

Equality Impact Assessment

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Equality Impact Assessment (EIA)

- Remember that your duty is to demonstrate that you have had “due regard” to equalities issues.

Useful guidance:

- Discrimination and differentiation guidance
- Equality Impact Assessments

1. Name and outline of policy proposal, guidance or operational activity

The policy change brings people who have been granted a positive Reasonable or Conclusive Grounds decision under the National Referral Mechanism (NRM), and who are therefore regarded as being potential or confirmed victims of modern slavery respectively, fully within the scope of the Adults at risk in immigration detention (AAR) policy by amending the AAR Statutory Guidance.

The AAR caseworker guidance and [Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the MSA Act 2015\) and Non-Statutory Guidance for Scotland and NI](#) have also been amended to make clear that detention decisions for this cohort should be considered under the AAR policy.

The Adults at Risk in Immigration Detention guidance (“the AAR Statutory Guidance”) sets out the principles and process for making decisions on immigration detention, for the purposes of removal, in respect of individuals who are or may be considered at risk.

It enables officials to identify vulnerable adults and to make balanced decisions about the appropriateness of their detention. There is a presumption in immigration policy that a person will not be detained. The AAR Statutory Guidance strengthens this presumption against the detention of those who are particularly vulnerable to harm in detention and is supplemented by guidance for caseworkers. However, detention may still be appropriate in cases where

immigration control considerations outweigh the presumption of release, even where a person is considered to be at risk.

The AAR Statutory Guidance includes a list of matters which may make a person particularly vulnerable to harm in detention, which includes the experience of having been a victim of human trafficking or modern slavery.

Previously, the AAR Statutory Guidance required any decisions as to the detention of individuals who have received a positive Reasonable Grounds decision under the NRM, and who are therefore considered to be potential victims of trafficking or modern slavery, to be made with reference to the separate [Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the MSA Act 2015\) and Non-Statutory Guidance for Scotland and NI](#). In turn, this guidance stated only that such individuals did not need to be released from detention where there were public order reasons not to do so. The AAR policy itself provides an appropriate framework for the detention considerations of potential and confirmed victims of trafficking or modern slavery, enabling a more rounded assessment of detention decisions for people in this cohort and enabling the decisions to be made in a way that is more consistent with those made for other vulnerable individuals.

Particular considerations arise in the management of potential victims of modern slavery (those who have received a positive Reasonable Grounds decision under the NRM and have not yet received their Conclusive Grounds decision or otherwise left the NRM) – for example, the requirement for a Recovery and Reflection period in accordance with Article 13(1) of the European Convention on Action Against Trafficking in Human Beings (subject to the public order considerations in Article 13(3)), as reflected in the [Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the MSA Act 2015\) and Non-Statutory Guidance for Scotland and NI](#). These considerations can impact on the likely removal date and the appropriateness of detention or continued detention.

Supplementary caseworker guidance titled Adults at Risk: Detention of potential or confirmed victims of modern slavery has been published to ensure caseworkers are aware of the particular considerations, protections and support which apply to potential victims of trafficking or modern slavery.

Under the guidance, where continuing detention is being considered for a potential victim, a Modern Slavery Needs Assessment will be undertaken in order to identify any recovery needs arising from the person's experience of modern slavery and assess any support they may require. This assessment consists of identifying any recovery needs that the potential victim may have, including any healthcare needs, and assessing whether or not suitable assistance to support the individual in their recovery can be provided in detention.

2. Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

In order to demonstrate due regard to the Public Sector Equality Duty (PSED), the Home Office has considered evidence from a number of sources:

Published Detention Statistics

Consideration has been given to published [Detention](#) and [National Referral Mechanism](#) Statistics which provide some background information on the demographics of people in immigration detention and people considered to be potential victims of modern slavery in particular with regards to race and sex. We have primarily considered detention statistics for 2019, the last complete calendar year before the COVID-19 outbreak, because of the impact of the pandemic on the number of people in detention and the demographics of that cohort.

In 2019, of the 24,480 individuals who entered immigration detention, 3,366 (14%) were women. Whilst men make up the majority of potential victims of modern slavery (of the potential victims referred in 2019, one-third (3,391) were female; two-thirds (7,224) were male), women are proportionally represented in much greater numbers in the NRM than in the detained population in general. A greater proportion of adult NRM referrals are female (38%) than under 18 NRM referrals (24%). The majority of adult female NRM referrals are related to sexual exploitation whereas the majority of adult male NRM referrals are related to criminal exploitation.

Albanians were the most common nationality entering detention in 2019, accounting for 14% of the total (3,477) and a 29% increase on the previous year. Iranians were the second most common nationality entering detention (1,758). UK nationals are the most represented nationality in all potential victims of modern slavery (27%) (2,836). Of non-UK nationals, the most commonly referred nationality was Albanian (1,705 referrals) followed by Vietnamese nationals (887 referrals). These statistics suggest that some nationalities will be disproportionately impacted by any policy designed to apply to potential victims of modern slavery within immigration detention.

In 2019, 16% of people detained following immigration offences, and 6% of detained FNOs were referred into the National Referral Mechanism. Of these, 90% and 73% respectively received positive Reasonable Grounds decisions. The vast majority had not yet received a Conclusive Grounds decision by the end of 2019. The average (median) time taken from referral to a Conclusive Grounds decision made in 2019 was 345 days (It is important to note that the decision-making times presented here are for cases that received a Conclusive Grounds decision in this period, and do not reflect the waiting time of all cases within the system).

Stakeholder engagement

In developing these changes we have given consideration to concerns about the detention of victims (and potential victims) of modern slavery raised by MPs and NGOs through various routes including the following:

Correspondence from the Independent Anti-Slavery Commissioner

Letters from Dame Sara Thornton DBE QPM (Independent Anti-Slavery Commissioner) of 8 March 2021 and 19 April 2021 raised concerns that the AAR policy resulted in proportionately fewer people leaving immigration detention than the 'public order' test previously applied to potential victims of modern slavery, and that these changes would result in an increase in the use of detention for people in this cohort. The letters also highlight the additional considerations that apply to potential victims of modern slavery including our obligations under Article 13 of ECAT and assert the necessity for these considerations to be included in the caseworker guidance.

A [submission](#) to the Secondary Legislation Scrutiny Committee (published 16 March 2021) from a group of seven organisations with expertise on immigration detention and/or human trafficking: After Exploitation, Anti-Slavery International, Bail for Immigration Detainees, Focus on Labour Exploitation, Freedom from Torture, the Helen Bamber Foundation and Medical Justice.

The concerns raised in that submission are summarised as follows:

- We are concerned that the changes brought into force by SI 2021/184 will weaken the protections against detention afforded to potential victims of trafficking – a group recognised by the government as being particularly vulnerable to suffering harm in detention.
- As such, we believe the changes will result in more potential victims of trafficking being detained and for longer periods of time. This outcome appears to directly contravene the government's stated policy aim of bringing about "a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal"
- We therefore submit that, as per the Committee's Terms of Reference paragraph 3(b) the SI imperfectly achieves its policy objectives.
- In addition we submit that, as per the Committee's Terms of Reference paragraph 3(e), there have been inadequacies in the consultation process relating to the instrument.

Targeted engagement to gather views from specialist NGOs including written feedback from NGOs in May 2020 and policy development stakeholder engagement sessions on 10 August 2020 and 26 November 2020.

Consideration was given to written feedback, including concerns and recommendations raised by Focus on Labour Exploitation (FLEX), Detention Action, Human Trafficking Foundation, Duncan Lewis and After Exploitation. An engagement session was held with specific NGOs (Helen Bamber Foundation, Freedom from Torture, Medical Justice, ILPA, UNHCR and Forest Medical) on 10 August 2020, and consideration was also given to subsequent correspondence from the sector. An engagement session was also held with representatives from Jesuit Refugee Service UK, Bail for Immigration Detainees (BID), Independent Monitoring Boards, Detention Action, Anti Slavery International, Helen Bamber Foundation, FLEX, UNHCR, Medical Justice, Freedom from Torture, and Immigration Law Practitioners Association (ILPA) on 26 November 2020

Key concerns raised in this engagement include the following:

- Timescales for Reasonable Grounds and Conclusive Grounds decisions in the NRM
- Concerns about the identification of potential victims of modern slavery in detention
- Perceived weakening of protections for potential victims of modern slavery, and concerns this would impact release figures for this cohort
- Lack of adequate training for Home Office staff
- Link between criminality and lack of immigration compliance with exploitation
- Lack of equivalent care for potential victims of modern slavery in detention compared to that available in the community.

A [Westminster Hall debate](#) on the effect of immigration detention on potential victims of trafficking – 27 April 2021

and [Main Chamber negative SI prayer debate](#) on the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 – 28 April 2021

The Women for Refugee Women and After Exploitation report ‘survivors behind bars’, which summarised their concerns as follows:

- Between January 2019 and September 2020, 4,102 people who were referred into the UK’s modern slavery framework (the National Referral Mechanism, or ‘NRM’) were locked up in detention. In 2020 alone, despite a significant overall reduction in the use of detention due to the Covid-19 pandemic, 969 people with trafficking indicators were detained.

- Between 2017 and 2019, the detention of potential trafficking survivors tripled, from 410 to 1256 people locked up.
- 658 women with trafficking indicators were detained between January 2019 and September 2020. While this is fewer than men (fewer women are detained overall), it is concerning high. We are particularly concerned that since August 2020, women are increasingly being detained in places meant for men. A lack of privacy and appropriate support makes it even more difficult for women to disclose trafficking and gender-based violence in these settings.

[The Royal College of Psychiatrists position statement](#) on Detention of people with mental disorders in immigration removal centres (IRCs) published April 2021 which identifies victims of modern slavery as among those likely to suffer from mental disorders as a result of their experiences, and raises concerns that the recovery model cannot be implemented effectively in a detention centre setting and that the very fact of detention mitigates against successful treatment of mental illness.

Policy Framework

This policy change has been developed with reference to several existing detention policy documents including:

- [Modern Slavery: Statutory Guidance for England and Wales \(under s49 of the MSA Act 2015\) and Non-Statutory Guidance for Scotland and NI.](#)
- AAR Statutory Guidance: [Adults at risk in immigration detention - GOV.UK](#)
- AAR caseworker guidance [Adults at risk in immigration detention - GOV.UK](#)
- The Detention Centre Rules 2001
- Detention: General Instructions [Detention: general instructions - GOV.UK](#)
- [AAR Policy Equality Statement](#)

We have also considered existing operational guidance and instructions for staff working within the immigration detention estate or with individuals detained under immigration powers. Particular consideration has been given to those instructions that operate to mitigate any foreseeable negative impacts on those with protected characteristics, safeguard the vulnerable in detention, or that are relevant to the provision of support during the Recovery and Reflection period.

As potential or confirmed victims of modern slavery may be detained within the immigration detention estate or in prisons, consideration has been given to both Detention Service Orders and Prison Service Instructions.

Detention Services Orders are instructions outlining procedures to be followed by Home Office staff operating within the immigration detention estate and are published on gov.uk. Prison Service Instructions (PSI) or Prison and Probation Policy Frameworks, also published on gov.uk, provide operational policy and guidance for prison and probation professionals.

Where specific DSO or PSI are applicable to particular protected characteristics, these documents have been linked in parts 3 and 4 of this EIA.

Training

The implementation of this policy change was supported by training delivered across the relevant areas of the business to people who work within detained casework, or who work with detained individuals across the immigration detention estate, including in IRCs and prisons. The initial round of this training, delivered to over 600 people, was delivered directly by policy officials (remotely, via Microsoft Teams).

This training explains the policy changes, highlights the particular considerations that apply in managing the detention of potential or confirmed victims of modern slavery and directs people to further resources to assist in interacting with vulnerable individuals.

In addition to that standalone training, the detained caseworker training will be updated to reflect these policy changes. That training is delivered annually to Home Office staff involved in the management of people in immigration detention, or who interact with individuals who are liable to immigration detention elsewhere.

3A. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act

Age

Background

[Schedule 3](#) of the Equality Act permits exceptions in relation to functions exercised under certain immigration legislation in relation to age and nationality and ethnic or national origins. Its effect is that discrimination that is authorised or required by legislation and the Immigration Rules is not unlawful.

There are statutory limitations on the detention of children created by section 5 of the Immigration Act 2014. An unaccompanied child who is being detained for **removal** under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 can only be detained for a maximum of 24 hours, subject to certain other conditions being met. They must only be detained in a short-term holding facility, not in an immigration removal centre. This differentiation on the grounds of age is justifiable in order to fulfil the duty created by Section 55 of the Borders, Citizenship and Immigration Act 2009 to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK.

The Adults at Risk (AAR) policy specifies being aged 70 years or over as an indicator of risk of harm in detention. The AAR policy strengthens the presumption against the detention of those who are regarded as being vulnerable to harm in detention including people aged 70 years and over. People in this age group will be detained only when immigration control considerations in their case outweigh their inherent vulnerability.

Direct Discrimination

The AAR policy only applies to adults (those over the age of 18). The statutory requirements for children and the policy in relation to the detention of children provide sufficient safeguards to prevent them being disadvantaged by their exclusion from the AAR policy. Within the 18-69 age group, detention and release decisions are not made on the grounds of age. We do not consider that direct discrimination on the basis of age arises with regards to this policy change.

Indirect Discrimination

It is possible that as a result of the average age of victims (and potential victims) of modern slavery in detention, this policy change will impact a larger number of young people. We expect this disparity to be proportionate to the general age spread of this cohort, as opposed to resulting from a policy that unfairly affects any particular age group. Resultantly, we believe any policy designed to apply to victims or potential victims of modern slavery would disproportionately impact this age group, and as such believe that any such indirect impact is a proportionate means of achieving the legitimate policy aims. The policy ensures that detention

decisions for victims of modern slavery are made in a way that takes into account individual recovery needs.

Disability

Background

For the purposes of the Equality Act, disability is described as being: “A physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on an individual’s ability to carry out normal daily activities.”

Under the AAR policy an individual considered to be “at risk” will be detained only when the immigration control factors outweigh the evidence of vulnerability presented in their particular case. Having a serious mental or physical disability, health condition or illness, including suffering from post-traumatic stress disorder, are specified as indicators of risk under the policy.

The Adults at Risk (AAR) policy sets out considerations for individuals with a “serious physical disability” whereby it states “where an individual may be suffering from a serious disability it may inhibit their ability to cope within a detention environment and should be factored into any consideration of detention and, indeed, into consideration of their general management through the immigration process”. Mental illness is also covered in the AAR policy and states that such conditions may inhibit an individual’s ability to cope within a detention environment and should be factored into any consideration of detention and, into consideration of their general management through the immigration process.

The AAR policy would be applicable with regards to the disability regardless of whether an individual was referred into the NRM as a potential victim of modern slavery or not.

Direct Discrimination

These changes bring all potential and confirmed victims of modern slavery within the scope of the AAR policy. We do not consider that direct discrimination arises as a consequence of this policy, with regards to this protected characteristic.

Indirect Discrimination

The Home Office does not routinely collect data on the number of people entering detention broken down by disability as defined by the Equality Act 2010. However, potential victims of modern slavery may have experienced significant trauma, which could make them more likely to suffer from a mental illness amounting to a disability. It is possible that disabilities of this nature could be negatively impacted by detention or require the provision of support unavailable in detention. Under the policy changes, individuals with a disability including those whose disability is a result of modern slavery continue to be protected by the AAR policy whereby they will only be detained if immigration concerns outweigh any evidence of

vulnerability. This safeguard with regards to disability is not lessened by this policy change.

We do not believe that bringing potential and confirmed victims of modern slavery within the scope of the AAR policy would have a disproportionate negative impact on individuals with the protected characteristic of disability. We do not believe that the new Modern Slavery Needs Assessment process creates a disproportionate disadvantage for individuals in this cohort and therefore do not consider that indirect discrimination arises on the basis of disability.

Reasonable Adjustments

We do acknowledge that where a decision has been taken to detain a person with the protected characteristic of disability, reasonable adjustments may need to be made on account of that disability: The Equality Act 2010 places a duty on public bodies which requires them to make reasonable adjustments for individuals with a disability (including mental health and learning disabilities) so that they are not disadvantaged.

The Modern Slavery Needs Assessment introduces an additional opportunity to identify any recovery needs associated with the individual's experience of modern slavery, which may include needs related to their physical or mental health.

In line with [DSO 08/2016](#) (Management of adults at risk in the detention estate) a consistent approach is taken by all Home Office, supplier and healthcare staff working with those in detention to identify and record changes to the physical or mental health of a detained person, or a change in the nature/severity of any previously identified vulnerability, alongside the IS91RA risk assessment process. Any vulnerability that may impact on the safety and wellbeing of a detained person must be addressed and reasonable adjustments put in place. As laid out in the DSO, where required, a care plan will be put in place recording the adjustments/interventions agreed. If a care plan is not considered necessary, a review of the detained person's welfare should continue to be assessed on a weekly basis.

[DSO 4/2020](#) (Mental vulnerability and immigration detention – non clinical guidance) provides guidance on the provision of support to those with mental vulnerabilities in detention.

Gender Reassignment

Background

As defined in section 7 of the Equality Act 2010, a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is

undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

Under the AAR policy being a transsexual person is specified as an indicator of risk of harm in detention. A person with the protected characteristic of gender reassignment may therefore be detained only when the immigration control factors outweigh the evidence of their vulnerability.

Under the policy changes, transsexual individuals continue to be protected by the AAR policy whereby they will only be detained if immigration concerns outweigh any evidence of vulnerability. This safeguard is not lessened by the changes to the policy.

Direct Discrimination

This policy applies equally to all individuals regardless of whether they hold the protected characteristic of gender reassignment. We do not therefore consider that the policy changes will result in direct discrimination with regards to this protected characteristic.

Indirect Discrimination

There is no evidence to suggest that the policy change would have a disproportionate negative impact on this particular group when compared with other potential or confirmed victims of modern slavery in detention. As such, we do not consider that any indirect discrimination arises with regards to this protected characteristic.

It should be recognised that victims of modern slavery may struggle to disclose factors linked to gender reassignment, which could lead to difficulties in identifying necessary adjustments. The recovery needs of a potential victim of modern slavery will be kept under review: If a caseworker, member of IRC or prison staff or the potential victim believes that their recovery needs may have changed, an additional Modern Slavery Needs Assessment can be requested.

Harassment

The Home Office accepts that people with the protected characteristic of gender reassignment are more likely to be victims of bullying. They may therefore be adversely affected by being detained in close proximity to other individuals, some of whom may hold trans-phobic views.

[DSO 11/2012](#) provides guidance to staff working in the immigration detention estate on the care and management and treatment of transsexual detainees. It takes into account the sensitivities of the individuals concerned and seeks to ensure that individuals are accommodated and treated in the best possible way taking account of their gender issues.

Marriage and Civil Partnership

Background

Home Office policy does not exempt individuals from immigration detention by virtue of their being married or in a civil partnership. The Home Office does not regularly collect or publish data on the marital status of people in detention or of potential victims of modern slavery. Marital status is not a factor which influences detention or release decisions for victims (or potential victims) of modern slavery.

Direct Discrimination

The AAR policy applies equally to all individuals regardless of their marital status. We therefore consider that the policy changes do not result in direct discrimination with regards to this protected characteristic.

Indirect Discrimination

There is no evidence to suggest that the policy would have any differential impact on individuals because of their marital status. We therefore consider that this policy does not result in indirect discrimination with regards to this protected characteristic.

Pregnancy and Maternity

Background

By virtue of section 60 of the Immigration Act 2016, if a person is pregnant, they may only be detained if they will shortly be removed from the United Kingdom, or if there are exceptional circumstances which justify detention.

Under the AAR policy, pregnancy is afforded significant weight when determining suitability for detention (pregnant people will automatically be regarded as meeting level 3 evidence). By virtue of the Immigration Act 2016, pregnant people may not be detained for longer than 72 hours, extendable up to a week in total with Ministerial approval.

Between March 2019 and February 2020 there were 21 cases of pregnant women in immigration detention. Of these, 15 were released from detention and 6 were removed from the UK, all within the 72-hour guideline.

Direct Discrimination

The AAR policy is applicable to all individuals liable to immigration detention, but it does contain special provision for pregnant people to automatically be regarded as meeting level 3 evidence under that policy, hence increasing the presumption against their detention. 13(6)(b) of the Equality Act 2010 provides that it is not

discriminatory to afford special treatment to a woman in connection with pregnancy or childbirth.

The changes to bring modern slavery considerations within the scope of the AAR policy do not alter that provision and therefore we do not consider that this policy change results in direct discrimination with regards to this protected characteristic.

Indirect Discrimination

There is no evidence to suggest that the policy would have any differential impact on individuals because of their being pregnant. We therefore consider that this policy does not result in indirect discrimination with regards to this protected characteristic.

Race

Background

Any person without leave to remain in the UK may, in principle, be detained, provided the statutory powers of detention can be exercised and their detention is in line with published Home Office policy on the use of detention.

The cohort of people subject to immigration detention and therefore the AAR policy is, by definition, made up of non-UK nationals. The policy change and the wider detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of race, ethnicity or nationality. Any such detention may in principle be appropriate, according to the particular facts of the case. Immigration control necessitates overseas nationals being subject to considerations not applicable to UK nationals and will inherently impact some nationalities disproportionately.

Direct Discrimination

The AAR policy applies equally to all individuals regardless of their race. These policy changes do not therefore present a case of direct discrimination with regards to this or any other protected characteristic.

Indirect Discrimination

For individuals who fall within the scope of this policy, we do not believe there would be any disproportionate disadvantage for any one person as a result of their race. We do not believe that the new Modern Slavery Needs Assessment process creates a disproportionate disadvantage for individuals of any particular race in this cohort.

The policy changes are likely to more frequently affect people of some nationalities simply because they represent a higher proportion of victims (or potential victims) of modern slavery. We consider that any potential indirect discrimination arising from a person of any particular race being more likely to

have experienced Modern Slavery is a proportionate means of achieving the legitimate aim of ensuring that detention decisions for victims of modern slavery can be made through a more rounded assessment of the appropriateness of detention.

Religion or Belief

Background

Home Office detention policy does not prescribe, or exclude, individuals from immigration detention by virtue of their religion or belief. Any individual without leave to remain in the UK may in principle be detained regardless of religion or belief (or absence of it), provided that one of the statutory powers of detention is engaged and their detention would be in line with published Home Office policy on the use of detention.

The Home Office does not collect or publish data on the number of people entering detention broken down by religion or belief.

Of itself, the AAR policy does not have any impact on the numbers entering, or remaining in detention on the basis of religion and there is no reason to believe that the impact of the policy change on individuals of different religions is likely to be disproportionate.

Direct Discrimination

The AAR policy applies equally to all individuals regardless of their religion or belief. The policy changes contain no criteria directly relevant to detention or exclusion from detention on the grounds of religion or belief (or the lack thereof) and therefore we do not consider that direct discrimination arises as a result of this policy change, with regards to this protected characteristic.

Indirect Discrimination

The cohort of people subject to immigration detention is, by definition, made up of non-UK nationals with no leave to remain in the UK, with migrants from some countries or regions more commonly represented within that cohort. It is possible that, as with the protected characteristic of race, adherents to some religions or beliefs will be disproportionately represented within the cohort of individuals who are potential or confirmed victims of modern slavery in detention.

The Home Office recognises that individuals may require the provision of specific facilities and resources to allow them to practice their religion whilst detained, and that they would be disproportionately disadvantaged if these provisions were not fulfilled. The policy changes do not impact the provision on religious facilities available to individuals detained which are enshrined in the Detention Centre Rules and Operating Standards for Immigration Removal Centres.

We consider that any indirect discrimination arising from this policy with regards to this protected characteristic represents a proportionate means of achieving the policy aims as outlined above.

Sex

Background

Home Office policy does not exclude individuals from detention by virtue of their sex. Men and women are equally eligible for detention provided that one of the statutory powers of detention apply and their detention would be in line with published Home Office detention policy. There are significantly more men than women in the detained population as a whole and in the NRM; however, the Home Office recognises that women are more likely to be victims of gender-based violence. Individuals identified as victims of gender-based violence fall explicitly within the adults at risk policy and will be detained only where immigration control considerations outweigh vulnerability considerations.

Direct Discrimination

The AAR policy and Modern Slavery guidance both apply equally to all individuals regardless of their sex. Decisions to detain or to maintain detention will not be influenced by an individual's sex. Therefore, we do not consider that direct discrimination arises as a result of this policy change with regards to this protected characteristic.

Indirect Discrimination

The fact that there are significantly more men than women in the NRM, in combination with there being significantly more men than women detained under immigration powers, suggests that men may be more likely to be referred into the NRM from detention. As such, this policy may disproportionately impact men, as a greater number of men will fall within its scope. The Home Office recognises that women are more likely than men to be the victims of sexual or gender-based violence. A higher proportion of women are potential victims of modern slavery than are represented in the detained population in general, which means it is possible that these changes would cause a higher proportion of women to fall under the AAR policy than previously. It is necessary to apply this change equally to all victims (or potential victims) of modern slavery in order to achieve the policy aim of securing fair and equal consideration of all indicators of vulnerability. We therefore believe this to be a proportionate measure. All decisions to detain or maintain detention will continue to be taken on a case by case basis and in accordance with the specific vulnerabilities of the individual, and there are systems in place to mitigate any negative impact on women arising from an experience of gender-based violence (addressed later in this document).

Sexual Orientation

Background

Sexual orientation is not included as a specific criterion when considering suitability for detention, nor is any particular sexual orientation considered to constitute a vulnerability that would make someone an adult at risk, within Home Office detention policy (including the AAR policy).

Direct Discrimination

The AAR policy applies equally to all individuals regardless of their sexual orientation. Therefore, we do not consider that these policy changes result in direct discrimination with regards to this or any other protected characteristic.

Indirect Discrimination

There is no evidence to suggest that the application of this policy would have any differential impact on individuals because of their sexual orientation, we do not believe there to be any indirect discrimination with regards to this protected characteristic.

Harassment

The Home Office acknowledges that individuals with this protected characteristic may be more likely to experience harassment from fellow detained people. In response to recommendations in Steven Shaw's review of detainee welfare, [DSO 2/2016](#) (Lesbian, gay and bisexual detainees in the detention estate) was created to provide instruction for handling vulnerabilities associated with sexual orientation, including anti-bullying policies.

3B. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it

This limb of the duty does **not** have to be considered in relation to immigration and nationality functions in respect of race (excluding colour), religion or belief and age.

The Equality Act specifies that this limb involves having due regard to three specific aspects:

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and

- encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

Disability

The Equality Act 2010 places a duty on public bodies which requires them to make reasonable adjustments for individuals with a disability (including mental health and learning disabilities) so that they are not disadvantaged. In any circumstances where an individual is detained, it is possible that an individual with a physical or mental disability may require additional support, which is provided in line with this duty, for example literature in accessible formats, access to medication or adjustments to accommodation or escorting vehicles. When making a detention decision, consideration must be given as to whether those needs can be met in detention.

The [Mental Vulnerability DSO](#) and [AAR DSO](#) provide guidance to staff in the immigration detention estate on ensuring that reasonable adjustments are made and needs are met for those with the protected characteristic of disability.

Gender Reassignment

The Home Office accepts that people with the protected characteristic of gender reassignment are more likely to be victims of bullying. They may therefore be adversely affected by being detained in close proximity to other individuals, some of whom may hold trans-phobic views.

Individuals may also require specific medical interventions (in particular provision of hormone treatment) and access to appropriate clothing/make-up allowing them to “pass” in their acquired gender.

A [DSO 11/2012](#) provides guidance to staff working in the immigration detention estate on the care and management and treatment of transsexual detainees.

The DSO covers issues such as: respect for gender identity, allocation to detention accommodation, creation of individual care plans, facilities and clothing, risk management, and searching. It takes into account the sensitivities of the individuals concerned and seeks to ensure that individuals are accommodated and treated in the best possible way taking account of their gender issues. The care plans for individual transsexual detainees mean that all relevant factors are taken into account in managing accommodation and daily living arrangements.

Maternity and Pregnancy

It is possible that detained individuals may have specific needs as a result of pregnancy or maternity. To fulfil our duty to meet the needs of this group, as well as establishing a 72 hour time limit on the detention of pregnant people, [DSO 05/2016](#) (Care and Management of Pregnant Women in Detention) sets out instruction to Immigration Officials for the care of pregnant people, including

healthcare screening and the provision of access to ante-natal supplies such as maternity clothing on a case by case basis.

Race (colour)

We do not foresee any particular requirements or disadvantages arising as a result of an individual's colour.

Sex

Detained women may have particular welfare needs stemming from their gender, including the fact that they are more likely to have been the victims sexual or gender-based violence. All Detention Engagement Team (DET) Engagement Officers are trained to act as first responders and during their first contact with those in detention, Engagement Officers will look for indicators of modern slavery during the HO induction, conducted within 48hrs of arrival in the IRC. There are a number of NGOs providing specialist services to help those who have experienced female genital mutilation and trafficking respectively. [DSO 6/2016](#) sets out specific arrangements that must be made for all women in the detention estate

Sexual Orientation

We do not foresee individuals of any particular sexual orientation having specific needs if they are detained. We do acknowledge that LGB individuals may be more at risk of harassment in detention. [DSO 2/2016](#) includes anti-bullying policies to mitigate this potential disadvantage.

With regard to the third aspect of limb 2, we acknowledge that there will be significant limitations on participation in public life for all individuals in immigration detention. This restriction is inherent to the nature of detention, and will apply to any person subject to immigration control and therefore potentially liable to detention regardless of any protected characteristic, therefore we do not believe this disproportionately disadvantages any particular group.

3C. Consideration of limb 3: Foster good relations between people who share a protected characteristic

We do not foresee this policy change causing detrimental relations between people who share a protected characteristic and those who do not, on the grounds that it does not apply any specific advantage to any group on the basis of their sharing a protected characteristic. The policy change seeks to ensure that detention decisions are taken with equality of treatment for all those with identified vulnerabilities and so we hope that this will ensure that individuals to whom the wider policy is applied will consider that they have been treated fairly and are not disadvantaged compared to others with different protected characteristics.

We do not anticipate any particular groups of people holding any other group responsible for any perceived problems. We do not anticipate any particular group as being seen to benefit unfairly on the basis of any one or more protected characteristics.

All Detainee Custody Officers undertake training in Cultural Diversity, Disability, Mental Health Awareness, Adult Safeguarding, Human Trafficking & Modern Slavery.

4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics
(see table at end of document)

5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

Whilst we do not foresee the policy change having a disproportionate impact on individuals with protected characteristics, we have put a number of mitigations in place to minimise any potential negative impact:

- An individual assessment of a potential victim of modern slavery's recovery needs – the Modern Slavery Needs Assessment will be undertaken in all cases in which continuing detention is being considered for an individual in detention who has received a positive Reasonable Grounds decision. This assessment consists of identifying any recovery needs that the potential victim may have, including any healthcare needs, and assessing whether or not suitable assistance to support the individual in their recovery can be provided in detention. The outcome of that Modern Slavery Needs Assessment will be a contributing factor in the assessment of the individual's vulnerability under the AAR policy.
- If detention is continued, the provision of assistance and support in detention will be kept under review to reflect that the recovery needs of the potential victim may change over time. If a caseworker, member of IRC or prison staff or the potential victim believes that their recovery needs may have changed, an additional Modern Slavery Needs Assessment can be requested.
- The introduction of the policy was accompanied by published caseworker guidance. This provides a full explanation of the changes and provides caseworkers and stakeholders clarity on where and how to apply policy in practice.
- The introduction of the policy was accompanied by a training package and caseworker training to rolled out across detained casework.

- We will monitor these changes to understand the impacts of the policy including any indication of disproportionate impact to any particular group.

We will review this EIA in the light of any significant new information arising as a result.

6. Review date

This Equality Impact Assessment will be reviewed in 2022.

Declaration

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations

SCS sign off:

Name/Title: Official – sensitive

Directorate/Unit: Official - sensitive

Lead contact: Official – sensitive

Date: 10 November 2021

For monitoring purposes all completed EIA documents **must** be sent to the PSED Team

Date sent to PSED Team: 16 November 2021

4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
Age	Yes	<p>It is possible that due to the demographics of the cohort of potential victims of modern slavery, people of some age groups may be more impacted than others.</p> <p>Within the cohort of detained potential or confirmed victims of modern slavery, we do not believe there will be an impact on the grounds of age.</p>	<p>This is inherent to the introduction of any policy on modern slavery and as such we believe our policy aims justify this potential impact.</p>
Disability	No	<p>We do not anticipate this policy change resulting in the detention of more individuals with this protected characteristic, or in the duration of their detention being increased. Notwithstanding that, the Home Office has a duty to provide reasonable adjustments for those with a disability.</p> <p>We recognise that there are high rates of mental illness including post-traumatic stress disorder experienced by survivors of modern slavery.</p>	<p>The duty to make reasonable adjustments for individuals with disabilities, and the way the Home Office fulfils this duty are covered at parts 3a and 3b of this document.</p> <p>The Modern Slavery Needs Assessment, which includes a medical assessment, provides an additional opportunity for detained potential victims of modern slavery to communicate their recovery needs including those associated with disability.</p> <p>Under the AAR policy, if a person is at risk of harm in detention due to their disability, the presumption of release is strengthened.</p>

Gender Reassignment	No	We do not anticipate this policy change resulting in the detention of more individuals with this protected characteristic, or in the duration of their detention being increased. Notwithstanding that, the Home Office acknowledges that individuals with the protected characteristic of gender reassignment may be more at risk of harassment in detention. They may also require the provision of specific support.	Under the AAR policy, the presumption of release is strengthened if a person has transitioned or is transitioning from one gender to another. DSO 11/2012 provides guidance to staff working in the immigration detention estate on the care and management and treatment of transsexual detainees
Marriage and Civil Partnership	No	Neither the AAR policy or general detention policy use marriage or civil partnership as criteria in considering detention decisions.	No negative impact foreseen.
Pregnancy and Maternity	No	We do not anticipate this policy change resulting in the detention of more individuals with this protected characteristic, or in the duration of their detention being increased. Notwithstanding that, individuals with the protected characteristic of pregnancy or maternity may require particular support, resources or adjustments in detention.	There is a statutory 72-hour time limit on the detention of pregnant women DSO 05/2016 (Care and Management of Pregnant Women in Detention) sets out instruction to Immigration Officials for the care of pregnant women, including healthcare screening and the provision of access to ante-natal supplies such as maternity clothing on a case by case basis.
Race	Yes	The cohort of people subject to immigration detention is, by definition, made up of overseas nationals, and as such this policy change may disproportionately affect some nationalities. Within the cohort of detained potential or confirmed victims of modern slavery, we do not believe there will be an impact on the grounds of race.	This is inherent to the introduction of any policy on modern slavery and as such we believe our policy aims justify this potential impact.

<p>Religion or Belief</p>	<p>Yes</p>	<p>Adherents to some religions or belief systems may have specific requirements to enable them to practice that belief. We acknowledge that these individuals could be more disadvantaged by detention if provision was not made to meet those requirements.</p> <p>We also acknowledge that adherents of some religions are more likely to be victims of modern slavery.</p> <p>The Modern Slavery Needs Assessment provides an additional opportunity for detained individuals to communicate their recovery needs, including desire to participate in faith activities.</p>	<p>The responsibility to make religious facilities available to individuals in detention is set out in the Detention Centre Rules and Operating Standards for Immigration Removal Centres.</p> <p>If specific religious facilities required for an individual's modern slavery recovery cannot be provided in the detained environment this will be reflected in their AAR level.</p> <p>All Detainee Custody Officers undertake training in Cultural Diversity</p>
<p>Sex</p>	<p>Yes</p>	<p>The fact that there are significantly more men than women in the NRM, in combination with there being significantly more men than women detained under immigration powers, suggests that men may be more likely to be referred into the NRM from detention. As such, this policy may disproportionately impact men, as a greater number of men will fall within its scope.</p> <p>The Home Office recognises that women are more likely than men to be the victims of sexual or gender-based violence in their experience of modern slavery and that a higher proportion of women are potential victims of modern slavery than are represented in the detained population in general.</p>	<p>This disproportional impact is inherent to the introduction of any policy on modern slavery and as such we believe our policy aims justify this potential impact.</p> <p>Notwithstanding that, published DSO 06/2016 sets out specific arrangements that must be made for all women in the detention estate</p> <p>There are a number of NGOs providing specialist services to help those who have experienced female genital mutilation and trafficking respectively. As specified in DSO 06/2016 every centre should keep a list of organisations and their contact numbers who provide gender specific support, and of organisations that support the needs of women detainees who have experienced</p>

			violence or abuse: These contacts are made available to women in detention.
Sexual Orientation	No	We do not anticipate this policy change resulting in the detention of more individuals with this protected characteristic, or in the duration of their detention being increased. Notwithstanding that, the Home Office acknowledges that LGB individuals may be more at risk of harassment in detention.	<p>A detention services order (DSO 02/2016), setting out standards for the treatment of LGB detainees in the immigration detention estate, was published in April 2016.</p> <p>The foundation training programme for decision makers in the Third Country Unit and Detained Asylum Casework includes training on sexual orientation issues.</p>

