Home Office

Policy Equality Statement

Demonstrating Compliance with the Public Sector Equality Duty (PSED)

Policy equality statement (PES)

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

  Useful guidance:

- **Discrimination and Differentiation Guidance**
- **Policy Equality Statements**

1. Name and outline of Policy proposal, Guidance or Operational Activity

Policy on adults at risk in immigration detention

In February 2015 the Home Secretary commissioned Stephen Shaw CBE to undertake a review of the welfare in immigration detention of vulnerable detainees. In his review published in January 2016, Mr Shaw made a total of sixty four recommendations. A number of those concerned Chapter 55.10 of the Home Office Enforcement Instructions and Guidance (EIG), which was the previous policy and which set out the categories of individuals who were considered for detention only in very exceptional circumstances.

Mr Shaw recommended the addition of certain categories (victims of sexual or gender-based violence, people with learning difficulties, people with post traumatic stress disorder, transsexual people) and revisions to certain existing categories (such as an absolute exclusion for pregnant women and a definition of the elderly which included an upper age limit). He also recommended a "catch-all" provision, to account for sufficiently vulnerable individuals not covered in these categories and to reflect the dynamic nature of vulnerability. Finally, he recommended a review of Rule 35 of the Detention Centre Rules

2001 (which requires doctors in IRCs to report on, amongst other things, concerns that a detainee may have been the victim of torture).

In response, the Home Office developed a new approach which involves an evidence-based assessment of individuals' vulnerability (or "risk") factors against immigration control factors, with the emphasis on a presumption against the detention of individuals identified as being at risk. Individuals at risk will be detained only at the point at which immigration control factors outweigh any risk identified.

As part of the assessment, decision makers take into account any evidence available in respect of the individual's risk factors.

This policy also attempts to address some of the criticisms levelled at the Rule 35 process, by alleviating pressure on the medical reporting system and being clearer about the types of experiences, events and conditions which GPs may consider necessary to report.

The Home Office is committed to implementing policy in a way which promotes equality, respects diversity and takes into account the needs of people with protected characteristics. The intention is that this policy, and the wider programme of reform to detention policy and operational practice within which it operates, will not impact negatively on individuals with protected characteristics and that, in the rare situations in which there may be a negative impact, this is justifiable and proportionate.

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

In considering whether the Home Office has had due regard to the Public Sector Equality Duty (PSED), consideration has been given to:

- Published Home Office data
- Internal Home Office management data
- The Review into the Welfare in Detention of Vulnerable Persons by Stephen Shaw CBE
- Concerns raised by NGOs in meetings and in correspondence

1. **Detention policy and practice for vulnerable individuals**

Home Office policy on the detention of individuals for immigration purposes is set out as part of the guidance for offender management. .

Additionally, Section 60 of the Immigration Act 2016 places restrictions on the circumstances in which pregnant women may be detained for the purpose of removal and on the duration of their detention. Since 12 July 2016, pregnant women may not be detained for the purpose of removal for longer than 72 hours, extendable up to a week in total with Ministerial approval.

Assessments of the suitability of the initial detention of an individual in an immigration removal centre (IRC) involve a detailed review of the case by the Home Office Detention Gatekeeper (DGK). The allocation of an individual to an IRC will take into account any risks to the detainee that may be present, along

with the likely timescale for the individual's removal, the history of the detainee's behaviour and the risk the detainee may pose to the safety and security of other detainees, staff and visitors. The Home Office accepts that being in detention may have a disproportionately adverse effect on some individuals (including individuals with protected characteristics, such as elderly people and pregnant women) and detention is continually reviewed in the light of any changes to the individual's level of vulnerability and to the immigration considerations present in the case.

1.1. Stephen Shaw Review and the development of the Adults at Risk policy

The recommendations of Stephen Shaw's Review had a direct and substantive influence on the adults at risk policy. Mr Shaw based his review on an extensive programme of visits to detention settings; meetings with detainees, detention centre operators, civil servants, and non-governmental organisations; observations of the workings of the detention process and conditions in the detention setting; an extensive written consultation with NGOs and others; as well as a review of the impact of immigration detention on mental health, carried out by Professor Mary Bosworth. This informed Mr Shaw's analysis of the implications of immigration detention on each of the protected groups set out in the Equality Act 2010. In chapter 4 (entitled 'Vulnerability') of his review he considers victims of sexual violence, pregnant women, serious mental illness, women detainees, transsexual detainees, and elderly people. In chapter 6 (entitled 'Regimes and Practices') Mr Shaw looks at, among other things, religious issues and the position of women.

As a result of his consideration of the issues, Mr Shaw recommended some amendments to the list of groups of individuals who would normally be considered suitable for detention in only very exceptional circumstances. These were, at the time, set out in Chapter 55.10 of the EIG and were as follows:

- unaccompanied children and young persons under the age of 18;
- the elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention;
- pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this;
- those suffering from serious medical conditions which cannot be satisfactorily managed within detention;
- those suffering from serious mental illness which cannot be satisfactorily managed within detention. In exceptional cases, it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act 1983;
- those where there is independent evidence that they have been tortured;
- people with serious disabilities which cannot be satisfactorily managed within detention;
- persons identified by the competent authorities as victims of trafficking.

He recommended the addition of certain categories (victims of sexual or gender-based violence, people with learning difficulties, people with post-

traumatic-stress-disorderand transsexual people) and revisions to certain existing categories (such as an absolute exclusion for pregnant women and a definition of 'elderly' which includes an upper age limit). He also recommended a "catch-all" provision, to account for sufficiently vulnerable individuals not covered in these categories and to reflect the dynamic nature of vulnerability.

Mr Shaw's Review into the welfare in detention of vulnerable people was published on 14 January 2016 alongside the Government's response. Mr Shaw's review contained a total of sixty four recommendations, including those in respect of 55.10 EIG. As well as recommendations in respect of immigration detention policy, Mr Shaw made recommendations about, amongst other things, strategy, safeguarding within detention, living conditions within detention, escorting, mental health and detention decision making. In the Government's response to Mr Shaw's review it accepted the broad thrust of his recommendations and set out three key reforms: the introduction of a new adults at risk concept into decision making on immigration detention, with a clear presumption that people who are at risk of particular harm in detention should not be detained, building on the existing legal framework; a detailed mental health needs assessment in immigration removal centres, along with a joint Department of Health, NHS and Home Office mental health action plan; and a new approach to the care and management of those detained, including improvements to replacing the existing detention review process by the introduction of case progression plans for all those in detention and a more rigorous assessment of who enters detention through a new gatekeeping function.

1.2 Adults at risk policy and protected characteristics

The grounding provided by Mr Shaw's review meant that the adults at risk policy had full regard for protected characteristics written into its fundamental purpose and principles. For example, chapter 4 led to recommendations 9-16, which relate to vulnerable individuals, and on which the adults at risk policy itself is, in part, built.

1.3 Adults at risk policy – general principles

The adults at risk policy was therefore developed in response to Mr Shaw's recommendations in respect of the detention of vulnerable people. The key change was that, instead of having an "exempt categories" approach (which was, essentially, the effect of 55.10 EIG), the adults at risk policy sets out a process for a case by case assessment of the suitability of detention of an individual who needs to be detained in order to effect removal, based on the evidence of vulnerability available in their particular case. Under the policy, when an individual is identified as being at risk (in line with a number of indicators which reflect the categories listed in 55.10, supplemented by Mr Shaw's recommendations), a decision maker will take into account any available evidence in respect of the individual's risk factors, and will weigh this evidence against immigration considerations, having regard to the period identified as necessary to give effect to removal. Individuals considered to be at risk in the terms of the policy will be detained only at the point at which the immigration control factors outweigh any risk identified. This builds on the

general presumption of liberty and the specific presumption that adults at risk will not be detained.

In brief, in each case in which detention is being considered, the decision maker will first determine whether a person needs to be detained in order to effect removal, and if so how long detention is likely to last. A decision maker will then consider whether a person is identified as an adult at risk in the terms of the indicators set out in the policy. Then, they will take into account any evidence available in respect of the individual's risk factors. This evidence can include self-declaration of vulnerabilities or can be evidence provided by medical or other professionals. The decision maker will weigh the evidence of risk against any immigration considerations, having started from the point of presuming that the individual should not be detained. Any concerns about the credibility of evidence in support of risk can be taken into account. The general principle is that any individual considered to be at risk for the period identified as necessary to effect their removal will not be detained unless the countervailing immigration considerations are of such weight as to outweigh the risk identified. Once a decision has been taken to detain an individual, their case will be monitored through both regular and ad hoc detention reviews to ensure that any changing circumstances (for example issues raised in a report under rule 35 of the Detention Centre Rules 2001 or a change in the likely removal date) are taken into account and the appropriateness of continued detention will be reappraised.

1.4 Process and consultation

The adults at risk policy was placed on a statutory footing in the Immigration Act 2016. Section 59(1) of the Act requires the Secretary of State to issue guidance on identifying whether an individual would be at risk if detained and, if so, on making a decision on whether to detain that individual. Section 59(4) requires the Secretary of State to lay a draft of the guidance before Parliament before it is issued.

Following Royal Assent, guidance was published in draft on 26 May 2016, after which the Home Office invited a range of NGOs to discuss the developing policy. Those who accepted the offer included, amongst others, Women for Refugee Women, Detention Action, the Association of Visitors to Immigration Detainees, and the Helen Bamber Foundation. Their views, including in relation to protected characteristics, were taken into account as the policy developed further. For instance, engagement with Freedom from Torture resulted in the definition of torture in the policy being expanded to include terrorist groups. Engagement with Women for Refugee Women helped highlight issues relating to women, including pregnant women. Though not always directly related to the adults at risk policy, this input nonetheless proved useful for other initiatives throughout the year, such as the inclusion of the Immigration Act 2016 of a provision which places a time limit on the detention of pregnant women, which are closely related to the protections provided by the policy.

On 21 July 2016, statutory guidance was laid before Parliament. The statutory guidance, entitled "Guidance on adults at risk in immigration detention", came into force on 12 September 2016. On the same date, chapter 55b EIG "Adults

at risk in immigration detention" was also published. This contained a more detailed version of the adults at risk policy for decision makers.

1.5 Levels of protection

The intention was that the new adults at risk policy, as set out in chapter 55b, would provide a higher standard of protection for individuals, including those with protected characteristics, when compared to the previous policy set out in chapter 55.10 of the EIGs. The change in policy from one in which some groups of individuals were considered unsuitable for detention other than in "very exceptional circumstances" to one in which risk factors for vulnerable individuals, including those with protected characteristics, are balanced against immigration control, does not provide less protection for the reasons set out below.

Under chapter 55.10 the "very exceptional circumstances" standard was not qualified in any way, rather it was left to the discretion of decision makers. This meant that, in practice, its application often varied from case to case. The standard under chapter 55b is more transparent than that under chapter 55.10 through its provision of a clear framework to help decision makers ascertain appropriateness of detention by weighing immigration factors with risk.

The ways in which the adults at risk policy provides a higher standard of protection than chapter 55.10 are as follows:

a) The adults at risk policy is fundamentally broader in scope than its predecessor in that it encompasses a wider range of vulnerable groups (including victims of sexual violence, transsexual individuals, individuals with learning difficulties and individuals with post traumatic stress disorder).
b) The adults at risk policy caters for vulnerabilities which do not fall within the listed indicators of risk set out in the policy and applies a more dynamic approach to adapting to changing circumstances. Additionally, it brings within its ambit individuals who self-declare that they are vulnerable. This means that more individuals than before will be regarded as vulnerable within the terms of the policy.
c) The adults at risk policy contains a robust approach to determining whether detention is appropriate, involving three levels of evidence-based risk, as set out above, with level 3 being the highest level.
d) The list of conditions and characteristics that precluded detention other than in "very exceptional circumstances" in chapter 55.10 represents those who were likely to be considered the most vulnerable under the new adults at risk policy. The highest level of vulnerability, level 3, is defined as "the individual is at risk and … a period of detention would be likely to cause harm". This, taken alongside the list of indicators of risk set out in the adults at risk policy, is broadly analogous to the list of vulnerable groups set out in chapter 55.10 related to protected characteristics. The perceived "exemption" from detention in relation to many of the groups of individuals listed in chapter 55.10 was caveated with the words "cannot be satisfactorily managed in detention" and it can be argued that the definition inherent in level 3 for establishing who are the most vulnerable is at least as high at that represented by chapter

55.10. It follows, therefore, that the circumstances surrounding individuals categorised as level 3 of evidence-based risk can be considered to indicate a level of vulnerability at least as high as the characteristics set out in the list in chapter 55.10, in terms of defining the most vulnerable.

The “very exceptional circumstances” concept in chapter 55.10 essentially can be regarded as being broadly analogous to the immigration factors threshold in the adults at risk policy that applies to level 3 cases - namely: where the individual presents a significant public protection concern, where they have been subject to a custodial sentence of four years or more, where there is a serious relevant national security issue or the individual presents a current public protection concern and where removal has been set for a date in the immediate future. As these “very exceptional circumstances” were not specified in chapter 55.10, interpretation varied from case to case, leading to inconsistent outcomes and, consequently, an overall lower threshold for justifying the detention of vulnerable individuals. With the concept of “very exceptional circumstances” now rationalised in the adults at risk policy to aid consistent interpretation, an overall higher threshold now applies to detaining ‘at risk’ individuals.

Given that clear parallels can be drawn between the elements of chapter 55.10 and the elements of level 3 of the adults at risk policy, it follows that the majority of those now regarded as being at level 1 or level 2 of evidence-based risk are newly regarded as vulnerable by virtue of the adults at risk policy, and that an additional cohort of individuals are therefore afforded protection by virtue of the policy, compared with individuals who would not have received protection under chapter 55.10.

The exception is that there may be some cases in which individuals will, on the face of it at least, receive less protection under the adults at risk policy than they did under chapter 55.10. The “very exceptional circumstances” formulation in 55.10 was often, in the absence of an accepted definition, taken to refer only to considerations related to public protection and compliance with immigration law. However, some individuals who are accepted as being at level 2 or 3 of evidence-based risk under the adults at risk policy may still be detained because, aside from public protection and compliance issues, they can be removed in a short space of time (level 2) or very quickly indeed (level 3). Under chapter 55.10, such individuals may have been more likely to have been released because removability was not expressly a factor.

This risk is mitigated by the fact that, under the adults at risk policy, a key element of any detention decision is the removability of the individual – in each case, given the risk to the individual (including whether a period of detention may cause harm), consideration must be given to whether detention can be justified for the length of time it is envisaged as necessary in order to effect removal. This decision is made after consideration has been given in each case to the issue of whether detention is necessary in the first place to effect removal, and after all other options have been explored. If detention is necessary in any given case, then the policy is clear that this must be for the shortest period of time possible.

This means that, taken as a whole, level 3 of evidence-based risk in the adults at risk policy can be regarded as providing protection of at least as high a level as was provided by Chapter 55.10 in terms of both defining the most vulnerable individuals and defining "very exceptional circumstances".

Management information, which has not been audited or verified, in respect of the DGK (which considers the cases of all individuals recommended for detention), supports the contentions that more individuals are being identified as vulnerable, that more individuals (especially the most vulnerable) are not being detained because of that identified vulnerability and that, therefore, the adults at risk policy is not reducing the levels of protection available to vulnerable individuals (in fact, the opposite is true). For example, in **August 2016** (the last full month before the adults at risk policy came into force), **2,293** individuals were referred to the Gatekeeper. Of these, 94 (or **4%**) were identified as vulnerable. Between **September 2016** (the month in which the adults at risk policy came into force), and **November 2017**, **50,083** individuals were referred to the DGK. Of these, **9,280** (or **19%**) were identified as vulnerable. This clearly demonstrates that a significant number of people are being identified as vulnerable following the advent of the policy because of its wider scope.

Overall, the policy provides a better balanced process than existed before its introduction, with each individual case being subject to more exacting and transparent considerations.

1.6 Wider detention policy

With regard to immigration detention policy more generally, the Home Office has published a range of guidance which gives focused and specific consideration to the protected characteristics. This guidance includes:

- Detention Services Order 11/2012, which provides guidance to staff working in the immigration detention estate on the management and treatment of transsexual detainees. It covers living in an acquired gender role, where to locate the individual in the detention estate, searching, and the legal position.

- Detention Services Order 14/2012, on the care and management of age dispute cases in the detention estate, which provides guidance for staff on how to deal with individuals in the detention estate who claim to be under 18 years of age when there is a lack of physical or definitive documentary evidence to prove that this is the case.

- Detention Services Order 02/2016, on LGB detainees, which sets out standards for the treatment of LGB detainees in the immigration detention estate.

- Detention Services Order 05/2016, which sets out guidance for operational staff in the immigration detention estate on the care and management of pregnant women. It covers matters such as the woman's welfare during her transfer to her place of detention, her

care whilst in detention and arrangements for her removal.

- Detention Services Order 06/2016 'women in the detention estate', which provides consistent standards for the treatment of women in the detention estate and under escort.

- The Immigration Removal Centres Operating Standards, which stipulate the minimum auditable standards on a wide range of issues concerned with the management and operation of IRCs. These include sections on disabled detainees, female detainees, race relations and religion.

The adults at risk policy, this guidance package, and other initiatives such as the publication of a joint Home Office/Department of Health/NHS Action Plan on 1 December 2016, complement each other to form a framework for the consideration of vulnerability and equality issues which are fully compliant with equality legislation.

2. Training

2.1 Adults at risk

The adults at risk policy implementation was supported by training delivered across the relevant areas of the business. This was delivered by the policy officials who had developed the policy, on the basis of "train-the- trainer" training, whereby the training was delivered to business-embedded trainers (or to senior decision makers) who, in turn, then delivered the training to individuals involved in the decision-making process. The train-the-trainer training sessions were of approximately three hours' duration, delivered either in person by policy officials or (in two cases) through interactive "on-line" telephone/computer sessions. The training dealt specifically with each of the indicators of risk set out in the policy, a number of which are protected characteristics in the equality legislation. Since the original training, additional training has been provided to staff in Criminal Casework and Home Office officials have participated in a National Health Service Executive event for IRC doctors and other IRC healthcare staff.

The adults at risk training is in addition to a comprehensive range of training provided to decision makers across the business, as set out below. All staff receive the following mandatory training in the following relevant areas: equality and diversity for all; modern slavery and human trafficking; unconscious bias; Rule 35; keeping children safe and mental health awareness. Each business area also provides its own in-house job specific training.

2.2 National Removals Command training

The National Removals Command (NRC), which is the part of the Home Office which manages the entire removals process from the point of detention to removal or release, makes learning opportunities available to raise the skill levels of the workforce and build teams that are 'consistently competent'; a vision outlined in the Home Office Transformation Strategy. In order to achieve this, the NRC training team set out to ensure consistent core, functional and

technical training to all staff of all grades across the NRC; build a competent, skilled workforce capable of delivering returns; create a strategy that underpins wider Immigration Enforcement and Home Office objectives,supporting both experienced and less experienced managers; and put measures in place to identify and develop future leaders through leadership programmes.

2.2.1 The Detained Case Workers' training Programme

The Detained Case Workers' training Programme is a week-long classroom based training course. Decision makers dealing with detained cases receive training delivered locally by senior caseworkers and Business Embedded Trainers. This training course includes training in all detained casework polices and processes, including but not limited to procedural rules, detention, bail, flexibility, and the Rule 35 processes. When decision makers start work in their individual teams they are allocated to mentors who are experienced decision makers who support them as they deal with cases. They also receive the support of senior caseworkers and line managers.

In addition to casework training, they also receive mandatory e-learning training in the areas including, but not limited to, equality and diversity for all, modern slavery and human trafficking, unconscious bias, Rule 35, keeping children safe, and mental health awareness. These vary in length and generally require a short assessment at the end which must be passed in order to measure learning.

The Detained Casework training provides decision makers with an understanding of the relevant legal and policy background to detention, knowledge of where to find the statutory provisions governing detention, the ability to describe the limitations on the power to detain, the ability to list authorisation levels for detention, the ability to name relevant detention forms, and awareness of some of the issues regarding unlawful detention.

2.2.2 Overview of the Immigration Process training

The Overview of the Immigration Process training provides staff with the knowledge and skills to determine why immigration control is important and to be able to identify the type of offences associated with immigration control. This includes before entry, after entry, and returns or releases from detention alongside European Economic Area applications. By the end of the training, staff should be able to demonstrate an understanding of the reasons for immigration control, explain the different types of immigration control, have an understanding of the grounds of refusal/re-entry bans to the United Kingdom, and identify the type of offences associated with immigration control.

2.2.3 Barriers Casework training

The Barriers Casework training is designed to provide staff with the knowledge and skills to effectively consider barriers to removal and to respond to them appropriately using legislation, guidance, and case law. This training also includes modules on the Asylum & Appeals Process**.** This is normally a one week training course with the following learning outcomes: to have an understanding of immigration control; to be able to identify the different types of

barriers to removal; to be able to respond to the barriers to removal using appropriate legislation and guidance; to be able to use the Home office Intranet to access the Immigration rules, policy, and guidance; and to be able to use the Case Information Database to research and record case information.

2.2.4 Immigration Act 2014 training

Immigration Act 2014 training was first delivered across the NRC in 2014/15 to all decision makers and managers. It lasted half a day and was a classroom-based training. Decision makers are continuously updated with all relevant changes. They learn to identify new Immigration Act cases, and a range of other functions.

All updates to policies and processes are included in NRC Briefings which are sent out every week or on an ad hoc basis if required. NRC is required to fill out a log detailing all briefings that have been sent out to staff.

2.2.5 Case Information Database training

Case Information Database (CID) is the main case working and operational database used throughout the Home Office to record details of foreign nationals who pass through the UK immigration system for any reason. The CID training comprises the following aspects: appeals, removals, special conditions, travel documents, and updating fingerprint details.

2.3 Third Country Unit training

Within the Third Country Unit (TCU), which is the part of the Home Office which identifies, in accordance with the Dublin Regulation and UK Legislation, those asylum applicants who are more properly the responsibility of another safe country and arranges their transfer to that country, the following training is provided to all case working staff.

2.3.1 Foundation training programme

All TCU case working staff attend the Foundation training programme (FTP) course, which is a five week course delivered to all new asylum decision making staff. The first six days of the course cover asylum legislation, conventions and the general theory of refugee and human rights law as well as asylum policy. The next five days are spent on the theory and practice of writing decisions. The remainder of the course covers asylum interviews and decisions (practical and theoretical exercises), with an emphasis on issues such as trauma; memory and recall; and vulnerability. These three elements are then combined with other topics such as gender issues, trafficking and modern slavery, torture, medical conditions, female genital mutilation (FGM), sexual identity and domestic violence.

The course emphasises the importance of well-reasoned decisions, from credibility (and the factors behind this) to how to make the best use of country and other background information. It also stresses the need to allow asylum seekers the space to tell their stories and present the best possible case as fairly and as sensitively as possible. After the training has been provided, new

staff are mentored and coached by experienced staff of a higher grade until they are assessed to be competent to undertake the work.

2.3.2 Detained asylum casework training

TCU staff also receive further coaching and mentoring on a 2/3:1 ratio from a member of staff experienced in these elements of the role. This training includes training in all detained casework polices and processes including, but not limited to, procedural rules, detention, bail, flexibility, and Rule 35 processes (including the adults at risk policy), safeguarding, and identifying potential victims of trafficking.

2.3.3 Credibility training

A particularly important course relates to credibility. It is a one day consolidation course, written in consultation with the UN High Commission for Refugees (UNHCR) and other partners. It covers assessing the evidential value of questions in interviewing, including the advantages of asking open questions, as well as consideration of the various reasons why someone may not present as credible in an asylum interview. There are also discussions on issues such as speculation and implausibility. The course makes explicit reference to key concepts around affording fairness to the applicant, including the following key points: reference to the lower standard of proof in asylum cases (that of a reasonable degree of likelihood); the need to ensure that the applicant is afforded every opportunity during the interview to explain inconsistencies or apparently implausible evidence; the requirement to afford the benefit of the doubt to parts of the evidence which cannot be corroborated where an applicant is generally credible; the requirement to approach interviews with sensitivity and compassion, particularly when asking questions about matters which may be very difficult for the applicant to talk about in detail; and the requirement to consider the effect of incidents of torture or trauma on memory and recall, and to ensure that applicants are given every opportunity to disclose information about why they need international protection.

2.4 Asylum training

In the area of asylum, where all asylum claimants are potentially vulnerable, the following training is provided:

2.4.1 Foundation training programme

This is the same training that is delivered to TCU staff (see paragraph 2.31 above).

2.4.2 Detained asylum casework training

Decision makers dealing with detained asylum cases receive an additional two-day supplementary training course, delivered locally by senior caseworkers. This training course includes training in all detained casework polices and processes, including (but not limited to) procedural rules, detention, bail, flexibility and Rule 35 processes.

2.4.3 Credibility

This is the same training that is delivered to TCU staff (see paragraph 2.3.3 above).

2.4.4 Trafficking and modern slavery

Specific training addresses issues of trafficking and slavery, servitude and forced or compulsory labour, to assist members of staff in recognising and properly handling the cases of those who may be victims.

Competent Authority Training (Modern Slavery/Trafficking) is a one day course for specialist decision makers trained as competent authorities. It covers the National Referral Mechanism (NRM) from end-to-end and the competent authority's responsibilities at each stage of it, including the purpose of the NRM, timescales for decision making and benefits to victims.

Home Office e-learning on human trafficking and the NRM aimed at UK Border Force, UK Visas and Immigration and Immigration Enforcement staff was updated and re-launched in March 2016 with revised text relating to modern slavery and other relevant policy changes. There are three courses. The NRM e-learning course is for all those commands. There is a specific modern slavery e-learning course for the use of Border Force and a separate modern slavery e-learning course for the use of UK Visas and Immigration and Immigration Enforcement. The training is mandatory for all in-country staff in those areas. Home Office staff working in detention areas must therefore complete two mandatory training courses on modern slavery and on the NRM.

The e-learning courses cover the issues surrounding Modern Slavery, providing a general insight into what Modern Slavery is and what is entails, some of the general indicators to look out for if there are grounds for suspecting that someone might have been a victim of modern slavery, and some more detailed information about specific types of exploitation such as sexual exploitation, forced labour, and domestic servitude. Staff are also trained to refer cases into the NRM.

2.4.5 Vicarious trauma training

Interviewing officers and decision makers in Asylum Operations have also been provided with Vicarious Trauma training to equip them with coping mechanisms for anything they may hear and be affected by during the course of their work. The course is also aimed at reminding decision makers to be alert to the signs of vulnerabilities, including signs that might be implicit in a claim, and to deal with these issues in a sensitive manner.

2.5 Criminal cases training

All new decision maker recruits to Criminal Casework are given the 12-day Initial decision maker training. Within this training, four days are dedicated to classroom-based training covering detention and bail. This part of the course

involves theory, group discussion, Q&A sessions and the practical application of detention considerations to a case study.

The theory part delivered by the trainers includes explanation and discussion of the following key points:

- Power to Detain in deportation cases
- Introduction to section 36(1) of the 2007 Act
- Powers to detain – non-EEA cases: Regulation 24(1) of EEA Regulations 2006
- Home Office detention policy and Criminal Casework detention policy
- Chapter 55 of Enforcement Instructions & Guidance (EIG) on Horizon
- Understanding the OASys Assessment Report
- Definition of MAPPA
- Adults at risk
- The impact of detention on FNOs with children
- Is the initial detention decision lawful?
- The principles set out in Hardial Singh
- Detaining an FNO of a country with Bi-Lateral Agreement
- The complete detention process

Overview, or refresher, training is a shorter version of this training and is provided to decision makers who do not require the full training - for example those who have returned from maternity leave.

3. **Other matters**

3.1 **Torture**

One specific issue that is addressed in the adults at risk policy is torture. The approach to torture set out in the policy is a balanced approach which focuses on the risk to the individual based on their experiences and on the likely impact of detention on them given their vulnerability and given the likely length of their detention.

Torture was not explicitly defined in chapter 55.10 EIG, but the definition was set out in the guidance on Rule 35 of the Detention Centre Rules and was that which was handed down in the case of R (EO and others) v Secretary of State for the Home Department [2013] EWHC 1236 (Admin): *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third party information or a confession, punishing him for an act he or a third person has committed or intimidating or coercing him or a third person or for any reason based on discrimination of any kind". (*the "EO" definition).

The view of the Home Office was that, for the purposes of immigration detention policy, the EO definition is too wide because, for example, it allows violent altercations between individuals in a local dispute over property or of different religions to be presented as "torture". Immigration detention is most likely to be redolent of harm inflicted by the state or by organisations operating on behalf of the state, and the underlying policy intention regarding torture

victims as potentially vulnerable in terms of detention is therefore linked implicitly to torture instigated by or involving state parties.

From any reasonable standpoint, "torture" is very different from other kinds of harm. The broad definition set out in EO led to perverse situations in which, because the policy allowed it, an individual who had suffered comparatively minor harm (though which may still have amounted to severe pain or suffering) could claim to have been tortured and could be regarded as a torture victim. In the detention context, the key issue is the impact of the harm on the individual if they are detained over the course of the period necessary to effect their removal. Immigration detention is most likely to be redolent of harm inflicted on a state-sponsored basis. Consequently, the Home Office took the opportunity when introducing the adults at risk policy to revise the definition of torture for the purposes of immigration detention.

The definition adopted was that set out in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which states: *"For the purpose of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions."*

For the purposes of the policy, the definition that was included in the guidance went further than the basic UNCAT definition, to also include torture carried out by terrorist groups exploiting instability and civil war.

By virtue of an order in the High Court, the Home Office reverted to the EO definition of torture for the purposes of the adults at risk policy on 7 December 2016, pending the outcome of a further hearing. The final judgment of that hearing was handed down by the High Court on 10 October 2017 (see *"Medical Justice and others v Secretary of State for the Home Department (Equality and Human Rights Commission intervening) [2017] EWHC 2461 (Admin) [2017]"*)

The outcome of that judgment was that the use of the UNCAT definition of torture within the Adults at Risk Statutory Guidance was found to be unlawful. Although the Home Office had, in the interim, reverted to the EO definition of torture, the Judge clearly indicated that the Home Office was not compelled to adopt the EO definition. Indeed, the Judge raised some concerns with that definition, in that it did not provide for any consideration of powerlessness:

"*All circumstances in which severe pain and suffering are inflicted, regardless of purpose, seem likely to involve a situation of powerlessness for a longer or shorter period. However, the situation of powerlessness to which the expert evidence refers must be something somewhat over and above that which is inherent in the mere fact that the individual has been unable to prevent the infliction of severe pain and suffering. It would otherwise be irrelevant to the*

question of vulnerability in detention. What the evidence is pointing to is the relevance of the circumstances in which the severe pain and suffering were inflicted. Some of those circumstances indicate a particular vulnerability to harm in detention because of the powerlessness of the individual. State inflicted torture, or torture which it acquiesced in, or consented to or instigated, or torture by terrorist groups exercising control over territories are obvious situations of powerlessness. But powerlessness may relate to the identity of the perpetrator, for example where there has been abuse by family members in the home. It may include a prolonged period of severe pain and suffering from which escape was prevented or not practically possible. The duration of the experience, the severity of the pain and suffering and all the other circumstances in which it was inflicted, which does not exclude that the identity of the perpetrator may add to the trauma of the experience, are all relevant to powerlessness and thus to particular vulnerability. The definition of torture, if that indicator is to be retained, and is to focus on why the circumstances in which it is inflicted may create particular vulnerability to harm in detention, should focus on those aspects. Neither UNCAT nor EO definitions of torture are particularly apt for that purpose" (para 177).

On 8 January 2017, the Immigration Minister agreed that the Home Office should explore a new definition of torture for the purpose of immigration detention, in order to respond to the concerns of the Judge. The definition proposed is as follows:

"*Any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which the perpetrator has control (whether mental or physical) over the victim and, as a result of that control, the victim is powerless to resist.*"

Several NGOs were invited to provide their views on this definition of torture and on 20 February 2018 a meeting was held with Medical Justice, Bail for Immigration Detainees, Association of Visitors of Immigration Detainees, Helen Bamber Foundation, Freedom from Torture, and Detention Action. Other NGOs were invited to attend and to submit written views. At the meeting (and prior to the meeting) the NGOs suggested that amendments to the statutory guidance should be deferred pending the outcome of Stephen Shaw's further review. On the basis of the NGOs' concerns, the Home Office took the decision to disassociate amendments to the definition of torture in line with the Judge's views from wider proposed changes. The NGOs involved indicated that they would prefer the decision to amend the definition of torture be deferred until the follow-up report from Stephen Shaw was available. The Home Office indicated that although the refinements to the management of victims of torture may be contained within the later Shaw report, it was unlikely that the actual definition of torture would be commented upon, being outside of the remit of his review. The Home Office also felt that the new definition aligned with the opinion set out by the Judge in his judgement of October 2017, and on the basis of that decided to proceed with amending the definition as planned.

3.2 Rules 34 and 35 of the Detention Centre Rules

Under Rule 34 of the Detention Centre Rules (DCRs) 2001, all detainees admitted to an IRC must be given a consultation appointment with a doctor within 24 hours of their arrival, following their initial healthcare screening by a nurse within two hours of admission. Although detainees are not compelled to attend such appointments, or to disclose a physical or mental disability or history of mental or physical illness if they do attend, this arrangement provides an important safeguard on reception to IRCs and is an opportunity for individuals to raise any relevant conditions and for doctors to flag to the decision maker any concerns that may affect an individual's suitability for detention.

Rule 35 of the DCRs requires doctors in IRCs to report to the Home Office, to ensure that those with particular needs or who otherwise may not be suitable for detention can be brought to the attention of the Home Office, to inform welfare considerations and detention review decisions. Specifically, doctors must report:

- 35(1) ... on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention;

- 35(2) ... on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain.A record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State;

- 35(3) ... on the case of any detained person who he is concerned may have been the victim of torture.

The process is supported by a detention services order (DSO) which explains the role and responsibilities of both doctors and Home Office contact management teams in IRCs, most particularly when and how to complete a Rule 35 report, and what steps to take to ensure it is promptly considered by the relevant decision maker. Any evidence from a Rule 35 report should be used in considering cases under the adults at risk policy. Indeed, it may be one of the main sources of available evidence. Should a doctor have concerns about an individual and these concerns do not fall within the scope of Rule 35, doctors alert the Home Office to their concerns through Part C of the IS191, or through more informal communication routes. This acts as an additional safeguard to ensure that the Home Office is made aware of any vulnerabilities that may impact upon suitability for detention.

The Home Office has issued revised guidance on the Rule 35 process (Detention Services Order 9/2016, which is available on Gov.UK). This includes changes to the template form which doctors are required to use when preparing Rule 35 reports. Separate templates have been introduced for the different reporting categories in Rule 35. The new templates are tailored to

those individual reporting categories, providing more structure and clarity for IRC doctors about the information the Home Office requires in each case. The aim is to support improved reporting quality (by IRC doctors) and report consideration (by Home Office decision makers).

The revised guidance also makes clear the link between the Rule 35 process and the adults at risk policy.

A Rule 35 training course is mandatory for those involved in managing detained cases, available as a classroom based course or as e-learning. The course covers Rule 35 policy and processes, including (but not limited to) the background to Rule 35 and Rule 35 reports; associated processes and criteria, the Istanbul Protocol, roles and responsibilities of officials involved in the Rule 35 process (medical practitioners, IRC staff, contact management staff, responsible officers), and how to consider a Rule 35 report.

Detainees in IRCs should receive a range and quality of treatment and services for their health needs that is equivalent to that provided to people in the community, and in line with their clinical needs.

3.3 Other initiatives

The adults at risk policy is supplemented by a range of other initiatives being put in place under the Detained Casework Transformation Programme (DCTP), all of which support and work alongside the adults at risk policy. The DCTP was established to deliver some of the recommendations in the Shaw Review, notably in relation to managing detained casework. The programme is geared towards the Home Office's approach to detaining the most suitable cases and progressing them both swiftly and fairly, in order to reduce the numbers going into detention and the length of time people spend in detention. It will promote greater consistency across the immigration detention system and examine how to increase levels of internal independent oversight of decision making. The DCTP aims to maximise the efficiency and effectiveness of the detention estate and, in response to Stephen Shaw's recommendations, enhance the processes for carrying out detention reviews, put in new and improved safeguards for vulnerable individuals, strengthen existing safeguards against the possibility of unduly prolonged periods of detention, and implement new approaches to case management.

The DCTP represents a new approach to the case management of those who are detained, improving the existing detention review process through the introduction of a new, clearer removal plan in November 2017. It fosters a stronger focus on momentum towards removal, combined with a more rigorous assessment of who enters detention through a new gate-keeping function, with an aim of ensuring that the minimum possible time is spent in detention before people leave the country.

The DCTP includes a detention gatekeeper team, which is a single cross-system team which manages access to the immigration detention estate. The team independently considers decisions about who enters immigration detention, it scrutinises prospects and speed of removal, and it assesses vulnerability. The team is separated from the case working function and

provides an additional safeguard against unnecessary or inappropriate detention, It includes case progression plans, which replace detention reviews, and case progression panels, which provide an increased level of oversight and challenge on cases on a regular basis outside of the direct case working function. These internal independent panels review detention on a minimum of a three-monthly basis, covering all cases within the detention estate, ensuring consistent and appropriate use of detention powers and that cases are being progressed ensuring the number of long-term detainees is reduced.

On 15 January 2018, the immigration bail provisions in schedule 10 of the Immigration Act 2016 came into force. This included a duty on the Home Office to refer detainees to the First Tier Tribunal for consideration of bail at four months intervals from the point of entry into detention, or the last Tribunal consideration of bail, and every four months thereafter. This acts as a further safeguard to potentially vulnerable adults who do not make an application for bail themselves for whatever reason, ensuring regular judicial oversight of their detention.

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

Age

Policy

The Home Office no longer routinely detains families with children under 18 for removal. However, to secure the UK border it remains necessary on occasion to detain families with children at ports pending a decision on whether to grant them entry or, having been refused entry, pending their return flight.

Unaccompanied children under the age of 18 may also be detained for short periods of time in a limited number of very exceptional circumstances. Most commonly this happens in port holding rooms on arrival in the UK, pending alternative care arrangements being made for the child with friends or relatives or local authority children's services. Section 5 of the Immigration Act 2014 has amended paragraph 16(2) of Schedule 2 to the Immigration Act 1971 to restrict the detention of an unaccompanied child for removal to a short term holding facility for a maximum of 24 hours, though in practice unaccompanied children are not detained in residential short term holding facilities.

Individuals who are initially detained as adults, and whose age is later disputed as being under 18 years, may have already been detained prior to the age dispute issue having arisen. Where this happens, the child will be released from detention to the care of local authority children's services at the earliest opportunity, whilst their age is established.

Age over 70 years is specified as an indicator of risk of harm in the adults at risk policy. Accordingly, people falling into this group will be detained only when immigration control considerations in their case outweigh their inherent vulnerability (see mitigation).

Quantitative impacts

Although the Home Office publishes data on the number of adults entering detention it is not subdivided by age groups outside of those aged under 18. It is therefore not possible to say how many individuals aged 70 or over have historically been detained.

Qualitative impacts

By definition, the adults at risk policy does not cover individuals aged under eighteen. Where there is dispute about the age of an individual and the individual is referred to a local authority for an age assessment, they are treated as a child pending the outcome of the assessment. Other than in certain clearly defined and limited circumstances, the Home Office does not detain children for immigration purposes, as it is accepted that detention may have a disproportionately adverse impact on children. Detention Services Order 14/2012 provides guidance for staff on how to deal with individuals in the detention estate who claim to be under the age of 18 where there is a lack of physical or definitive documentary evidence to prove that this is the case.

The Home Office accepts that elderly people may be adversely affected by detention, given that infirmity increases with age. Older people are also more likely to suffer from physical disabilities or have particular medical needs.

Mitigation

The reason for there being a presumption against the detention of elderly people is that this recognises the obvious fact that individuals' level of infirmity increases with age. If it can be assumed that this would have an impact on an individual's levels of resilience, then it might reasonably be assumed that detention would have a disproportionate impact on the elderly – although anecdotally only a very small proportion of the detained population is made up of older people. Under the previous policy, "the elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention" were listed in chapter 55.10 EIG as one of the groups who were "normally considered for detention in only very exceptional circumstances". Stephen Shaw recommended a specific upper age limit in order to define what is meant by "elderly". Accordingly, for the purposes of the policy, elderly people are defined as those aged seventy and over. People aged seventy or over will be regarded as being at risk if detained (regardless of any other considerations) and there is therefore a presumption not to detain. This risk consideration will be weighed against the immigration factors. They will automatically be regarded as being at level 2 of evidence based risk in the terms of the policy. Setting an age limit ensures clarity on the part of detainees and decision makers whilst ensuring that individuals of an advanced age are detained only when absolutely necessary because of significant compliance or public protection issues, or when negative impacts resulting from a short period of detention are minimal.

If an individual aged under seventy is infirm by virtue of their advancing age, they may nevertheless be regarded as an adult at risk by virtue of their infirmity (or by virtue of other vulnerability considerations) and, in these circumstances, will come within the scope of the policy. Accordingly, the policy contains protections aimed at minimising the detention of individuals considered vulnerable to the effects of detention by virtue of either their age alone or circumstances arising from their advancing age.

Disability

Policy

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 chapter 55.10 EIG, those with serious disabilities and those suffering from serious medical conditions or mental illness (that might be indicative of disability) which could not be satisfactorily managed within detention were listed amongst the groups who were "normally considered for detention in only very exceptional circumstances". The rationale for the presumption against the detention of people with serious disabilities was twofold: the potential difficulties involved in managing cases of severe physical and mental impairment in a detention setting; and the potential lack of resilience, including a risk of deterioration, on the part of the individual concerned.

Some individuals entering immigration detention suffer from mental illness to some degree. In his review, Mr Shaw based his findings on mental health issues on a literature review carried out by Professor Mary Bosworth, which found that: "*immigration detention has a negative impact on detainees' mental health*".

The view of the UNHCR (UNHCR Detention Guideline 9.5 (paragraph 63)) is: "*As a general rule, asylum seekers with long-term physical, mental, intellectual and sensory impairments should not be detained*". Stephen Shaw did not make any specific recommendations in respect of how detention policy should apply to people with disabilities generally, though a substantial portion of his review related to mental health issues.

Quantitative impacts

A random sample of 100 cases (50 managed under chapter 55.10 EIG before 12 September 2016 and 50 managed under the adults at risk policy) showed that, under chapter 55.10, of three individuals with a disability, 66.6 per cent were released while, under the adults at risk policy, the sole individual with a disability was released, indicating a 100% released rate. Since the numbers are so small, these figures are indicative rather than definitive.

Mitigation

Under the adults at risk policy, the presumption against the detention of individuals with serious disabilities (which could include serious mental disabilities, such as psychiatric illness, clinical depression, post-traumatic stress disorder or serious learning difficulties) remains in place. As with all cases under the adults at risk policy however, evidence of a disability and the seriousness of the disability will be balanced against immigration considerations. In cases of individuals with evidence of more serious disabilities, the level of public protection risk or non-compliance will have to be high in order to justify detention. On that basis, it is expected that, if it becomes necessary to detain individuals with serious disabilities in order to remove them, it will be for only very short periods of time in order to minimise the impact of detention and any potential deterioration in their health – and the starting point

will be a presumption against detention. In terms of serious physical disabilities, anecdotal evidence suggests that it has been rare for individuals to be detained under the previous policy and that this situation has not changed since the advent of the adults at risk policy.

Those with less serious conditions are also brought within the scope of the policy. Whilst the previous policy provided only for serious conditions, the adults at risk policy requires decision makers to consider vulnerabilities in the round. In practical terms this means that those with less serious conditions will be provided with protection, if it is needed, either by virtue of one of the other indicators or under the broad "unforeseen condition" provision. This system is more flexible than the previous one and provides greater levels of protection for those with, for example, fluctuating conditions, in line with Stephen Shaw's recommendation that the system needed to be more dynamic and responsive. The procedures in place for alerting the Home Office to cases of vulnerability in detention, including Rule 35 of the Detention Centre Rules, and part C of IS191, along with the broader approach to the identification of vulnerability, mean that appropriate action is more likely to be taken and to be taken more quickly than before.

The joint Home Office/Department of Health/NHS Action Plan, published on 1 December 2016, puts in place a programme of action to improve the diagnosis and treatment of mental health conditions in detainees. Together with the adults at risk policy, this means that individuals with mental health conditions are more likely to be identified and to receive the appropriate care and treatment in the IRC. Where particular individuals with mental disorders need care which cannot be provided in an IRC, and if they cannot be satisfactorily managed in the IRC, they can be sent to a hospital. People detained under immigration powers, who have a mental disorder which makes hospital detention appropriate, may be transferred in custody to hospital under section 48 of the Mental Health Act 1983. NHS England is in the process of updating previous Department of Health guidance on transfers made to secure psychiatric hospitals under the Act from the detention estate.

The Immigration Removal Centres Operating Standards stipulate the minimum auditable standards on a range of issues, including disability, in respect of the management and operation of IRCs. The detained caseworkers' training programme, delivered to decision makers in the National Removals command, includes mandatory e-learning on mental health awareness, and mental health awareness training is also delivered to decision makers dealing with third country cases.

Gender reassignment

Policy

The Equality Act defines a transsexual person as someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. Section 43 of the Act provides that the protected characteristic also applies in cases in which a person decides to spend the rest of their life in the opposite gender without seeking medical advice or without medical intervention.

The previous policy, set out in chapter 55.10 EIG, did not include reference to individuals who have been through a gender reassignment process and/or who are transsexual. Under that policy, therefore, such individuals would be covered by 55.10 EIG only if they fell within one of the other categories of individuals listed in 55.10 EIG

Quantitative impacts
The Home Office does not collate data on the number of people entering detention broken down by gender reassignment. However, anecdotally the number of transgender is known always to have been very small.

Qualitative impacts
The Home Office accepts that transsexual people 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.

Mr Shaw's review suggests that transsexual individuals suffer a disproportionate risk of bullying and intimidation in detention.

Mitigation
The adults at risk policy offers new protection to those displaying evidence of transsexuality (at a level concomitant with the level of evidence). Transsexual persons are listed in the new policy as being particularly vulnerable to harm in detention. There is therefore a presumption that transsexual individuals will not be detained until the point at which the immigration considerations are such that they outweigh any risk of harm identified if detained. The expectation is that this will lead to fewer transsexual individuals entering detention and that, where detention does become necessary in order to effect removal, this will be for the shortest period necessary.

A specific detention services order (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.

Pregnancy/Maternity

Policy
Section 60 of the Immigration Act 2016, which came into force on 12 July 2016, provides that a pregnant woman detained pending removal or deportation may be detained only if her removal/deportation will take place shortly or there are exceptional circumstances to justify her detention. In either case, detention

may last for no more than 72 hours although, in exceptional circumstances, this may be extended up to an absolute maximum of 7 days if that extension is authorised by a Minister.

Quantitative impacts

The Home Office only began collating information on the number of pregnant women in detention since July 2016. Between 12 July 2016 and 30 November 2017, a total of 75 pregnant women have been detained.

A review of individuals detained between 12 July 2016 and 31 January 2017 showed that 34 pregnant women were detained under immigration powers in that period. Of those:

- eleven were initially refused leave to enter at port. Of these, six were temporarily admitted to the country after medical assessments were conducted within 24 hours and five were removed after less than 72 hours in detention.,
- seven were detained for imminent removals. Of these, one was detained, with Ministerial authorisation, for more than 72 hours but for less than a week (in line with the statutory limit) and was subsequently removed from the UK. Two others were successfully removed after less than 48 hours in detention. The remaining four were released from detention in less than 72 hours, after failed removal attempts.
- one was removed voluntarily less than 24 hours after her pregnancy was confirmed in detention.
- the remaining fifteen were released within 72 hours of being confirmed as pregnant in detention, after urgent reviews were conducted by decision makers.

This data indicates that pregnant women are not being held in immigration detention for longer that the statutory limit and that in only one case in the period in question was Ministerial authorisation required for an extension (but still within the statutory limit).

Qualitative impacts

Mr Shaw supplied evidence provided by the Royal College of Midwives which suggested that pregnant women are uniquely vulnerable because of their healthcare needs. On the basis of this, Mr Shaw recommended that pregnant women be absolutely excluded from immigration detention. The Government did not agree to an absolute exclusion because there remains a need to detain some pregnant women in order to be able to effect their removal. However, the Government used the Immigration Act 2016 to place a statutory time limit on the detention of pregnant women for immigration removal purposes of 72 hours (extendable to up to a week with Ministerial authorisation).

Mitigation

Under the adults at risk policy, pregnancy is automatically regarded as amounting to the highest level of evidence in support of risk and is therefore afforded significant weight when determining suitability for detention. Together, the new policy and section 60 of the Act provide greater protection to pregnant women. The expectation is that there will be low numbers of

pregnant women detained under the policy, and that, in combination with the statutory time limit, it will therefore benefit pregnant women.

Detailed guidance has been issued to caseworking staff on the restrictions on the detention of pregnant women, the duty to have regard to a pregnant woman's welfare, the operation of the time limit on detention, the process for seeking Ministerial authority in exceptional circumstances in which detention needs to extend beyond 72 hours, and release from detention. In respect of the requirement to have due regard to the welfare of pregnant women, which is also set out in the Immigration Act 2016, the practical response of the Home Office to this requirement is set out in DSO 05/2016, which provides guidance for operational staff in the immigration detention estate on the care and management of pregnant women. It covers matters such as the woman's welfare during her transfer to her place of detention, her care whilst in detention and arrangements for her removal.

Race (**includes colour, nationality and national or ethnic origins-section 9 of the Equality Act 2010)**

Policy

Published Home Office detention policy does not exclude any groups from immigration detention on the grounds of race or nationality. Any individual may, in principle, be detained, provided the statutory powers of detention apply and their detention is in line with published Home Office policy on the use of detention.

The cohort of individuals subject to immigration detention is, by definition, made up of overseas nationals. The adults at risk policy 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. The adults at risk policy is predicated on minimising the number of vulnerable individuals in detention and minimising the risk posed to the wellbeing of those in continued detention whilst weighing this against immigration considerations.

Quantitative impacts

Although the Home Office collates data on the total number of individuals entering detention broken down by national origins, it is not subdivided by reference to status as an adult at risk or, previously, chapter 55.10 EIG. Of itself, the policy does not have any quantitative impact on the numbers entering or remaining detained by national origin.

A random sample of 100 cases (50 managed under chapter 55.10 EIG before 12 September 2016 and 50 managed under the adults at risk policy) showed that, broadly speaking, the adults at risk policy offers more protection based on race. Under chapter 55.10, out of a total of 29 South Asian individuals, 34% were released. Under the adults at risk policy, of 21 South Asian individuals, a total of 52% were released. Under chapter 55.10, out of a total of 13 individuals from Sub-Saharan Africa, 23% were released. Under the adults at risk policy, out of a total of eight individuals from Sub-Saharan Africa, 62.5% were released. Additionally, under chapter 55.10, the one White European individual was not released while, under adults at risk, of ten White European

individuals, 40% were released. There was no data for the adults at risk policy in the random sample relating to people of Caribbean origin. The sole individual of East & Southeast Asian origin was released under chapter 55.10, while, under adults at risk, of seven East & Southeast Asian individuals, 43% were released. Under chapter 55.10, of four Middle Eastern & North African individuals, three (75%) were released while, under adults at risk, of four Middle Eastern & North African individuals, two (50%) were released. Since these figures do not take into account whether an individual is from a non-suspensive appeal state or whether they have committed a crime in the UK, as well as the fact that the numbers are so small, these figures are indicative rather than definitive.

Qualitative impacts

The Home Office accepts that certain individuals are more likely to be victims of bullying by virtue of their particular national/ethnic origins. Such persons may be disproportionately affected by being detained in close proximity to other detainees who may, for example, hold racist views.

A person's ethnic/national origins may be a relevant factor in relation to the food they eat and the clothes they wear.

The Home Office also accepts that individuals with a poor command of written or spoken English are also likely to be adversely affected by detention because they are likely to face more difficulties understanding why they have been detained and their rights and responsibilities whilst in detention. The latter point was raised by a number of respondents to a consultation in 2016 in relation to amending the short term holding facility rules.

Certain detainees, depending on their particular ethnic/cultural background, are also likely to have objections to being searched by a member of staff of the opposite sex to themselves, or to undergoing medical examinations by a healthcare professional who is not of their own sex.

Mitigation

The Detention Services Operating Standards for Immigration Removal Centres require IRCs to develop and publish a policy on the prevention of bullying, to measure the problem, to change the culture to support victims and to challenge bullying behaviour. In addition, DSO 12/2012 sets out the arrangements for assessing risk when making room-sharing arrangements. The Immigration Removal Centres Operating Standards stipulate the minimum auditable standards on a range of issues, including race relations, concerned with the management and operation of IRCs.

The need for travel documentation for removal may lead to certain nationalities being found more suitable for detention than others as removal can take place sooner in respect of those who have travel documents or whose documents can be obtained relatively quickly than in respect of individuals who require travel documentation that is difficult to obtain. However, the adults at risk policy is not expected to affect any given race or nationality in a disproportionate way and the anticipated impact in terms of race is therefore rated as low. Where there is an impact, it is likely to be a positive one in terms of the expectation

that the policy will have the effect of raising the level of protection for vulnerable people generally.

Religion/Belief

Policy
Published Home Office policy does not exclude individuals from detention by virtue of their religion or belief. Any individual may in principle be detained regardless of their particular religion/belief, 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.

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

Of itself, the adults at risk policy does not have any impact on the numbers entering, or remaining detained on the basis of religion.

Qualitative impacts
The Home Office recognises that individuals may require the provision of specific facilities to allow them to practice their religion whilst detained. A detainee's religion may also affect the food they eat and/or clothes they wear. Where this is the case, individuals will be adversely affected if the appropriate provision is not available.

Of itself, the adults at risk policy does not have any impact on the provision on religious facilities available to individuals detained. There is no reason to believe that the impact of the policy on individuals of different religions (and of no religion) is likely to be anything other than low.

Mitigation
The policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of religion or belief (or the lack thereof). Any such detention may in principle be appropriate, according to the particular facts of the case. Where there is an impact, it is likely to be a positive one in terms of the expectation that the policy will have the effect of raising the level of protection for vulnerable people.

The need to allow immigration detainees access to their religion is taken very seriously by the Home Office. Detainees are free to practice their religion whilst detained and are supported in doing so by the manager of religious affairs appointed in each IRC. There is provision of a multi-faith team in each centre, religious services, faith rooms and religious literature. Dietary requirements arising from a person's religion will be also be met.

The Detention Centre Rules 2001 set out a requirement for each immigration removal centre to have a process in place to allow detainees access, through observance and through contact with ministers, to their religions. This is reinforced by the Operating Standards for Immigration Removal Centres. There is a specific Standard on religion which requires centre operators to ensure that detainees' religious or spiritual needs are met as far as is

practicable and that facilities are available for prayer and religious services as well as for their pastoral care.

Gender

Policy

Published Home Office policy does not exclude individuals from detention by virtue of their gender. Men and women are equally likely to be detained provided one of the statutory powers of detention apply and their detention would be in line with published Home Office detention policy.

Quantitative impacts

The majority of immigration detainees are men. Published statistics from September 2017 show that, of the 3,455 individuals in immigration detention at that point in time, 346 (10%) were women. This data is not however subdivided by reference to status as an adult at risk or, previously, chapter 55.10 EIG.

Although official statistics are difficult to come by, evidence and opinion suggests that women are significantly more likely than men to be the victims of sexual or gender-based violence. The adults at risk policy, by making it less likely that victims of sexual or gender based violence will be detained, is likely to impact primarily on women. Men who are such victims will also benefit but not, in numerical terms, to the extent that women will.

A random sample of 100 cases (50 managed under 55.10 EIG before 12 September 2016 and 50 managed under the adults at risk policy) showed that under chapter 55.10, of 42 men, 31%were released as compared with eight women, of whom 62.5% were released. Under adults at risk, of 40 men, 42.5%were released compared with ten women, of whom 80%were released. For both genders under adults at risk there is an increase in the number and proportion of releases. Given the small sample size, these figures are indicative rather than definitive.

Qualitative impacts

Stephen Shaw recommended that there should be a presumption against the detention of victims of sexual or gender based violence, in line with the UNHCR Detention Guideline 9.1 (paragraph 49), which states: "*Victims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained*". The basis for Mr Shaw's view was that sexual violence is analogous, in terms of the appropriateness of detention, to trafficking and torture.

The effect will be that an individual who claims to have been such a victim (by self-reporting or by obtaining evidence from a medical professional, social worker or NGO, for example) will automatically be regarded as being at risk and the presumption will be that they will not be detained until the point at which the immigration considerations outweigh the risk factors. This follows from the overarching starting presumption that anyone considered to be at risk should not be detained. Under the previous policy there was no specific reference to such victims, though some such individuals (but not all) may well have fallen

under the categories in 55.10 EIG by virtue of having been torture or trafficking victims.

Mitigation
DSO 06/2016 'women in the detention estate' provides consistent standards for the treatment of women in the detention estate and under escort. This is supported by DSO 05/2016 which covers the specific needs of pregnant women. In addition, the Immigration Removal Centres Operating Standards stipulate the minimum auditable standards on a range of issues, including female detainees, concerned with the management and operation of IRCs. The foundation training programme for decision makers in the Third Country Unit and Detained Asylum Casework includes training on trafficking and modern slavery, female genital mutilation and domestic violence.

Sexual Orientation

Policy
Detention policy generally and the adults at risk policy do not include sexual orientation as a specific criterion when considering suitability for detention. 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. The foundation training programme for decision makers in the Third Country Unit and Detained Asylum Casework includes training on sexual identity issues.

Quantitative impacts
The Home Office does not collate data on the number of people entering detention broken down by sexual orientation.

A random sample of 100 cases (50 managed under chapter 55.10 EIG before 12 September 2016 and 50 managed under the adults at risk policy) showed that, under chapter 55.10, of five self-declared LGB individuals, 20% were released. Under the adults at risk policy, of six self-declared LGB individuals, 50% were released. Under chapter 55.10, of 45 heterosexual individuals, a total of 38% were released while under adults at risk, of 44 heterosexual individuals, a total of 50% were released. These figures show an overall increase in coverage of protected characteristics. Given the small sample size, these statistics are indicative rather than definitive.

Qualitative impacts
The Home Office recognises that, where an LGB detainee's sexuality is openly expressed, they may be more likely to be victims of bullying and therefore may be adversely affected by their experience of detention.

Stephen Shaw recommended, on the basis of testimony from the UK Lesbian and Gay Immigration Group, that the Home Office considers producing a discrete detention services order on LGB issues and that it take LGB issues into account in developing anti-bullying policies, but, beyond this, he did not find that LGB individuals needed particular protection in the immigration detention context and he did not recommend that there should be a presumption against the detention of such individuals.

Mitigation Established procedures around managing bullying are in place (DSO 12/2012) and these cover bullying of all individuals, including those who are LGB. The Home Office also has in place DSO 2/2016 (lesbian, gay and bisexual detainees in the detention estate). This instruction provides for the provision of consistent standards of treatment across the detention estate for detainees belonging to these groups to safeguard their welfare whilst in detention. There is no apparent reason to consider that the adults at risk policy will impact negatively on individuals on the basis of their sexual orientation. The adults at risk policy assesses the appropriateness of immigration detention with regard to how previous harm may impact on a person's experience of detention. It has also widened, with the inclusion of groups such as Post Traumatic Stress Disorder sufferers and victims of sexual or gender-based violence, the scope of those considered to be 'at risk'. In effect, this means that LGBT individuals who are found to be vulnerable if detained by virtue of some experience of harm relating to their sexual orientation will be likely to be picked up by relevant indicators of risk in the policy.
6 Review date
The Policy Equality Statement will be reviewed by April 2019. This date is held to be appropriate to account for the required statutory changes to the definition of torture and other envisaged changes to the detention centre rules in 2018.

SCS sign off		**Name/Title**	Philippa Rouse
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.			
Directorate/Unit	IMISE	**Lead contact**	James McGInley
Date	1 March 2018		
All completed PESes **must** be sent to the **Talent & Inclusion Team** Date sent to Talent and Inclusion Team?			

Part 2 - Policy Equality Sign-off

N.B. The PES can be completed throughout the development of a policy but is only signed at the point the policy is made public i.e. finalised and implemented.

To assist in evaluating whether there is robust evidence that could withstand legal challenge, the following questions must be asked prior to sign-off.

Q. Has ‘due regard’ been made to the three aims of the General Duty (Section 149 of the Equality Act 2010)?

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **Foster good relations** between people who share a protected characteristic.

Q. Have all the **protected characteristics** been considered – age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex; and sexual orientation?

Q. Have the relevant stakeholders been involved and/or consulted?

Q. Has all the relevant **quantitative and qualitative data** been considered and been subjected to **appropriate analysis**?

Q. Have lawyers been consulted on any legal matters arising?

Q. Has an appropriate date been established for reviewing the policy?