



Home Office

Rt Hon Robert Jenrick MP
Minister of State for Immigration

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Ms Lynn Emslie
Chair
Independent Panel on Deaths in Custody
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11 September 2023

Dear Ms Emslie,

Thank you for your letter of 17 March to the Home Secretary raising concerns about several of the detention provisions contained in the Illegal Migration Bill which became law after receiving Royal Assent on 20 July and is now an Act. I am aware your letter was raised during Committee stage in the House of Lords on 7 June. I am replying as the Minister of State for Immigration.

You have expressed concern that the new detention powers in the Act, along with the fact that those subject to the removal duty in section 2 will no longer be able to apply to the First Tier Tribunal (FTT) for immigration bail for the first 28 days of their detention, means that there will be many people facing long-term uncertainty about their future, with the negative implications this could have for their mental health and well-being. The Home Office recognises that some groups of people can be at particular risk of harm in immigration detention and already operates the Adults at Risk in Immigration (AAR) policy that specifically considers all levels of vulnerability in immigration detention. This policy, in a revised form, will continue to apply to detention decisions made for those in the scope of the Act. This includes where a rule 35 (or other medical) report has been provided. In accordance with the AAR policy, vulnerable people will only be detained where the evidence of vulnerability in their particular case is outweighed by immigration considerations.

I should add that, despite the removal of the ability to apply for FTT bail the Home Office will still be able to release people on immigration bail during those first 28 days, where that is considered appropriate.

As you have pointed out, the Act disapplies the duty contained in section 3 of the Immigration Act 2014 requiring the Home Office to consult the Independent Family Returns Panel (IFRP) on how best to safeguard the welfare of children in family returns cases. An important feature of the scheme provided for in the Act is that individuals who arrive in the UK illegally are promptly returned to their home country or removed to a safe third country. To enable us to swiftly remove those families who fall for removal under the Illegal Migration Act, it is therefore necessary to disapply the duty to consult the IFRP. The disapplication only relates to families who have entered the UK illegally and are subject to

the section 2 duty. The requirement to consult the IFRP will continue unchanged in all other family return cases. I would like to assure you that officials will be consulting with the IFRP about how they might continue to have a role in respect of the return of any family subject to the section 2 duty.

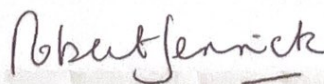
We recognise the particular vulnerability of unaccompanied children and therefore the Act provides that the statutory detention powers may only be exercised to detain an unaccompanied child in circumstances prescribed in regulations made by the Secretary of State, such as, but not limited to, for the purpose of family reunion or where removal is to a safe country of origin. It is worth noting that unaccompanied children are not subject to the duty to remove and the power to remove them will only be exercised in limited circumstances, so for the most part unaccompanied children will not be detained under the provisions of this Act but will instead be quickly transferred to local authority care. Where unaccompanied children are detained for the purpose of removal, the Act provides that the First-tier Tribunal will be able to consider granting immigration bail after eight days for unaccompanied children, rather than the 28 days which applies to other cohorts.

In the case of pregnant women, the Act also now provides that the existing 72-hour limit (extendable up to a week with ministerial authorisation) will apply to those pregnant women detained under the new detention powers in the Act.

You have expressed concern that the Act allows illegal entrants to be detained anywhere that is considered appropriate, coupled with the expansion of the detention estate, means that, in future, people are likely to be held in detention accommodation which is neither safe nor humane. I would like to assure you that this will not be the case. We only detain persons for immigration purposes in places that are listed in the Immigration (Places of Detention) Direction 2021 in accordance with long-standing provisions in the Immigration Act 1971. Following Royal Assent, we will be updating the Direction in line with the new detention powers. We are increasing our detention capacity in response to the Act and have plans to open two new immigration removal centres (IRCs) in due course. They will need to satisfy the requirements of the Detention Centre Rules 2001, in the same way that our existing IRCs are required to do.

An equality impact assessment has been completed for the Illegal Migration Act and is available online at: [Illegal Migration Bill: overarching documents - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614444/Illegal_Migration_Bill_-_overarching_documents_-_GOV.UK.pdf)

Yours sincerely,



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