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Dame Sarah Thornton DBE QPM
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25 February 2021

Dear Dame Sara Thornton DBE QPM,

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

I am writing to you to inform you that I have today laid before Parliament the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021, which I know will be of particular interest to you given your role as the UK's Independent Anti-Slavery Commissioner. The purpose of the statutory instrument (the "Regulations") is to bring people who have been granted a positive reasonable grounds decision under the National Referral Mechanism (NRM), and who are therefore regarded as being potential victims of trafficking or modern slavery, fully within the scope of the guidance on Adults at Risk in Immigration Detention ("the AAR Statutory Guidance").

The AAR Statutory Guidance sets out the principles and process for making decisions on immigration detention, for the purposes of removal, in respect of individuals who are or may be considered at risk. It specifies matters to be taken into account in determining whether a person would be particularly vulnerable to harm if that person were to be detained in immigration detention and, if so, whether that person should be detained or remain in immigration detention.

The AAR Statutory Guidance is well-established, having come into force on 12 September 2016. It enables officials to identify vulnerable adults more effectively and to make more balanced decisions against the appropriateness of their detention. There is a presumption in immigration policy that a person will not be detained. The AAR Statutory Guidance strengthens this presumption against the detention of those who are particularly vulnerable to harm in detention. However, detention may still be appropriate in an individual case when immigration control and public protection considerations outweigh the presumption of release, even for a person considered to be at risk. The AAR Statutory Guidance includes a list of matters which may make a person particularly vulnerable to harm in detention, which includes the experience of having been a victim of trafficking or modern slavery.

At present, the AAR Statutory Guidance requires any decisions as to the detention of individuals who have received a positive reasonable grounds decision under the NRM, and who are therefore considered to be potential victims of trafficking or modern slavery, to be

made with reference to the separate Modern Slavery Act 2015 Statutory Guidance. The Modern Slavery Act 2015 Statutory Guidance, in turn, states only that such individuals do not need to be released from detention where there are public order reasons not to do so, creating a policy anomaly. We believe that the AAR policy itself provides the appropriate framework for all detention considerations of potential victims of trafficking or modern slavery. The Regulations I have laid today amend this policy anomaly, and mean that detention considerations for potential victims of trafficking or modern slavery will be made using the same criteria consistent with other categories of vulnerability set out in the AAR Statutory Guidance.

Modern slavery is an abhorrent crime. The Government remains committed to identifying and protecting victims of this crime, and bringing the perpetrators to justice. However, being recognised as a victim of modern slavery does not and should not automatically result in being granted immigration status in the UK; there may be victims of modern slavery who have no lawful basis to remain here and for whom we are faced with the difficult decision of using detention as a means of securing their return. This is especially true when other options (including voluntary return, or the provision of any reintegration support) have been exhausted. Such decisions are not taken lightly.

However, particular considerations arise in the management of cases with the NRM – for example, the requirement for a recovery and reflection period in accordance with Article 13 of ECAT, which is reflected in the Modern Slavery Act 2015 Statutory Guidance. These considerations can impact on the likely removal date and the appropriateness of detention or continued detention when consideration is made under the AAR policy. To ensure caseworkers are aware of the particular circumstances and processes which apply to potential victims of trafficking or modern slavery, the AAR caseworker guidance, which supplements the AAR Statutory Guidance, will be amended to reflect these considerations. The Modern Slavery Act Statutory Guidance will also be amended to make clear that detention should be considered under the AAR policy.

Pursuant to Section 59(4) of the Immigration Act 2016, the Secretary of State is required to lay the amended AAR Statutory Guidance before Parliament. The guidance has been published by the Stationery Office and copies may be obtained from the Stationery Office bookshops or online shop. The guidance is also available on publication pages of the gov.uk website.

I of course welcome the opportunity to discuss these changes further and address any questions you might have, either in correspondence or through a meeting with myself or officials.

Yours sincerely,



Chris Philp MP
Minister for Immigration Compliance and the Courts