



Immigration Act 2016

2016 CHAPTER 19

PART 3

ENFORCEMENT

Detention and bail

59 Guidance on detention of vulnerable persons

- (1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—
 - (a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and
 - (b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.
- (2) In subsection (1) “detained” means detained under—
 - (a) the Immigration Act 1971,
 - (b) section 62 of the Nationality, Immigration and Asylum Act 2002, or
 - (c) section 36 of the UK Borders Act 2007,and “detention” is to be construed accordingly.
- (3) A person to whom guidance under this section is addressed must take the guidance into account.
- (4) Before issuing guidance under this section the Secretary of State must lay a draft of the guidance before Parliament.
- (5) Guidance under this section comes into force in accordance with regulations made by the Secretary of State.
- (6) The Secretary of State may from time to time review guidance under this section and may revise and re-issue it.

Status: This is the original version (as it was originally enacted).

(7) References in this section to guidance under this section include revised guidance.

60 Limitation on detention of pregnant women

- (1) This section applies to a woman if the Secretary of State is satisfied that the woman is pregnant.
- (2) A woman to whom this section applies may not be detained under a relevant detention power unless the Secretary of State is satisfied that—
 - (a) the woman will shortly be removed from the United Kingdom, or
 - (b) there are exceptional circumstances which justify the detention.
- (3) In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman's welfare.
- (4) A woman to whom this section applies may not be detained under a relevant detention power for a period of—
 - (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (5) In subsection (4) “the relevant time” means the later of—
 - (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention begins.
- (6) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.
- (7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.
- (8) In this section—

“relevant detention power” means a power to detain under—

 - (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation),
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

“woman” means a female of any age.
- (9) The Immigration Act 1971 is amended in accordance with subsections (10) and (11).
- (10) In paragraph 16 of Schedule 2 (detention of persons liable to examination or removal) after sub-paragraph (2A) insert—

“(2B) The detention under sub-paragraph (2) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(11) In paragraph 2 of Schedule 3 (detention or control pending deportation) after sub-paragraph (4) insert—

“(4ZA) The detention under sub-paragraph (1), (2) or (3) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(12) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) after subsection (7) insert—

“(7A) The detention under this section of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

(13) In section 36 of the UK Borders Act 2007 (detention) after subsection (2) insert—

“(2A) The detention under subsection (1) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.”

61 Immigration bail

(1) Schedule 10 (immigration bail) has effect.

(2) In that Schedule—

- (a) Part 1 contains the main provisions about immigration bail, and
- (b) Part 2 contains amendments to other Acts.

(3) A person may be released and remain on bail under paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971 even if the person can no longer be detained under a provision of the Immigration Acts to which that paragraph applies, if the person is liable to detention under such a provision.

(4) The reference in subsection (3) to paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971 includes that paragraph as applied by any other provision of the Immigration Acts.

(5) Subsections (3) and (4) are to be treated as always having had effect.

(6) Subsections (3) to (5) are repealed on the coming into force of the repeal of paragraphs 22 and 29 of Schedule 2 to the Immigration Act 1971 by paragraph 20 of Schedule 10.