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Home Affairs Select Committee
House of Commons
LONDON SW1A 0AA

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USE OF IMMIGRATION DETENTION: THE GOVERNMENT'S STRATEGIC APPROACH

I am writing to update you on the Government's strategic approach to the use of immigration detention. The letter has also been issued to the Joint Committee on Human Rights in advance of the Committee session on 5 December.

Context and purpose

Across the immigration system the Government has a wide range of potential interventions at its disposal to deter and tackle immigration abuse, with immigration detention acting as one tool in the wider system. Our priority will always be those tools that are the most effective upstream, promote compliance with our laws and individuals' conditions of entry to the UK, encourage voluntary return where appropriate, and protect both the vulnerable and the public.

They include careful consideration of visa applications; checks on those travelling to the UK, and at the physical border; the compliant environment legislation to ensure fairness for migrants, employers and others who play by the rules, and reduce the incentives to abuse the system and exploit the vulnerable for criminal gain; engagement with communities and individuals to support voluntary return; and reporting arrangements that allow 95% of those liable to removal at any one time to be managed in the community while their voluntary return is facilitated, or they regularise themselves. Almost all asylum claims are processed in the community, except where individuals have claimed asylum after being detained, or are detained for public protection reasons. Wherever possible, the departure of foreign national offenders is secured by the end of their prison sentence.

Given this context, the Government is clear that the role played by detention and enforced removal is necessary but strictly limited. Such sanctions must always be available to uphold the law, including where claims to remain in the UK are rejected by the courts. Detention for brief periods may be necessary to confirm the identity and nationality of clandestine entrants. But the essential focus should be on the small minority who fail to leave voluntarily, and for whom we are confident that no other approaches to leaving the

UK will work; or where the risk of absconding, or the need for public protection, are material considerations. Annex A offers six recent, anonymised case studies of individuals for whom detention to secure removal was judged necessary and appropriate, and the relevant safeguards applied.

We recognise that the deprivation of liberty for immigration purposes is a significant use of state power, with life-changing implications for those involved. The welfare of detainees is an absolute priority, and the use of detention should always be open to scrutiny and reform. It was this Government that commissioned Stephen Shaw to conduct his independent review of vulnerability in detention; responded with pace and determination to his 2016 findings; invited him to return last winter to take stock of progress; and published both his reports in full.

Mr Shaw's second review was positive about our work since 2016 and the improvements he found, but was clear – and we agree – that there is more to do. In his Oral Statement on 24 July the Home Secretary welcomed the broad thrust of Mr Shaw's conclusions but went further, setting out a clear strategic direction for the future use of immigration detention and a wide range of ambitious reforms to underpin this. Over time we expect these reforms to deliver a reduction both in the numbers of those detained and their length of stay before removal, and the improved welfare of detainees; further strengthening a culture that maintains the highest standards of professionalism, and is always striving to be fair and humane.

Priorities for further reform

Given these ambitions, I see four broad strategic priorities for the years ahead.

Our first priority must be to keep the use of immigration detention to a minimum. The statistics published last week show there were 41% fewer individuals in detention in September 2018 than a year earlier, the lowest since comparable data has been available. We are placing a stronger emphasis across the immigration system on voluntary return, and setting in hand the systematic investigation of potential alternatives to detention, particularly for the most vulnerable, and the most complex cases.

The Government is clear that those who are at risk of detention and enforced removal should always be given the opportunity to consider leaving voluntarily and with dignity, and offered financial and other support for their travel and reintegration where appropriate. In our reporting centres, for example, technology changes and training are giving staff the time and skills to have constructive discussions with reportees about these issues, and to identify vulnerabilities more effectively. Local immigration enforcement teams are spending more time with diaspora communities and other partners, building trust and encouraging more open and supportive discussions about options for voluntary return. A strengthened Voluntary Returns Service stands ready to take referrals and pursue the practicalities.

On alternatives to detention, we have been working closely with the United Nations High Commissioner on Refugees and community and faith groups to explore how we can achieve better outcomes for migrants through the faster resolution of their cases, whether that results in a grant of leave to remain or their departure from the UK. As a result of those discussions we are launching a pilot scheme this week, led by Action Foundation in Newcastle, to provide alternative arrangements for a number of vulnerable women who are already in detention, or are at risk of being detained, in Yarl's Wood Immigration Removal Centre.

The pilot will operate on a voluntary basis, and last for two years, as participants move through to case resolution and are replaced. It will include women of varying ages, nationalities and immigration histories to give us the best possible insights. The aim is to provide the reliable information, community support and personal stability that participants need to make appropriate decisions about their future. A key measure of success will be whether we can achieve the same or better outcomes, in terms of case resolution, than if we had detained them. We are already working towards further pilots that can test different models of support with a wide range of migrants, men and women, taking account of international practice where relevant to the UK context. I look forward to making the most of the findings from these pilots.

Our second priority is to ensure that decisions to detain, and subsequent decisions to maintain detention or to release, are well made, with more systematic safeguards and support for the vulnerable. Right across the immigration system we are giving individuals more opportunities to provide further evidence before key decisions are made, and decision-makers more support and advice.

In the specific context of immigration detention, the adults at risk policy implemented in September 2016 provides a valuable framework for identifying vulnerable adults more effectively, and making better balanced decisions about their detention. We continue to strengthen that framework, with reforms in hand to ensure that the most vulnerable and complex cases get the attention they need, and to improve the consideration of "rule 35" reports from doctors in Immigration Removal Centres, while avoiding abuse of these processes. There will always be a balance to be struck between issues of vulnerability and immigration and public protection considerations, but over time I want to see material reductions in the number of vulnerable people detained.

The Detention Gatekeeper system we also put in place in autumn 2016 is already improving the quality and consistency of initial decisions to detain. The Gatekeepers make judgements independently of the referring team or caseworker that all the relevant factors required to make lawful decisions to detain have been taken into account, including the adults at risk considerations, and that alternatives to detention, including voluntary return, have been fully explored. They have rejected more than 2,300 cases referred to them since their introduction. We have strengthened the internal panels that challenge progress on detainees' cases and make recommendations on their continuing detention or release, and are considering how best to introduce an element independent of the Home Office into the discussions on those who have spent longest in detention.

By the end of this financial year dedicated teams of Home Office staff will have been established in every Immigration Removal Centre, ensuring that induction is done well, and engaging with people in detention and their caseworkers to pick up and resolve concerns quickly. We are reviewing how time limits on detention work in those countries that have them, and how these relate to any other protections within their systems, to create a better-informed debate, and will consider this issue further in due course.

All these safeguards are, of course, additional to the legal framework within which immigration detention operates. By law, we do not detain unaccompanied children in Immigration Removal Centres, and detain families with children and pregnant women only in tightly circumscribed circumstances. For any individual, their initial and continuing detention is only lawful if there is a realistic prospect of their removal within a reasonable timeframe. The Immigration Act 2016 introduced the concept of immigration bail, creating a single, far clearer system. People in detention can go to the courts at any time to apply for release on immigration bail. For all detainees except foreign national offenders there is also an automatic referral to the courts for a bail hearing after four months in detention, or

their most recent application, and every four months thereafter. We are working with the Ministry of Justice to pilot in the new year an additional automatic referral after two months in detention.

The overwhelming majority of those who left detention in the year ending September 2018 - 91% - were detained for four months or less, and nearly two thirds - 66% - for less than a month. Almost all of those detained for more than six months, however, were foreign national offenders (FNOs), where the balance of risk is different. FNOs present some of the most challenging decisions we face, weighing up public protection issues, the prospects of removal and their welfare. The majority of FNOs released from detention are released following a decision by the courts. But the numbers released by the Home Office itself have increased in the recent past as we have struck a better balance between these factors. At the same time, 2016/17 and 2017/18 saw the highest levels ever of FNO removals.

Annex B illustrates in more detail the various points in the process where the safeguards noted here are applied.

The Government's third priority is to secure greater transparency around immigration detention. We all have a part to play in tackling the myths and misunderstandings about some of the issues here. The Home Office has now taken the important step of publishing more data on deaths in and escapes from detention, on "rule 35" matters and on pregnant women in detention. We will continue to review what more we could do to provide a more complete and coherent account of immigration detention for Parliamentarians, the public and others. I want to ensure that all the reforms summarised in this note are evaluated carefully, and to that end I welcome the preparations the Independent Chief Inspector of Borders and Immigration is already making for the first of the annual inspections we commissioned from him on whether and how the adults at risk policy is making a difference.

The fourth priority is to ensure that everyone in detention is treated with the dignity they deserve, in an estate fit for purpose. In my visits to Immigration Removal Centres (IRCs) I have seen much high quality provision and many committed, caring staff, but there is more to be done. At its simplest, immediately after the Home Secretary's Statement in July we ended the practice in some IRCs of placing three detainees in rooms originally designed for two. We are now reviewing the standards for all rooms in the detention estate with a view to removing further unsuitable accommodation, and working to modernise toilet facilities. We are piloting the use of Skype and similar platforms so that people in detention can contact their families overseas more easily.

More fundamentally, however, the Government is clear that well led and trained IRC staff in appropriate numbers are essential to detainee welfare. We are working closely on this with all the providers who manage our IRCs. Our requirements in the coming months for the new contract to manage the two IRCs at Gatwick from May 2020, and the opportunities offered by the need to replace the two Heathrow IRCs when the third runway is built, will set high expectations for the quality of the management and staffing in these key elements of the estate.

This work is complemented by significant progress in the strategic management of the detention estate itself. Following years of haphazard and reactive growth under previous administrations the Government has taken, and continues to take, a systematic approach to the modernisation and rationalisation of the estate, both to improve further the quality of the provision and to ensure that we have the geographical footprint and resilience required to meet our future needs.

Annex C sets this history out. As well as significant investment in improved facilities, including the healthcare provision, we have focused the estate more tightly around the major airports at Heathrow and Gatwick, while retaining the essential national footprint. We have closed IRCs that were not fit for purpose physically or geographically: Dover and Haslar IRCs in April and October 2015 respectively, reducing the size of the estate by 600 beds, and The Verne IRC in Dorset in January this year, cutting 580 more. Last month we announced the closure of Campsfield House IRC in Oxfordshire by the end of the current contract period in May 2019, reducing the estate by a further 280 beds. Following the review recommended by Stephen Shaw we also closed the Cedars facility, which provided pre-departure accommodation for families with children, in October 2016, transferring this provision to a new facility at Gatwick to secure better value for money. We have no current plans to close further IRCs, and with significantly fewer detainees than in the past the remaining estate is of sufficient size to ensure that all those detained can be accommodated with appropriate attention to their safety and welfare.

As a result of this restructuring, and the ongoing removal of unsuitable and unnecessary beds across the estate, by next summer the detention estate will be of significantly higher quality and almost 40% smaller than four years ago.

As we make progress with the reforms I have summarised in this note we will continue to keep the use of detention, and the implications for the detention estate as a whole, under review.



Rt Hon Caroline Nokes MP
Minister of State for Immigration

ANNEX A

Case 1 - Case Summary

Name: Mr H

Nationality: Algeria

Age: 47

Case type: Foreign National Offender

Mr H entered the UK clandestinely in October 1995 as a stowaway on a ship and made a claim for asylum when he was encountered by Immigration Officers. Mr H's asylum claim was refused in June 1996, as were his applications for Leave to Remain (LTR) in 1996 and 1999. In September 2000 Mr H was granted 6 months LTR as the spouse of an EEA national. In 2008, Mr H was served papers as an overstayer having separated from his spouse. Between November 1998 and October 2015 Mr. H amassed 17 convictions for 40 offences, including theft and burglary. In August 2012 he was sentenced to 31 months in prison for assault and attempted robbery and was served with a Deportation Order in February 2013.

Mr H was detained under immigration powers on two occasions between 2012 and 2016, the first of which ended as he was called to prison to serve a custodial sentence and the second was ended due to lengthy appeal timescales, following a period in which Mr H had been detained under the Mental Health Act.

Mr H was detained on 15 January 2018 for his return to Algeria. He was considered to engage level 2 of the adults at risk in immigration detention policy due to prescribed medication for a mental health condition. This was carefully considered and balanced against immigration factors and the imminence of removal. Detention was maintained as removal was set and therefore imminent and consideration was also given to his illegal entry into the UK, previous absconding and the criminality. It was considered that he was unlikely to be removed unless he was detained. Mr H disrupted his deportation to Algeria on 20 January 2018 by appearing to swallow a razor blade, with the medic advising the removal should not continue.

Mr H again interrupted his deportation on 21 April 2018 when he was verbally and physically disruptive, shouting obscenities and attempting to head-butt an escort; Mr H was consequently offloaded by the captain.

Mr H disrupted his deportation on a further occasion on 10 March 2018 by claiming to have a blade in his mouth. Although this claim turned out to be false, upon boarding the aircraft he was screaming and had to be carried from the van and up the stairs and into his seat. This led to the captain advising he would be offloaded.

Mr H again refused to board another flight on 12 May 2018 and was offloaded by the captain after having had to be restrained with the use of a waist restraint belt.

Mr H was successfully deported from the United Kingdom on 23 June 2018.

Case 2 – Case Summary

Name: Ms D

Nationality: Portugal

Age: 47

Case type: Foreign National Offender

Ms D arrived in the UK at some point in 2011. Between 19 March 2014 and 22 May 2014, she received 2 convictions for 4 offences, being convicted of 2 counts of assault/ill-treatment/neglect/abandoning a child/young person to cause unnecessary suffering/injury and failing to surrender to custody at the appointed time. On 27 March 2018, Ms D was served a Deportation Order.

A valid ID card was available for Ms D's return to Portugal. Ms D was detained in Yarl's Wood IRC on 28 March 2018 for her return to Portugal. On 15 May 2018 Ms D stated numerous times that she would not comply with her return. Ms D was placed in a waist restraint belt and handcuffs during transportation to the airport due to disruptive behaviour and screaming. As a result, the Captain refused to carry Ms D.

On 15 June 2018 a further attempt was made to remove Ms D, who was again offloaded by the Captain. Ms D became non-compliant and disruptive at Yarl's Wood IRC, resulting in the use of a waist restraint belt. At the airport the Captain was briefed and spoke to Ms D who threatened to disrupt the flight therefore the Captain refused boarding.

On 06 August 2018 Ms D was offloaded by the Captain after becoming very loud and verbally disruptive, scaring a family with two children sitting two rows in front of her.

On 13 August Ms D was extremely disruptive on her removal and on arrival in Paris, she began to bite her lip and spit blood at escorts and the Police Aux Frontières (French border police). Despite missing their onward flight, a later flight was booked, and Ms D was returned to Portugal.

Case 3 – Case Summary

Name: Mr B

Nationality: India

Age: 23

Case type: Detained Asylum Casework

Mr B was granted Entry Clearance to the United Kingdom (UK) valid until 30 August 2013. He was encountered on an enforcement visit where he was found working in breach of his employment restrictions. He was required to report and failed to depart voluntarily.

Mr B was detained on reporting on 21 May 2013 for his scheduled removal on 31 May 2013. However, this was unsuccessful as Mr B refused to leave the IRC for his flight. He was granted Immigration Judge Bail 9 days later. On 15 June 2013, Immigration Officers attended Mr B's address and served him with self-check in removal directions by hand. Mr B failed to appear for self-check in and removal failed. Mr B failed to make any further contact with the Home Office.

Mr B was next encountered on 21 May 2018 working illegally. He was detained, and removal set for 1 June 2018. On 31 May 2018, Mr B lodged an Article 8 claim and removal was deferred. This application was concluded within 5 days and further removal directions set. Mr B then claimed asylum on 12 June 2018, deferring removal and was accepted for consideration by Detained Asylum Casework (DAC). Mr B withdrew his asylum claim after interview and requested to purchase his own ticket to depart to India. Mr B's return ticket to India was scheduled on 28 July 2018. However, on 19 July 2018, Mr B requested that his asylum claim was re-instated. This was considered as further submissions, refused with no right of appeal and removal directions were maintained. Mr B was considered to satisfy level one of the Adult at Risk in immigration detention policy as he informed the Home Office that he was feeling depressed. His detention was maintained as it was considered the immigration factors, including working illegally, absconding and failing to depart voluntarily outweighed his vulnerability and that, pending consideration of the asylum claim within DAC, it was considered that he was unlikely to be removed unless he was detained. Mr B's removal failed as he refused to leave the IRC. Shortly after, a Rule 35 (3) report was received, raising concerns that Mr B may have been a victim of torture. This was accepted as professional evidence and Mr B was considered to engage level 2 of the Adults at Risk policy. Detention was maintained as it was considered that the immigration factors and realistic prospect of removal outweighed the vulnerabilities highlighted in the report. Further removal directions were scheduled for 15 August 2018.

Before removal, Mr B submitted a Judicial Review against the consideration of his asylum claim and removal was deferred. Shortly after, a Medico-Legal Report was received confirming a diagnosis of PTSD and Depressive Disorder and a clinical opinion that detention was worsening his symptoms. Mr B was then considered to satisfy Level 3 of the adults at risk policy. As removal was no longer scheduled for a date in the

immediate future, Mr B's known vulnerabilities were considered to outweigh the immigration factors and a decision was taken to release him from detention on 14 August 2018.

Since his release, Mr B has applied for Leave to Remain on a 10-year route based on family/private life in the UK, which is still pending. The Judicial Review was refused on 8 November 2018.

Case 4 – Case Summary

Name: Mr A

Nationality: Morocco

Age: 31

Case type: Foreign National Offender

Mr A entered the UK clandestinely on an unknown date. He was encountered on 11 January 2009 claiming to be a Palestinian national. He was arrested on suspicion of illegal entry, released on reporting and subsequently absconded. Between 2010 and 2015 he amassed 14 convictions for 24 offences including burglary, theft and violence.

He was served with a decision to make a Deportation Order in June 2014 and was appeal rights exhausted by December 2014. In May 2015 the Deportation Order was signed, and Mr A was detained. Mr A used several aliases, however, during an interview in October 2015, he revealed his true identity as a Moroccan national. Whilst in detention Mr A was disruptive, abusive and threatening to IRC staff and healthcare, and was involved in numerous altercations with other detainees. Mr A was granted Immigration Judge Bail in November 2016, and subsequently absconded prior to tagging.

On 8 May 2017 an Emergency Travel Document (ETD) was issued, and Mr A was located and detained on 09 May 2017. On detention he was assessed as being at AAR level 2, as a heroin user who may suffer from withdrawal. He was assessed by the Force Medical Examiner as showing no signs of withdrawal. His negative immigration factors including clandestine entry, absconding, deception and criminality were considered to outweigh his vulnerability and detention was maintained.

He again displayed the same disruptive behaviour in the IRC. Removal directions were set in July 2017. However, these were deferred due to a late asylum claim, which was refused and certified on 13 November 2017. Deportation failed several times due to operational issues including medic availability and an overbooked flight. Deportation was deferred in June 2018 after Mr A was disruptive on the day of removal producing razor blades in his mouth.

He was deported from the United Kingdom on 30 July 2018.

Case 5 – Case Summary

Name: Ms J

Nationality: Gambian

Age: 34

Case type: Non FNO

Ms J arrived in the UK in February 2004 with a valid visit visa and claimed asylum at Port. Her asylum claim was refused, and her appeal dismissed by the end of 2004. In 2005 Ms J was noted as an absconder having failed to report. Nothing further was heard for 8 years. However, in 2013 Ms J lodged a fresh claim and was given new appeal rights. All of her appeals were dismissed, and she became appeal rights exhausted in December 2014. Another set of further submissions based on Article 8 grounds were received and refused in 2016. On 19 October 2017 Ms J was encountered working illegally and detained pending removal using a valid ETD. Removal was set for 17 November 2017. However, this failed as Ms J was disruptive and refused to leave the centre. A successful escorted removal took place on 12 December 2017. It is worth noting that Ms J's claimed partner made serious threats against Home Office staff members.

Case 6 – Case Summary

Name: Ms A

Nationality: Uganda

Age: 41

Case type: Non FNO

Ms A arrived in the United Kingdom in September 2008 on a student visa, expiring in 2010. She successfully extended her leave in the UK for a further 2 years until January 2012. Ms A submitted a further leave to remain application as a Tier 1 student in September 2011. This was refused with no right of appeal whilst her visa was still valid.

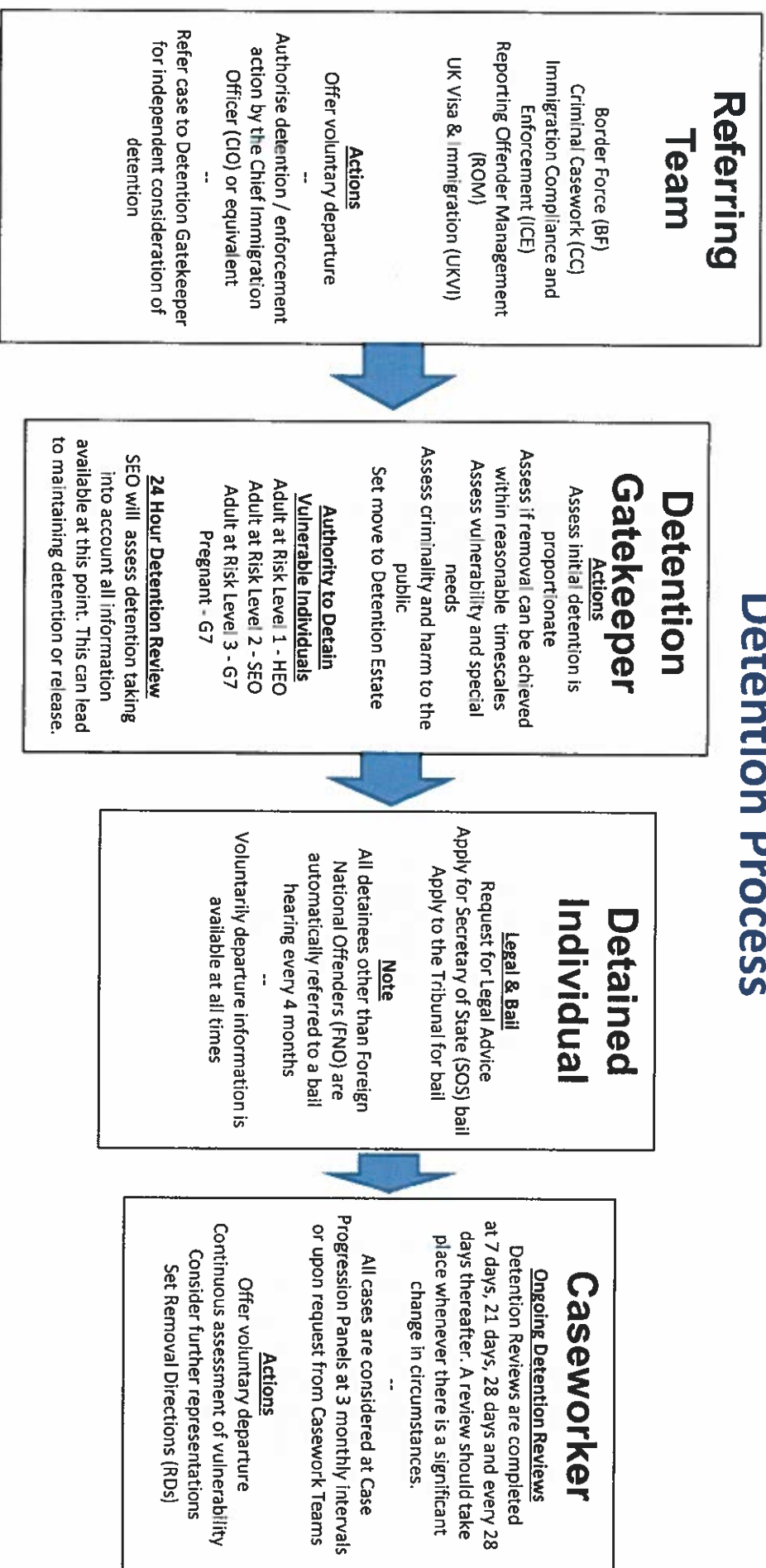
In July 2012, Ms A claimed asylum on the basis of being a victim of a war crime. This application was refused. Her subsequent appeals to the first-tier tribunal and the upper tribunal, and judicial review application, were all refused.

In May 2015, Ms A's doctor submitted evidence to confirm her history of trauma and that she had developed symptoms of post-traumatic stress disorder (PTSD) due to events experienced in Uganda. As a result, and considering medication taken, Ms A was considered as being an Adult at Risk level 2.

Taking into account all the immigration factors, it was considered unlikely that Ms A could be removed unless she was detained. Arrangements for return were planned whilst Ms A remained in the community to minimise detention due to her vulnerability and case circumstances.

An enforcement visit was conducted on 16 August 2018 and Ms A was detained pending her removal from the UK. She was removed with escorts (including medical) on 25 August 2018 following 8 nights in detention.

Detention Process



We have modernised and rationalised the detention estate since 2015

Bed numbers in Immigration Removal Centres

