



Ministry
of Justice



Home Office



Department
of Health &
Social Care

Independent Advisory Panel on Deaths in Custody

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Home Secretary
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Dear Home Secretary,

I am writing to you on behalf of the Independent Advisory Panel on Deaths in Custody (IAPDC) about the proposals introduced in the Illegal Migration Bill and the impact these may have on the safety of those in detention. As you know, the role of the IAPDC is to advise Ministers and officials in England and Wales on how they can meet their human rights obligations to prevent deaths and protect the lives of people detained in state custody. The Panel has serious concerns about the impact some of the proposed changes may have on the ability of the Home Office to keep people safe in detention.

The Bill significantly expands immigration detention powers, including the period for which persons can be detained for the purposes of removal.¹ At the same time, it removes the right of detainees to apply for bail to the First-tier Tribunal for the first 28 days and seeks to remove the right of detainees to challenge the lawfulness of their detention by way of judicial review.² The overall effect of the proposals will be to expand the circumstances in which persons can be detained and to significantly lengthen, and render considerably uncertain, the period for which individuals are detained. The IAPDC's guidelines on preventing suicide and self-harm in Immigration Removal Centres pointed to the link between the indefinite nature of detention and feelings of uncertainty and hopelessness, which can increase the risk of suicidality.³ This is of particular concern as the UK does not have extensive return agreements in place and the Rwanda scheme, which has an initial capacity for only 200 people, continues to be subject to legal challenges, potentially leaving tens of thousands of detained people in a state of long-term uncertainty.

This also raises acute concerns about the adequacy of existing processes to secure the release of people most at risk who cannot be safely managed in detention, such as via the Adults at Risk policy and Rule 35 of the Detention Centre Rules 2001. A recent report by the Independent Chief Inspector of Borders and Immigration described Rule 35 as "ineffective"

¹ Clauses 11-12

² Clause 13

³ Independent Advisory Panel on Deaths in Custody, 'Priorities for a prevention of deaths strategy in Immigration Removal Centres', October 2020, available [here](#).

and “no longer achieving its aim” of safeguarding vulnerable detainees.⁴ What steps will be taken to ensure individuals who are vulnerable and who cannot be safely managed in detention will be swiftly released on bail in the absence of the current, and most accessible, legal channels? Has your Department carried out a risk assessment of the extended period of detention (in the context of the likely significant expansion in the numbers of those detained), and will that be published?

Additionally, the Bill will significantly expand the cohort of people liable for detention to anyone suspected of arriving in the UK illegally and whom the Secretary of State will have a new duty to remove.⁵ This includes the detention of unaccompanied children who arrive in the UK alone – a group who are particularly vulnerable, including in respect of mental ill-health, self-harm, and suicide due to trauma caused by dislocation from family – and anyone believed to be a relevant family member of a person who is suspected of entering the UK illegally. Further to this, the Bill will suspend the duty to consult the Independent Family Returns Panel when seeking to remove families.⁶ Could you clarify why the Bill proposes to remove this duty, and whether you will publish any risk assessment you have completed?

The Bill will also remove safeguards that limit the detention of pregnant women to between 72 hours and seven days. In the independent review of the welfare of people in immigration detention, Stephen Shaw CBE pointed to the “incontrovertibly deleterious effect [of detention] on the health of pregnant women and their unborn children”.⁷ Has your Department carried out a full assessment of the risks linked to detaining this new cohort of children, families, and pregnant women? Will you publish that assessment?

Further, the Bill will enable the detention of individuals in “any place the Secretary of State considers appropriate”. I understand that this “includes, but is not limited to, pre-departure accommodation, a removal centre or a short-term holding facility”.⁸ As highlighted by the sad death of Hussein Haseeb Ahmed in November 2022, short-term holding facilities such as Manston are unsuitable for the detention of individuals beyond, at most, short-term stays. Problems including inadequate sleeping and catering arrangements, poor sanitation, and the spread of infectious, and potentially fatal, diseases make clear the unsuitability of such settings for potentially prolonged periods of detention such as those implied in the Bill. Given that you have suggested up to 80,000 people in the coming year could be liable for detention,⁹ what work is being done to ensure the expansion of the detention estate to create additional capacity which is safe and humane?

It is the duty of government to take active steps to protect the lives of all individuals in its care. I look forward to receiving clarification on these urgent concerns.

Yours sincerely,



Lynn Emslie

Chair of the Independent Advisory Panel on Deaths in Custody

⁴ Independent Chief Inspector of Borders and Immigration, ‘Third annual inspection of ‘Adults at risk in immigration detention’, June – September 2022’, 12 January 2023, available [here](#).

⁵ Clause 11

⁶ Clause 14

⁷ Home Office, ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, 24 August 2018, available [here](#).

⁸ Illegal Migration Bill, Explanatory Notes, 7 March 2023, available [here](#).

⁹ Evening Standard, ‘80,000 people could arrive in UK by ‘small boats’ in 2023 despite new crackdown, admits Suella Braverman’, 8 March 2023, available [here](#).