

**Medical Justice**  
working for health rights for detainees



association of visitors to immigration detainees

## Briefing on the revised Adults at Risk in Immigration Detention Statutory Guidance

10 June 2024

This is a joint briefing by [Medical Justice](#), [Bail for Immigration Detainees \(BiD\)](#), [Jesuit Refugee Service \(JRS\) UK](#), [Refugee Council](#), [Women for Refugee Women](#), [the Helen Bamber Foundation](#), [Detention Action](#), [Association of Visitors to Immigration Detention \(AVID\)](#), [Immigration Law Practitioners' Association \(ILPA\)](#), [Freedom from Torture](#) and [Gatwick Detainees Welfare Group \(GDWG\)](#).

### Key points

1. The Adults at Risk in Immigration Detention Statutory Guidance (AAR SG), a policy meant to protect vulnerable people in immigration detention, was significantly watered down by the government in April 2024. **As experts in the field, we are concerned that the changes will lead to vulnerable people remaining in detention for longer, exposing them to increased risk of harm.**
2. The AAR SG was introduced in 2016,<sup>1</sup> after an independent review into the welfare of vulnerable people in detention led by Stephen Shaw, former prisons and probation ombudsman. The Shaw review was commissioned following a series of cases where UK courts found that the mistreatment in detention of people with severe mental health conditions amounted to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights (ECHR).<sup>2</sup> The Review identified a systematic overreliance on immigration detention, too many vulnerable people being detained for too long, inadequate healthcare provisions and a failure of existing safeguards.<sup>3</sup>
3. As such, a **key aim of the AAR SG was to improve the protections for particularly vulnerable people in detention, (including those with mental health difficulties and physical disabilities; victims of torture and trafficking; victims of gender-based violence; transgender and intersex people, pregnant women; and those over the age of 70 years old), and to mitigate against**

<sup>1</sup> The AAR SG is brought into force via a statutory instrument under [section 59 of the Immigration Act 2016](#).

<sup>2</sup> Article 3 of the [ECHR](#) states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. A summary of the Article 3 cases is provided in: Jeremy Johnson QC, “Appendix 4: Assessment of cases where a breach of Article 3 of the European Convention of Human Rights has been found in respect of vulnerable immigration detainees”, Stephen Shaw (2016) [Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office](#), pages 269-302.

<sup>3</sup> Stephen Shaw (2016) [Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office](#).

**the risk of further Article 3 breaches.** This aim has been accepted on multiple occasions by Ministers.<sup>4</sup>

4. It is important to note that, even prior to the recent changes, serious long-standing concerns have been raised over many years about the effectiveness of the AAR SG, including by the [Brook House Inquiry](#), the [Independent Chief Inspector of Borders and Immigration](#), and the House of Common’s [Home Affairs Committee](#). Concerningly, **the government has now made changes that reduce the already inadequate protections even further, putting vulnerable people at yet greater risk.** The changes include removing a previous commitment to reducing the number of vulnerable people in detention and their period of detention and granting the government the power to seek a second opinion on medical evidence from external providers documenting a person’s vulnerability, often leading to further deterioration in health due to longer periods of detention, and the loss of liberty. The changes were laid out in the *Draft revised guidance on Adults at Risk in immigration detention*, published in April 2024.<sup>5</sup> along with an accompanying Statutory Instrument.<sup>6</sup> and came into effect on 21 May 2024.
5. **The changes are likely to result in more vulnerable people being detained, for longer periods of time, increasing their risk of suffering harm and, potentially, human rights violations.** They come at a time of much wider powers to detain granted to the Home Secretary by the *Illegal Migration Act 2023*,<sup>7</sup> a planned expansion of the detention estate and the mass detention of people for removal to Rwanda – many of whom are known to be vulnerable and affected as a result.<sup>8</sup>
6. **The changes run entirely counter to the findings and recommendations of the recent Brook House Inquiry, a public inquiry established by the Home Secretary, into the abuse of detained people.**<sup>9</sup> The Inquiry found 19 incidents of credible breaches of Article 3 of the ECHR within a period of just five months.<sup>10</sup> It further found that the systemic deficiencies and dysfunction of the detention safeguards contributed to the occurrence of such abuse. The Chair of the Inquiry, Kate Eves, in recent oral evidence to the Home Affairs Committee stated that that the revised AAR SG “is a move in the opposite direction from what I have suggested is needed, which is a doubling down to make sure that the safeguards in place are being implemented in the way the rules intended... It is really concerning to me that the guidance

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<sup>4</sup> In 2016, then Minister for Immigration James Brokenshire MP accepted Stephen Shaw’s recommendations concerning vulnerable detained people and, in response, set out the new AAR framework. His written statement outlined that the framework would be introduced “with a clear presumption that people who are at risk should not be detained”. See James Brokenshire MP (14 January 2016) [Immigration Detention: Response to Stephen Shaw’s report into the Welfare in Detention of Vulnerable Persons](#) Written Statement HCWS470. In 2017, then Minister for Immigration Robert Goodwill MP, stated that the AAR framework “seeks to minimise the use of detention for those considered vulnerable”. See Robert Goodwill MP (6 March 2017) [Immigration: Indefinite Detention](#) HC Debate, Vol 622, Col 561.

<sup>5</sup> The draft AAR SG came into force on 21 May 2024 without changes. It is now available at: Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#).

<sup>6</sup> [The Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), SI 2024/573.

<sup>7</sup> *Illegal Migration Act 2023*, ss 11-14.

<sup>8</sup> See, for example, Medical Justice (2022) [Who’s paying the price? The human cost of the Rwanda scheme](#).

<sup>9</sup> The Brook House Inquiry was established to investigate the mistreatment of individuals detained at Brook House Immigration Removal Centre (IRC). Its report, published on 19 September 2023, found 19 incidents of credible breaches of Article 3 of the ECHR, which prohibits torture, inhuman and degrading treatment, within the 5-month period investigated and exposed how systemic and ongoing deficiencies, including in the operation of the safeguards designed to identify and protect particularly vulnerable people, contributed to the abuse. See Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volumes I-III](#).

<sup>10</sup> Since the period investigated by the Inquiry, further periods of intense abuse have occurred in detention. This includes at Brook House in late 2020 during a concentrated programme of charter flights to EU countries, the effects of which were found by independent monitors to amount to “inhuman treatment of the whole detainee population”, and during the detention of people for removal to Rwanda in 2022. See Independent Monitoring Boards (2021) [Annual Report of the Independent Monitoring Board at Brook House IRC](#) p 6; and Medical Justice (2022) [Who’s paying the price? The human cost of the Rwanda scheme](#). Serious problems continue to be ongoing; see for example, Medical Justice (2023) [‘If He Dies, He Dies’: What has changed since the Brook House Inquiry?](#)

appears to be moving in the opposite direction to what I have recommended based on all the evidence”...<sup>11</sup>

7. **The revised AAR SG has been drawn to the special attention of the House by the Lords’ Secondary Legislation Scrutiny Committee (SLSC).** The Committee has raised concerns that “the Government has not set out how it will monitor and report on the policy”, despite the fact that the “possible adverse impact of detention on vulnerable people makes these changes controversial”, and that “the House and the general public will wish to be kept abreast of their effects in practice”...<sup>12</sup>

## How does the Adults at Risk Guidance work?

8. The purpose of the AAR SG is to protect vulnerable people who are at risk of suffering harm in detention. It sets out a process to identify such individuals, and to determine whether they should remain in detention or be released.
9. Under the policy, when an individual is identified as being at risk of harm,<sup>13</sup> the Home Office considers evidence in respect of the individual’s risk factors, and weighs this evidence against various immigration factors...<sup>14</sup> There are three “levels” of evidence documenting risk; level 3 is the highest, and consists of evidence from a professional (such as a medical doctor) that the person is at risk and that a period of detention is likely to cause them harm...<sup>15</sup> The higher the evidence level, the stronger the immigration factors must be for a person’s detention to be maintained. Thus, only vulnerable people with level 3 evidence documenting their risk have the greatest protection against detention. Even under the previous version of the AAR SG, the AAR policy often failed to protect vulnerable people.

## The changes and concerns in more detail

10. The Government has now made various changes to the AAR SG that reduce the protections afforded to vulnerable people in detention:

<b>Key changes between previous and revised AAR SG, and their effect</b>		
<b>Previous AAR SG</b>	<b>Revised AAR SG</b>	<b>Effect</b>
One of the main principles underpinning the policy is “(t)he intention... that fewer	This provision has been deleted.	Removing the intention to reduce the detention of vulnerable people, despite the

<sup>11</sup> Home Affairs Committee, [Oral evidence: Brook House, HC 717, Wednesday 1 May 2024](#), Q 4 and 5. The Government’s apparent disregard for the Brook House Inquiry’s recommendations is also evident in its [response to the Inquiry report](#), published in March 2024. An analysis of the response by Medical Justice showed that, of the Inquiry’s 31 recommendations directed to the government across ten sub-topics, only one appears to have been fully accepted. See Medical Justice (2024) [Government’s Response to the Brook House Inquiry report - Analysis for Parliamentarians](#).

<sup>12</sup> Secondary Legislation Scrutiny Committee, [25<sup>th</sup> Report of Session 2023–24](#), page 5, paragraph 21.

<sup>13</sup> The AAR SG lays out a number of conditions or experiences that indicate a person may be particularly vulnerable to harm in detention. Known as “indicators of risk”, they include: suffering from a mental health condition or impairment; having been a victim of torture, sexual or gender-based violence, human trafficking or modern slavery; from post-traumatic stress disorder; being pregnant; suffering from a serious physical disability or other serious physical health conditions or illnesses; being aged 70 or over; being a transgender or intersex person. See Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 13.

<sup>14</sup> The “immigration factors” taken into account are: the length of time the person will spend in detention; whether the individual raises public protection concerns by virtue of, for example, a criminal history; and compliance issues risk of absconding, based on their previous compliance record. See Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 16.

<sup>15</sup> See Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 9.

<p><i>people with a confirmed vulnerability will be detained in fewer instances and that, where detention becomes necessary, it will be for the shortest period necessary”</i>..<sup>16</sup></p>		<p>purpose of the policy being to protect such people means they are likely to be detained for longer, with increased risk of harm and Article 3 breaches.</p>
<p>States that “(t)he clear presumption is that detention will not be appropriate if a person is considered to be ‘at risk’”..<sup>17</sup></p>	<p>“Clear presumption...” statement is deleted. States instead that “(t)here is a general presumption of liberty which is strengthened for those considered vulnerable under this guidance”..<sup>18</sup></p>	<p>Reduces the protective nature of the policy.</p>
<p>States that victims of torture “with a completed Medico Legal Report from reputable providers will be regarded as meeting level 3 evidence, provided the report meets the required standards”..<sup>19</sup></p>	<p>This provision has been deleted.</p>	<p>Victims of torture with a Medico Legal Report from a reputable provider such as Medical Justice, Freedom from Torture or the Helen Bamber Foundation will no longer be automatically considered to have Level 3 evidence and not granted the highest level of protection against continued detention.</p>
<p>No provisions regarding the power to seek a second opinion.</p>	<p>Gives the Home Office a new power to obtain a second professional opinion from a Home Office-contracted doctor..<sup>20</sup> on detained individuals who already have professional external evidence (e.g. MLR)..<sup>21</sup> This second opinion is considered by the Home Office who decides if a vulnerable person should remain in detention or be released.</p>	<p>A number of detrimental impacts on vulnerable detained people, including delaying their release. These are explained more fully below in <a href="#">Obtaining a second opinion – concerns in more detail</a>.</p>

11. The Government’s purported justifications for making the changes are deeply concerning. It has stated, for example, that reducing the number of vulnerable people in detention “is no

<sup>16</sup> Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 6.

<sup>17</sup> Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 3.

<sup>18</sup> Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 3.

<sup>19</sup> Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 11, second bullet point.

<sup>20</sup> See Home Office (2024) [Equality Impact Assessment: Adults at Risk in Immigration Detention](#) page 4.

<sup>21</sup> Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 11.

longer considered compatible with the fact that the immigration detention estate is growing in response to the Government's change in approach to how immigration detention is used", and that "logically... a rise in the detained population will result in a rise in those that are considered vulnerable"...<sup>22</sup>

12. This signals a dramatic shift in how the Government views the detention of vulnerable people – not as a harm they are responsible for reducing, but as an inevitability. The dangers of such a shift cannot be overemphasised. This must not be an inevitability; instead, protections for vulnerable people should be strengthened rather than weakened.

## Obtaining a second opinion – concerns in more detail

13. The revised AAR SG grants the Home Office officials the power "to obtain a second professional opinion" when considering whether a vulnerable person should remain in detention or be released...<sup>23</sup>

14. This poses risks to vulnerable people because:

- 14.1. It will introduce an additional delay to the review their detention, while the second opinion is sought, thereby prolonging their period of detention.

- 14.2. In cases where the second opinion differs from the original external evidence, the latter may be given less weight in the Home Office decision making. There are many valid reasons why two doctor's findings and conclusions may differ, including the lack of trust a detained person might have with a Home Office-contracted doctor may prevent full disclosure and that, for example, Medical Justice doctors who conduct MLR assessments for those in detention, follow an extremely rigorous process that complies with certain standards...<sup>24</sup> Downgrading of external evidence is also contrary to the Istanbul Protocol...<sup>25</sup>

- 14.3. It will not improve the quality of decision making, since the Home Office caseworkers do not have the medical knowledge to resolve differences in clinical opinions and doing so may lead them to make judgments beyond their expertise.

- 14.4. It will expose the already vulnerable person to risk of re-traumatisation, by requiring them to recount their history again to the second opinion doctor...<sup>26</sup>

15. The Government has stated that the power to seek second opinions on professional evidence is necessary because "(h)istorically, the large majority of cases involving an external medical

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<sup>22</sup> See Home Office (2024) [Equality Impact Assessment: Adults at Risk in Immigration Detention](#) page 3.

<sup>23</sup> Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 3.

<sup>24</sup> Medical Justice doctors complete around 150 MLRs a year, all of which comply with the Home Office's MLR Quality Standards, and with UN guidance "to provide a clinical interpretation of the degree to which clinical findings correlate with the alleged victim's contention of abuse, and a clinical opinion on the veracity of such claims, and the possibility of torture, based on all relevant clinical evidence" (See United Nations (2022) [Istanbul Protocol](#)). Medical Justice doctors' MLRs also undergo a peer review process to ensure consistently high quality and compliance with relevant standards.

<sup>25</sup> United Nations (2022) [Istanbul Protocol](#) paragraph 309.

<sup>26</sup> For further discussion of these impacts, see Medical Justice (2024) [Submission to the Secondary Legislation Scrutiny Committee on the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024 \(SI 2024/573\)](#) paragraphs 31-53.

report/medico-legal report have led to the person being released from detention, thereby undermining lawful action to remove them from the UK”...<sup>27</sup>

15.1. As a group of expert NGOs, including those providing external medical reports/medico-legal reports (MLRs), we are extremely concerned by this statement. MLRs are a legitimate and important way for individuals to obtain independent clinical evidence for their legal case. In most cases, the primary purpose of an MLR is to document clinical evidence relevant to the person’s asylum or human rights claim. Clearly the documentation of such evidence is crucial to allow the decision-maker, be it the Home Office or a Tribunal, to reach findings based on the relevant evidence. In some cases, a medical report may contain evidence that leads to the person being recognised as a refugee. Far from “undermining lawful action”, MLRs are a crucial part of how the legal process works and often lead to a person’s release, exposing their unlawful detention.

15.2. For people in immigration detention, MLRs serve the additional important purpose of assessing and evidencing any adverse impact that immigration detention is having on the person’s health. It is well known that immigration detention can cause significant and lasting harm to many people...<sup>28</sup> Survivors of torture and others with pre-existing vulnerabilities are particularly at risk. In fulfilling that important function, MLRs may provide the evidence that leads to a person being released from detention. Again, this should not be characterised as “undermining lawful action”; instead, it is the legal process working as intended.

15.3. It is as a result of the long-standing failure of detention safeguards to identify and protect vulnerable people...<sup>29</sup> that MLRs have become a prominent process to alert the Home Office of clinical concerns that a detained person is likely to be harmed by detention. Yet, not everyone who would benefit from such evidence has access to external medical reports.

16. The Government also notes that “(a) Home Office review in 2021, involving clinical experts, independently validated the department’s concerns about the reliability of [...external medical] evidence in some cases”...<sup>30</sup>

16.1. The Home Office provided further details of the data/results from this review to the Lords Secondary Legislation Scrutiny Committee (SLSC)...<sup>31</sup> Medical Justice has raised serious concerns about the validity of the data/results of the Home Office review with the SLSC and the Home Office...<sup>32</sup> The SLSC concluded that the Home Office’s data “does not provide compelling evidence either way on the need for the

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<sup>27</sup> Home Office (2024) [Explanatory Memorandum to the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), paragraph 5.4.

<sup>28</sup> Bosworth M. (2016) Appendix 5: The Mental Health Literature Survey Sub-Review. Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office.

<sup>29</sup> These failures are described in the Brook House Inquiry report, which found the safeguarding system in detention to be “dysfunctional” and as a result that “vulnerable people in detention are not being afforded the appropriate protections that [the] safeguards are designed to provide”. See Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume 1](#), page 9 paragraph 40 and page 8 paragraph 35.

<sup>30</sup> Home Office (2024) [Explanatory Memorandum to the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), paragraph 5.4.

<sup>31</sup> See Home Office (2024) [Response from the Home Office to the Secondary Legislation Scrutiny Committee](#) page 26 Q14.

<sup>32</sup> Medical Justice (2024) [Submission to the Secondary Legislation Scrutiny Committee on the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024 \(SI 2024/573\)](#) paragraphs 31-53.

second opinion policy”.<sup>33</sup> This conclusion echoes previous concerns of the Independent Chief Inspector of Borders and Immigration, who investigated Home Office reports of potential abuse of the MLR process in his second review of the Adults at Risk policy. He noted that Home Office data on MLRs was “poor” and found that “[i]n the absence of comprehensive and reliable data to support suspicions of fraud, it is impossible to reach a conclusion on what the scale of the problem of abusive MLRs might be”.<sup>34</sup>

## Additional concerns

17. An initial version of the revised AAR SG was shared for consultation with a small number of NGOs working on immigration detention in February 2024. Importantly, this date was before the Government had issued its response to the Brook House Inquiry report (published on 19 March 2024).<sup>35</sup>, meaning that essential learning from the Inquiry has been excluded from the revised AAR SG. It is a fundamental mistake to have made changes to essential detention safeguards without properly considering the implications of the Inquiry’s findings. The revised AAR SG clearly contradicts the key findings and recommendations of the Inquiry.
18. There were also serious flaws in the consultation process, including that it took place over short a timeframe (5 weeks), and that NGOs were not provided with important additional information such as the Equality Impact Assessment, evidence relating to reliability of medico-legal reports, and evidence from previous experience of the second opinion policy.<sup>36</sup> Such an approach runs counter to the Government’s own Consultation Principles.<sup>37</sup>

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<sup>33</sup> Independent Chief Inspector of Borders and Immigration (October 2021) *Second annual inspection of ‘Adults at Risk Immigration Detention, July 2020 to March 2021* paragraph 10.13.

<sup>34</sup> Independent Chief Inspector of Borders and Immigration (October 2021) [Second annual inspection of ‘Adults at Risk Immigration Detention’ July 2020 to March 2021](#) paragraph 10.13.

<sup>35</sup> Home Office (2024) [Government response to the public inquiry into Brook House Immigration Removal Centre](#).

<sup>36</sup> Medical Justice (2024) [Submission to the Secondary Legislation Scrutiny Committee on the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024 \(SI 2024/573\)](#) paragraphs 70-76.

<sup>37</sup> See Cabinet Office (2018) [Consultation Principles](#), in particular paragraphs C, E and G.