



Detention Action's response to the Draft Operational guidance: Detention Services Order XX/2018 – Management and security of night state.

About Detention Action

Detention Action is a national charity established in 1993 that seeks to defend the rights and improve the welfare of people in immigration detention by combining support for individuals with campaigning for policy change. Detention Action works in Harmondsworth and Colnbrook Immigration Removal Centres (IRCs) near Heathrow Airport in London, Morton Hall IRC in Lincolnshire, and with people held under immigration powers in London prisons.

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Introduction

1. Detention Action is pleased to have the opportunity to respond to the Draft DSO on the management and security of the night state.
2. We have long had substantial concerns about the operation of the 'night state' in immigration detention centres. Under this system, individuals are locked in their rooms, in some centres for up to 11 hours a day.
3. The system is not referenced in the Detention Centre Rules but is borrowed from the prison system and has developed unchecked. It is our experience that the night state has a deeply detrimental impact on detainees' mental health and wellbeing.

The Night State has no justifiable purpose

4. The Home Office has adduced no evidence as to why night lock in is required, though it is widely believed that the principal driver is a lack of adequate staffing. This is implied by paragraph 28 of the DSO which says: "*The Night Operating Procedures must clearly state how many staff must normally be present before detainee accommodation can be unlocked.*" Similarly the Government's reviewer of immigration detention, Sir Stephen Shaw, reported in July 2018 that: "*In some centres, I was disappointed to learn that the lock-down period had been extended, presumably due to staffing requirements.*"¹ This is

¹ Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office by Stephen Shaw, July 2018

concerning, and undermines the Detention Centre Rules which purport to create “a *relaxed regime, with as much freedom of movement and association as possible*”.² The suggestion that centres are understaffed, especially at night is of acute concern given that Shaw further found that “*Adequate staffing levels, particularly at night, are an important part of effective suicide prevention*”.³

5. The Home Office claims that night lock in is intended to enhance welfare. Paragraph 3 of the DSO says: “*The use of night state creates a clearly defined day/night routine and offers detainees the opportunity to rest in a quiet and private space in contrast with the constructive activities available during the day time*”.

6. There is no explanation as why individuals need to be imprisoned in their rooms in order to have the “opportunity to rest in a quiet and private space”. It is, of course, perfectly possible for individuals to rest without the use of coercion and deprivations of liberty.

Harmful consequences of night lock in

7. In Detention Action’s extensive experience, night lock in is not generally desired by individuals. On the contrary, our clients’ experience is that it acts to exacerbate the harms of the detention system – isolation; mental health crises; fear and anxiety. Below are a number of extracts from our recent case files, where clients have made reference to night lock in arrangements:

- a. *Our client can't sleep, he is awake all night from 8pm - 8am, we asked what he does when he's awake in his room, he said that he looks out of the window. He can usually get some sleep between 7 and 11pm but that's it. Being locked in, makes it much worse, he's been locked up since 2012 and is starting to feel claustrophobic. Waiting through the night is really difficult, its very unpleasant.*
- b. *Our Client was moved from Dungavel to Harmondsworth. When we called him he presented as very distressed. He explained that they lock the doors at night and it's like prison. Dungavel wasn't like this.*
- c. *He told us that they (the guards) open the door, he waves and they leave, but every hour they are checking on him. When they lock the door he has a panic attack."*
- d. *When The Verne closed our client was transferred to Harmondsworth which has a more restrictive regime: He told our caseworker that "Night time is a big problem –at 9pm the door is closed. He wants someone to talk to – He asked us if we can call him at night. We explained that we can't do this and encouraged him to speak to the Samaritans. He is in the “red book” (Suicide Risk) and was for over three and a half months at The Verne. At night at The Verne people would come and talk to him if he can't sleep. Now he is suffering on his own."*

8. There is further evidence that night lock in undermines the personal security and safety of individuals. The harms of night lock in at Harmondsworth were documented in the

² DCR 3.

³ Ibid, page 97.

report of the HM Chief Inspector of Prisons unannounced inspection 2-20 October 2017. The Chief Inspector found that –

- a. *“Detainees in Cedar and Dove units were unlocked all day and night. Those on the remaining units were locked in at night, and slightly longer at the weekend; they were now also locked up for one hour at lunchtime, which we were told was an opportunity for staff to catch up on paperwork”⁴*
- b. *“Many detainees on the newer and more prison-like units found being locked into their cells at night upsetting and stressful”⁵*
- c. *“In our survey, more than half of detainees said they felt depressed or suicidal on arrival. Many also spoke of the stress of being locked behind their doors on first night, and said that this added to their feelings of insecurity.”⁶*
- d. *“Another case involved a detainee who, according to his ACDT, had made ‘deep lacerations’ to his arm at night requiring emergency hospital treatment. He remained locked in his cell for over an hour without assistance, and emergency cell bell records indicated that he had made 22 calls before staff came to see him and called an ambulance. There had been no ‘near-miss’ investigation of this or other serious self-harm incidents to identify poor practice and learn lessons. Staff on duty at night told us that in the event of an emergency they would not take the decision to call for an ambulance until health care staff had seen and assessed the detainee, which could have caused delays in life-threatening situations.”⁷*
- e. *“Detainees [on Ash, Beech, Fir and Gorse units] were locked in their rooms at night, which was an inappropriate restriction that had a significant negative impact on their sense of well-being.”⁸*

9. The Chief Inspector conducted interviews with 120 men and found -

- a. *“Two-thirds of detainees felt unsafe...many detainees ascribed feeling unsafe to the following issues: • A lack of staff. This reinforced the overwhelming theme of the staff interviews (Appendix VI). • Being locked behind doors at night. Several said this made them feel unsafe and had an impact on their mental well-being.”*

⁴ Report on an unannounced inspection of Heathrow Immigration Removal Centre Harmondsworth site by HM Chief Inspector of Prisons 2–20 October 2017, page 45, available here - <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/03/Harmondsworth-Web-2017.pdf>.

⁵ Ibid, page 5.

⁶ Ibid, page 13.

⁷ Ibid page 24.

⁸ Ibid, page 27.

10. Night time lock up was listed as one of the main negative aspects of detention, alongside poor physical environment; poor healthcare and a lack of things to do.⁹

Night state lock up contradicts the explicit recommendation of the Chief Inspector of Prisons

11. Following his inspection at Harmondsworth, the Chief Inspector recommended that - *Detainees should be able to live in a more open environment, and security restrictions should be proportionate to the risks posed. Detainees should not be locked into cells at night.*¹⁰ He made the same recommendation for Colnbrook in 2016 following an unannounced inspection which found that detainees were locked up between 9pm – 8am. Despite this night lock in continues in these centres and across the detention estate. The Draft DSO provides official endorsement of a system found to be deeply detrimental by the independent inspector.

Night State lock up is arbitrary and will remain so under the DSO

12. The rules around night time lock up vary considerably between detention centres and even within the same centres.

13. As Shaw found – *“In many IRCs, I felt the regimes were unnecessarily restrictive, with extended nighttime periods when detainees were locked in their units or – where there were toilets within rooms – locked in the rooms themselves. In this respect, Campsfeld and Tinsley House demonstrated best practice: the rooms themselves were not locked and detainees retained access at all times to showers and toilets in their units. Moreover, at Campsfeld the units were not locked overnight until 23:00. This is far more decent than the situation in other IRCs, and the proportion of FNOs at Campsfeld shows that it is possible to manage diverse populations within relatively open conditions.”*¹¹

14. The DSO purports to lay out general principles for how the night state should be operated in order to *“ensure a consistent approach is taken”*.¹² However the Draft DSO sets out no minimum standards or substantive guidance, instead leaving all decision-making to individual centre-operators:

Paragraph 9 of the Draft DSO says – *“Each centre supplier must have in place local Night Operating Procedures that clearly define and justify the timings for night state. The Night Operating Procedures must be agreed between the supplier centre manager and the Home Office Compliance Team Service delivery manager, or RSTHF contract monitoring senior manager, and be set out in the centre’s Local Security Strategy or Security Standard Operating Procedures.”*

⁹ Ibid, page 87.

¹⁰ Ibid, page 28.

¹¹ Shaw report, para 2.79.

¹² Draft DSO, paragraph 3.

15. No maximum period for this further deprivation of liberty is set out in the DSO and there is no guidance as to which factors can reasonably “justify” the timings for the night state.

16. There is nothing contained in the Draft DSO to prevent the night state from continuing to operate in an entirely arbitrary way; so that night time deprivations of liberty are and solely dependent on which centre or which unit a person is held.

The DSO fails to mitigate the indirectly discriminatory impact of the Night State

17. While the DSO recognises that the Night State may have a potential impact on a number of the protected groups set out in the Equality Act 2010, it entirely fails to set out measures to mitigate these impacts, instead requiring the supplier centre manager to carry out an equalities impact assessment and consider mitigating features.

18. The Night State clearly impacts detrimentally on religious freedom and carries the potential to significantly undermine the rights of disabled persons and those with mental health needs. While the DSO concedes that some individuals’ welfare, healthcare or support needs may not be able to be met by local night state procedures, it does not put robust safeguards in place to respond to this. It is insufficient that the DSO merely requires that *“reasonable adjustments that mitigate against any identified impact must be considered”*.¹³

19. The night state policy as described in the draft DSO is a national policy and as such so a national-scale equalities impact assessment should be carried out. This should be conducted by central Government and minimum mitigating safeguards incorporated directly into the DSO.

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¹³ Draft DSO, paragraph 12.