



Rt Hon Dame Diana Johnson MP  
Chair  
Home Affairs Select Committee  
House of Commons  
London  
SW1A 0AA

30 April 2024

Dear Dame Diana,

### **Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2024**

I have today laid before Parliament the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2024. The purpose of the statutory instrument (the “Regulations”) is to amend the Adults at Risk in Immigration Detention (AAR) Statutory Guidance to a) refresh the policy to reflect the current Government’s priorities and approach to immigration detention and b) to place on a statutory footing the ability of the Home Office to seek a second opinion on professional evidence submitted in relation to people detained under immigration powers.

The AAR Statutory Guidance was originally introduced in September 2016, following an independent review by Stephen Shaw into the welfare of vulnerable people in detention. The AAR Statutory Guidance provides a framework for assessing the appropriateness of detention for people considered vulnerable under the policy. It specifies matters to be taken into account in determining a) whether a person would be particularly vulnerable to harm if they were to be detained in immigration detention and b) whether that person should be detained or remain in immigration detention. It enables a holistic approach to be taken to assessing vulnerability in detention and ensures that vulnerable people can be consistently identified and supported.

As part of a fair immigration system, it is essential that we deter and tackle immigration abuse and protect the public and vulnerable people within the system. The Government has adapted its approach to the use of immigration detention in response to the challenge of illegal migration by increasing immigration detention for identity and nationality checks, enforced returns and deportations. The Regulations amend the overall purpose of the AAR Statutory Guidance to reflect this. This includes removal of the previous aim of reducing the number of vulnerable people detained. The AAR Statutory Guidance now aims to strike a balance between protecting the vulnerable and maintaining immigration control. The amended AAR Statutory Guidance maintains the concept that the presumption of liberty is strengthened for those considered vulnerable under the guidance. Those considered vulnerable under the guidance will be detained only where the risk factors are outweighed by the immigration factors in their particular case.

The Regulations also amend the AAR Statutory Guidance to reflect provisions relating to detention brought into force in September 2023 through section 12 of the Illegal Migration Act 2023. Section 12 establishes that whilst detention must only be for such period as is reasonably necessary to enable the specific statutory purpose of the detention to be carried out, it is for the Secretary of State to decide that reasonable period, rather than the courts.

The Regulations amend the AAR Statutory Guidance to provide a statutory footing for the Home Office to seek second opinions on professional evidence submitted in relation to those in immigration detention. This follows a High Court judgment [2024] EWHC 38 (*Admin*) in which the Court found the operation of the Home Office's previous interim policy for seeking second opinions to be unlawful, in part because it authorised caseworkers to act contrary to the AAR Statutory Guidance. The Home Office considers there to be value in having access to additional clinical evidence about a person's vulnerability in order to be able to make a fully informed decision about the appropriateness of continued detention.

Pursuant to Section 59(4) of the Immigration Act 2016, the Secretary of State is required to lay the amended statutory guidance before Parliament. The Secretary of State laid the amended statutory guidance in draft before Parliament on 30 April 2024. The draft guidance has been published by the Stationery Office and copies may be obtained from the Stationery Office bookshops or online shop. The draft guidance is also available on publication pages of the gov.uk website.

I would be happy to discuss these changes further and answer any questions you might have, either in correspondence or through a meeting with myself or officials.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Michael Tomlinson". The signature is stylized with a large initial 'M' and a long, sweeping underline.

**Rt Hon Michael Tomlinson KC MP**  
**Minister of State for Countering Illegal Migration**