

## **BRIEFING: EXPANSION OF THE DETENTION ESTATE IN THE “ILLEGAL MIGRATION” BILL**

The 1971 Immigration Act permits removal of non-British citizens where the Home Secretary considers such action “conducive to the public good” but to be performed only in exceptional circumstances. Under UK law, the Home Secretary is permitted to detain a person only in certain circumstances for the purpose of their deportation or removal from the United Kingdom. Immigration detention is “administrative” and should not be used as a punishment, in place of a criminal sentence or as a “deterrent”. Immigration detention should only be used as a last resort and for the shortest possible time, pending removal. However, the UK remains the only country in Europe with no legal limit on how long a person can be held in immigration detention.

The four Hardial Singh principles (1983) are the most important legal limitation on the Home Office’s immigration detention powers. By granting the Home Secretary arbitrary and sweeping powers to detain people indefinitely and en masse, the Illegal Migration Bill fundamentally challenges these legal principles, most directly that:

- *A person may only be detained for a period that is reasonable in all the circumstances;*
- *If it becomes apparent that the Home Secretary will not be able to effect removal or deportation within a reasonable period, she should not seek to exercise the power of detention;*

There are strict limitations on the detention of certain people considered to be at additional risk of harm, including: children, whether alone or with family members; pregnant people; survivors of torture, and people with serious mental or physical health problems. When a person is detained by the Home Secretary, they have a right to apply for Immigration Bail or challenge the lawfulness of their detention through a Judicial Review.

Among its many regressive proposals, the Home Secretary’s “Illegal Migration Bill” would create new and sweeping powers of arbitrary detention applicable to any person in breach of immigration laws, including people seeking asylum. It demands an exponential increase in the number of people detained and removes the bulk of the essential safeguards put in place to protect people from the serious harm caused by prolonged and indefinite detention. It would transform immigration detention in UK law, from a tightly controlled administrative process to facilitate a person’s orderly removal, into a sweeping and unnecessary restriction of people’s liberties, with the apparent intention of punishing people for seeking asylum.

## **THE REALITY OF IMMIGRATION DETENTION**

In addition to our policy expertise, Detention Action operates a free Casework Service, providing practical, non-legal advice and support to people in immigration detention. We also work closely with people who have been held in immigration detention.

People are often held in immigration detention for much longer periods than are necessary to facilitate their removal and essential safeguards are applied inconsistently. Detention Action is aware of numerous cases of people detained in excess of two years - and in extreme cases, for seven years or more - with no clear resolution identified by the Home Secretary.

In 2022, 45,755 people arrived via small boat across the Channel, most of whom claimed asylum on arrival. The vast majority of people entering detention in 2022 were people seeking asylum, rather than people facing imminent removal. That year, the Home Secretary held 20,446 people in detention and 19,447 people were released (95%)<sup>1</sup>. More than 15,000 people (78%) were released on Immigration Bail and, of those, around 11,000 (73%) were released after fewer than 28 days. The capacity of the UK immigration detention system was approximately 2,245. This shows that, in the vast majority of cases, the Home Secretary is detaining people unnecessarily and without legal or practical justification. This is reflected in the drastic increase in compensation payments paid out by the Home Office to cases of unlawful detention. In the year ending March 2022, there were 572 proven cases of unlawful detention, for which a total of £12.7 million was paid in compensation<sup>2</sup>; an increase of £11.9 million from 2015.

## HEALTH IMPACTS OF DETENTION

Testimony from people in detention supports the extensive findings of independent research into the harm indefinite detention causes to physical and mental health. The British Medical Association (BMA) has stated:

*Various studies have identified the negative impact of immigration detention on mental health, and that the severity of this impact increases the longer detention continues. Depression, anxiety, and post-traumatic stress disorder (PTSD) are the most common mental health problems, and women, asylum seekers, and victims of torture are particularly vulnerable.*<sup>3</sup>

Around 80% of the population in immigration detention are estimated to suffer from depression and those people with depression are more likely to have been in detention for longer. 159 suicide attempts were made in UK detention centres over a three month period in 2018; an average of more than 50 per month.<sup>4</sup>

Once in detention, the Rule 35 and Adults at Risk processes are intended to bring medically vulnerable people in detention to the attention of the authorities, so that their case can be reviewed and they can be released. Both processes are inconsistently applied, frequently delayed and have been beset with criticisms that they fail to adequately protect vulnerable people in detention.<sup>5</sup>

## ABUSE, NEGLECT AND MISMANAGEMENT

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<sup>1</sup> [Immigration Detention & Returns \(2022\) - Home Office Immigration Statistics](#)

<sup>2</sup> [Immigration Detention in the UK \(Nov 2022\) - Migration Observatory, University of Oxford](#)

<sup>3</sup> [Locked Up, Locked Out - Health & Human Rights in Immigration Detention \(2017\) - British Medical Association](#)

<sup>4</sup> [Detained & Dehumanised: The Impact of Immigration Detention \(2020\) - Jesuit Refugee Service](#)

<sup>5</sup> [Third Annual Inspection of 'Adults at Risk in Immigration Detention' \(2022\) - Independent Chief Inspector of Borders & Immigration](#)

Adding to the inherent harm caused by indefinite detention, the UK's immigration detention system has been plagued by mismanagement and incidents of systemic and direct abuse and neglect, including:

- **Brook House Immigration Removal Centre (IRC):** Subject to a public inquiry following an undercover investigation by BBC Panorama that revealed abuse of people detained there, bullying by staff and insufficient mental health care. The public inquiry is due to report this year.<sup>6</sup>
- **Manston Short-Term Holding Facility:** A processing centre with a capacity of 1,600 people and permitted under law to detain people for a maximum of 24 hours, the Home Secretary unlawfully detained approximately 4,000 people at the facility at one time, including families with children, for periods of more than a month, in cramped, unsanitary and dangerous conditions.
- **Harmondsworth IRC:** In November 2022, prolonged power cuts left people detained there without lighting, heating, running water or access to medication. This led to the evacuation of the facility. An FOI request later revealed that the power cuts were caused by “a lack of preventative routine maintenance” over a period of 10 years.<sup>7</sup>

## ACCESS TO SUPPORT

Current guidance requires that after a person's “irregular” arrival in the UK, any evidence that they have been trafficked should be recognised by Home Office officials and trigger a referral to the National Referral Mechanism (NRM). This should ensure that person is not detained and receives the practical and psychological support they require.

In 2022, 90% of all people referred to the NRM were later confirmed as victims of trafficking or Modern Slavery by Home Office officials.<sup>8</sup> However, over a 21-month period, 938 suspected victims were only referred to the NRM after being released from detention<sup>9</sup>, indicating a lack of sufficient checks is leading to the detention of victims of trafficking and Modern Slavery, who are then unable to access crucial support. This was recognised in the recent annual inspection of the Adults at Risk policy by the Independent Chief Inspector of Borders and Immigration.<sup>10</sup>

Extensive evidence also shows that detaining people who have been trafficked results in:

- Damage to mental health, re-traumatisation, and delayed recovery<sup>11</sup>
- Increased risk of re-trafficking or further exploitation<sup>12</sup>
- Failure to identify and support victims and increased distrust of authorities<sup>13</sup>

Access to legal support and justice is highly restricted for people in detention. The Detained Duty Advice Scheme (DDAS) exists to provide 30 minutes of free legal advice after which a

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<sup>6</sup> [Website of the Brook House Inquiry](#)

<sup>7</sup> “Maintenance failures sparked Heathrow detention centre disturbances. FoI reveals” (The Guardian, 27/02/2023)

<sup>8</sup> [Modern Slavery: National Referral Mechanism and Duty to Notify Statistics \(2022\) Home Office Modern Slavery Statistics](#)

<sup>9</sup> [Survivors Behind Bars: The Detention of Modern Slavery Survivors Under Immigration Powers \(2021\) - After Exploitation](#)

<sup>10</sup> [Third Annual Inspection of 'Adults at Risk in Immigration Detention' \(2022\) - Independent Chief Inspector of Borders & Immigration](#)

<sup>11</sup> [The Impact of Immigration Detention on Mental Health: A Systematic Review \(2018\) - Helen Bamber Foundation](#)

<sup>12</sup> [Review into the Welfare in Detention of Vulnerable persons: A Report to the Home Office by Stephen Shaw \(2016\)](#)

<sup>13</sup> [Detaining Victims: Human Trafficking and the UK Immigration Detention System \(2019\) - Focus on Labour Exploitation](#)

person's case should be taken on by that provider if it meets the means and merits test. However, in December 2022, a survey of people in detention showed that only 43% had legal representation.<sup>14</sup> Detention Action regularly sees support denied to people whose cases appear to have merit, as well as lengthy delays in legal appointments or advice, even when removal is imminent.

### **IMPACT OF THE “ILLEGAL MIGRATION BILL”**

The “Illegal Migration Bill” demands an exponential expansion of the UK's immigration detention estate, dramatically increasing the number of people in detention and the length of time they would be detained. It would also grant the Home Secretary new powers to indefinitely detain people at greater risk of harm, including children, pregnant people and survivors of torture, trafficking and Modern Slavery.

Currently, people detained have the right to apply to the First-tier Tribunal for Immigration Bail or challenge their detention through judicial review. The “Illegal Migration Bill” would deny people access to these safeguards for the first 28 days of their detention, guaranteeing in law the detention of people for whom it is unjustified and poses greater risk of harm. The Bill will shut many survivors of trafficking or Modern Slavery out of the NRM and deny their rights under Article 12 of the European Convention on Action against Trafficking in Human Beings (ECAT)<sup>15</sup>, including essential practical, legal and psychological support.

Under these proposals, any decision to release a person from detention before the 28 day minimum would remain entirely at the discretion of the Home Secretary and be withheld from independent or public scrutiny. This would drastically increase the numbers of people being detained at any one time and increase the percentage of people detained for 28 days or more from 27% to almost 100%.

The Bill would introduce a duty on the Home Secretary to remove from the UK any person arriving here “irregularly” and includes a discretionary power to remove unaccompanied children<sup>16</sup>. Currently, those who arrive irregularly and claim asylum cannot be removed while their claims are pending. Unaccompanied children who are refused asylum are normally granted limited leave until they are aged 17-and-a-half, and trafficking survivors who have been referred to the NRM are protected from removal while their trafficking claims are pending. However, the Bill would place a duty on the Home Secretary to remove adults, and give her a power to remove children, regardless of these factors. It will only be possible in practice to effect such removal if a person arriving irregularly can be removed to their country of origin or a third country. In many cases, removing a person seeking asylum to their country of origin, without assessing their claim, would place them at serious risk of persecution, torture or death, fundamentally violating the UN Refugee Convention (1951). Removal to a third country requires a formal agreement with that third country and the Home Secretary has failed to establish such an agreement with any country except Rwanda. The lawfulness of the UK-Rwanda agreement is yet to be established by the courts and there remain serious doubts about the ability of the Rwandan government to safely accommodate and process the asylum applications of, potentially, tens of thousands of people per year.

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<sup>14</sup> [Autumn Legal Advice Survey \(2022\) - Bail for Immigration Detainees](#)

<sup>15</sup> [Council of Europe Convention on Action against Trafficking in Human Beings CM 8414](#)

<sup>16</sup> Clause 3(2) of the Illegal Migration Bill 2023

The Home Secretary made attempts to strike similar removal agreements with other governments, including Ghana and Albania, but these were bluntly rejected. Lastly, returning people seeking asylum to an EU country through which they have travelled would require explicit returns agreements with those countries; a prospect that has been roundly rejected by EU countries.

Under this Bill and in the absence of functioning removal agreements, the Home Secretary is likely to hold people in detention for extremely long periods, far beyond the minimum 28 days the Bill makes mandatory. This drastically prolonged and indefinite detention will inevitably cause more serious harm to the physical and mental health of people detained, including people at additional risk of harm such as children, pregnant people and survivors of torture and trafficking.

The current capacity of the UK's immigration detention system is approximately 2,245. In order to implement the Bill's requirements for the automatic and long-term detention of, potentially, tens of thousands of people per year, we anticipate the Government would have no choice but to drastically and rapidly increase the number of detention centres in the UK. The Home Secretary has proposed to build these on disused military sites on Crown Land. The majority of these sites are located in relatively isolated, rural areas within small existing communities. Sites previously identified include Linton-on-Ouse in North Yorkshire, Wethersfield in Essex and Scampton in Lincolnshire. These communities lack the infrastructure required to safely and reliably support a large-scale immigration detention centre. In all cases, these proposals have been met by strong local opposition.

The average cost to hold one person in immigration detention is around £116.42 per day.<sup>17</sup> The cost of operating and maintaining the UK's detention system at the scale demanded by the "Illegal Migration" Bill would be exponentially greater. Furthermore, the UK's immigration detention system has been rife with incidents of systemic and direct abuse, neglect and overcrowded, unsanitary and poorly maintained facilities. The drastic expansion of the detention estate would be very likely to increase the seriousness, scale and frequency of those failures.

## **ALTERNATIVES TO DETENTION AND REMOVAL**

While asylum applications in Europe and the UK have risen since 2017, the only evidence-based approach to addressing the backlog of 160,000 undecided claims is to adequately resource the UK's asylum processing system and offer safe and efficient routes to people seeking asylum.

Denying people their right to protection and detaining them indefinitely and arbitrarily will simply replace a wholly fixable asylum backlog with a vastly more costly and immovable detention backlog.<sup>18</sup> Worse, it will subject tens of thousands of people - including people at additional risk of harm such as children, pregnant people and survivors of torture - to a detention regime that has been proven repeatedly to be unjust, inhumane, harmful and beset by scandals.

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<sup>17</sup> [Factsheet: Cost of the Asylum System \(2022\) - Home Office](#)

<sup>18</sup> [The UK's Asylum Backlog \(2023\) - Migration Observatory, University of Oxford](#)