Home Office

Chapter 55a
Detention of pregnant women

Version 1.0

Contents

About this guidance

This guidance tells you about the restrictions on the detention of pregnant women for the purpose of removal and on the duration of their detention.

The restrictions on, and duration of, detention are set by section 60 of the Immigration Act 2016.

You must read this guidance in conjunction with Detention Services Order (DSO) 05/2016 - Care and management of pregnant women in detention, which provides guidance on post-detention actions, as well as on the care and management of pregnant women in detention.

Contacts

If you have any questions about the guidance contact your business area's detention lead.

If they, your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Detention Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Clearance and publication

Below is information on when this version of the guidance was cleared:

- version **1.0**
- published for Home Office staff on **12 July 2016**

Changes from last version of this guidance

- new guidance

Related content

Contents

Detention of pregnant women: general principles

This page tells you about the general principles for the detention of pregnant women.

As is the case more generally, the strong preference is for pregnant women with no lawful basis of stay in the UK to leave voluntarily and to be encouraged to do so. Measures to encourage or achieve voluntary departure should normally be tried first. Only where such measures have failed, are assessed as unlikely to succeed or are considered inappropriate (eg because of a risk of public harm), should consideration be given to enforced removal. Even where removal is to be enforced, the preference is for this to be achieved, if possible, without the use of detention.

The enforced removal of a pregnant woman must only be pursued where it can be achieved safely and there is no suggestion that her baby is due before the planned removal date.

In the case of a planned arrest, a pregnant woman, or a woman who claims to be pregnant, must be encouraged by the arrest team to bring with her all maternity-related items, including medication and documents, and must be allowed time to collect the items together and to pack them.

The detention of a pregnant woman must be reviewed promptly if there is any change in circumstances, especially if related to her pregnancy or to her welfare more generally.

Force may only be used on a pregnant woman where it is necessary to prevent harm, either to the woman herself or to other persons. In addition, a pregnant woman must not be placed at physical risk when force is used on another person. Any force used must be justified, appropriate and proportionate. Force must not be used on a pregnant woman to secure her compliance.

Related content

Contents

Detention of pregnant women: restrictions

This page tells you about the restrictions on the detention of pregnant women.

Under section 60 of the Immigration Act 2016, a woman who is to be detained pending removal or deportation and who the Secretary of State is satisfied is pregnant may be detained only if the removal or deportation will take place shortly or there are exceptional circumstances to justify detention. In either case, the detention of such a pregnant woman may be for no more than 72 hours although this may be extended up to a total of 7 days if authorised by a minister. In addition, there is a duty to have regard to the welfare of the pregnant woman.

In this context, 'shortly' means that removal is planned or likely to take place within the time limit, ie within the maximum period of 7 days although the expectation is that removal should normally take place within 72 hours.

The 'exceptional circumstances' that may justify detention of a pregnant woman who is not being removed shortly are likely to be confined to issues relating to risk of public harm (eg criminality or national security). The expectation is that detention other than where the pregnant woman's removal will take place shortly should be very exceptional. Examples of where this situation could arise may be where a pregnant woman is arrested and detained following a breach of bail conditions, or is detained under section 36(1) of the UK Borders Act 2007 pending a decision on whether the automatic deportation provisions of that Act apply or whether to make a deportation order. Detaining in order to facilitate a future removal (eg to obtain travel documents) or to prevent absconding would not, of themselves, be regarded as exceptional circumstances. Even where detention is based on exceptional circumstances, it will still be subject to the same time limits.

The duty to have regard to a pregnant woman's welfare covers not only her general welfare but also particular welfare issues that may arise as a direct result of her pregnancy. Examples of specific welfare considerations that may need to be taken into account include:

- the stage of the pregnancy
- whether it is a complex pregnancy
- whether there have been complications in the pregnancy
- whether any special care or treatment is being provided or needed
- any known appointments for scans, care or treatment
- whether particular arrangements may be needed to facilitate safe removal

Related content

Contents

Detention of pregnant women: scope

This page tells you about the scope for detaining pregnant women.

The restrictions on the detention of pregnant women apply to detention under:

- paragraph 16(2) of schedule 2 to the Immigration Act 1971 (1971 Act)
- paragraphs 2(1), 2(2) and 2(3) of schedule 3 to the 1971 Act
- section 62 of the Nationality, Immigration and Asylum Act 2002
- section 36(1) of the UK Borders Act 2007

The restrictions do **not** apply to pregnant women detained at the border (whether held in port holding rooms or transferred to immigration removal centres (IRCs) or residential short term holding facilities (STHFs)) pending examination or further examination to determine entry to the UK (paragraph 16(1) schedule 2 1971 Act), or pending a decision to cancel leave to enter (paragraph 16(1A) schedule 2 1971 Act).

Nor do they apply to pregnant women detained on embarkation (paragraph 16(1B) schedule 2 1971 Act), or as persons liable to arrest or subject to arrest warrant (section 2 UK Borders Act 2007).

The restrictions apply **only** where the Secretary of State is satisfied that the woman is pregnant.

A mere assertion to be pregnant, which is unsupported by physical, medical or documentary evidence, is not sufficient to trigger the restrictions. To be satisfied that the woman is pregnant there must be some medical or documentary evidence to support the claim, such as:

- the outcome of a pregnancy test or medical examination
- her maternity record or correspondence from a doctor, hospital or midwife confirming any ante-natal appointments, scans or other medical appointments associated with her pregnancy

Such medical or documentary evidence must be credible and come from a reliable source. The evidence of pregnancy need not be medical or documentary, if the woman is visibly pregnant this should normally be accepted as evidence of pregnancy.

Evidence which might allow the Secretary of State to be satisfied that a woman is pregnant may emerge or be provided only after the woman has been detained (whether or not she claimed to be pregnant before detention started). Such evidence could include confirmation of pregnancy provided by immigration removal centre (IRC) or short term holding facility (STHF) healthcare staff following testing or examination. Evidence other than such confirmation will have to be considered carefully to decide whether it establishes the woman's pregnancy.

Although it will usually be in a woman's best interests to provide evidence or confirmation of pregnancy, she cannot be compelled to do so. In particular, a woman

cannot be required to take a pregnancy test and she is entitled, if she wishes, to withhold consent for the disclosure of information from her medical records. A woman who claims to be pregnant but who has no evidence to support or confirm that claim (or is unwilling to disclose such evidence) and who is not visibly pregnant should be treated as not being pregnant (and thus not subject to the provisions of section 60 of the Immigration Act 2016) unless and until such evidence is provided and accepted.

Related content
Contents

Pregnancy confirmed post-detention

This page tells you what to do if a pregnancy is confirmed after detention.

Where evidence or confirmation of pregnancy emerges in relation to a detained woman, which enables the Secretary of State to be satisfied that the woman is pregnant, detention must be reviewed promptly to consider whether both:

- detention remains appropriate and still fits within the permitted criteria for the detention of pregnant women
- the purpose for which detention was authorised can realistically be achieved within the time limit

This consideration must also pay due regard to the woman's welfare, including consideration of whether there are welfare-related factors present that argue against continued detention. Where the woman's detention does not fit within the permitted criteria and/or its purpose is unlikely to be achieved within the time limit, the woman must be released. Similarly, if welfare-related factors outweigh the immigration factors arguing for continued detention the woman should normally be released.

Related content

Contents

Detention of pregnant women: time limit

This page tells you how to calculate the time limit for detention of pregnant women and how to comply with or extend the time limit.

Calculate detention time limit

The time limit on detention is calculated from the **later** of when either:

- the Secretary of State is first satisfied that the woman is pregnant
- the woman's detention starts

For the purposes of this guidance, detention is deemed to start from the point at which the person concerned is first held physically in line with a detention authority (eg an 'IS.81' or 'IS.91'). The location where the person is being held is irrelevant.

Detention does not start on administrative arrest as a person liable to detention, nor does it start on arrest or during custody in relation to a criminal offence. Detention on a basis other than those set out in Detention of pregnant women: scope does not constitute the start of detention for the particular purposes of this instruction.

For Border Force cases held for the purposes of examination, the restrictions on detention will only apply when paragraph 16(2) of schedule 2 to the Immigration Act 1971 is engaged; that is, when a refusal decision is made and it is suspected that removal directions will follow.

If the Secretary of State is satisfied prior to or at the very outset of detention that the woman is pregnant, the time limit will be calculated from the point the woman is first detained under one of the relevant powers listed in Detention of pregnant women: scope. All time spent detained, including whilst under escort as a detainee, after this point will count towards the 72 hour limit. Time spent under arrest before the start of detention under one of the relevant powers listed in Detention of pregnant women: scope will not count.

If the woman's pregnancy only becomes known or is confirmed after detention under one of the relevant powers listed in Detention of pregnant women: scope has begun, and the Secretary of State is not therefore satisfied until that point that the woman is pregnant, the time limit will be calculated from the point at which the Secretary of State is satisfied. It is therefore vitally important that information about a claimed, suspected or confirmed pregnancy is passed promptly to the Home Office caseworker responsible for managing the woman's case.

All time spent in detention, as a detainee under escort or as an arrested person prior to the point that the Secretary of State is satisfied as to the pregnancy will **not** count towards the 72 hour limit. The exact point at which the woman's pregnancy is accepted must be recorded clearly, particularly if she is already detained. This must be recorded in CID 'Special Conditions' and CID 'Notes'. The principal responsibility for accepting the woman's pregnancy rests with the relevant caseworker.

Confirmation of pregnancy for a woman in detention may be notified by immigration removal centre (IRC) healthcare to Home Office staff working in the centre. Following confirmation of a detainee's pregnancy the onsite healthcare team will notify detainee escorting and population management unit (DEPMU), the supplier and the on-site Immigration Enforcement team of the pregnancy using an 'IS.91RA Part C' **only** if the detainee consents.

Where pregnancy is confirmed, Management information and notification sets out instructions for those staff who will be responsible for accepting the woman's pregnancy, for recording this on CID, and for notifying DEPMU and the caseworker (or detention gatekeeper if out of hours) without delay. The same principles will apply where the confirmation is received by DEPMU in the case of a woman detained at a residential short term holding facility (STHF). If IRC staff receive less conclusive evidence or information they will pass it on to the caseworker (or detention gatekeeper if out of hours) for consideration. Detention Services Order (DSO) 05/2016 - Care and management of pregnant women in detention provides more detailed guidance for staff in the detention estate.

A pregnant woman may be detained at pre-departure accommodation (PDA) as part of a family group subject to ensured return in line with the family returns process. It is important to bear in mind that the detention of such a woman would be subject to 2 separate time limits applying to the detention of:

- pregnant women for the purpose of removal
- families at PDA

These time limits are calculated in different ways and may not align exactly in practice. The time limit for detention at PDA is calculated from the point of arrival at the facility, whereas the time limit for the detention of pregnant women applies from the moment the Secretary of State is satisfied as to the pregnancy or, if later, from the start of detention.

A woman who is known to be pregnant will have been detained ahead of her journey under escort to PDA. In such a case, the clock on the 'pregnant woman' time limit will have started at that earlier point and before arrival at PDA.

In the case of a woman whose pregnancy becomes known or is confirmed after arrival at PDA, the 'pregnant woman' time limit will not start until that later point although the PDA time limit will have started on her arrival. In both scenarios, the operative time limit (PDA or 'pregnant woman') will be the shorter of the 2.

Compliance with detention time limit

It is the responsibility of the caseworker or caseworking team managing a pregnant woman's detention to monitor compliance with the time limit and to take appropriate action in good time before the limit is reached. Such action may include authorising release from detention or, if appropriate and detention has lasted less than 72 hours, seeking ministerial authority to extend detention for a further period up to a total of 7

days. In all cases it is important to ensure that action is taken sufficiently ahead of reaching the time limit to avoid breaching it.

Extending detention time limit

In line with the general principle, detention of a pregnant woman must be kept to the shortest period possible to achieve the purpose for which it was authorised and must not be prolonged unduly. However, there may be circumstances where it would be appropriate to detain a pregnant woman for more than 72 hours.

Ministerial authority to detain for more than 72 hours and up to a total of 7 days may be sought before or after a pregnant woman is detained.

In the former case, such authority may be sought where it is known or believed in advance that the woman's planned detention will need or is likely to last for more than 72 hours, eg because of the timing of the earliest return flight following refusal of entry at the border.

In the latter case, extension of the time limit may be needed because of unexpected factors or events after detention has started, eg return flight delay, escort unavailability or the raising of a last minute barrier to removal which is reasonably expected to be resolved (and removal take place) within the extended period of detention.

In both cases, the extension sought should normally be for the additional period beyond the 72 hours needed in the particular circumstances of the case rather than automatically for the full 7 day period. There will, however, be cases where the full 7 day period may be needed or appropriate, either because of the actual timing of removal or because of an identified need for some flexibility.

The need to seek an extension should be avoided, wherever possible, by timing a pregnant woman's detention so that it is sufficiently close to her planned removal that her detention need not last for more than 72 hours. The caseworker must review the removal plan to check that arrangements have been put in place to ensure a successful removal, and that there are clear contingency plans in place in the event that the first attempt at removal fails. Extensions must not be sought as a matter of routine. They must not be sought for reasons of administrative convenience, nor must they be sought on a speculative, contingency basis. In the event that an extension is unavoidable, the caseworker must clearly set out the reasons why the extension is being sought when requesting ministerial authority.

Referral might be appropriate where (this list is not exhaustive):

- a first removal attempt fails and it is reasonable to expect that removal can be re-arranged to take place without the pregnant woman exceeding a total of 7 days in detention
- a pregnant woman's planned return is scheduled for between 65 and 72 hours, and prior authority to extend past the 72 hour deadline is being sought as a contingency against a delayed departure caused by **unforeseen circumstances outside** of the Home Office's control

- timing and availability of flights, or requirements for removal notice periods, mean it is known that a pregnant woman needs to be accommodated for longer than 72 hours prior to removal, eg because of the timing of the earliest return flight following refusal of entry at the border

Where the circumstances of the case suggest that a pregnant woman must be detained for longer than 72 hours the caseworker must refer the case to the minister at the earliest opportunity.

Authority for an extension of stay in the case of a detained woman must be sought in the first 48 hours of detention to give the minister time to review, consider and respond to a request for an extension. Referrals for an authority to extend made later than the 48 hour point in a pregnant woman's detention are not likely to be granted in the available remaining time. It is the responsibility of the referring team to seek ministerial authority at the earliest opportunity.

In all cases ministerial authority **must** be in place before the 72 hour deadline is reached, and every effort **must** be made to have authority in place by the **48 hour point**.

Related content
Contents

Detention of pregnant women: ministerial authority

This page tells you how to refer a case for ministerial authority and what to do after referral.

Process for referring a case to the minister for authorisation

Referrals for ministerial authority must be made on the 'Detention of pregnant women: minister referral' template.

Authority to seek an extension, on the completed submission template, must be agreed by the local senior civil servant (SCS) for the business area in question or, if out of office hours, by the on-call SCS.

Outside office hours the caseworker must also discuss the request for ministerial authority with the Immigration and Borders Secretariat by telephone and notify the minister's office of the submission.

In the submission the caseworker must set out:

- the case summary that led to the pregnant woman being detained
- any detail about risks, vulnerabilities or medical issues affecting the woman (in respect of her pregnancy or otherwise)
- the reasons and justification for seeking an extension of detention beyond 72 hours
- details of the plans for removal and contingency plans should removal not go ahead as planned
- clear time lines explaining how long the woman has been detained, when she reaches 72 hours of detention, and when a ministerial response is needed by

Actions to take following referral for ministerial authorisation

The following actions must be taken in order to record the referral for ministerial authorisation:

- the caseworker must update CID person notes to confirm that the request for authorisation has been sent to the minister, noting the time that the submission was sent
- once a response is received from the minister's office the caseworker must note the outcome and the next actions in CID person notes
- the submission and the minister's response must be saved on an 'ICD.1100' in Doc Gen and added to any paper file

The caseworker must email the referral for ministerial authorisation to the Adults at risk – pregnancy referrals inbox and ensure that a copy of any response is also

provided to this inbox within 30 minutes of receipt, if not already provided by the minister's office.

Related content
Contents

Detention of pregnant women: release from detention

This page tells you about the release of pregnant women from detention. It also tells you about re-detention.

Decisions to release pregnant women from detention must be timed appropriately. They must be taken sufficiently ahead of the time limit being reached so as to avoid breaching it. This includes factoring in the time likely to be required to implement the release decision.

In addition, release decisions must be timed and implemented so as to have regard to the pregnant woman's welfare. In particular, wherever possible, release decisions should be taken at such a point that they can be implemented and the woman reach her final destination without the need for late night travel, unless she is being collected by friends or family or for other significant operational reasons that mean that release at other times would be unavoidable.

In circumstances where it may be necessary for a pregnant woman to be released to uncertain support arrangements or, indeed, to 'no fixed abode' this is not a reason to delay release, nor is it grounds on which to seek an extension of detention beyond the initial 72 hour limit. Although there is a duty to have regard to a pregnant woman's welfare, this does not, in and of itself, provide a reason for initial, continued or extended detention. In such circumstances there must, however, be a case by case consideration before release of what, if anything, might be done to make or facilitate support arrangements, even if only by signposting the woman to appropriate services.

Re-detention of pregnant women

A pregnant woman who has been released from detention may be re-detained at a later date whilst still pregnant if circumstances at that time warrant it. Any such further detention must nevertheless again comply with the requirements of section 60 of the Immigration Act 2016. Time spent detained in separate periods of detention are not cumulative.

Circumstances in which re-detention might be warranted could arise where, for example, a woman's pregnancy becomes known or is confirmed only after she has been detained and she is released because her removal will not take place within the time limit. Such a woman might be re-detained at a later date once removal within the time limit can be achieved. Such circumstances might also arise where a pregnant woman's removal does not take place as planned and has to be re-arranged for a later date when it can be achieved within the time limit.

Related content

Contents

Detention of pregnant women: management information and notifications

This page tells you what information to record before and at the end of detention of a pregnant woman, or the end of the pregnancy. It also tells you when and how to send status notifications.

It is important that the exact point at which the woman's pregnancy is accepted must be recorded and that action must be taken to update records once a woman has either been removed, released or is no longer pregnant.

For pre-planned detention

Where detention of a pregnant woman is being planned in advance the detention gatekeeper must be notified and included in the planning. At the point of detention, either service of the 'IS.91' or acceptance by the detention gatekeeper, the caseworker must open a 'DS: Pregnant' special condition on CID confirming that the Home Office are satisfied that the detained woman is pregnant. The 'DS: Pregnant' flag can be chosen from the drop down list. The start date must be entered and, in the notes field, the exact time of detention must be entered along with details of evidence provided to confirm pregnancy.

During detention

Where the onsite healthcare team establish that a woman is pregnant, they must raise an 'IS.91RA Part C' and submit this to detainee escorting and population management unit (DEPMU), with a copy provided to the centre supplier and onsite Home Office Immigration Enforcement (HOIE) team. On receipt of the 'IS.91RA Part C', DEPMU will open a 'DS: Pregnant' special condition on CID as outlined above. Where the Home Office is satisfied that a woman is pregnant as a result of evidence provided from any other source (including the woman herself) the caseworker will be responsible for opening a 'DS: Pregnant' special condition on CID as outlined above.

During office hours (Monday to Friday, 9am to 6pm) the Home Office caseworker will be notified immediately using an 'IS.91RA Part C' form. This notification will be undertaken by the onsite HOIE team who will also follow up with a telephone call to the caseworker to ensure that the information has been noted.

Outside of office hours (after 6pm until 9am, and at weekends and bank holidays) the Home Office caseworker will be notified using an 'IS.91RA Part C' form and the Returns on call senior manager will notify the on call duty officer for the relevant case working team.

Detention closure

Once the detained woman has either been removed, released or is no longer pregnant, the caseworker must close off the 'DS: Pregnant' special condition on CID,

entering the closure date and updating the notes field to include the time that detention ended.

Notification

In all cases, once the clock starts on the detention of a pregnant woman the caseworker **must** notify the detention gatekeeper **immediately** by:

- completing the relevant information on the Detention of pregnant women: management information spreadsheet
- emailing it to the Adults at risk – pregnancy referrals inbox

The caseworker must also notify the detention gatekeeper when:

- a case is referred to the minister to authorise an extension
- the minister replies to the referral
- the pregnant woman is removed or released

The detention gatekeeper will hold a central record of all such cases.

For further details regarding the full notification process, including between health care providers, immigration removal centre (IRC) staff and detainee escorting and population management unit (DEPMU) see Detention Services Order (DSO) 05/2016 - Care and management of pregnant women in detention.

Related content

Contents