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Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

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IMMIGRATION ACT 2016: IMMIGRATION DETENTION

This information sheet outlines measures on immigration detention introduced by the Immigration Act 2016 in response to the criticisms that have been made in relation to the welfare of vulnerable people in immigration detention. A separate information sheet details the new provisions for [immigration bail](#).

Review of the welfare of vulnerable people in immigration detention

The former Prisons and Probation Ombudsman, Stephen Shaw, was commissioned by the Home Office to undertake an independent review of the welfare of vulnerable people in immigration detention following longstanding concerns raised about the treatment of immigration detainees which in some cases amounted to inhuman and degrading treatment in breach of human rights legislation. Stephen Shaw recommended that the use of detention should be reduced as the fact of detention in itself undermines people's welfare. He made recommendations for limiting the impact of detention on particular groups in the meantime, including recommending an outright ban on the detention of pregnant women.

Guidance on the detention of vulnerable persons

In response to the findings of the review, the Government included a provision in the Immigration Act 2016 placing a duty on the Home Office to issue guidance on the detention of 'vulnerable persons'. This must cover the matters its officials are required to take into account when determining whether a person would be particularly vulnerable to harm in detention and, if so, whether they should be detained or remain in detention.

This guidance, *Adults at risk in immigration detention*, was laid before parliament and published at: <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>. It entered into operation on 12 September 2016 when further operational guidance was also issued at: <https://www.gov.uk/government/publications/offender-management>.

The policy recognises a wider range of vulnerability than previously and includes the following indicators that a person may be at risk of harm in detention:

- suffering from a mental health condition or impairment (depending on the nature and seriousness of the condition);
- having been a victim of torture;
- 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;
- being pregnant;

- suffering from a serious physical disability;
- suffering from other serious physical health conditions or illnesses;
- being aged 70 or over;
- being a transsexual or intersex person;
- other conditions making a person vulnerable, including the recognition that a person may obtain more evidence or become more vulnerable over time.

It outlines three levels of evidence that will be considered by the Home Office when identifying those at risk of harm. These include a person's own testimony at level one; professional evidence that a person is from a vulnerable category at level two (including concerns reported by general practitioners in Immigration Removal Centres, under Rule 35 of the Detention Centre rules, that a person may be a victim of torture); and professional evidence that a person is from a vulnerable category and that detention will cause them harm at level three.

Under the policy, an adult at risk of harm in detention should normally be released, but the Home Office will balance the risk factors against any 'immigration factors', such as whether the person's history indicates that they will not comply with the removal process, to determine whether or not detention should be maintained. There are concerns that the approach may lead to even less protection than the previous Home Office guidance, which only permitted the detention of vulnerable persons in *exceptional* circumstances. The Minister promised parliament that the new approach would improve on the regime criticised by Stephen Shaw but it remains unclear whether it will do so. The policy does not address the protection of victims of trafficking and modern slavery which will be considered in separate guidance.

Limitation on the detention of pregnant women

A separate provision in the Immigration Act 2016 places a limitation on the detention of pregnant women. It is not the absolute ban on detaining pregnant women recommended by Stephen Shaw but is an important improvement. The limitation on detention came into force on 12 July 2016 and the Home Office has issued guidance on its operation in new chapter 55a of its Enforcement Instructions and Guidance at: <https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals> and in a draft Detention Services Order dealing with procedures in detention centres.

Under the Immigration Act 2016, pregnant women may only be detained if they will 'shortly' be removed or if there are exceptional circumstances, interpreted in the accompanying guidance as 'very exceptional' circumstances following assurances given in parliament that this was the proper interpretation. Pregnant women may not be detained for longer than 72 hours (or seven days if the Minister personally authorises this in the individual case). The time limit begins from when the woman is detained or from when the Home Office is 'satisfied' that a woman is pregnant, whichever is later. A woman may be visibly pregnant, have medical letters or appointments confirming her pregnancy or be able to take a pregnancy test at the detention centre. The Act creates an additional duty to consider the woman's welfare when deciding on detention. This is a further safeguard against detention where it would be contrary to the woman's welfare, for example if she arrived at a remote port and facilities were not appropriate for detaining a pregnant woman. The provisions do not apply to women detained at the border whilst their entry to the UK is under consideration.

There remain concerns about pregnant women being taken into detention for removal without adequate notice, disrupting their medical care and causing high levels of distress to the woman and her unborn child. The guidance states that measures to achieve voluntary departure from the UK should be tried before removal and that enforced removals should preferably be achieved without detention. Responding to concerns about the lengthy and difficult journeys to Immigration Removal Centres experienced by pregnant women, the Minister promised a review of how women were transported to detention centres.