

## **Adults at risk in immigration detention**

### **Draft policy**

#### **Purpose and background**

1. This policy emerges from the Government's response (in a Written Ministerial Statement of 14 January 2016) to the report by Stephen Shaw of his review of the welfare of vulnerable people in detention. The intention is that the policy will, in conjunction with other reforms referred to in the Government's response, lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal. It aims to introduce a more holistic approach to the consideration of individual circumstances, ensuring that genuine cases of vulnerability are consistently identified, in order to ensure that vulnerable people are not detained inappropriately. The policy aims to strike the right balance between protecting the vulnerable and ensuring the maintenance of legitimate immigration control.
2. This policy allows for a case-by-case evidence-based assessment of the appropriateness of the detention of an individual considered to be at particular risk of harm in the terms of this policy.
3. The clear presumption is that detention will not be appropriate if a person is considered to be "at risk". However, it will not mean that no one at risk will ever be detained. Instead, detention will only become appropriate at the point at which immigration control considerations outweigh this presumption. Within this context it will remain appropriate to detain individuals at risk if it is necessary in order to remove them. This builds on the existing policy and sits alongside the general presumption of liberty.
4. This policy will apply in all cases in which an individual is being considered for immigration detention in order to facilitate their removal<sup>1</sup>. In these cases, an assessment will be made of whether the individual is "at risk" in the terms of this policy and, if so, the level of risk (based on the available evidence) into which they fall. If the individual is considered to be at risk, an assessment will be made of whether the immigration considerations outweigh the risk factors. Only when they do will the individual be detained.
5. The processes set out in this policy apply to all cases in which consideration is being given to detaining an individual in order to remove them<sup>2</sup>. They also apply to cases of individuals who have already been detained, though there are some differences in the way in which these cases are managed.

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<sup>1</sup> Except in certain modern slavery cases – see paragraph 20 of this document.

<sup>2</sup> Except in certain modern slavery cases – see paragraph 20 of this document.

## **Principles**

6. The main principles underpinning this policy are:

- the intention is that fewer people with a confirmed vulnerability will be detained in fewer instances and that, where detention becomes necessary, it will be for the shortest period necessary
- there will be a clearer understanding of how the government defines ‘at risk’ and how those considerations are weighed against legitimate immigration control factors to ensure greater transparency about who is detained and why
- individuals should leave the UK when they have no permission to enter or stay in the UK. The Government expects individuals to leave the UK on the expiry of any valid leave they may have, and to comply with any requirement or instruction to leave the UK
- for the purposes of removal, individuals can be detained if there is a realistic prospect of removal within a reasonable timescale and if there is evidence which suggests that the individual would not be likely to be removed without the use of detention
- detention will not be appropriate if an individual is considered to be at risk in the terms of this policy unless and until there are overriding immigration considerations
- in each case, the evidence of risk to the individual will be considered against any immigration factors to establish whether these factors outweigh the risk
- the greater the weight of evidence in support of the contention that the individual is at risk, the weightier the immigration factors need to be in order to justify detention

## **Who is an adult at risk?**

7. For the purposes of this policy, an individual will be regarded as being an adult at risk if:

- they declare that they are suffering from a condition, or have experienced a traumatic event, that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention
- those considering or reviewing detention are aware of medical or other professional evidence which indicates that an individual is suffering from a condition, or has experienced a traumatic event, that would be

likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention – whether or not the individual has highlighted this themselves

### **Assessment of whether an individual is an adult at risk**

8. On the basis of the available evidence, the Home Office will reach a view on whether a particular individual should be regarded as being “at risk” in the terms of this policy. If, on this basis, the individual is considered to be an adult at risk, the presumption will be that the individual will not be detained.

9. Once an individual has been identified as being at risk, consideration should be given to the level of evidence available supporting the risk factors and the weight that should be afforded to the evidence:

- a self-declaration of being an adult at risk - should be afforded some weight, even if the issues raised cannot be readily confirmed. Individuals in these circumstances will be regarded as being at evidence level 1
- professional evidence (e.g. from a social worker, medical practitioner or NGO), or official documentary evidence, which indicates that the individual is (or may be) an adult at risk - should be afforded greater weight. Individuals in these circumstances will be regarded as being at evidence level 2
- professional evidence (e.g. from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm – for example, increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk (for example, that the individual’s mental or physical health would be adversely affected), should be afforded significant weight. Individuals in these circumstances will be regarded as being at evidence level 3

10. Determinations from courts or tribunals about the credibility of a person’s account or claims, or about professional evidence, or credibility concerns arising from other determinations, may be taken into account in deciding the weight that should be afforded to evidence and could result in a reconsideration of the evidence level into which the individual falls.

### **Indicators of risk**

11. The following is a list of conditions or experiences which will indicate that an individual is at risk in the terms of this policy and any information provided to the Home Office on them by an individual will inform detention decisions:

- suffering from a mental health condition or impairment (this may include learning difficulties, psychiatric illness, clinical depression or post traumatic stress disorder, depending on the nature and seriousness of the condition)
- having been a victim of torture<sup>3</sup>
- having been a victim of sexual or gender based violence<sup>4</sup>, including female genital mutilation
- having been a victim of human trafficking or modern slavery (see paragraph 20 below)
- being pregnant (pregnant women will automatically be regarded as being level 3 risks)<sup>5</sup>
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transsexual or intersex person

12. It cannot be ruled out that there may be other, unforeseen, conditions that may render an individual particularly vulnerable to harm if they are placed in detention or remain in detention. In addition, the nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time.

### **Assessment of immigration factors**

13. The presumption will be that, once an individual is regarded as being at risk in the terms of this policy, they should not be detained, even if the risk is self declared. However, the risk factors for the individual, and the evidential weight that has been afforded to them, will then need to be balanced against any immigration control factors in deciding whether they should be detained.

14. The immigration factors that will be taken into account are:

- Length of time in detention – there must be a realistic prospect of removal within a reasonable period. What is a “reasonable period” will vary according to the type of case but, in all cases, every effort should be made to ensure that the length of time for which an individual is detained is as short as possible. In any given case it should be possible to estimate the likely duration of detention required to effect removal. This will assist in determining the risk of harm to the

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<sup>3</sup> As defined in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

<sup>4</sup> Gender based violence is defined as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life

<sup>5</sup> By virtue of the Immigration Act 2016, pregnant women may not be detained for longer than 72 hours, extendable up to a week in total with Ministerial approval

individual. Because of their normally inherently short turnaround time, individuals who arrive at the border with no right to enter the UK are likely to be detainable notwithstanding the other elements of this policy

- Public protection issues – consideration will be given to whether the individual raises public protection concerns by virtue of, for example, criminal history, security risk, decision to deport for the public good
- Compliance issues - an assessment will be made, based on the previous compliance record of the individual concerned, of whether that individual is likely to leave the UK voluntarily or whether the individual is likely to be removable only if they are detained for that purpose

15. Voluntary return options should be pursued before consideration is given to detaining at risk individuals. Where there are reasonable grounds to believe that the individual would not return without the use of detention to support enforced removal (e.g. has previously been offered the chance to pursue a voluntary return and not taken it up or complied with the process or, for instance, has been living and working illegally in the UK for some time or has made attempts to frustrate their return), this should be regarded as a matter of non-compliance.

### **Balancing adult at risk factors with immigration control factors**

16. If the individual has been identified as being at risk, the decision maker deciding on detention should first assess whether there is a realistic prospect of removal within a reasonable timescale. If there is not, the individual should not be detained. If there is such a prospect, the decision maker should carry out an assessment of the balance between the risk factors and the immigration factors. This should involve a weighing of the level of risk to the individual against the immigration factors listed above.

17. This should result in a determination of whether the risk factors are outweighed by the immigration factors. An individual should be detained only if the immigration factors outweigh the risk factors such as to displace the presumption that individuals at risk should not be detained. This will be a highly case specific consideration.

18. As part of the determination of whether an individual should be detained, consideration must be given to whether there are alternative measures, such as residence or reporting restrictions, which could be taken to ensure an individual's compliance whilst removal is being planned or arranged and to reduce to the minimum any period of detention that may be necessary to support that removal – e.g. by detaining much closer to the time of removal.

### **Risk factors emerging after the point of detention**

19. Following the detention of any individual (including those regarded as being at risk) there should be an ongoing assessment of risk made by the case owner throughout the period of detention which will facilitate the identification of any emerging risk, or changes to known risk factors. Should any new risk factors emerge (including through reports produced under Rule 35 of the Detention Centre Rules), or any existing risk factors change, there should be a formal review of the case, with a fresh consideration of the balance of risk factors against the immigration factors, as set out above. The emerging risk factors may shift the balance to the extent that the risk factors outweigh the immigration factors. If they do, the individual should be released from detention on appropriate release conditions and their compliance monitored. Equally, a failure to remove within the expected timescale might also tip the balance to the extent that release becomes appropriate – though this is less likely if the individual's non-compliance has caused the failure to effect removal.

### **Trafficking cases**

20. Any decision made on the immigration detention of an individual who has received a positive reasonable grounds decision under the National Referral Mechanism (NRM), and who has not yet received their conclusive grounds decision or otherwise left the NRM, will be made on the basis of the modern slavery policy set out in separate guidance.