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Lord Anderson of Ipswich  
House of Lords  
London  
SW1A 0PW

The Lord Murray of Blidworth  
Parliamentary Under Secretary of State  
for Migration and Borders

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03 July 2023

Dear Lord Anderson,

### **ILLEGAL MIGRATION BILL: HOUSE OF LORDS COMMITTEE STAGE**

I am writing to follow up the debate in the Lords (Official Report, 8 June, column 1519) regarding amendments 71 and 72 and clause 11 of the Illegal Migration Bill.

The Government has included the provisions in clause 11, which make clear that it is for the Home Secretary, rather than the courts, to determine what constitutes a reasonable time period to detain an individual for, as the Home Office will be in possession of all the relevant and necessary facts and therefore in the best position to decide whether continued detention is reasonable in all the circumstances.

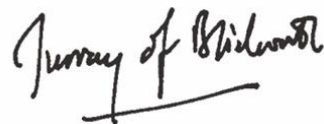
This does not, however, take away the case that a person's detention will be subject to judicial oversight. Clause 12 prevents the First-tier Tribunal from granting bail, where an individual is detained under the new statutory powers, for the first 28 days of detention, and places a restriction on someone challenging their detention during this period by way of judicial review. An individual will however, at any time, be able to make an application for a writ of *habeas corpus* (or the equivalent in Scotland). In considering such an application and the lawfulness of detention, the High Court will undoubtedly apply the *Hardial Singh* principles. These principles, which were set out in the case of *R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB)*, lay down the limitations on the power to detain for immigration purposes.

You asked, in particular, what is meant by the provision in new paragraph 17A(2) of Schedule 2 to the Immigration Act 1971 (inserted by clause 11(1)). This clause does not permit the Secretary of State to detain indefinitely. As outlined above, the Bill provides, in line with the current common law position, that an individual may only be detained for a period that is reasonable, with reference to the specific statutory purpose for which they are detained. Even now, under the existing *Hardial Singh* principles, the fact that there is something which 'for the time being' prevents a decision being made, or removal being carried out or leave being granted does not, in itself, render detention unlawful. Detention will still be lawful so long as the obstacle in question can be overcome within a reasonable period of time.

The detention powers under the Bill enable the detention of illegal migrants to establish whether the new duty to remove applies, and to promptly remove those eligible from the UK. The Home Office intends to swiftly remove those who fall under the duty, however we recognise that there may be occasional circumstances where an individual is temporarily prevented from being removed from the United Kingdom, for example, by virtue of the fact that they require short-term medical treatment or there is a practical impediment to their removal, such as a short-term issue with flight availability. In these instances, we would still be detaining the individual in compliance with our duty to remove them as soon as reasonably practicable. However, where there is a longer-term barrier to an individual's removal, we accept that maintain detention may no longer be reasonable or justified.

I am copying this letter to Lord Coaker, Lord Ponsonby of Shulbrede, Lord Paddick, Baroness Chakrabarti, Baroness Bennett of Manor Castle, Lord German, Baroness Ludford, Lord Bach and Baroness Lister of Burtersett. I will place a copy of this letter in the library of the House.

Yours sincerely,

A handwritten signature in black ink, reading "Murray of Blidworth". The signature is written in a cursive style with a horizontal line underneath.

**The Lord Murray of Blidworth  
Parliamentary Under Secretary of State  
for Migration and Borders**