

30 DAYS TO ACT

FOR SURVIVORS AT RISK OF DETENTION

The Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 (S.I. 2021, No.184)

Joint parliamentary briefing on concerns

This briefing has been jointly compiled by eight organisations with expertise on immigration detention and/or human trafficking – **After Exploitation, Anti-Slavery International, Bail for Immigration Detainees, Focus on Labour Exploitation, Freedom from Torture, Helen Bamber Foundation, Immigration Law Practitioners’ Association, and Medical Justice.**

Summary

- The government has introduced **new regulations that downgrade protections afforded to potential victims of trafficking held in immigration detention.**
- The move run entirely counter to the government’s stated aim to protect victims of trafficking. Victims need support and compassion, not detention in prison-like settings. **It is vital that the Home Secretary thinks again.**
- We are therefore **asking MPs to show their opposition to the change and sign [Early Day Motion 1696](#)**, tabled by Sir Keir Starmer MP and others, which seeks to annul the regulations.

The Regulations

The Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 is a negative statutory instrument, laid on 25 February 2021. The period to oppose/annul the Regulations ends on 22 April 2021.

The regulations make changes to the government’s guidance on Adults at Risk in Immigration Detention (AAR Guidance).¹ These changes come into effect on 25 May 2021.

The AAR Guidance sets out the government’s process for deciding when to hold in immigration detention people who are particularly vulnerable to suffering harm if detained (e.g. those whose mental health may deteriorate). It is still possible for the Home Office to detain such people, if it is considered that a range of immigration factors outweigh the risk of harm to them. In fact, at last count 39% of all detainees were Adults at Risk (AAR).²

¹ A copy of the guidance is accessible at: <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

² See: <https://www.independent.co.uk/news/uk/home-news/coronavirus-immigration-detention-removal-prison-inspectorate-home-office-a9544116.html>

Potential victims of trafficking³ are considered AAR: they may, for example, experience re-traumatisation in detention because the conditions there in many ways replicate those under which they were held by their traffickers. Currently however, an exception exists whereby decisions about the detention of potential victims of trafficking have to be made with reference to separate guidance on the Modern Slavery Act 2015.

Under the new Regulations, such decisions will be brought fully within the scope of the AAR Guidance.⁴

Our concerns

We are alarmed by this change, as it represents an erosion of already inadequate safeguards for victims of trafficking wrongfully detained due to their immigration status. Since 2019 alone, 2,914 potential victims of trafficking who should have had access to support were detained instead.⁵ **We believe that the change will result in even more victims of trafficking being detained and being held for longer.**⁶

Remarkably, the government has itself acknowledged that this may happen: following questions from the Secondary Legislation Scrutiny Committee (SLSC) about the regulations earlier this month, the Home Office admitted that “some (victims) may, as a result of the changes, be more likely to be detained, or have their detention continued, than would currently be the case”.⁷ This led the Committee to draw special attention to the regulations, suggesting that Members “may wish to consider whether it is appropriate to downgrade statutory guidance under the Modern Slavery Act 2015 in this way”.⁸

The consultation carried out by the government before introducing the change was extremely limited. A very small number of stakeholders were invited to take part, many of whom had just two weeks to respond. No trafficking survivor groups were involved. The SLSC described the consultation as “poor practice”.⁹

The regulations are the first of a number of worrying proposed changes affecting the rights of vulnerable people subject to immigration detention. They form part of wider government plans to reduce protections for such people within the immigration and asylum system, as seen recently in the Home Office's New Plan for Immigration.¹⁰

What can MPs do?

The move runs entirely counter to the government’s stated aim to protect victims of trafficking. Victims need support and compassion, not detention in prison-like settings. It is vital that the Home Secretary thinks again.

Sir Keir Starmer MP and other parliamentary colleagues have tabled Early Day Motion 1696, which seeks to annul the regulations.

We encourage as many MPs as possible to [sign Early Day Motion 1696](#), to show their opposition to the change and help push back against these unacceptable measures.

³ Potential victims of trafficking are people who have been given a positive Reasonable Grounds decision in the National Referral Mechanism. The National Referral Mechanism (NRM) is the UK’s framework for identifying victims of human trafficking and ensuring they receive the protection and support. For an overview of how the framework operates in practice, please see:

<https://www.freemovement.org.uk/briefing-the-support-system-for-migrant-victims-of-human-trafficking/>

⁴ The SLSC 49th Report explains the change in more detail. Accessible at:

<https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/245/24504.htm>

⁵ FOI requests by After Exploitation + Women For Refugee Women, published in Survivors Behind Bars

(2021). Accessible at: <https://www.independent.co.uk/news/uk/home-news/trafficking-modern-slavery-detained-immigration-home-office-b1797186.html>

⁶ A detailed discussion of our concerns is available at: <https://committees.parliament.uk/publications/5085/documents/50376/default/>

⁷ See SLSC 49th Report, accessible at: <https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/245/24504.htm>

⁸ Ibid.

⁹ Ibid.

¹⁰ Accessible at: <https://www.gov.uk/government/consultations/new-plan-for-immigration>