



Home Office

Immigration Act 2016:

Draft Revised Guidance on adults at risk
in immigration detention

April 2024



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Presented to Parliament pursuant to Section 59(4) of the
Immigration Act 2016

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Adults at risk in immigration detention

Purpose and background

1. This guidance specifies the matters to be taken into account in accordance with section 59 of the Immigration Act 2016 when determining whether a person would be particularly vulnerable to harm if they were detained, or if they remained in detention, and, if they were particularly vulnerable in those circumstances, whether they should be detained or should remain in detention. This guidance provides a framework for undertaking a case-by-case, evidence-based assessment of the appropriateness of the detention of a person considered vulnerable in terms of this guidance. This enables a holistic approach to be taken to assessing vulnerability in detention, ensuring that genuine cases of vulnerability are consistently identified, in order to ensure that vulnerable people are not detained inappropriately.

2. The adults at risk in immigration detention policy was originally introduced in September 2016, following an independent review by Stephen Shaw into the welfare of vulnerable people in detention. Since then, the Government has adapted its approach around the use of immigration detention in response to the international challenge of illegal migration. As part of a fair immigration system, it is essential to tackle immigration abuse in order to secure the UK's borders and protect the public. Detention plays a key role in maintaining effective immigration control, particularly as a means to facilitate the removal of people who have no right to be in the UK but refuse to leave voluntarily. This guidance aims to strike a balance between protecting the vulnerable and the public interest in maintaining legitimate immigration control and ensuring public protection.

3. There is a general presumption of liberty which is strengthened for those considered vulnerable under this guidance. A person considered vulnerable under this guidance may be detained only where the immigration factors outweigh the risk factors in their particular case. No group of vulnerable people within this guidance is exempt from the possibility of detention.

4. This guidance will apply in all cases in which an individual is being considered for immigration detention and then whilst continued immigration detention is considered.

5. An assessment will be made of whether the individual is "at risk" in the terms of this guidance and, if so, the level of risk (based on the available evidence) into which they fall. In considering evidence of vulnerability and assigning an individual an evidence level, a balanced and evaluative

approach must be taken to ensure decisions to detain or to maintain detention are informed by all the relevant information. This may involve additional information being sought to fully inform the decision. The process involves a holistic assessment of all the individual circumstances to reach an outcome. If the individual is considered to be at risk in detention, an assessment will be made of whether the immigration factors outweigh the risk factors and only when they do will the person be initially detained or remain in detention.

Principles

6. The main principles underpinning this guidance are:

- the importance of immigration control; individuals should leave the UK when they have no permission to stay in the UK. The Government expects individuals to leave the UK on the expiry of any valid leave they may have, and to comply with any requirement or instruction to leave the UK.
- the presumption of liberty; there is a general presumption of liberty which is strengthened for those considered vulnerable under this guidance.
- the importance of individual and holistic decision-making; decisions to detain or continue detention will be made on a case-by-case basis. In accordance with section 12 of the Illegal Migration Act 2023, detention must only be for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the specific statutory purpose of the detention to be carried out.
- the importance of maintaining focus on the prospect of removal; where detention is for the purpose of removal or deportation, individuals can only be detained if there is a realistic prospect of removal within a reasonable timescale and if it is considered that the individual would not be likely to be removed without the use of detention.
- the importance of the balancing of risk factors against immigration factors; there is a clear framework for how the Government defines 'at risk' and how risk is balanced against immigration factors to ensure consistency, fairness and transparency in detention decision-making.
- the importance of evidence in assessing the appropriateness of detention; the weight of evidence of vulnerability will be considered in determining the evidence level the vulnerable person is assigned under this guidance. Types of evidence range from self-declarations of vulnerability to professional opinions of vulnerability. The higher the level of evidence

assigned to an individual, the higher the threshold in practice for detaining or maintaining the detention of an individual when balancing their risk factors against the immigration factors applicable in their case.

- there is no exemption from detention for any category of vulnerable person within this guidance; where a person is considered vulnerable for the purposes of this guidance and the immigration factors outweigh the risk factors in their case, the vulnerable person may be detained. To establish whether the immigration factors outweigh the risk factors, the evidence of risk will be balanced against the immigration factors set out in this guidance.

Who is an adult at risk?

7. For the purposes of this guidance, an individual will be regarded as being an adult at risk if:

- they declare that they are suffering from a condition or have experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention.
- those considering or reviewing detention are aware of medical or other professional evidence, or observational evidence, which indicates that an individual is suffering from a condition, or has experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention – whether or not the individual has highlighted this themselves.

8. On the basis of the available evidence (including evidence obtained on further enquiry), the Home Office will reach a view on whether a particular individual should be regarded as being “at risk” in the terms of this guidance. A balanced approach to consideration of all the evidence must be taken, which may require a reasonable period of time to obtain all the relevant information and make an assessment of all the evidence, to ensure decisions to detain or to maintain detention are well-informed. A vulnerable person may be detained, or have their detention maintained, only where the immigration factors in their particular case outweigh the risk factors.

Assessment of whether an individual identified as being at risk should be detained

9. Once an individual has been identified as being at risk, consideration should be given to the level of evidence available in support of, and the weight that should be afforded to the evidence in order to assess the appropriateness of initial detention or continued detention of the person for the period identified as necessary for the specific statutory purpose of their detention to be carried out. The evidence levels within the policy framework are:

- adults at risk level 1; a self-declaration of being an adult at risk should be afforded limited weight in most cases, including where the issues raised cannot be readily confirmed. Individuals in these circumstances will normally be regarded as being at evidence level 1
- adults at risk level 2; professional evidence (e.g. from a social worker, medical practitioner or NGO), or official documentary evidence, which indicates that the individual is an adult at risk should be afforded greater weight than a self-declaration. Individuals in these circumstances will normally be regarded as being at evidence level 2
- adults at risk level 3; professional evidence (e.g. from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm. For example, evidence that a period of detention or continued detention will increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk should be afforded significant weight. Individuals in these circumstances will normally be regarded as being at evidence level 3

10. Where professional evidence is not immediately available, but where observations from Home Office officials lead to a belief that the individual is at a higher level of risk than a simple self declaration would suggest, an individual can be allocated to a higher risk category in the terms of this guidance on the basis of that observational evidence.

11. Home Office officials are responsible for obtaining and considering the information needed to make an informed assessment of whether detention, or continued detention, is appropriate. That may include taking steps to obtain a second professional opinion in cases where professional evidence has been received in relation to a person detained under immigration powers. Professional evidence submitted should be acknowledged without prejudice to the evidential weight that it would normally warrant at face value. Whilst a second opinion is pending, consideration should be given to the needs and

circumstances of the person in detention in view of the evidence submitted. External medical reports should be provided to the responsible clinicians. Normally, a decision on the evidence level should be taken after consideration of all of the evidence including any second professional opinion, where one is sought. The time taken to obtain and consider this evidence is considered appropriate in order to make a fully informed decision.

12. Determinations from courts or tribunals about the credibility of a person's account or claims, or about professional evidence, or credibility concerns arising from other sources, should be taken into account in deciding the weight that should be afforded to evidence and could result in a reconsideration of the evidence level into which the individual falls.

Indicators of risk

13. The following is a list of conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention:

- suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition)
- having been a victim of torture¹
- having been a victim of sexual or gender-based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery
- suffering from post-traumatic stress disorder (which may or may not be related to one of the above experiences)
- being pregnant (pregnant women will automatically be regarded as meeting level 3 evidence)²
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transgender or intersex person.

14. The above list is not intended to be exhaustive. Any other relevant condition or experience that may render an individual particularly vulnerable to harm in immigration detention, and which does not fall within the above list, should be considered in the same way as the indicators in that list. In addition, the nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time.

¹ "Torture" is defined in rule 35(6) of the Detention Centre Rules 2001.

² By virtue of the Immigration Act 2016, pregnant women may not be detained for longer than 72 hours, extendable up to a week in total with Ministerial approval.

Assessment of immigration factors

15. Under this guidance, any risk factors identified and evidence in support must be balanced against immigration factors in deciding whether a vulnerable person may be detained or continue to be detained. A person considered vulnerable under this guidance may only be detained where the immigration factors in their particular case outweigh the risk factors.

16. The immigration factors that will be taken into account are:

- Length of time in detention – where detention is for the purpose of removal or deportation, there must be a realistic prospect of removal within a reasonable period. Where detention is for any other statutory purpose, it must be for a period considered reasonable for that specific statutory purpose of detention. In accordance with section 12 of the Illegal Migration Act 2023, it is for the Secretary of State to determine what constitutes a “reasonable period” of detention and this period will vary according to the particular factors of a case (including whether or not the individual is considered vulnerable) and the specific statutory purpose of detention. When considering continuing detention, the period of detention to date should be factored in when determining whether a further period of detention is reasonable. In all cases, every effort should be made to ensure that the length of detention is as short as possible. Where detention is for the purpose of removal or deportation, it should be possible to estimate the likely duration of detention required to effect removal or deportation. Where removal or deportation is likely to be within a short timeframe, an individual considered vulnerable under this guidance is likely to be able to be detained for removal notwithstanding the other elements of this guidance.
- Public protection issues – consideration will be given to whether the individual raises public protection concerns by virtue of, for example, criminal history, security risk, decision to deport for the public good.
- Compliance issues - an assessment will be made of the individual’s risk of absconding, based on their previous compliance record.

17. An individual considered at risk under this guidance should be detained only if the immigration factors outweigh the risk factors in their particular case. This will be a highly case specific consideration.

18. Consideration must be given to whether immigration bail with specific conditions, such as residence or reporting restrictions, could be imposed to enable the outcome sought by detaining the individual to be achieved but without detention of the individual.

19. Where detention is for the purpose of removal, all reasonable voluntary return options should be considered prior to detaining individuals considered at risk under this guidance. Where it is considered that the individual would not return without the use of detention to support enforced removal (e.g. they have previously been given the opportunity to take a voluntary return and have declined or not complied with the process and/or made attempts to frustrate their return), this should be regarded as a matter of non-compliance.

Medico Legal Reports

20. In cases where an individual is detained during the consideration of their asylum claim and is successfully referred for a Medico Legal Report, the Asylum Policy Instruction on Medico Legal Reports will apply.

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