested questions to ask the Minister during debate:

1. Will the Minister explain the reasons for granting the Secretary of State the power to detain people “in any place that [she] considers appropriate”?
2. If the intention is to allow detention in places not currently set out in the Immigration (Places of Detention) Direction 2021, will the Minister give details of where these places will be? Do they, for example, include military sites such as Scampton in Lincolnshire, Wethersfield in Essex and Bexhill in East Sussex, or the barges such as the Bibby Stockholm due to be moored in Dorset? Current Home Office plans suggest that these facilities are being considered for use as asylum accommodation only rather than detention – can the Minister confirm whether the government in fact plans to use them in whole or part as detention sites?
3. If the intention is to allow detention in places not currently set out in the Immigration (Places of Detention) Direction 2021, will the Minister explain how the Secretary of State will ensure standards set out in the Detention Centre Rules 2001 and Short-Term Holding Facility Rules 2018 are met in relation to the treatment of detained persons – including the safeguarding of vulnerable people known to be at particular risk of suffering harm in detention, such as victims of torture, trafficking, pregnant women, and those with serious mental health conditions? What legal framework will exist to ensure these standards in such places?

For further information, please contact:

Idel Hanley
Policy, Research and Parliamentary Manager
i.hanley@medicaljustice.org.uk

Elspeth Macdonald
Parliamentary and Research Analyst
e.macdonald@medicaljustice.org.uk