



JOINT CHILD DETENTION BRIEFING ILLEGAL MIGRATION BILL, HOUSE OF LORDS REPORT – June 2023

“We know detention is like being in prison. Detention causes a lot of harm to people who experience it. It is hard on adults let alone on children. Some of us have spent time in immigration detention, its terrible effects will be imprinted on us for the rest of our lives. Detention is also very costly; this is not the best way for the government to spend its resources.”

Refugee young people working on the Bill

What would the detention powers in the Bill mean for children?

The Illegal Migration Bill reverses the 2010 commitment by a Conservative-led government, enacted into law in 2014, to end child detention. This landmark achievement stopped the routine detention of thousands of children and families for immigration purposes – a practice recognised as ‘state-sponsored cruelty’.¹

The Bill creates new detention powers that apply to those within (and those *suspected* as within) the Bill’s scheme – that is, who arrive in the UK without permission on or after 7 March 2023, not directly from a country where their life and liberty were threatened for a Refugee Convention reason, and who need a visa and do not have one.

If the government’s intention is to detain all those who fall within the Bill’s new scheme for arrivals, then more than **13,000 children** could face detention annually.² Refugee babies and children and child victims of trafficking will be detained.

The new detention powers:

- Apply to both unaccompanied children and children with their families;
- Are without time limit;
- May be exercised in any place that the Home Secretary considers appropriate – that is, not solely in the currently specified places of detention;
- Are without the possibility of bail for 28 days.

¹ Medical Justice (2010) ‘State Sponsored Cruelty: Children in immigration detention’ available at: https://medicaljustice.org.uk/wp-content/uploads/2022/02/2010_State-Sponsored-Cruelty_Final.pdf

² Figure based on the Refugee Council’s [Impact Assessment of the Bill](#) which finds that in the first three years of the legislation coming into effect, between 225,347 and 257,101 people will have their asylum claims deemed inadmissible. This includes between 39,500 and 45,066 children, consisting of between 13,065 and 14,906 unaccompanied children and between 26,435 and 30,160 children with family members. This means an estimated 13,000 to 15,000 each year.

As children's and refugee organisations, we are united in opposing the reintroduction of mass child detention in the UK.

"Children must be exempted from the changes to detention rules, whether with their families or unaccompanied. It is not acceptable for them to be treated in the same way as adults."³

Dame Rachel de Souza, Children's Commissioner for England

How would this change existing limits on child detention?

Since the Immigration Act 2014, unaccompanied children may only be detained with strict safeguards for up to 24 hours and only in short-term holding facilities. Children within families may only be detained for up to 72 hours, or not more than seven days where personally authorised by the Minister, and only in short-term holding facilities or pre-departure accommodation.⁴

The new powers at clause 10 of the Illegal Migration Bill would mean that a large group of child arrivals would be detained without these time limits and anywhere that the Home Secretary considers appropriate. This could mean babies and children indefinitely detained in any facilities.⁵ Short-term holding facilities at Western Jet Foil, Lydd Airport and Manston were already condemned in July 2022 by HM Chief Inspector of Prisons for holding children for too long in non-residential accommodation⁶ and in February 2023 detainees were found to have been held for too long in marquees in Manston in unacceptable conditions.⁷ In January 2023 the Inspector found that unaccompanied children were held for too long at other short-term holding facilities at five airports and ten seaports.⁸

Such mass, routine detention of children is a regressive step without justification which would undo an achievement that is a proud Conservative government legacy. It will cause immeasurable harm to children.

The Bill would also bring in changes to judicial oversight. Clause 11 is intended to change the long-established position that it is for the court to decide for itself whether the detention of a person for the purposes of removal is for a period that is reasonable. This change applies across the board to all detention powers and not only to the new powers introduced by the Bill.

"detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"

Article 37, UN Convention on the Rights of the Child

³ Statement by Dame Rachel de Souza on the progression of the Government's Illegal Migration Bill to Report Stage, released 26 April 2023, available at: [Statement from the Children's Commissioner on the Illegal Migration Bill | Children's Commissioner for England \(childrenscommissioner.gov.uk\)](https://www.childrenscommissioner.gov.uk/statement-from-the-childrens-commissioner-on-the-illegal-migration-bill/)

⁴ Immigration Act 2014, sections 5 and 6, [Immigration Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/22/sections/5-6)

⁵ For further analysis of current use of detention facilities, see Ilona Pinter (2022) <https://blogs.lse.ac.uk/politicsandpolicy/the-uk-asylum-backlog-and-increased-use-of-immigration-detention-are-negatively-impacting-childrens-welfare/>

⁶ HM Chief Inspector of Prisons (2022) 'Report on an unannounced inspection of the short-term holding facilities at Western Jet Foil, Lydd Airport and Manston' available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2022/10/Manston-WJF-and-Lydd-web-2022.pdf>

⁷ HM Chief Inspector of Prisons (2023), 'Report on an unannounced inspection of the short-term holding facilities at Western Jet Foil, Manston and Kent Intake Unit' available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2023/06/WJF-Manston-and-KIU-web-2023.pdf>

⁸ HM Chief Inspector of Prisons (2023) 'Report on an unannounced inspection of short-term holding facilities managed by Border Force' available at: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2023/05/Border-Force-STHF-web-2023.pdf>

How was child detention ended in 2010?

Campaigning ahead of the 2010 election to end child detention for immigration purposes gathered support from hundreds of parliamentary candidates and backing across the political and professional spectrum. At a Citizens UK assembly in 2010 David Cameron said, “[i]t is not acceptable what happens now, not acceptable at all” and pledged to end child detention if elected. The commitment was part of the Coalition’s programme for government in May 2010.⁹ Detention policy changed in 2011 and then the Immigration Act 2014 codified the ending of routine detention of children.

Has the government made allowances for children?

“The intention of this part of the policy objective is not to detain children”¹⁰
Prime Minister Rishi Sunak

The power of the executive to administratively detain without charge or trial is one of the most draconian powers exercised by the state over the individual. Exercising that power over children is a matter of profound importance – and one that the government has recognised, but not addressed.

At Commons Report on 26 April 2023, the Minister stated:

“We have taken the issue of the detention of children extremely seriously, because **we do not want to detain children**. We will do so only in the most exceptional circumstances. The circumstances that we have now clarified in the Bill and in the debate, again with the helpful guidance and support of right hon. and hon. Members, are for the purposes of initial processing when children and families arrive irregularly in the United Kingdom in small boats or via other forms of clandestine entry, and then for the limited and defined purposes of removal from the country that I mentioned a moment ago. We understand the desire of many Members for there to be carefully thought through and limited time limits on detention. I hope that the amendment we tabled and my remarks today give reassurance that we will bring forward that regime and that it will be as short as practically possible.”
(emphasis added)

At Lords Second Reading on 10 May 2023, the Minister stated:

“The Bill provides for bespoke powers of detention for the purpose of the scheme. It is vital that we have the power to detain to establish whether a person falls within the scheme, and pending their removal, if the Bill is to be effective both as a deterrent and as a means of ensuring that the Home Secretary can comply with the duty on her to make arrangements for removal. That said, **I again acknowledge the particular vulnerability of unaccompanied children**. That is why the Government have brought forward amendments to provide that unaccompanied children may be detained only in circumstances prescribed in regulations. In addition, in line with the commitment given by the Immigration Minister, later in the Bill’s passage through this House we will set out the new timescale under which children may be detained for the purposes of removal without judicial oversight.” (emphasis added)

At Lords Committee on 7 June 2023, the Minister stated:

⁹ [The Coalition: our programme for government \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/424444/the-coalition-our-programme-for-government.pdf), May 2010

¹⁰ Commons Liaison Committee, 28 March 2023, question 60, page 21, available at: <https://committees.parliament.uk/oralevidence/12944/pdf/>

“The detention powers in the Bill are fundamental to our approach, and here, as elsewhere, we need a robust and uniform scheme that broadly applies to all and does not allow the system to be gamed, for example by adults pretending to be children, or provide scope for the people smugglers to exploit any exceptions or carve-outs. The Bill will create new detention powers specific to all migrants subject to the duty to remove being introduced in this Bill. These new powers will not be time-limited. However, in line with our other existing immigration detention powers, detention will be limited to a period of time that is reasonably necessary for the statutory purpose to be carried out. The new detention powers will not be subject to the same statutory limitations as existing detention powers to ensure the power can apply more widely.

We recognise the particular vulnerability of unaccompanied children and therefore the Bill provides that the statutory detention powers may only be exercised to detain an unaccompanied child in circumstances prescribed in regulations 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. We will set out, in due course, having reflected on debates in this House and the other place, a new timescale under which genuine children may be detained for the purposes of removal without judicial oversight. ...

Along with a new timescale under which genuine children may be detained for the purposes of removal without judicial oversight, the Bill will also allow the Secretary of State to make regulations specifying time limits to be placed on the detention of unaccompanied children for the purpose of removal, if required.”

The government’s reassurances and government amendments to date are insufficient because:

- 1) **Child detention cannot be a side-effect:** The implication is that detaining children is incidental. But something as serious as depriving a child of their liberty – and rowing back on a landmark Conservative-led government policy – cannot be a policy side-effect.
- 2) **Children are being punished because of presumed future actions of adults:** Many children will be routinely detained because of a presumption that adults and smugglers will exploit a carve-out but notably absent is a policy rationale for detaining children themselves.
- 3) **Child detention will be routine:** ‘Most exceptional circumstances’ is not on the face of the Bill. Moreover, this test does not tally with other statements on circumstances, which are routine and apply to the entire cohort: initial processing, establishing whether a person falls within the scheme and removal. Even if the Minister says that ‘for the most part, unaccompanied children will not be detained’, the Bill gives extremely wide power to detain them without any meaningful constraint. Guarantees must be established in statute.
- 4) **The regulation-making power for unaccompanied children is not a limitation:** The circumstances of detention in relation to unaccompanied children are not ‘clarified in the Bill’; rather, the Bill as amended simply sets out that unaccompanied can only be detained in ‘circumstances specified in regulations’. Any circumstances could be specified and the Bill itself refers to wide, routine circumstances: detaining pending a decision to give leave, pending a decision to remove and pending removal. Further, the regulation-making power in relation to time limits is optional: the Home Secretary may make regulations with time limits but she may not. And the Minister stated that time limits in regulations will relate to detention for the purpose of removal, not other purposes, and then only ‘if required’.

- 5) **The government promised a timescale but has not set it out yet:** The Bill as amended does not stipulate on its face that detention of children must be ‘as short as practically possible’. Indeed, the 2014 requirement that detention be for the shortest appropriate period is being expressly removed by the Bill. Very little reassurance can be taken from the statement that detention will be ‘limited to a period of time that is reasonably necessary for the statutory purpose to be carried out’. The government has not yet set out its promised timescale.
- 6) **Statements on the timescale are heavily qualified:** Statements by the Minister also raise the concern that any timescale will not be on the face of the Bill nor even in regulations; that it will be a timescale for judicial oversight, rather than an absolute time limit for the detention of children itself; and that it will relate only to child detention for the purposes of removal and not to child detention for other purposes. Further, it should be noted that the Minister has promised to set out during the Bill’s passage a *timescale* in contrast to time *limits*.

What is the impact of detention on children?

As recently as 31 March 2023, the Home Office itself published guidance stating: ‘a period of detention can have a significant and negative impact on a child’s mental or physical health and development’.¹¹

Previous research conducted in the UK evidenced the long-lasting damage detention does to children’s lives, both lone children and those with their families. The effects on their physical and mental health included weight loss, sleeplessness, nightmares, skin complaints, self-harm and attempted suicide, depression and symptoms of post-traumatic stress disorder.¹²

Médecins sans Frontières has found a range of serious medical issues arising from detention of refugee children in Greece and Nauru island, with a significant number of children suffering from trauma- and fear-induced symptoms including sleep disturbances and nightmares, behavioural issues and developmental regression, helplessness and detachment, skin conditions and self-harm.¹³ Recent research analysing the impacts on children of Australia’s immigration detention policies similarly evidences the devastating impacts on children’s physical and mental health and their wellbeing and upon their parents’ parenting capabilities.¹⁴ Children in detention face difficulties accessing healthcare and treatment.

“Evidence is clear that immigration detention is unsafe for children. While no time in detention is safe, placing children in indefinite detention can have a catastrophic impact on their development and psychosocial health.”

Dr Jan Wise, Ethics Committee Chair, British Medical Association

¹¹ See page 14, [Assessing age \(publishing.service.gov.uk\)](#), v. 6, 31 March 2023.

¹² The Children’s Society (2011) ‘[What have I done? The experiences of children and families in UK immigration detention: Lessons to learn](#)’; Bail for Immigration Detainees (2011) [Last resort or first resort? Immigration detention of children in the UK](#); Royal College of GPs, Royal College of Psychiatrists, Royal College of Paediatrics and Child Health and the Faculty of Public Health (2009), ‘Intercollegiate Briefing Paper: Significant Harm – The effects of administrative detention on the health of children, young people and their families’, available at: <http://rcpch.adlibhosting.com/files/Significant%20Harm%20The%20Effects%20of%20Administrative%20Detention%202009.pdf>

¹³ MSF, ‘The medical consequences of detaining and containing children’, May 2023, available at: <https://drive.google.com/file/d/1BRI6FdOLSRO4MfmRkgtbMCalu9R9N9Yy/view>

¹⁴ Tosif S, Graham H, Kiang K, Laemmle-Ruff I, Heenan R, Smith A, Volkman T, Connell T, Paxton G. (2023). [Health of children who experienced Australian immigration detention](#)

Children who are detained are also cut off from education and from interacting with peers, with potential long-term effects on their development. Many children assessed by clinicians at Yarl's Wood in the past exhibited signs of developmental regression.¹⁵ They are at heightened risk of witnessing and experiencing the use of force, violence, abuse and self-harm.¹⁶ HM Chief Inspector of Prisons found potential child trafficking victims at short-term holding facilities were not identified.¹⁷

Despite the overwhelming evidence and its own duties to promote the welfare of children, the UK government seeks to rescind its prior commitments and detain children en masse. The Royal College of Paediatrics and Child Health, the British Medical Association, the Royal College of Psychiatrists, the Royal College of General Practitioners and the Faculty of Public Health have written to the Home Secretary to outline the serious harm and risks that refugee children would face and ask for an urgent meeting.¹⁸

"It didn't make me feel happy, it made me feel like, erm, sad and angry, feel like screaming or breaking something."¹⁹

Nine-year-old of her experience in detention

Will not detaining children act as a pull factor?

Continuing to have limits on child detention will not increase the number of children coming to the UK on small boats. Once routine child detention was ended in 2011, there was no proportional increase in children claiming asylum. The Joint Committee on Human Rights, in looking at the removal of location and time limits on child detention, considered the Government's desire not to incentivise people smuggling gangs to target particular groups. The Committee stated: 'We have not seen evidence that this is likely to happen, nor that it would justify detaining children for periods previously considered to be excessive.'²⁰

Will adults claim to be children if children are not detained?

"We have to get the balance right so that young adults do not regularly pose as minors and create an enormous and very concerning safeguarding risk for our young people," said the Minister at Report on 26 April 2023. As it stands, the balance that the Bill strikes is not right. This is because:

- 1) **Age disputes are unrelated to detaining babies and children in families.** The government does not claim that there is an age-dispute issue in relation to families but still intends to detain children in families.

¹⁵ Medical Justice (2010) 'State Sponsored Cruelty: Children in immigration detention,' available at: https://medicaljustice.org.uk/wp-content/uploads/2022/02/2010_State-Sponsored-Cruelty_Final.pdf

¹⁶ The Children's Society (2011) '[What have I done? The experiences of children and families in UK immigration detention: Lessons to learn](#)'

¹⁷ HM Chief Inspector of Prisons (2023) 'Report on an unannounced inspection of short-term holding facilities managed by Border Force', page 4, available at: <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2023/05/Border-Force-STHF-web-2023.pdf>

¹⁸ [Leading medical bodies sound alarm over putting refugee children behind bars](#), 19 June 2023.

¹⁹ The Children's Society (2011) '[What have I done? The experiences of children and families in UK immigration detention: Lessons to learn](#)', page 23

²⁰ Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill, June 2023: <https://committees.parliament.uk/publications/40298/documents/196781/default/>

- 2) **The greater safeguarding risk is an under-18 being treated as an adult.** Placing a lone child in an adult setting with far fewer oversight mechanisms poses a greater risk than, say, an 18-year-old being in a closely supervised child setting with a 17-year-old.²¹
- 3) **Detention is an unsuitable place to assess age.** Detention must not be used to assess whether someone is a child. Detaining someone in order to undertake an age assessment is not justifiable and detention is simply not an appropriate place to conduct age assessments.²² The Home Office trying to assess on arrival does not work: last year 70 local authorities took into their care over 850 children whom the Home Office had originally classed as adults and placed in adult accommodation or detention.²³
- 4) **Do not legislate against all for the sake of the exceptions.** Children’s sector and local authority practice does not support the assertion that adults ‘pretending’ to be children is a widespread problem, still less do we deal with the outlier cases cited by the government. While there may be a small number of outliers, the answer cannot be to treat all unaccompanied children the same as adults. Good law and policy should not be designed simply to catch the more extreme cases at the cost of harming hundreds or thousands of children.

“I am also seeking urgent reassurance that age assessment on children is carried out sensitively and appropriately, by trained professionals. Where age is disputed, they should be treated first and foremost as a vulnerable child, with the care and support they require from the local authority while this is resolved.”²⁴

Dame Rachel de Souza, Children’s Commissioner for England

²¹ There is ample evidence of the harm that can come to children, including sexual abuse, when placed in adult accommodation and without adequate supervision. See, for example: [Teenage boy allegedly raped at hotel housing refugees in London | UK news | The Guardian](#) and [Age-disputed child asylum seeker left without care: Refugee Council response - Refugee Council](#)

²² Association of Directors of Children’s Services ‘Age Assessment Guidance’ states at page 15: ‘Facilities such as police stations would not be considered appropriate for conducting age assessments, and every effort should be made to take a child or young person out of a police station in order to conduct a lawful assessment.’ Available at: [Age Assessment Guidance 2015 Final.pdf \(adcs.org.uk\)](#)

²³ Helen Bamber Foundation, Asylum Aid and Humans for Rights Network, ‘Disbelieved and denied’, 2023, available at: <https://www.helenbamber.org/resources/reportsbriefings/disbelieved-and-denied-children-seeking-asylum-wrongly-treated-adults>

²⁴ Statement by Dame Rachel de Souza on the progression of the Government’s Illegal Migration Bill to Report Stage, released 26 April 2023, available at: [Statement from the Children’s Commissioner on the Illegal Migration Bill | Children’s Commissioner for England \(childrenscommissioner.gov.uk\)](#)

Proposed amendments

We support the following child detention amendments that would preserve existing limits.²⁵

Amendment 51

BARONESS MOBARIK
THE LORD BISHOP OF DURHAM
BARONESS STROUD
BARONESS HELIC

Clause 10, page 15, leave out lines 10 to 35 and insert—

“(2D) Detention under sub-paragraph (2C) is to be treated as detention under sub-paragraph 16(2) for the purposes of the limitations in paragraph 18B (limitation on detention of unaccompanied children).”

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

Amendment 57

BARONESS MOBARIK
THE LORD BISHOP OF DURHAM
BARONESS STROUD
BARONESS HELIC

Clause 10, page 15, line 38, leave out subsection (4)

Member's explanatory statement

This amendment would retain existing limits on the detention of children (72 hours or one week with ministerial approval).

Amendment 59

BARONESS MOBARIK
THE LORD BISHOP OF DURHAM
BARONESS STROUD

Clause 10, page 16, line 44, leave out from beginning to end of line 20 on page 17 and insert—

“(2B) Detention under subsection (2A) is to be treated as detention under sub-paragraph 16(2) of Schedule 2 to the Immigration Act 1971 for the purposes of the limitations in paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children).”

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

Amendment 63

BARONESS MOBARIK
THE LORD BISHOP OF DURHAM
BARONESS STROUD
BARONESS HELIC

Clause 10, page 17, line 23, leave out subsection (8)

Member's explanatory statement

This amendment, with others to Clause 10 in the name of Baroness Mobarik, would retain existing limits on the detention of unaccompanied children (24 hours).

²⁵ We also support amendment 65 to retain time limits on the detention of pregnant women.

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