



## **Borders Immigration Citizenship Systems Equality Impact Assessment**

**Demonstrating Compliance with the Public Sector Equality Duty (PSED)**

### **Equality Impact Assessment (EIA)**

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

**Useful guidance:**

- [Discrimination and differentiation guidance](#)
- [Equality Impact Assessments](#)

#### **1. The impact of opening a new immigration removal centre, Derwentside IRC.**

An effective immigration detention system, as part of a fair and humane approach to immigration enforcement, is a Government requirement and an expectation of the public. To achieve this, we must provide a detention estate with enough resilience to ensure that it can absorb fluctuations in demand, such as a change in in-flow of time-served FNOs and short-term operational pressures, such as contagious illness or disturbance. This has been especially prevalent during the Covid-19 pandemic.

The Home Office currently operates six immigration removal centres (IRCs) throughout the UK (five in England and one in Scotland) and two residential short term holding facilities (RSTHFs) (one in Northern Ireland and one in England), following the closure of Morton Hall IRC in July 2021. Yarl’s Wood IRC has historically been run as a dedicated female only facility.

The return of Morton Hall IRC to MoJ removed almost 400 male detention beds (20% of the total male capacity, in an estate already 40% smaller than in 2015) and leaves no male IRCs between Glasgow and Heathrow/Gatwick. This loss of capacity comes at a time where flexibility and resilience in the detention estate are most needed. A response to the loss and an immediate restructure of the existing estate is necessary.

Immigration Enforcement (IE) must find alternatives to mitigate the loss of male

capacity at Morton Hall. This must happen concurrent to the closure of the IRC, leaving no gap in service. To absorb the loss in male beds at Morton Hall we will:

**1) Re-role Yarl's Wood as, primarily, a male IRC.** This change provides 372 new male beds in an IRC that has been historically underutilised as an all-female site (between 25% and 30% occupancy rates pre-covid). This change provides a starting point for the existing estate to be used to its full potential.

**2) Procure a small specialised site (84 bed) to detain women – Derwentside IRC.** This site will replicate the conditions that currently exist at Yarl's Wood, focusing on the healthcare, welfare and activities services provided. The detention facility for women will now be in County Durham. The Home Office is committed to designing and operating the new IRC in a way that reflects and responds to the characteristics and needs of the population who will be detained there.

IE are seeking to ensure that the immigration detention estate has the right amount of capacity, is fit for purpose and flexible, and serves the whole of the UK whilst minimising the cost to the public purse where possible and appropriate. Our aim is to implement the change in a way which promotes and enhances equality of opportunity, respects diversity and takes into account the needs of people with protected characteristics. Where there may be a negative impact, we explain how this is justifiable and proportionate in accordance with our obligations under the Equality Act 2010 and explain the mitigating action being taken.

Separate EIAs cover the re-rolling of Yarl's Wood IRC and the opening of a new RSTHF at Morton Hall with the closure of Morton Hall IRC as it returns to HM Prison and Probation Service.

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

### **Public sector equality duty and detention as part of immigration control**

The need for significant long-term capacity with a wider national footprint reflects IE's strategy of modernising and rationalising the immigration removal estate. Five centres have been closed in recent years creating a reduction in operational detention capacity. For financial reasons, the number of Foreign National Offender (FNO) beds used for immigration purposes in the prison estate has substantially decreased. Further reduction would present a risk to future capability to remove those with no legal basis to remain in the UK. This emphasises the importance of repurposing Yarl's Wood to cover the loss of beds at Morton Hall and the procurement of a new site for women.

The public sector equality duty under s149 of the Equality Act 2010 requires that in exercising their functions public authorities must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct

prohibited by the Act;

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Under s149 the eight specified protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation.

Schedule 18 to the 2010 Act sets out exceptions to the public sector equality duty. In relation to the exercise of immigration and nationality functions, s149(1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race (insofar as it relates to nationality or ethnic or national origins) or religion or belief.

Schedule 3 to the 2010 Act contains exceptions to the prohibition of discrimination on the basis of sex.

Direct discrimination is treating someone less favourably because of one or more protected characteristics, and indirect discrimination is doing something in a way that has a less favourable impact on someone who shares a protected characteristic than it does on others who do not share it, unless that treatment is objectively justified. The test to be applied is whether an individual would have received the less favourable treatment if they did not have the protected characteristic<sup>1</sup>.

### **Evidence considered**

Published Home Office records show that the numbers entering detention over each of the last five years were as follows, with the number of women being detained declining, albeit more slowly than the numbers of men. Women on average spend half the time in detention compared to men.

2015	Total 32,447 (4634 women)
2016	Total 28,903 (4093 women)
2017	Total 27,348 (4059 women)
2018	Total 24,773 (3644 women)
2019	Total 24,480 (3366 women)
2020	Total 14,773 (1055 women)

HM Inspectorate of Prisons (HMIP) and other external monitoring bodies have made comments which are relevant to our decision to open a women-only facility and to reducing the number of beds for women in the detention estate.

The published HMIP Expectations for Immigration Detention

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<sup>1</sup> Discrimination and differentiation guidance (page 6), v2.0, published on 22 March 2018  
[\[horizon.fcps.gsi.gov.uk/file-wrapper/discrimination-and-differentiation\]](https://horizon.fcps.gsi.gov.uk/file-wrapper/discrimination-and-differentiation)

(<https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/03/Immigration-Expectations-FINAL.pdf>) set out the detailed criteria used by the inspectorate for assessing the conditions for and treatment of immigration detainees. For centres for adult women in the immigration detention estate, the expectations cover the following areas: Safety (Women are held in safety and with due regard to the insecurity of their position); Respect (Women are treated with respect for their human dignity and the circumstances of their detention); Activities (The centre encourages activities and provides facilities to preserve and promote the mental and physical wellbeing of women); and Preparation for Removal and Release (Women leaving detention are prepared for their release, transfer, or removal. Women are treated sensitively and humanely and are able to retain or recover their property).

The published HMIP report following their 2017 Yarl's Wood inspection stated that the "Physical security features were proportionate to the risks of the population. Unlike other centres, there was no razor wire and few bars on the windows. Detainees experienced good freedom of movement throughout the centre" and "women continued to move freely around the centre for more than 12 hours a day. In addition, detainees were free to move within their residential units after 9pm. Movement restrictions were appropriately based on risk."

Further to this the HMIP 2017 Yarl's Wood inspection report stated "Most officers had an ethos of helpfulness, and relationships between detainees and staff were positive throughout the centre. In our survey, more detainees than at our last inspection said that staff understood their problems, and 87% said that most staff were respectful. Women said that staff knocked and waited before entering their rooms and we witnessed no instances where this did not happen. Despite efforts to increase the number of women detainee custody officers, there were still not enough, particularly at manager level. Some women told us they had felt intimidated by the presence of male staff and we observed a lone male officer working in reception. Units were sometimes left with no staff presence at all, which was a potential risk. Detainee consultation was good".

In his two independent reviews into the welfare of people in immigration detention (published in 2016 and 2018), the former Prisons and Probation Ombudsman Stephen Shaw commented on the detention of women, noting that "... virtually all of the population reduction has been on the male side, while the number of women in detention (who do of course make up a far smaller proportion of the overall detained population) has fallen by a much smaller percentage. Given the levels of vulnerability amongst women detainees, I hope that their numbers can also follow a strong downward path."

He went on to say "Likewise, it is not clear to me why around 450 beds are needed for female detainees. There has been a significant reduction in the overall number of male beds due to the closure of Dover, Haslar and The Verne, but this has not been matched in the female estate. Given the levels of vulnerability amongst women in detention, this needs to be addressed as a priority." In relation to pregnant women, he

commented that “I think it would assist decision making if the default position were to be an absolute exclusion of pregnant women from detention. Having said that, I do of course, very much welcome the change to the law and the subsequent reduction in overall numbers.”

Referring to Dungavel IRC (which houses mainly men but with capacity for 12 women), Mr Shaw commented that “While men and women’s accommodation were separate, women were allowed to mix with men in communal areas if they chose to do so. Women were able to access all services outside the times that men used them, but it was unclear how this worked in practice. I am concerned that there is risk of exploitation, or of vulnerable women being left without access to services and facilities, due to their shared use by men”.

The Detention Services Operating Standards manual for IRCs stipulate minimum auditable standards on a wide range of issues concerned with the management and operation of IRCs. These include specific sections related to disability, women (a safe and secure environment that meets the needs of women), race relations and religion. The document includes a standard “to provide a safe and secure environment, which meets the needs of women.”

The stated Minimum Auditable Requirements are:

- Women must only be housed in accommodation certified as suitable under the terms of Rule 15 of the Detention Centre Rules (Certification of accommodation).
- The Centre must inform female detainees by means of house rules and by any other method that they are entitled to ask to be examined by a female nurse/doctor (Rule 33 (10) of the DC Rules refers).
- The Centre must ensure that women are not required to undress within sight of another detained person or within sight of a male member of staff (Rule 7(3) of the DC Rules refers), except where the detainee has consented to be treated by a male member of the healthcare team.
- The Centre must provide for women to be served their meals within the dedicated female dining area. If they wish to do so, women will be allowed to eat their meals in association with men in a communal dining room.
- The Centre must ensure that female detainees are accompanied by at least one female detainee custody/escorting officer when being escorted to or from the removal centre.
- The Centre must ensure that the female population has equal opportunity of access to all activities within the Centre.
- The Centre must provide female detainees with the option of e.g single sex gym sessions and other activities appropriate to their needs and interests and monitor take up to ensure that those provided are appropriate.
- The Centre must involve female detainees in the process of identifying appropriate activities.
- Females must only be searched by a member of staff of the same sex (Rule 7 (3) refers).”

Section 60 of the Immigration Act 2016 provides that a pregnant woman detained

pending removal or deportation may be detained only if her removal or deportation will take place shortly or there are exceptional circumstances to justify her detention. In either case, her 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. The number of pregnant women in detention has been generally falling since the third quarter in 2017. For the whole of 2019 this number has consistently been below 10 per quarter and in Q2 2021 3 pregnant women were detained in the immigration detention estate. It is right to emphasise that all women in the IRC estate have the same access to pregnancy services as in the community regardless of length of stay.

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 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. It covers matters including hygiene and personal care; diet; activities and association; visits; and religion and faith. The guidance aims to ensure that gender-specific needs of the female population are identified and met.
- Detention Services Order 11/2012, which provides guidance to staff working in the immigration detention estate on the management and treatment of transsexual persons in detention. 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 persons in the immigration detention estate.
- Detention Services Order 4/2020 "Mental vulnerability and immigration detention-non clinical guidance" which provides guidance on provision of support to those with mental vulnerabilities in detention.

The statement of requirements for the site and services at Derwentside IRC will conform to the Immigration Removal Operating Standards and Detention Services Orders.

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

## SEX

Home Office policy does not exclude individuals from detention by virtue of their gender. Men and women are equally likely to be detained provided that one of the statutory powers of detention apply and their detention would be in line with published Home Office detention policy. However, victims of gender-based violence, who are more likely to be women, fall explicitly within the adults at risk policy: they will be detained only where immigration control considerations outweigh vulnerability considerations.

### **DIRECT DISCRIMINATION**

By opening a woman only facility at this location, we have considered the risk that the policy constitutes direct discrimination on the grounds of sex. The gender specific facilities available at Derwentside IRC will not be available to men who are being detained under the same detention powers.

Paragraph 26 of Schedule 3 to the Equality Act 2010 contains an exemption from the prohibition of direct discrimination on the basis of sex:

*(1) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services for persons of each sex if—*

*(a) a joint service for persons of both sexes would be less effective, and*

*(b) the limited provision is a proportionate means of achieving a legitimate aim.*

*(2) A person does not contravene section 29, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if—*

*(a) a joint service for persons of both sexes would be less effective,*

*(b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and*

*(c) the limited provision is a proportionate means of achieving a legitimate aim.*

We consider that failing to segregate the sexes would make the detention arrangements considerably less effective for both men and women.

The detention estate has long operated sex-segregated IRCs. This is due to the significant evidence (and widely accepted principle) that female residents have needs that are different to and often more complex than men and so a gender specific approach is required to manage detained environments in a way that meets the needs of its population, particularly around issues of safeguarding and vulnerability.

### **Security and freedom of movement within IRCs**

Different IRCs operate with different levels of security and openness within the

centres according to the layouts of centres and the level of risk that the average population within each centre tends to pose.

Security statistics demonstrate that between 2015 and present there were no women who have escaped or attempted to escape from an IRC in comparison to 20 attempts by the men. There are also less high harm female FNOs in prisons and subsequently less FNOs coming into IRCs than men. Thus, the risk posed from women in detention is diminished, and so all women centres have historically operated a more open and less regimented environment.

By opening a women only centre, we will be providing a facility designed and operated for women who historically require lower levels of security. One of the considerations for choosing the Derwentside site was because it had been a Secure Training Centre, rather than a prison or IRC, meaning it could be easily developed to provide an open and relaxed regime through which the needs of detained women could be met. Levels of security will be commensurate to the lower level of risk posed by women in terms of both security (such as escape attempts) and violence, allowing greater freedom of movement within the centre and shorter periods during which residents will be required to remain in their rooms. Making this a suitable site for the detention of women has been and remains a key factor throughout the planning and delivery of the renovations.

The workforce requirements will reflect the lessons learned from detaining women at Yarl's Wood IRC and will include a ratio of female to male custodial staff that is appropriate for the specific needs of women in detention. The training requirements for staff will be equivalent to those for Yarl's Wood IRC. All staff working with women must receive appropriate gender specific training (such as the protocol for entry to bedrooms), in addition to any generic training they receive when they undergo initial training. Appropriate refresher training should be undertaken, to include equality and diversity, human trafficking and modern slavery.

A full range of recreational and healthcare facilities tailored to women will mirror those currently operated at Yarl's Wood and will include a cultural kitchen, hair and beauty salon, the ability to purchase items from a shop, access to a computer suite, education, well-being services, welfare and access to legal services. Multi faith/prayer rooms will also be available to residents.

Visits will be facilitated in line with those in other centres, with visitors to the nearest main train station transported to the centre to support and encourage visiting arrangements.

We therefore consider that failing to segregate by sex would render this IRC less effective in managing the detention of women in a manner commensurate with the risk they pose, and in accordance with the purpose of the centres to operate 'a relaxed regime with as much freedom of movement and association as possible consistent with maintaining a safe and secure environment' (Detention Centre Rules 2001).



We are satisfied that this approach is a proportionate means of achieving the legitimate aim of ensuring that the detention estate is operated as a secure environment so far as is necessary to ensure the safety and security of detained persons and staff, tailored to the circumstances of each centre with no more restrictions than are necessary.

### **Location**

The new IRC will be located in the North East of England, and is not co-located with an airport or within a town or city. The majority of centres are located in the South/South East of England. We have considered whether the fact that the new IRC in the North East will house women, whereas all male centres are more heavily concentrated in the South, will result in direct discrimination on the basis of gender. This is because in practice there may be potential difficulties with receiving visits from family and friends that would disproportionately impact detained women, the majority of whom will likely be detained in the new IRC (as discussed above, there will still be capacity to detain women at other sites in the UK).

There is no policy that individuals should be detained in a location as close to family as possible. The DSO 3/2016 "Detainee Placement" sets out that detained persons can request transfers to other IRCs on personal grounds and the Home Office will consider such requests on the basis of available space elsewhere in the detention estate and the reasons provided.

Other sites were considered, including Campsfield House, but were discounted due to the current standard or use of the accommodation. Derwentside was deemed the most appropriate option because it was already government-owned and of the requisite standard, which made it the best option given the short timescales, cost-effectiveness and the standard of accommodation required. By maintaining some detention space for women at Yarl's Wood, Dungavel and Colnbrook and by expanding the geographical footprint of the detention estate we will, however, be better placed to take account of individual circumstances in deciding the most appropriate detention facility on a case by case basis.

We will provide modern communication links for the women at Derwentside with uninhibited access to Internet and Skype during core hours to ensure they can maintain the same level of communications, including with family, as other sites. In addition, all visitors to the nearest main train station will be transported to the centre to support and encourage visiting arrangements.

We also bear in mind that, as mentioned above, detention periods are generally lower for women than for men, which has some mitigating effect on the impact of detention.

It is therefore considered that the proposals are a proportionate means of achieving a legitimate aim: seeking to ensure that the immigration detention estate has the right amount of capacity, is fit for purpose and flexible, and serves the whole of the UK whilst minimising the cost to the public purse where possible.

## **Staffing and facilities**

The IRC will cater to the specific needs of women in detention and staffing will include a ratio of female to male custodial staff that is appropriate for the specific needs of women in detention. For example, (DSO 09/2012 Searching Policy, paragraph 31) below instructs that where possible the two DCOs carrying out a room search should be female.

*A search of a detainee(s)' room will be carried out by a minimum of two DCOs and the detainee(s) should be invited to be present during the search. In the case of female detainees, centres should aim to ensure that both staff members conducting the search, and where possible any others present, are female. If the detainee(s) wish to be present for the room search, they must first undergo a level A rub down search.*

In determining the types of facilities to be provided, we will take account of learning from Yarl's Wood IRC and relevant recommendations from external inspection and scrutiny bodies. We will provide facilities tailored to women, based on those currently available at Yarl's Wood, including a cultural kitchen, appropriately stocked shop, computer suite, dedicated hair salon and nail clinic, and a cafeteria for the women to engage with visitors from the local community including Hibiscus NGO, a charity that works primarily with women.

We have recognised that women in detention have frequently been victims of abuse, sexual trafficking, trauma and are therefore more likely to have severe complex needs in comparison to the male cohort. The NHS provider will be offering gender informed trauma-based practice therapy for women and will be conducting continual needs analysis for care of the women. We will welcome further engagement with NGOs both nationally and locally in the coming months.

We consider that there is a strong justification for providing these tailored facilities. Equivalent facilities are available at all male IRCs to account for the particular needs of male populations (eg barbers and gym facilities).

## **INDIRECT DISCRIMINATION**

We have considered whether this policy position could result in indirect discrimination as the policy of segregating by sex in IRCs means that one gender is always likely to be disproportionately impacted by the characteristics of a particular regime or location of a given centre. If this policy were to result in indirect discrimination, it is considered that the proposals are a proportionate means of achieving a legitimate aim for the same reasons as set out above: seeking to ensure that the immigration detention estate is tailored to the needs of women and men as appropriate, has the right amount of capacity, is fit for purpose and flexible, and serves the whole of the UK whilst minimising the cost to the public purse where possible.

**RACE** (includes ethnic or national origins, colour or nationality)

Home Office detention policy does not proscribe, or indeed exclude, individuals from immigration detention on the grounds of race, ethnic or national origins, colour or nationality. Any person who is without leave and requires it may, in principle, be subject to detention, provided that the statutory powers of detention apply and that their detention is in line with published Home Office policy on the use of detention.

The Operating Standards stipulate the minimum auditable standards on a range of issues, including race relations, concerned with the management and operation of IRCs. All removal centres have anti-bullying systems and strategies in place to work towards minimising the occurrences of bullying and all other forms of threatening or anti-social behaviours. In addition, supplier staff, detainee custody officers (DCOs) and Home Office staff working in IRCs receive training on equality and diversity.

On admission to an IRC detained people are encouraged to sign a “Compact” setting out their responsibilities and rights whilst in detention. It makes clear that they are required to treat each other with respect regardless of (amongst other things) the individual’s race or nationality background.

#### **Direct discrimination**

We do not consider that this policy will result in direct discrimination in respect of this protected characteristic.

#### **Indirect discrimination**

For individuals who do not have a fluent command of English and are seeking advice regarding their detention and/or removal from UK, the potential loss of access to organisations offering advocacy services who are working with women detained at other IRCs could place such detained persons at a disadvantage, potentially resulting in indirect discrimination. For some people detained it may be easier to receive such advice face-face from a speaker of their first language, rather than over the telephone or internet. The Legal Aid Agency (LAA) will set up a Detained Duty Advice scheme on the same basis as in other IRCs, and the LAA is tendering for a service comparable with that currently available at Yarl’s Wood. Residents and legal providers will have access to purpose designed interview suites and high speed wifi.

Where individuals in detention consider they are experiencing discrimination, or other negative treatment as a result of their race, nationality or ethnic origins they will continue to be able to request transfers to another IRC in the estate, in line with arrangements set out in DSO 3/2016 “Detainee Placement”. By expanding the detention estate footprint (and by also retaining some detention space for women at Dungavel, Yarl’s Wood and Colnbrook), we are providing more flexibility and scope to meet such requests.

We have also recently reviewed the provision of interpretation services across the IRC estate, looking at both equipment and service quality. Following that review we are introducing new equipment, pre-booking interpreters in certain circumstances and ensuring, in particular, improvements to interpretation during induction. In addition, work is underway to develop a DSO on interpretation services.

In light of these mitigations we consider that, in the event that there were to be any disproportionate impact on persons of a particular race, the decision to open this IRC in the North East is justified as a proportionate means of achieving the legitimate aim of developing the detention estate in an appropriate manner across the UK, as set out above.

## **RELIGION / BELIEF & NON-BELIEF**

Home Office detention policy does not prescribe, or exclude, individuals from immigration detention by virtue of their religion or belief. Any individual may in principle be detained regardless of religion or belief (or absence of it), provided that one of the statutory powers of detention is engaged and their detention would be in line with published Home Office policy on the use of detention.

Rule 22 of the Detention Centre Rules 2001 requires that a Minister of Religion (MOR) must be appointed at each IRC where the number of detainees so warrants it and that arrangements must be made for MORs to meet every detainee of their religion as soon as possible after their reception to detention. Under DC Rule 23 arrangements must also be made for Ministers of religion to visit detained persons as often as they reasonably can, whilst the individual remains in detention. The Detention Services Operating Standards for IRCs set timescales for visits by ministers of religion. The Standards similarly require the establishment of a multi-faith team in each IRC and the publishing of a calendar of religious festivals and observances.

### **DIRECT DISCRIMINATION**

We do not consider that this policy will result in direct discrimination in respect of this protected characteristic.

### **INDIRECT DISCRIMINATION**

As a Minister of Religion will be appointed to the new IRC, along with a multi-faith team, it is reasonable to assume therefore that if issues arise specifically connected to a particular individual's religion/belief the relevant minister of religion should be available to provide assistance to resolve them.

**We do not consider that these changes will have a disproportionate impact upon people of different religions or no religion, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.**

## **GENDER REASSIGNMENT**

Home Office detention policy does not completely exclude individuals from detention by virtue of the fact that they are undergoing, or have undergone, gender reassignment. However, under the Adults at Risk policy being a transsexual person is specified as an indicator of risk of harm in detention. Someone who has undergone gender reassignment may therefore be detained only when the immigration control factors outweigh the evidence of their vulnerability.

The Home Office does not collate data on the number of transsexual individuals held in IRCs, though anecdotally the number is known to have always been very small.

The adults at risk policy offers protection to those displaying evidence of transsexuality (at a level concomitant with the level of evidence). Transsexual persons are listed in the 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.

A specific DSO (DSO 11/2012) provides guidance to staff working in the immigration detention estate on the care and management and treatment of transsexual individuals. 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. Voluntary care plans for individual transsexual people in detention mean that all relevant factors are taken into account in managing accommodation and daily living arrangements.

A male to female transsexual person recognised as female under UK law is legally entitled to be located in the female estate. DSO 11/2012 sets out the process to be followed in deciding the most appropriate accommodation for a person based on the individual circumstances.

## **DIRECT DISCRIMINATION**

We do not consider that this policy will result in direct discrimination in respect of this protected characteristic.

## **INDIRECT DISCRIMINATION**

DSO 11/2012 requires that transsexual individuals at all stages of the gender reassignment process must be asked if they wish to enter into a voluntary written agreement (care plan) in respect of their stay and treatment whilst in detention. The purpose of such a care plan is to provide clear information for the individual and staff about the requirements, obligations and entitlements in respect of the individual and will cover issues such as accommodation, dress code, facilities and searching.

The Home Office acknowledges that detained persons with this protected characteristic may be more susceptible to being bullied by other people in detention. They may also have other welfare issues stemming from their gender identity, such as needing access to items/facilities enabling them to “pass” in their acquired gender. Our policies on the care of transsexual individuals aim to address these issues as far as possible.

**We do not consider that this policy will have a disproportionate impact upon transsexual people, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.**

## **SEXUAL ORIENTATION**

It is a long-standing policy that being lesbian, gay or bisexual of itself is not grounds for exclusion from detention. In his 2016 review of detainee welfare Stephen Shaw did not recommend any change to this position and the Home Office accepted this. Individuals who identify as LGB are therefore just as likely to be detained as their heterosexual counterparts provided that the statutory powers of detention are engaged, and their detention would be in line with published Home Office policy.

### **DIRECT DISCRIMINATION**

We do not consider that this policy raises issues of direct discrimination in respect of this protected characteristic.

### **INDIRECT DISCRIMINATION**

In his review of detainee welfare Stephen Shaw made some criticisms about the general treatment of lesbian, gay and bisexual people in detention and recommended that the Home Office should consider drawing up a Detention Services Order to address their needs. He also recommended that anti-bullying policies should explicitly reference lesbian, gay and bisexual detainees. In response to these comments, where a gay, lesbian or bisexual individual chooses to declare or express their sexual orientation openly there are established procedures, set out in DSO 2/2016 (Lesbian, gay and bisexual detainees in the detention estate) for dealing with vulnerabilities associated with sexual orientation, in particular the fact that lesbian, gay and bisexual people may be more likely to experience bullying/harassment from other people in detention.

Where a gay, lesbian or bisexual individual’s sexuality is openly expressed, the Home Office acknowledges that people with this protected characteristic may be more susceptible to being bullied by other people in detention.

**We do not consider that this policy will have a disproportionate impact upon people of any particular sexual orientation, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.**

## PREGNANCY AND MATERNITY

Section 60 of the Immigration Act 2016 provides that a pregnant woman detained pending removal or deportation may be detained only if her removal or deportation will take place shortly or there are exceptional circumstances to justify her detention. In either case, her 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. During the short periods pregnant women are in detention they will receive the same treatment and access to services as though they were in the local community.

A similar limitation on detention exists under the Family Returns process, which would benefit single mothers with children, as well as mothers with children who are detained alongside their partner (and children). Accordingly, pregnant women or women with children are less likely to be detained than those without children and, where they are detained, to only spend short periods of time in detention.

It is possible that a woman may be detained without having declared (or been aware of) her pregnancy at the time of detention.

Detention Services Order 05/2016 sets out the arrangements that must be made for the care of a pregnant woman in detention.

## DIRECT DISCRIMINATION

It is not anticipated the new women's centre will have direct discriminatory impacts on pregnant women. Detention – including the most appropriate place of detention – will be considered on a case by case basis for pregnant women. The number of pregnant women in detention has been generally falling since the third quarter in 2017. For the whole of 2019 this number has consistently been below 10 per quarter and in Q2 ending June 2021 3 pregnant women were detained in the immigration detention estate.

## INDIRECT DISCRIMINATION

**We do not consider that these changes will have a disproportionate impact upon people who are or are believed to be pregnant, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.**

## AGE

The Home Office no longer routinely detains families with children under the age of 18

years for removal. Where family groups with children under 18 are detained, their detention will be governed by the limitations set out in the Immigration Act 2014. However, to secure the UK border the Home Office has always been clear that 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 occurs in port holding rooms on arrival in the UK, pending alternative care arrangements being made for the child with friends/relatives or local authority children's services. Detention in these circumstances must be for as short a period as possible.

The Adults at Risk (AAR) policy specifies being aged 70 years or over as an indicator of risk of harm in detention. This policy introduced in September 2016 as part of the (then) Government's response to the first independent review into the welfare of people in immigration detention by Stephen Shaw referred to above strengthened the presumption against the detention of those who are regarded as being vulnerable to harm in detention. This includes people aged 70 years and over. People falling into this age group will be detained only when immigration control considerations in their case outweigh their inherent vulnerability.

#### **DIRECT DISCRIMINATION**

Children will not be detained in the new IRC. A girl who is initially detained as an adult but whose age is later disputed as being under 18 years, may have already been detained prior to the age dispute issue having arisen. Where the individual in question meets the published Home Office "age dispute" criteria, they will be released from detention to the care of local authority children's services at the earliest opportunity, whilst their age is established.

**We do not consider that opening a women only IRC will raise direct discrimination issues in respect of age.**

#### **INDIRECT DISCRIMINATION**

Although any person may experience health problems whilst in detention, such issues are likely to be more common in elderly people, given that infirmity increases with age. Where the elderly are detained the provision of round-the-clock IRC primary healthcare from doctors and nurses ensures that any existing health issues the individual may have, or which may arise whilst in detention, will be identified and treated.

We do not consider that these changes will have a disproportionate impact upon people with this protected characteristic, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.



## **DISABILITY**

Home Office detention policy does not operate with absolute exclusions in relation to specific groups, such as those with either mental or physical disabilities or impairments. Under this policy an individual considered to be “at risk” will be detained only when the immigration control factors outweigh the evidence of vulnerability presented in their case. Having a serious mental or physical disability, including suffering from post-traumatic stress disorder, are specified as indicators of risk under the policy.

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

Detention Services Order 4/2020 “Mental vulnerability and immigration detention- non clinical guidance” provides guidance on provision of support to those with mental vulnerabilities in detention.

### **DIRECT DISCRIMINATION:**

A person with disabilities may be held at any IRC that can accommodate their needs. There is disabled access across the majority of the estate for those who are able to move independently and are capable of participating in the regime with minor assistance from others.

Similar provision will be put in place at the new IRC and we do not consider that opening a women only IRC will pose direct discrimination issues in respect of disability.

### **INDIRECT DISCRIMINATION:**

Following publication of DSO 08/2016 ‘Management of adults at risk in the detention estate’ a consistent approach is taken by all Home Office, supplier and healthcare staff working with those in detention to identify and record changes to the physical or mental health of a person in detention, or a change in the nature/severity of any previously identified vulnerability, alongside the current IS91RA risk assessment process. Any vulnerability that may impact on the safety and wellbeing of an individual must be addressed and reasonable adjustments be put in place, which must be

documented in the care plan.

The Detention Engagement Team in the IRC aim to conduct an induction for all people entering detention within 48 hours of arrival as well as regularly engaging with each individual throughout their detention. Their one-to-one interactions support the wellbeing of people in detention, particularly in identifying any signs of vulnerability and / or signs of deterioration in physical or mental health.

The new IRC will be able to accommodate people with disabilities in line with the rest of the estate with the majority of the rooms on the ground floor with en- suite facilities.

## **MARRIAGE AND CIVIL PARTNERSHIP**

Home Office detention policy does not exclude individuals from immigration detention by virtue of being their being married or in a civil partnership. Any individual may in principle be detained regardless of their marital/civil partnership status 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.

### **DIRECT DISCRIMINATION**

We do not consider that opening a women-only IRC will pose direct discrimination on the grounds of marriage/civil partnership.

### **INDIRECT DISCRIMINATION**

Detained individuals who are married or in a civil partnership may well be anxious as a result of being separated from their partner because of detention, though this is not automatic and is equally likely to apply to any detained person in a long-term relationship. We will facilitate visits on a daily basis and arrange transport from the local station.

Accordingly, we do not consider that these changes will have a disproportionate impact upon people of any particular marital status, but to the extent that they do, we consider that this is a proportionate means of achieving the legitimate aim set out above.

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

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

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Schedule 18 to the 2010 Act sets out exceptions to the public sector equality duty in relation to the exercise of immigration and nationality functions-s149 ( 1)(b)-advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it-does not apply to the protected characteristics of age, race (insofar as it relates to nationality or ethnic or national origins) or religion or belief.

Therefore, the following protected characteristics have been considered in respect of limb 2:

- disability
- gender reassignment
- pregnancy and maternity
- sex
- sexual orientation

As stated elsewhere in this document, by opening a women only IRC we are inevitably making different arrangements for people being detained, on the basis of their sex, to improve and enhance equality of opportunity for women who have complex needs and require a gender informed approach to detention. Otherwise, individuals who share and do not share protected characteristics will be equally subject to the same regime within the new IRC, with policies in place as outlined above to ensure that a protected characteristic does not impede an individual's ability to take advantage of the activities and facilities available. We do not consider any further action is required to advance equality of opportunity, as there are clear justifications for the proposed policy change.

**This is justifiable under the Equality Act 2010.**

Limb 3 of the above test is not relevant as the ability of those in immigration detention to participate in public life is inevitably constrained by virtue of their detention, though as indicated elsewhere in this document, they continue to have access to telephones, the internet, Skype and other forms of communication including visits.

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

The Equality Act specifies that having due regard to this limb involves considering the need to:

- (a) tackle prejudice; and,
- (b) promote understanding.

Individuals who share and do not share protected characteristics will be equally subject to the policy, with the potential only for discrimination on the basis of sex. However, there are clear justifications for opening an all-women centre, which will ensure that women in detention are cared for appropriately in accordance with their needs. The proposals for visitors to the centre minimise the risk of indirect discrimination against women on the basis of their sex due to the location of the centre, and we regard the policy overall of expanding the estate with due regard for the needs of the detained population overall as a proportionate means of achieving a legitimate aim. As a result, we do not consider there to be a risk to good relations.

We do not believe that opening a women only IRC will adversely affect good relations between people who share a protected characteristic.

**4. Foreseeable impacts of policy proposal on people who share protected characteristics**


Under the new arrangements, it is possible that a woman detained in the new IRC might find it more difficult to receive social visitors due to distances involved.

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

As a facility for detaining women, the provision of services, regime access and security arrangements will be specifically tailored to the characteristics of that particular group. In opening the new IRC, we are reducing the overall number of detention beds for women whilst broadening the detention estate footprint, providing greater flexibility whilst ensuring sufficient detention capacity for both men and women.

IRCs have a range of long-standing welfare arrangements in place to support people in detention, including a range of specific DSOs about the management and support of those with protected characteristics. Service providers in IRCs provide health and welfare services; with 24-hour healthcare available to all detained persons.

The introduction of Home Office Detention Engagement Teams (DETs) in IRCs as a result of Stephen Shaw's review into the welfare of people in detention has improved the ability of those detained to seek advice, help or support. Having an on-site

<p>engagement officer enables any issues raised to be addressed quickly and signposting to Legal Advice Surgeries where required.</p> <p>Ministers of religion offer a source of welfare support; the new IRC will cater to all major religions and requests can be made for any Minister who is not readily available.</p>	
<p><b>6 Review date one year after the IRC opens</b></p>	
<p><b>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.</b></p>	
<p>SCS sign off </p>	
<p><b>Name/Title</b> Phil Riley, Director</p>	
<p><b>Directorate/Unit</b> Detention &amp; Escorting Services, Immigration Enforcement</p>	
<p><b>Lead contact</b> Frances Hardy</p>	
<p><b>Date</b></p>	<p>13 October 2021</p>
<p>All completed EIAs <b>must</b> be sent to the <b>Talent and Inclusion team</b></p> <p>Date sent to Talent and Inclusion Team?</p>	

## Part 2 - Policy Equality Sign-off

**The EIA can be completed throughout the development of a policy but is only signed at the point the policy is made public namely 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 3 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
- 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?