

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

3 October 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](#), [Gatwick Detainees Welfare Group \(GDWG\)](#) and [Rainbow Migration](#).

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 previous Conservative government in April 2024. **As experts in the field, we are concerned that the changes allow the Home Office to detain vulnerable people more easily and for longer periods of time, exposing them to increased risk of harm and possible human rights breaches. Subsequent to the Brook House Inquiry report in 2023, which found credible evidence of inhuman and degrading treatment in immigration detention contrary to Article 3 of the European Convention on Human Rights (ECHR),¹ official monitoring bodies have recently warned of worsening conditions in detention facilities.²**
2. **The AAR SG changes have not been retracted by the new Labour government.** In August this year, the Home Secretary announced plans to create a “surge” in removals and to increase detention capacity.³
3. **A debate on the AAR SG changes will take place in the Lords on Monday 14th October 2024,** tabled by Labour peer Baroness Lister of Burtsett. The debate will be an **opportunity for peers to press the new government on its plans regarding the AAR SG and detention more widely, and to urge the government to withdraw the AAR SG changes immediately to avoid any further worsening of detention conditions.**

¹ Brook House Inquiry (2023) *The Brook House Inquiry Report Volume 1*, 77.

² HMIP (2024) [Report on an unannounced inspection of Harmondsworth Immigration Removal Centre](#); Independent Monitoring Boards (2024) [Annual Report of the Independent Monitoring Board at Gatwick Immigration Removal Centre](#).

³ [“Home Secretary announces new measures to boost Britain’s border security”](#), *Home Office* (21 August 2024)

4. The AAR SG was introduced in 2016,⁴ after an independent review into the welfare of vulnerable people in detention led by Stephen Shaw, former prisons and probation ombudsman, with the clear presumption that individuals at risk should not be detained.⁵ 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).⁶ 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.⁷
5. 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 the risk of further Article 3 ECHR breaches. This aim has been accepted on multiple occasions by Ministers.⁸
6. 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 Commons' [Home Affairs Committee](#). Concerningly, **the previous Conservative government 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, from a Home Office contracted doctor, on external independent medical evidence documenting a detained person's vulnerability. This "second opinion policy" risks leading to a longer period in detention for the vulnerable person, while the second opinion is sought, and therefore exposes them to further deterioration in their health.
7. The changes were laid out in the *Draft revised guidance on Adults at Risk in immigration detention*, published in April 2024⁹ along with an accompanying Statutory Instrument¹⁰ and came into effect on 21 May 2024. **They are likely to result in more vulnerable people being detained, for longer periods of time, increasing their risk of suffering harm and, potentially,**

⁴ The AAR SG is brought into force via a statutory instrument under [section 59 of the Immigration Act 2016](#).

⁵ [Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons, Statement made on 14 January 2016](#), para 5

⁶ 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.

⁷ Stephen Shaw (2016) [Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office](#).

⁸ 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.

⁹ 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](#).

¹⁰ [The Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), SI 2024/573.

human rights violations. They come alongside other very worrying developments in detention. These include much wider powers to detain granted to the Home Secretary by the previous government's Illegal Migration Act 2023, which allows for individuals, including those with vulnerabilities, to be detained for longer periods under section 12 of the Act,¹¹ HM Inspectorate of Prisons finding "the worst" conditions it has ever seen in Immigration Removal Centres (IRC) during a recent visit to Harmondsworth IRC,¹² and a planned "surge" in removals and the re-opening of two extra IRCs by the new Labour government.¹³

8. **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.**¹⁴ The Inquiry found 19 incidents of credible breaches of Article 3 of the ECHR within a period of just five months.¹⁵ 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 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".¹⁶ Notably, a recent annual report by the Independent Monitoring Board for Brook House IRC has warned that many of the failings in safeguarding processes identified by the Inquiry are still continuing.¹⁷ Amongst other concerns, the Board found "degraded" safety levels at Brook House, a doubling of the use of force against detained people, a significant increase in the use of segregation, and an extension of the periods during which people are locked in their cells, unable to interact with others or engage in activities, bringing the total amount of "lock-in" time to 13 hours per day¹⁸.
9. **The revised AAR SG has been drawn to the special attention of the House by the Lords' Secondary Legislation Scrutiny Committee (SLSC).** The Committee raised concerns that the previous Government did not set out how it will monitor and report on the revised policy, despite the fact that the "possible adverse impact of detention on vulnerable people makes

¹¹ [Illegal Migration Act 2023](#), ss 11-14.

¹² HMIP (2024) [Report on an unannounced inspection of Harmondsworth Immigration Removal Centre](#), 3.

¹³ ["Home Secretary announces new measures to boost Britain's border security"](#), Home Office (21 August 2024)

¹⁴ 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 Brook House Inquiry (2023) [The Brook House Inquiry Report Volumes I-III](#).

¹⁵ 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?](#)

¹⁶ 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](#).

¹⁷ Independent Monitoring Boards (2024) [Annual Report of the Independent Monitoring Board at Gatwick Immigration Removal Centre](#), 13-15, 28.

¹⁸ See Independent Monitoring Boards (2024) [Annual Report of the Independent Monitoring Board at Gatwick Immigration Removal Centre](#), 10, 18, 22-23, and 31. At Brook House people are locked in their cells for set periods during the day and night. At night, the lock in period is from 21.00-08.00 (11 hours). During the day, lock in periods have increased from two 30 minute periods, to two hour-long periods (11.30-12.30, 16.30-17.30). See Brook House Inquiry (2023) [The Brook House Inquiry Report Volumes II](#), 56; and Independent Monitoring Boards (2024) [Annual Report of the Independent Monitoring Board at Gatwick Immigration Removal Centre](#), 31.

these changes controversial”, and that “the House and the general public will wish to be kept abreast of their effects in practice”.¹⁹

10. An initial version of the revised AAR SG was shared by the Home Office in February 2024 for consultation with a small number of specialist NGOs that work on immigration detention. Importantly, this date was before the Government had issued its response to the Brook House Inquiry report (published on 19 March 2024)²⁰, 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.
11. 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.²¹ Such an approach ran counter to the previous government’s own Consultation Principles.²²

How does the Adults at Risk in Immigration Detention Statutory Guidance work?

12. 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.

Under the policy, when an individual is identified as being at risk of harm,²³ the Home Office considers evidence in respect of the individual’s risk factors, and weighs this evidence against various immigration factors.²⁴ 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.²⁵ 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.

¹⁹ Secondary Legislation Scrutiny Committee, *25th Report of Session 2023–24*, page 5, paragraph 21.

²⁰ Home Office (2024) [Government response to the public inquiry into Brook House Immigration Removal Centre](#).

²¹ 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.

²² See Cabinet Office (2018) [Consultation Principles](#), in particular pa C, E and G.

²³ 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.

²⁴ 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.

²⁵ See Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 9.

The changes and concerns in more detail

13. The previous government made various changes to the AAR SG that reduce the protections afforded to vulnerable people in detention:

Key changes between previous and revised AAR SG, and their effect		
Previous AAR SG	Revised AAR SG	Effect
One of the main principles underpinning the policy is <i>“(t)he intention... that fewer 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> . ²⁶	This provision has been deleted.	Removing the intention to reduce the detention of vulnerable people, despite the 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.
States that <i>“(t)he clear presumption is that detention will not be appropriate if a person is considered to be ‘at risk’”</i> . ²⁷	<i>“Clear presumption...”</i> statement is deleted. States instead that <i>“(t)here is a general presumption of liberty which is strengthened for those considered vulnerable under this guidance”</i> . ²⁸	Reduces the protective nature of the policy.
States that victims of torture <i>“with a completed Medico Legal Report from reputable providers will be regarded as meeting level 3 evidence, provided the report meets the required standards”</i> . ²⁹	This provision has been deleted.	Victims of torture with a Medico Legal Report (MLR) 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.
No provisions regarding the power to seek a second opinion.	Gives the Home Office a new power to obtain a second professional opinion from a Home Office-contracted doctor ³⁰ on detained individuals who already have	A number of detrimental impacts on vulnerable detained people, including delaying their release. These are explained more fully below

²⁶ Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 6.

²⁷ Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 3.

²⁸ Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 3.

²⁹ Home Office (2022) [Adults at Risk in Immigration Detention Statutory Guidance, updated 16 March 2022](#), paragraph 11, bullet point two.

³⁰ See Home Office (2024) [Equality Impact Assessment: Adults at Risk in Immigration Detention](#) page 4.

	<p>professional independent external evidence (e.g. MLR).³¹ This second opinion is considered by the Home Office who decides if a vulnerable person should remain in detention or be released.</p> <p>It is important to note that the Home Office-contracted doctor may not necessarily have specialist expertise in documenting deterioration of people’s health in immigration detention, and in some cases may not meet the detained individual in-person.³²</p>	<p>in Obtaining a second opinion – concerns in more detail.</p>
--	--	---

14. The previous government’s justifications for making the changes were deeply concerning. It stated, for example, that reducing the number of vulnerable people in detention was “no 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”.³³
15. This signalled a dramatic shift in how the previous government viewed the detention of vulnerable people – not as a harm they were responsible for reducing, but as an inevitability. The dangers of such a shift cannot be overemphasised. It is vital that the new Labour government now reverses this position, and takes urgent action to strengthen, rather than weaken, protections for vulnerable people in detention.

Obtaining a second opinion – concerns in more detail

16. The revised AAR SG grants the Home Office officials the power “to obtain a second professional opinion” from a Home Office contracted doctor when considering if a vulnerable person should remain in detention or be released.³⁴
17. This poses risks to vulnerable people because:
- 17.1. It introduces an additional delay to the review of the person’s detention, while the second opinion is sought, thereby prolonging their period of detention.

³¹ Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 11.

³² Home Office (2024) [Guidance: Requesting a second opinion for an external medical report, updated 16 August 2024](#)

³³ See Home Office (2024) [Equality Impact Assessment: Adults at Risk in Immigration Detention](#) page 3.

³⁴ Home Office (2024) [Adults at Risk in Immigration Detention Statutory Guidance, updated 21 May 2024](#) paragraph 3.

- 17.2. 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 as to why two doctor’s findings and conclusions may differ. These include the lack of trust a detained person might have with a Home Office-contracted doctor, which may prevent full disclosure. They also include the fact that Medical Justice doctors for example, whose sole focus is to conduct MLR assessments for those in detention, follow an extremely rigorous process that complies with certain standards and have undertaken extensive specialist training.³⁵ Downgrading of external evidence is also contrary to the Istanbul Protocol.³⁶
- 17.3. It will not improve the quality of decision making, since 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.
- 17.4. 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.³⁷
18. The previous government 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 report/medico-legal report have led to the person being released from detention, thereby undermining lawful action to remove them from the UK”.³⁸
- 18.1. 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.
- 18.2. 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.³⁹ Survivors of torture and others with

³⁵ 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.

³⁶ United Nations (2022) [Istanbul Protocol](#) paragraph 309.

³⁷ 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.

³⁸ Home Office (2024) [Explanatory Memorandum to the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), paragraph 5.4.

³⁹ 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.

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.

18.3. It is as a result of the long-standing failure of detention safeguards to identify and protect vulnerable people⁴⁰ 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.

19. 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”.⁴¹

19.1. The Home Office provided further details of the data/results from this review to the Lords Secondary Legislation Scrutiny Committee (SLSC).⁴² 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.⁴³ The SLSC concluded that the Home Office’s data “does not provide compelling evidence either way on the need for the second opinion policy”.⁴⁴ 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”.⁴⁵

⁴⁰ 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.

⁴¹ Home Office (2024) [Explanatory Memorandum to the Immigration \(Guidance on Detention of Vulnerable Persons\) Regulations 2024](#), paragraph 5.4.

⁴² See Home Office (2024) [Response from the Home Office to the Secondary Legislation Scrutiny Committee](#) page 26 Q14.

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.