PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

IMMIGRATION (GUIDANCE ON DETENTION OF VULNERABLE PERSONS) REGULATIONS 2018

DETENTION CENTRE (AMENDMENT) RULES 2018

Wednesday 6 June 2018

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Sunday 10 June 2018

The Committee consisted of the following Members:

Chair: Mrs Madeleine Moon

† Argar, Edward *(Charnwood)* (Con)
Cryer, John *(Leyton and Wanstead)* (Lab)
† Hoare, Simon *(North Dorset)* (Con)
† Jones, Mr David *(Clwyd West)* (Con)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Mackinlay, Craig *(South Thanet)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Nokes, Caroline *(Minister for Immigration)*
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Ryan, Joan *(Enfield North)* (Lab)
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
† Skidmore, Chris *(Kingswood)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Smith, Jeff *(Manchester, Withington)* (Lab)

Yohanna Sallberg, *Committee Clerk*

† attended the Committee

Third Delegated Legislation Committee

Wednesday 6 June 2018

[Mrs Madeleine Moon *in the Chair*]

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018

2.30 pm

Afzal Khan (Manchester, Gorton) (Lab): I move the motion. We can all agree that vulnerable people, including torture survivors, should not be in detention.

The Chair: Order. May I stop you, Mr Khan? You need to move the motion that the Committee has considered the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018. Can you start with that, please?

Afzal Khan: I beg to move,

That the Committee has considered the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018 (S.I. 2018, No. 410).

The Chair: With this it will be convenient to consider the Detention Centre (Amendment) Rules 2018 (S.I. 2018, No. 411).

Afzal Khan: As I said, we can all agree that vulnerable people, including torture survivors, should not be in detention. The Government have recognised that in their adults at risk policy, but current protections are not working and the proposed definition of torture will make the situation worse, so we will vote against these statutory instruments today. More than a torture definition, the subject before us may seem specific and technical, but it speaks—

Paul Maynard (Blackpool North and Cleveleys) (Con): On a point of order, Mrs Moon. Has the shadow Minister actually moved the motion yet?

The Chair: Yes, we are happy that the shadow Minister has done so.

Afzal Khan: The subject before us may seem specific and technical, but it speaks to something much wider—the punitive hostile environment targeting the wrong people. The Windrush scandal brought to light shocking examples of vulnerable people getting swept up in the Government's attempts to meet their immigration target. The public were outraged and rightly worry that the Home Office has gone too far. The former and current Home Secretaries recognised that the Home Office has lost sight of the individual and needs to be more humane and fair.

The continued detention of vulnerable people is one of the most extreme instances of Home Office inhumanity and unfairness. The Government now have the chance to get ahead of another Windrush scandal. We know that, with Windrush, warnings were not heeded. I say to the Minister today: "On this issue, you have been warned." With Windrush, the Government removed legislative protections without scrutiny or debate. When the impact of those changes came to light, there was, rightly, outrage and condemnation of that approach. The current definition of torture was brought in in 2016 without proper consultation or debate. The result was the Home Office losing a legal battle with Medical Justice and detainees.

The Government have now carried out last-minute and very limited consultation. Those they did consult strongly urged the Government not to go ahead with these statutory instruments but to wait until the Shaw review has been published. However, those pleas have been ignored. I say to the Minister today that the Government must wait until the Shaw review has been published and consult on the full range of protections for vulnerable people in detention. Listen to us now and get ahead of the problem.

We object to the torture definition that is being considered today on two grounds. First, it is unworkable. It is too complex to be applied by Home Office staff or doctors. Concepts such as powerlessness are highly complex and nebulous. They require caseworkers to make a subjective judgment, and to go beyond the expertise of doctors being asked to decide these cases. Determining whether someone fits the definition would require doctors to interrogate detainees in a way that far exceeded the purpose of the safeguard. The problem with the previous definition that was being used, and the reason why the Home Office lost in court, was that caseworkers could not correctly apply the policy. They will have the same problem with these changes.

Secondly, it is unnecessary. The Government are attempting to construct a narrow definition of torture. It is not proposed that the definition will define a criminal offence; it is supposed to be an indicator of vulnerability to harm in detention, for use as part of the rule 35 process. As all colleagues will know, rule 35 is the mechanism by which vulnerable detainees can be brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. If it is implemented in its current form, even if it is applied perfectly, the definition of torture will exclude victims of severe ill treatment from the rule 35 process, subject to harm in detention. The Secretary of State has the power to create an inclusive category of people to be protected by the adults at risk policy. They should do that as part of a review of detention centre rules and adults at risk guidance.

Despite how the Government would like to spin it, this is not a narrow debate. This is not just about the definition of torture. Rule 35 and the torture definition it uses is just a small part of the wider adults at risk policy—the policy introduced after the Shaw review, which was commissioned by the Prime Minister when she was Home Secretary after serious and repeated scandals over the treatment of people in detention. It was supposed to provide better protection for vulnerable people in detention, but since its introduction we have seen the release rate of rule 35 go down dramatically.

In 2016, before the policy was introduced, 39% of those with a rule 35 report were released. In the first quarter of this year, that had fallen to 12.5%. The bar for proving torture has risen, and the burden of proof has been shifted on to the vulnerable individual. Under the old policy, victims of torture only had to show independent evidence of their history of torture to be considered unsuitable for detention. Now they must

prove that detention is likely to cause harm. It is, of course, very difficult to prove that detention will cause harm unless someone has been detained, so preventive action is almost impossible.

On top of that, under the previous policy, victims of torture could be detained only under very exceptional circumstances—that is, if they were likely to offend or cause a public safety risk. Now, however, the risk of harm in detention has to outweigh a wide range of immigration factors, such as the risk of absconding, which is widely defined and requires a person effectively to prove a negative. How can someone prove that they will not abscond?

Simon Hoare (North Dorset) (Con): I am listening with considerable care to what the hon. Gentleman is saying. He is deploying his arguments in his usual thoughtful way. Could he just clarify, if for nobody's reference other than my own, his party's position on the use of detention centres per se, as part of the arsenal of immigration control and management? What role does he see detention centres playing? Different Labour spokespeople, at different times, seem to have suggested both that such centres should exist and that they should not.

The Chair: Order. We are not here to discuss the nature of detention centres. We are here to debate the immigration guidance on the detention of vulnerable persons. I am ruling that question out of order.

Afzal Khan: Thank you, Mrs Moon. Clearly, something has gone wrong with the adults at risk policy. It may make it possible to identify vulnerable people, but that is of no value if it is harder for them then to be released. The Shaw review will re-examine the detention of vulnerable people. I urge the Government to wait until that has been published, and to consult on changes to the whole framework.

While we are in this Committee Room, the Home Secretary is in front of the Joint Committee on Human Rights inquiry on the detention of the Windrush generation. On Windrush, the Home Office failed to pick up on what was clearly a systematic and unjust situation that wrecked the lives of innocent people.

The Home Office is in court today over the right to rent scheme, which is a key tenet of the hostile environment. The Government did not properly consult on right to rent before it was rolled out. There is no evidence that it works to reduce illegal immigration. They are failing to monitor it, despite the fact that internal and independent reports have found that it results in racial and other discrimination. There is a very clear pattern here: the Government fail to consult on a policy; they ignore warnings that it will cause harm to the wrong people; they roll it out anyway; and public outrage and significant media pressure cause high-profile roll-backs, U-turns and damage limitation.

On Sunday, the Home Secretary indicated that the Government would move away from the hostile environment approach and refused to endorse the figure of 100,000. He also said that he was considering opening the tier 2 visa route. The detention of vulnerable people is one of the sharpest parts of the Home Office's inhumane and unfair approach. I hope the Minister will listen to the arguments that my colleagues and I make today and get out in front of this problem.

2.41 pm

Joan Ryan (Enfield North) (Lab): It is a pleasure to serve under your chairpersonship, Mrs Moon. It is not the first time I have done so; I think the first time was in Westminster Hall. I make no apology if I repeat some of what my hon. Friend the Member for Manchester, Gorton said from the Front Bench, because this matter is of such importance that it bears repeating.

I welcome this opportunity to scrutinise Government policy relating to the welfare of vulnerable people in immigration detention. At the risk of your ire, Mrs Moon, I will say that I do not think any of us has ever said that there is absolutely no place for immigration detention, but legislation and guidance have always referred to exceptional circumstances. Members sitting on a Committee of this importance, where we see a present danger and threat to the health and life of human beings, should know that.

The new Home Secretary, as my hon. Friend said, has pledged to re-evaluate the Government's hostile environment policy because of the Windrush scandal. I completely agree with my hon. Friend; the adults at risk policy is part of that hostile environment, and I think the court judgment demonstrated that. The issues we are discussing today should be an important part of that review, because the treatment of victims of torture and other vulnerable people in the country's immigration detention system is nothing short of scandalous. The current safeguards have failed, and the proposed amendments to the detention centre rules and the guidance on the detention of vulnerable persons set out in the statutory instruments will fail to provide adequate protection to vulnerable people.

I prayed against these statutory instruments with the support of Front-Bench colleagues to give the Government an opportunity to break with the errors of past policies. I urge the Minister to withdraw the SIs so that a proper consultation can be carried out on the proposed changes.

The Minister will know that I brought a ten-minute rule Bill before the House last December to make provision about immigration detention safeguards for victims of torture and other vulnerable people—I emphasise "other vulnerable people". I will come to that point, but I am sure the Minister understands why I emphasise it. Long-standing Home Office policy has required that vulnerable people, including those with independent evidence of torture, should not be detained unless in exceptional circumstances. In practice, however, many are.

Extensive medical evidence has shown that immigration detention can seriously harm the mental health of detainees, particularly those who have previously suffered ill treatment, and the conditions of immigration detention can be appalling. Six court cases in recent years have reported on the inhuman and degrading treatment of detainees. Surely we should all be shamed by such reports. In 2017 alone, 11 people died in custody. Detainees in immigration detention are dying at a faster rate than we have seen before. We should all be deeply concerned about that.

In 2016, the then Home Secretary—now Prime Minister—commissioned the former prisons and probation ombudsman, Stephen Shaw, to conduct a review of the welfare of vulnerable persons in detention. His damning report found that the safeguards for vulnerable

[Joan Ryan]

people were inadequate, and that detention was used too often and for too long. It is not a Labour spokesperson saying that; it is the former prisons and probation ombudsman.

However, the implementation of the Government's adults at risk policy, which incorporates the detention centre rules and guidance on the detention of vulnerable persons, failed to address Shaw's recommendations. Far from increasing protection to vulnerable detainees, it increased the risk of harm. In its initial 10 weeks of implementation, the adults at risk policy was applied incorrectly in almost 60% of 340 cases. Between January and September 2017, Freedom from Torture's medico-legal report service received 101 referrals for suspected torture survivors in immigration detention, and 14 of its treatment clients were detained between January 2016 and November 2017. Torture survivors continue to be detained.

The guidance on the detention of vulnerable persons raised the threshold for a decision not to detain by increasing the evidentiary burden on the vulnerable individual. As a result, the release rate following a rule 35 report—designed to screen torture victims out of detention—has fallen dramatically. In quarter 3 of 2016, before the policy was introduced, 39% of those with a rule 35 report were released. In quarter 1 of 2018, that number fell to 12.5%.

According to the charity Medical Justice, the Home Office policy fundamentally weakened protections for vulnerable detainees, leading to more, rather than fewer, being detained for longer. That analysis was borne out in October 2017 by a ruling of the High Court in a case brought against the Home Office by Medical Justice and seven detainees. It found that the adults at risk policy unlawfully imprisoned hundreds of victims of torture. Do any of us really want to be responsible for that? That was due to the Home Office's deeply regrettable decision to narrow the definition of torture so that it refers only to violence carried out by state actors, and excludes vulnerable survivors of non-state abuse. We can all think of organisations that might be responsible for non-state abuse. The policy also encourages states—some rogue states—to outsource torture to organisations such as ISIS, the Taliban, Hezbollah to name but a few: I am sure hon. Members can come up with examples of their own.

Let me come to some of the questions I want the Minister to answer today. They echo some of the points that my hon. Friend the Member for Manchester, Gorton made, and those that I am sure other hon. Members will make. The Government tabled these statutory instruments in direct response to the High Court's ruling. Why are the Government proceeding with introducing these statutory instruments in their current form when Medical Justice—the very organisation that brought the successful litigation against the Home Office—has said that these changes will not deliver inclusive, protective and effective detention safeguards for vulnerable people? Why are we going ahead with that? The Government should be paying due respect and attention to the assessment of experts. They should have done that some time ago and saved themselves a High Court judgment. They should most certainly be doing that now.

Instead, to quote Freedom from Torture and Medical Justice,

"The SIs were laid before Parliament following an inadequate and expedited 'consultation' with a limited group of NGOs."

They cautioned against the new torture definition, as set out in SI 2018/411, and said it was unnecessary, inappropriate and too complex for caseworkers and doctors to apply to specific cases. That is the very point made by my hon. Friend the Member for Manchester, Gorton. They said that,

"even when applied correctly, the definition will exclude a group of victims of severe ill-treatment, who do not fall within the other indicators of risk".

Their concerns have been ignored by Government.

Why does the Minister think it necessary to produce a new definition of torture when the Government were not ordered to do so by the High Court? Can the Minister explain why the Government rejected the recommendation of Freedom from Torture and Medical Justice that the current categories of torture and victims of sexual or gender-based violence be replaced with a more inclusive category, modelled on the UN High Commissioner for Refugees' detention guidelines, namely,

"victims of torture or serious physical or psychological, sexual or gender-based violence or ill treatment"?

NGOs stipulated that the new catch-all provision within the revised guidance on detention of vulnerable persons

"does not adequately mitigate the risk of excluding from the protection of the safeguard those who are known to be at risk of harm in detention".

Their concerns, again, have been ignored by Government. NGOs asked the Home Office to await the publication of Stephen Shaw's re-review into the welfare of vulnerable people in detention, in order to allow consideration of his findings before laying changes before Parliament. Their concerns have been ignored by Government, as have the concerns of the cross-party group of parliamentarians, including myself, who signed Lord Dubs' letter to the Minister in March.

I raised this matter with the Minister during our telephone call about these issues on 28 March but was not provided with a satisfactory response. I wondered whether the telephone call was lip service or a tick-box exercise in order to say that consultation had taken place. The High Court judge did not demand that the Home Office respond to the court order before Shaw published. As we now know, Shaw gave the Home Office his report a matter of some weeks before these statutory instruments were tabled in the House.

The Minister for Immigration (Caroline Nokes) *indicated dissent.*

Joan Ryan: I will refer to the timeline in a moment but I understand that the Minister had the report.

Caroline Nokes: I would like to provide reassurance on that. I received Mr Shaw's report at the end of April.

Joan Ryan: I accept what the Minister has said but I will check my notes when I sit down. If necessary, I hope she will let me come back. Whatever the case, the Minister has the Shaw re-review now. Given the considerable resource and expert input expended on the second Shaw review, I consider it deeply ill advised to proceed with

these changes before the Government, parliamentarians and expert NGOs have had time to consider Shaw's latest recommendations.

Let us be clear: as the judge did not ask for this to be done, it was always an option for the Government to go back to before the adults at risk policy and narrowing torture definition that have caused all the problems. They could have gone back to the previous policy while we look at the Shaw re-review, before laying these SIs. Why did the Minister not wait for Shaw to provide his findings before issuing these statutory instruments? It seems inexplicable, and the answers I have seen from her in no way answer that question. Can she explain why she believes that it is more sensible to consider the revised definition of torture and the amended guidance separately from the findings of the Shaw re-review? Given the relevance of Shaw's re-review to the adults at risk policy, when will his report be made publicly available? Also, given that the Home Office possesses the report, why can we not see it now?

In a written statement on the Windrush scandal, which the Home Secretary submitted to the House on 24 May, he said that it was

"fundamentally important that the lessons from this episode are learned for the future, so that this never happens again."—[*Official Report*, 24 May 2018; Vol. 641, c. 53WS.]

It is blindingly obvious that the Government are refusing to learn the important lessons on how to increase the protection of vulnerable detainees. The Government have ignored the expert advice of esteemed organisations, cross-party concerns in Parliament, expressed through questions, letters and early day motions, and a Select Committee inquiry, none of which has been properly addressed. As a consequence, here we are today, discussing statutory instruments that are not fit for purpose.

If there were any doubt about the level of concern, I am sure that the Minister is aware that early-day motion 696 was signed by 131 MPs, making it the eighth most supported early-day motion in the 2017-19 parliamentary Session. We have also had the early-day motions that have prayed against today's statutory instruments: early-day motion 1200 and early-day motion 1202, which have 115 and 111 signatures respectively. That is a significant level of concern.

As we have heard, the Joint Committee on Human Rights is considering this matter today. The Home Affairs Committee also conducted an inquiry. I have read the transcript of that, and the answers that were given were most unsatisfactory. Next Thursday, we will have a Back-Bench debate in Westminster Hall that was requested by more than 20 MPs. The issue is not going away. Nobody is satisfied; everybody is concerned. I do not understand why the Minister is not paying any attention to what Members of Parliament, Select Committees and experts are saying.

How can the Minister say with confidence that, despite all the concerns that have been raised, the statutory instruments will make the situation better, not worse, for vulnerable people in detention? Is she willing to acknowledge that the Government may be running a real risk of further court action by ploughing on regardless of criticism? I cannot believe that she wants to make the situation worse for vulnerable detainees, so I cannot understand why she will not listen to what is being said to her.

In December 2017, as part of the conclusion to a ten-minute rule Bill speech, I said:

"The UK has a proud history of providing sanctuary to people fleeing violence and persecution. We have both moral and legal obligations to victims of torture and other vulnerable people who seek asylum. The UK must set an example as a country that respects and upholds human rights commitments. The torment faced by many individuals in the Government's immigration detention system runs counter to this country's proudest traditions."—[*Official Report*, 20 December 2017; Vol. 633, c. 1073.]

We are asking for a policy devised with consideration, care and compassion for victims of torture and other vulnerable people who have come to this country seeking refuge. In order to ensure a more humane approach to immigration detention in general, I also urge the Minister to end indefinite immigration detention, and to introduce a 28-day time limit. I will not pursue that, because it is not the subject of the statutory instruments, but it is obviously a related issue. Will she therefore commit to reviewing that policy too?

The Government must learn the lessons from this episode so we do not end up back in court again. That would not be the worst outcome; the worst outcome would be to harm vulnerable individuals who are detained when they should not be. I urge the Minister to reflect on my concerns and withdraw the regulations. The Government must also engage constructively with parliamentarians and expert non-governmental organisations to ensure we have a policy that works for the good of vulnerable detainees. I look forward to the Minister's response to my speech and her answers to my questions. I thank Committee members for their patience.

3 pm

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Mrs Moon. I am grateful for the opportunity to speak. I will make just a few comments because there have already been a number of contributions. This is an important debate, and I am convinced that the issue is an important priority for the Minister. I have had experience of it as a Member of Parliament; I have been struck by the importance of having a system based on the values we believe in. Our immigration policy must be fair and humane, and we must treat people in that way when they are in the care of the state.

I want to talk about detainees with mental health issues, such as schizophrenia, because I am concerned that the current safeguards, and proposed amendments to them, do not address that issue. People who have been through difficult or distressing circumstances, have experienced war or terrorism, have been tortured or whose families have been tortured, are at risk of developing mental health conditions.

A case I have raised with the Minister previously—I am writing to her about it—will illustrate why I think the issue should be part of a wider discussion. I was made aware of this case, which is still ongoing, a few years ago. A family fled their country and sought asylum in the UK. Over the course of a few years all the family members, bar one, received asylum and went on to become British citizens. Only the youngest member of the family did not: there was no explanation of why somebody who was a child when they fled Afghanistan for their life, after being a victim of torture, would be suddenly left in limbo. He was detained a few years ago. He had already started to suffer from medical conditions

[Seema Malhotra]

such as schizophrenia, and the uncertainty about his status—he was unable to continue studying or live independently—contributed to them significantly.

It was a harrowing situation. When he was in police detention, his family was not sure where he was to start with, and he did not have his medication. His family did not know how long it would be before he was deported and where he would go. He was taken to a detention centre, where he was not given the right dosage of medication. He was expected to administer the medication himself, but was not in a position to do that. During his detention, his condition worsened considerably, not least due to the anxiety about being there, the uncertainty about where he would go next, and the strain and stress on his family caused by the possibility that he would be sent back to Afghanistan, where he did not have any family members, where he would be at risk, given what had happened before, and where he had not lived since he was a child. His medical condition meant that he needed significant intervention not just from his family but from a range of health services.

It was extremely unfortunate that that triggered some very distressing episodes. His condition is still a huge challenge for him and his family. He has never fully recovered from that episode. What struck me on my visit to the detention centre at the time when he was there was that the staff were not adequately informed or trained to deal with such a difficult and sensitive matter.

None of us wants to be in a position as politicians, whether as Ministers or the Opposition, where we preside over a system in which something like this could happen. It is not someone's fault if they have a mental health condition. I know from friends and family members that when somebody is suddenly diagnosed in their teenage years or early 20s, it can bring the family a sense of loss for the person they knew; they also have to cope, day in, day out, with the uncertainty that the condition brings and the change that can happen in a person, day to day. They can be fine one week and then an episode can trigger some sort of psychosis, and then they are out and need almost 24-hour care.

How do we address those wider issues, as part of our consideration of adults at risk as a result of what they and their families have been through? How do we make sure, humanely, that those issues are not contributed to? How should we consider in more general terms the issue of people without settled status? I would be grateful if the Minister answered those points. I thank the Committee again for the opportunity to speak.

3.6 pm

Caroline Nokes: I am grateful to the right hon. Member for Enfield North for prompting today's debate and for the opportunity to set out the Government's position on these matters. We put significant effort into encouraging individuals to comply with immigration rules and supporting those with no right to remain in the UK to leave voluntarily. Unfortunately, a minority of individuals refuse to comply with the immigration rules and detention may be a necessary and proportionate tool to enforce their return.

Detention is used sparingly and we operate a strong presumption in favour of liberty. At any one time, we are detaining only 5% of those liable to removal, and the number of individuals we detain is decreasing: in the year ending March 2018, 26,541 people entered immigration detention, a reduction of 8% on the previous year.

Each time an individual is detained, there must be a realistic prospect of removal within a reasonable timescale, and we expect those making detention decisions to consider the likely duration of detention necessary to effect removal. The vast majority are held for very short periods: some 91%, or 25,000, of those leaving detention in the year ending March 2018 were detained for less than four months, and 64% were detained for less than a month.

When it is necessary to detain people in order to remove them, we have a number of safeguards in place, which are a key component of the adults at risk in immigration detention policy. The adults at risk policy was implemented in September 2016 and was a significant part of our response to Stephen Shaw's review of the welfare of vulnerable people in immigration detention. Under the policy, vulnerable people are detained or their detention is continued only when the immigration considerations in their particular case outweigh the evidence of vulnerability. Decisions are made on the basis of all available evidence. Cases are reviewed regularly, as well as on an ad hoc basis whenever new evidence comes to light in respect of removability and vulnerability.

That brings me to the specifics of the statutory instruments, as they relate directly to the adults at risk policy. The main purpose of the statutory instruments is to amend the definition of torture for the purposes of immigration detention. Torture is one of the 10 indicators of risk in the adults at risk policy, in addition to a further safeguarding provision for any other vulnerability.

I do not dispute the assumption that individuals who have been tortured—along with all others who are vulnerable under the terms of the adults at risk policy—should be considered to be at particular risk of harm if detained, but that does not mean that such individuals should never be detained. The adults at risk policy represents a proportionate and rational way of carefully balancing the vulnerability considerations against immigration considerations. It aims to ensure that when the most vulnerable are detained, it is only for very short periods of time or where there are overriding public protection concerns.

The way in which torture is defined in the context of immigration detention has a long history. The definition in use, the so-called EO definition, was established in case law in 2013. It is a broad definition, which limits the ability of the Home Office and of immigration removal centre health services to focus resources on the most vulnerable. The Home Office therefore introduced the UNCAT definition of torture into the adults at risk policy. As we have heard this afternoon, the High Court has since declared that definition to be unlawful when used for the purposes of immigration detention. We of course accept the High Court's view.

Contrary to what some have argued, however, the court also declared that the adults at risk policy was inherently sound. It took issue with the EO definition of torture, believing that it did not get to the heart of the imperative of defining torture in terms of the impacts of acts of harm that would be triggered by immigration detention. The court helpfully set out its view on what

a rational definition of torture for the purposes of immigration detention should look like, and we used that as the basis of the definition set out in the statutory instruments.

The court also said that the broad safeguarding provision was not effective and that guidance needed to be amended. The SI bringing into force the revised statutory guidance meets that requirement.

Joan Ryan: First, the Minister is correct—I am saying so for the record—about when she received the Shaw re-review. However, she laid the statutory instruments on 27 March, to come into effect on 2 July, so she will have had the Shaw re-review for a couple of months before they come into effect. It does not seem reasonable not to have waited so that we could have taken that important re-review into account.

Secondly, I want to come back on the torture definition. Does the Minister agree that the judge did not order the Home Office to maintain a torture definition? His commentary on the definition was caveated with

"if that indicator is to be retained".

The mechanism should have a very low threshold for identifying those vulnerable to harm in detention—much lower than that setting out culpability under international law. That does not seem to be where we are. This narrow approach risks excluding others who are no less highly vulnerable and who have suffered serious ill-treatment.

Caroline Nokes: I thank the right hon. Lady for putting on the record that I received Mr Shaw's re-review at the end of April this year. She will be conscious that we have significant parliamentary timetable issues to get through, not least the summer recess. The High Court judgment was delivered on 10 October last year with an emphasis on timeliness. When I spoke to the right hon. Lady and before we laid the SIs, I did not know exactly when the Shaw re-review would arrive. I was expecting it imminently but, in the event, it came significantly after the date that I had expected it—by a couple of weeks. I was anxious that we should not be in the situation, 12 months on from the judgment, of not having responded and of still not having a new definition on the statute book.

The right hon. Lady spoke about whether there is a need for a definition of torture or, indeed, the other aspects of vulnerability that make up part of our adults at risk policy. However, there are 10 separate elements of indicators of vulnerability, of which torture is only one. We were conscious of the potential for some vulnerability that we had not previously considered, so we included a catch-all category at the end to enable different types of vulnerability that had perhaps had been missed to be considered by health professionals working in the detention estate when considering people's suitability—or, indeed, by our detention gatekeepers.

Joan Ryan: I thank the Minister for being so generous in giving way. I agree that a catch-all is vital to ensure that unforeseen vulnerabilities can be picked up, but it is not an adequate substitute for known categories of vulnerability. Therefore, will the Home Office merge the existing categories of sexual violence and torture into a more comprehensive category modelled on the UNHCR detention guidelines, to ensure that vulnerable people are identified?

Furthermore, expert non-governmental organisations have said that the catch-all is too vague. The idea that the list is not exhaustive is essentially what the catch-all is, which leaves caseworkers in a difficult position; vulnerable people who should not be detained will be detained.

Caroline Nokes: I thank the right hon. Lady for her view. I disagree with her; it is important to have a catch-all that enables other categories to come forward. I do not want to make our definitions and guidance so restrictive that people may fall through the cracks. I am sure we all agree that that is absolutely the worst thing that could happen.

The view was put forward, as the right hon. Lady said, that the Home Office should not have laid these statutory instruments until Stephen Shaw's follow-up report is published. I do not accept that; the changes we seek to make through the statutory instruments are to implement the court's judgment within the reasonable timescale set by the court. The right hon. Lady will have read the judgment; specifically, paragraphs 172 to 177 cover these points in some detail. The Government have been correct to take the necessary action to put in place the new definition of torture within a reasonable timeframe. It is also right that we have made the important amendment to the statutory guidance, to put it beyond doubt that the list of 10 indicators is not exhaustive.

Implementing the court's judgment is just the first step, and it is the right thing to do now. Stephen Shaw has conducted a wide-ranging re-review and we will consider carefully his recommendations, which have been relatively recently received and will be published, along with our response, towards the end of this month. We will take the recommendations into account and review the operation of the rule 35 reporting mechanism, as part of the wider review of the detention centre rules later this year. That exercise will be subject to consultation.

Until the report is formally published, I will not be in a position to disclose its contents. I can, though, say that my officials informed Mr Shaw's team of proposals to implement the new definition of torture in parallel with their engagement with NGOs. I have explained to some hon. Members already that we will most certainly take Mr Shaw's views into account when we review the detention centre rules later in the year. The imperative at present is to ensure that, in the light of the court's very clearly expressed view, the correct definition of torture is applied without undue delay.

I turn to some of the comments made by right hon. and hon. Members. Please be assured that I have heeded the warning of Mr Shaw's review and, if it can be regarded as such, the warning in paragraphs 172 to 177 of Mr Justice Ouseley's judgment of 10 October. As I said, the review of the detention centre rules will come later this year. Adults at risk did form part of Shaw's review, which will be published at the end of this month. That gives us the opportunity to carefully consider and establish what enhancements can be made to that policy. I regard it as a work in progress and something that we need to make sure we make necessary improvements to, as required.

The right hon. Member for Enfield North mentioned timeliness; the High Court had the benefit of the experts brought before it by Medical Justice. I am sure that she has read the judge's comments, but I remind her that we

[Caroline Nokes]

had already invited Mr Shaw to carry out his re-review. I feel that there is a time imperative: we should not have allowed parliamentary recesses and delay to mean that we did not have a better definition 12 months after that judgment. We are considering the adults at risk policy in the round and we will publish Shaw's report and our response later this month.

The right hon. Lady concluded with a comment on the 28-day time limit, which, although not strictly in the terms of these regulations, I regard as an arbitrary time limit that potentially runs the risk of those with no right to be here deliberately frustrating their removal, simply to meet the date at which they might be released.

The hon. Member for Feltham and Heston made some important points about mental health and the welfare of detainees. I take on board her comments about those with serious mental health conditions. We have worked very hard to introduce the mental health action plan in 2016—it was developed by the Home Office, NHS England and the Department of Health and Social Care, following research by the Centre for Mental Health.

I am firmly of the view that the provision of mental health care in IRCs is crucial, but it is a matter for NHS England. We must, of course, remember that those with serious mental health conditions are perhaps best looked after under section 48 of the Mental Health Act 1983 and in hospital.

It has been suggested this afternoon that caseworkers and doctors would find the definition of torture set out in the statutory instruments to be too complicated. I do not accept that. As I have said, that is based on guidance provided by the court and has a number of key elements that must be met, but it is not inherently complex. We are in the process of producing detailed guidance for caseworkers who will be making decisions, and have engaged with a range of non-governmental organisations on the guidance.

My officials are currently also involved in running out an extensive training programme for caseworkers and healthcare professionals working in immigration removal centres and short-term holding facilities.

Joan Ryan: My understanding is that there was confusion when many of the caseworkers in training were questioned afterwards about the sample cases put before them on whether a person would be classed as vulnerable, should be safeguarded or not be detained. It was very difficult for them to identify who should be detained and who should not. Therefore, there is reason for concern. Medical Justice says that there will be problems applying this definition for medico-legal reports. Why are we not listening to what it says?

Caroline Nokes: We invited NGOs to attend the early sessions as observers and provide feedback. It is important that we evaluate carefully the success of training as part of any process. As I said, we are still in the process of rolling out guidance and the training programme. To date, we are about one fifth of the way through the training programme. It is important that we continue to learn the lessons.

I believe that these are important statutory instruments. As I explained to right hon. and hon. Members, the court clearly indicated that our previous definition was not adequate, so I have no hesitation in commending them to the Committee.

3.23 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Mrs Moon. I have no hesitation in joining the opposition to these two draft statutory instruments. I thank the right hon. Member for Enfield North for kicking off the process of challenging them and for securing a debate on the detention of vulnerable migrants next week.

My party's position is that the large-scale, routine detention of thousands of people, including vulnerable people, in what are essentially private prisons, for indeterminate periods, simply at the discretion of immigration officers, is a scandal. It is a stain on our democracy and an affront to the rule of law.

On the matter of scale, which the Minister always attempts to play down, 26,000 individuals each year—3,000 at any one time—is not something to celebrate. That is an horrendous number and is massive in scale next to comparable countries. It is clear that we are detaining many people whose removal is not imminent—around half are released back into the public.

Detention in those places is a harmful experience for anyone. By its very nature it makes detainees vulnerable. That vulnerability can be exacerbated depending on personal, social and environmental factors. Vulnerability will vary over the period of detention. Stephen Shaw's first review states:

"Detention in and of itself undermines welfare and contributes to vulnerability."

As we have heard, it also has atrocious implications for mental health. Nevertheless, the UK continues to detain vulnerable people on a huge scale, including too often people with serious mental illnesses. The detention of people with serious mental illnesses was described by Mr Shaw in his first report as

"an affront to civilised values".

Torture survivors and victims of serious violence and ill-treatment are particularly vulnerable to harm. Contrary to what the Government claim, organisations such as Freedom from Torture and Medical Justice are concerned that the specific changes proposed in these SIs will undermine the safeguarding of victims of torture and ill-treatment. That is because the changes place an impossible task on detention centre medical practitioners, with a definition of torture that is overly complex because it introduces a concept of powerlessness that has dubious links to vulnerability to harm and will require detailed and excessive interrogation of a vulnerable person.

Victims of severe ill-treatment and violence risk being excluded from the protections offered in the detention centre rules and guidance. The changes also increase the evidentiary burden on torture survivors. No longer will the guidance simply require independent evidence of torture to justify exclusion from detention, but specific evidence will be needed that detention is likely to cause harm. That requires to be seen alongside the fact that the guidance now includes a broader range of immigration factors that can justify detention, even of torture survivors, which explains the plummet in the number of releases following rule 35 reports that we have heard about.

Medical Justice and Freedom from Torture propose that we withdraw these statutory instruments until we see the Shaw review. The arguments for not waiting for Shaw were unconvincing. Going further, they argue that there is no need for a specific definition of torture and that the category of vulnerability should be broadened to include other victims of serious violence and ill-treatment, as recommended in the UNHCR detention guidelines. There should be a presumption, not a burden of proof, that such individuals are vulnerable to harm, and we should make their detention truly exceptional rather than having the Home Office with a further list of excuses for keeping them in detention. That is a sensible way ahead on these statutory instruments.

3.26 pm

Afzal Khan: I will be brief. The Opposition believe that these measures are not an appropriate way forward. We know that the current protections are not working and that the proposed definition of torture will make the situation worse. The Minister made an issue about the court order, but that did not demand that the Home Office responds before the Shaw report is published. She has the Shaw report. A better way forward would be for her to publish it and consult on the full range of protections for vulnerable people. In view of that, we will vote against the measures.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Argar, Edward	Morris, James
Hoare, Simon	Nokes, rh Caroline
Jones, rh Mr David	Shelbrooke, Alec
Mackinlay, Craig	Skidmore, Chris
Maynard, Paul	

NOES

Khan, Afzal	Ryan, rh Joan
McDonald, Stuart C.	Smith, Eleanor
Malhotra, Seema	
Rimmer, Ms Marie	Smith, Jeff

Question accordingly agreed to.

Resolved,

That the Committee has considered the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018 (S.I. 2018, No. 410).

DETENTION CENTRE (AMENDMENT) RULES 2018

Motion made, and Question put,

That the Committee has considered the Detention Centre (Amendment) Rules 2018 (S.I. 2018, No. 411).—*(Afzal Khan.)*

The Committee divided: Ayes 9, Noes 7.

Division No. 2]

AYES

Argar, Edward	Morris, James
Hoare, Simon	Nokes, rh Caroline
Jones, rh Mr David	Shelbrooke, Alec
Mackinlay, Craig	Skidmore, Chris
Maynard, Paul	

NOES

Khan, Afzal	Ryan, rh Joan
McDonald, Stuart C.	Smith, Eleanor
Malhotra, Seema	
Rimmer, Ms Marie	Smith, Jeff

Question accordingly agreed to.

3.30 pm

Committee rose.