

**Medical Justice Briefing on Amendment to create a duty to comply with the recommendations of
the Chief Inspector of Prisons
Illegal Migration Bill**

The Lord Bishop of Durham

Amendment

To move the following Clause:

“Duty to comply with recommendations of Chief Inspector of Prisons

(1) This section applies to a report made by the Chief Inspector of Prisons to the Secretary of State under section 5A(3) of the Prison Act 1952-

- (a) removal centres;
- (b) short-term holding facilities;
- (c) pre-departure accommodation; and
- (d) escort arrangements.

within the meaning of section 147 of the Immigration and Asylum Act 1999.

(2) The Secretary of State must, within six months, implement any recommendations made by the Chief Inspector of Prisons in a report to which this section applies.”

Briefing

His Majesty’s Chief Inspector Prisons

Under section 5A of the Prison Act 1952, His Majesty’s Chief Inspector of Prisons has a statutory duty to inspect or arrange for the inspection of immigration detention facilities. This is an important safeguard for people in immigration detention. The Chief Inspector regularly conducts unannounced visits to detention facilities, reports on the conditions and makes recommendations to the Secretary of State.

In November 2021 the Chief Inspector carried out an inspection of Tug Haven (which has since been closed), the Kent Intake Unit (KIU) and Frontier House on the South Coast, which were predominantly used to accommodate migrants who have undertaken sea crossings from France. He described conditions as *“unacceptably poor”* and said that at Tug Haven *“we saw several people who arrived with significant injuries and illnesses, but the site was ill-equipped to meet their needs. Migrants had little private space and were sometimes held overnight, sleeping on the ground, often in wet clothes.”*¹ He found that only one of his 10 recommendations from the previous inspection in 2020 had been partially achieved, with the others not achieved.² Vulnerable detainees could be detained for many hours and there was no evidence of their receiving prompt specialist support. For instance, one woman was held for almost a day after disclosing that she had been raped repeatedly by a smuggler. On release, she was housed in unsuitable initial accommodation holding both male and female asylum seekers.³ A 12-year-old girl was held for 15 hours overnight, and a 17-year-old girl was held in a holding room with around 30 men overnight. An eight-year-old girl with serious health

¹ HM Chief Inspector of Prisons (2022) [Annual Report 2021-22](#) 90.

² HM Chief Inspector of Prisons (2021) [Detention facilities: Tug Haven, Kent Intake Unit and Frontier House](#) 8 October and 1-3 November 2021, section 6.

³ *Ibid.* at 2.12

conditions was held at Tug Haven and KIU for a total period of 37 hours, and the Chief Inspector was told that staff at Tug Haven had forgotten that she and her siblings were there.⁴ This report shows the importance of the Chief Inspector's role in drawing attention to serious problems in immigration detention facilities.

The Chief Inspector plays an integral role in monitoring immigration detention. Most recently, the Chief Inspector'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.

The Chief Inspector 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"*.⁵

The report further stated 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"*.⁶ The Chief Inspector stated that the *"use of handcuffs for this purpose was disproportionate and unacceptable"*.⁷

Relevance to the Illegal Migration Bill

The Illegal Migration Bill significantly expands the current powers and use of immigration detention. The Bill removes the current limits on the detention of children and pregnant women. It curtails judicial scrutiny and removes effective remedies to challenge unlawful or unjustified detention. At the same time, a lack of returns agreements with other countries makes removals difficult. Moreover, because immigration detention is indefinite, the Bill is likely to lead to a ballooning of the number of people languishing in detention.

It dramatically expands who can be detained; Clause 10 introduces a new power to detain if the person *is* or is *suspected* to be subject to the duty to remove. The Home Secretary's duty to remove is set out in Clause 2 as the duty to remove those who satisfy the following four conditions:

1. Entered the UK in breach of immigration law;
2. Entered or arrived in the UK on or after 7 March 2023;
3. Entered or arrived from a safe third country;
4. Required leave to enter or remain in the UK but does not have it.

Refugee Council predicts that this Bill will result in as many as 250,000 people (including 45,000 children) being detained or left destitute in state-provided accommodation, and that, in the first three years of this Bill's operation, between £8.7bn to £9.6bn will be spent on their detention and accommodation.⁸

Clause 10 also disapplies the current 72-hour time limit⁹ on the detention of pregnant women and the current time limits on the detention of children and families (72 hours¹⁰) and unaccompanied children (24 hours). This means that the Bill will allow pregnant women and children to be detained indefinitely.

⁴ Ibid. at 2.31

⁵ HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.3.

⁶ HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.24.

⁷ HMIP (2023) [Report on an unannounced inspection of short-term holding facilities managed by Border Force](#) para 2.24.

⁸ Refugee Council (2023) [Illegal Migration Bill - Assessment of impact of inadmissibility, removals, detention, accommodation and safe routes](#) 4.

⁹ The limit is extendable up to 7 days with Ministerial authorisation.

¹⁰ The limit is extendable up to 7 days with Ministerial authorisation.

Clause 11 reduces judicial oversight and expands the government's power of administrative detention at the discretion of a Home Office official. This clause allows the Home Secretary to detain for any period that she considers to be “*reasonably necessary*”, and detention can continue “*regardless of whether there is anything that for the time being prevents the deportation order from being made or the removal from being carried out*”.

Clause 12 provides that a person detained under immigration powers cannot be granted bail by the First-tier Tribunal during their first 28 days of detention.

Clause 12 further stipulates that the High Court cannot review the lawfulness of the decision to detain within the first 28 days of someone’s detention. Clause 12(4) limits the High Court’s jurisdiction in judicial review proceedings, during the first 28 days of detention, to only being able to judicially review situations where the Home Office acts in bad faith or “*in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice*”.

In the first 28 days, the Bill only allows for detention to be challenged through applying for a writ of *Habeus Corpus*, which specifically concerns only whether there is a power to detain. It does not concern whether the power to detain was exercised lawfully or whether the Home Office has breached their own policies.

Taken together, these provisions risk creating a situation where there is no meaningful avenue for judicial scrutiny of the exercise of the power to detain for first 28 days of detention and only extremely limited scrutiny thereafter. This is all the more reason for the Chief Inspector’s scrutiny and for the Secretary of State to be required to implement his recommendations.

A large increase in detention facilities will be required, with many more people, including asylum seekers, children, pregnant women, and survivors of torture and trafficking, experiencing the devastating suffering and harm that detention is known to inflict, and which can in some cases be permanent.

The detention provisions in the Bill ignores previous findings from the Chief Inspector, including that detention facilities built and operated according to prison standards should be ended¹¹ and that a time limit should be introduced¹².

Given that the Illegal Migration Bill is likely significantly to increase the numbers of people who are held in immigration detention, it is essential to strengthen the Chief Inspector’s role by making it mandatory to implement his recommendations.

Effect of the amendment

This amendment, tabled by the Bishop of Durham, would give the Secretary of State a statutory duty to implement all recommendations of the Chief Inspector of Prisons in relation to immigration detention within six months, strengthening the independent external monitoring role of the Chief Inspector.

¹¹ [Hindpal Singh Bhui, 24 March 2022, 155/19-23](#)

¹² HM Chief Inspector of Prisons (2015) [Report of an unannounced inspection of Yarl’s Wood Immigration Removal Centre 13 April – 1 May 2015.](#)

Suggested questions to ask the Minister during debate:

1. Will the government commit to implementing all the recommendations of the Chief Inspector in relation to immigration detention within six months, to ensure safer detention and that the monitoring process can provide effective oversight, given the widespread evidence of the misuse of the power to detain indefinitely and inhumane conditions of detention identified by HMIP over many years.

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