EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (GUIDANCE ON DETENTION OF VULNERABLE PERSONS) REGULATIONS 2016

2016 No. 847

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument brings into effect the guidance on adults at risk in immigration detention.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 59(1) of the Immigration Act 2016 requires the Secretary of State to produce guidance detailing matters to be taken into account in determining whether a person would be particularly vulnerable to harm if that person were to be detained or to remain in immigration detention.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The guidance on adults at risk in immigration detention will provide an evidence-based means of assessing the vulnerability of persons in immigration detention. This has been developed following a review into the welfare in detention of vulnerable persons carried out by former Prisons and Probation Ombudsman Stephen Shaw ("the Shaw Report"). The "adults at risk" policy is designed to minimise the number of

vulnerable people in immigration detention whilst maintaining necessary immigration controls. It will do this by weighing immigration control considerations (such as public protection concerns) against evidence of risk. Evidence of risk can be self-declared, professionally confirmed or professionally confirmed with explicit recommendation against detention. An individual can move between these levels of evidence-based risk when new evidence of risk arises. Any new evidence of risk or immigration control considerations shall trigger a review of the detention decision previously made.

Consolidation

7.2 The question of consolidation does not arise.

8. Consultation outcome

8.1 The production of the Shaw Report involved an extensive consultation with interested parties. As well as this, when the draft guidance on adults at risk was published on the 26 May 2016, non-governmental organisations were offered the opportunity to discuss the guidance. A number of organisations, including Women For Refugee Women, Detention Action, Medical Justice, the Association of Visitors to Immigration Detainees, Freedom From Torture and the Helen Bamber Foundation, subsequently met with the Home Office to discuss the policy. The draft guidance was also laid before Parliament, in line with the section 59(4) of the Immigration Act 2016, on 21 July 2016.

9. Guidance

9.1 Users will be provided with the statutory guidance on adults at risk, as well as having access to the wider guidance on immigration detention, and will receive training on the implementation of the policy. The guidance will be published by the Stationery Office and copies may be obtained from the Stationery Office bookshops or online shop. The guidance will also be available on publications pages of the gov.uk website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The provisions of the 2016 Act and, by extension, the provisions of this instrument, will be subject to the normal post-legislative review.

13. Contact

13.1 Ian Cheeseman at Removals, Enforcement and Detention Policy (Telephone: 020 7035 1731 or email: IanR.Cheeseman@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.