

Immigration Act 2016

Factsheet – Detention of Pregnant Women (Section 60)

What are we going to do?

- We have placed a 72 hour time limit on the detention of pregnant women, extendable to up to a week with Ministerial authorisation. This is similar to the arrangements put in place as part of the ending of routine detention for families with children in 2014.
- We have also made it clear on the face of the Act that pregnant women will be detained only if they can be removed from the UK shortly or if there are exceptional circumstances which justify the detention, and we have placed a duty on those making detention decisions in respect of pregnant women to have regard to the woman's welfare.

How will we do it?

- Issue guidance to all staff to ensure that where a woman is known to be pregnant, that she will only be detained when it is absolutely necessary and as a last resort, with her health and welfare being a foremost consideration whenever a decision is made in respect of detention.

The Home Secretary Theresa May said:

“The Government is clear that pregnant women should be detained only in exceptional circumstances. This is a difficult issue - we need to balance the welfare of pregnant women with the need to maintain a robust and workable immigration system and ensure that those with no right to be here leave the UK.”

Immigration Minister James Brokenshire said:

“We must retain the ability to detain in certain limited circumstances—for example, where a pregnant woman who does not have the right to enter the UK is identified at the border and can be returned quickly, or where a pregnant woman presents a public risk or has a poor compliance history and the safe and most manageable way forward is a short period of detention prior to removal.”

Background

- The Government expects people who do not have the right to stay here to leave voluntarily. As with the family returns process, we will be able to offer support to those who choose to leave voluntarily to ensure that individuals are able to exercise control over their departure and can leave the UK with dignity.
- However, we need to ensure that we are able to effectively manage returns for those who do not depart voluntarily. This new safeguard will ensure that detention for pregnant women will be used as a last resort and for very short periods – for example: immediately prior to a managed return; to prevent illegal entry at the border where a return can be arranged quickly, or if a pregnant woman presents a public risk.
- Wider changes are underway to improve the welfare of all vulnerable people in detention through a series of reforms, including a new policy on “adults at risk.” The Government set out details of these reforms, which represent its response to the recommendations from the report by Stephen Shaw on the welfare of vulnerable people in detention, in a Written Ministerial Statement on 14 January.
- These changes include the new adults at risk policy, which is given a statutory basis in this Act. There will be a greater emphasis on safeguarding as part of current and planned improvements to the caseworking process – including a new cross-cutting gatekeeper function to help provide consistency in decision making across the business and an extra level of scrutiny of the cases of detained vulnerable people.
- The Government also intends to invite Stephen Shaw to, in due course, carry out a short review in order to assess progress against the key actions from his previous report.
- The Government has listened carefully to concerns expressed in Parliament and by others and believes that the changes, combined with the wider reforms, strikes the right balance between protecting vulnerable women and maintaining effective and proportionate immigration control.

Key Questions and Answers

➤ **Why does the legislation not restrict detention of pregnant women exclusively to those cases where there are exceptional circumstances?**

Pregnant women, as with all detainees, will be detained only for the purposes of removal. Because there will be a time limit on the detention of pregnant women all cases of the detention of pregnant women will be, by virtue of the time limit, short. Some of these cases will have exceptional circumstances attached. However, not all cases will be exceptional. For example, cases at the border, where a woman has no right to enter the UK and can be returned quickly, are quite likely not to have exceptional features. The legislation therefore allows for the detention of pregnant women only when they can be removed quickly or when they can be removed quickly **AND** exceptional circumstances pertain.

➤ **How many fewer pregnant women will be detained as a result of this change?**

The detention of pregnant women occurs only in exceptional circumstances as it is and we would not expect this change to impact on a significant number of cases. The purpose of this section of the Act is to put in place an additional safeguard, to allow for closer scrutiny of cases in which pregnant women are detained, and to have a fixed time limit in place when it is necessary to detain.

➤ **Won't officials use the time limit as an opportunity to keep pregnant women detained right up to the limit?**

Just because there will be a time limit it doesn't mean that pregnant women will be detained up to that limit. If there is no longer any justification for the detention of the pregnant woman, then release should occur immediately. As with family return cases, the intention is that Ministerial authorisation to extend detention of pregnant women beyond 72 hours will be provided only in limited circumstances – for example, where a first attempt at return fails (or it is believed that an attempt to return during the 72 hours will fail) but where removal can still be achieved within a week. The authorisation will not be provided for the purposes of administrative convenience. In family return cases the Ministerial extension has been used sparingly.

➤ **Why are you not introducing an absolute exclusion on the detention of pregnant women, as recommended by Stephen Shaw?**

Decisions on whether or not to detain individuals have never been predicated on absolute exclusions for any particular group. This is for good reason. There will always be occasions on which it will be appropriate to detain particular individuals – even if they are vulnerable in some way. For example, it may be perfectly reasonable to detain an individual, including a pregnant woman, for a short period of time at an airport if she has no right to enter the UK and can be put on a flight home very quickly. Or, an individual might present a risk to the public and that might outweigh the fact that she is pregnant. These are perfectly legitimate and appropriate uses of detention in a limited context and they are very much in the public interest.

➤ **If most pregnant detainees are eventually released, why are they detained at all?**

People may be released from detention for a wide range of reasons: they may be granted bail by the courts, lodge appeals or other legal proceedings, or there may have been a material change in their circumstances. It does not necessarily mean that the original decision to detain them was wrong.