

2009 No. []

Annex C (Revised Rules)

IMMIGRATION

The Short-Term Holding Facility Rules 2009

Made - - - - -

Laid before Parliament

Coming into force - - -

The Secretary of State makes the following Rules, in exercise of the powers conferred by sections 157(3) and 166(3) of, and paragraph 1 of Schedule 12 to, the Immigration and Asylum Act 1999(a):

PART I

Citation and commencement

1. These Rules may be cited as the Short-term Holding Facility Rules 2009 and shall come into force on 2009.

Interpretation

2. In these Rules—

“contracted out short-term holding facility” means a short-term holding facility in respect of which there is a contract entered into by the Secretary of State under regulation 2 of the Immigration (Short-term Holding Facilities) Regulations 2002(b);

“directly managed short-term holding facility” means a short-term holding facility which is not a contracted out short term holding facility;

“holding room” means a short-term holding facility without sleeping accommodation where a detained person may be detained for a period —

(a) of not more than 18 hours; or

(b) of not more than 24 hours if authorised by the Secretary of State;

“Immigration Acts” means those cited in section 61(2) of the UK Borders Act 2007 (citation)(c);

“health care professional” means a clinically qualified person working within the scope of practice as determined by their relevant professional body;

“legal adviser” means, in relation to a detained person, that person’s counsel, representative or solicitor, and includes a clerk acting on behalf of that solicitor;

(a) 1999 c. 33.
(b) 2007 No. 2538
(c) 2007 c. 30.

“officer” means an official of the Secretary of State (and includes a Crown servant or an employee of the contractor) or a detainee custody officer (and includes a detainee custody officer who is authorised to perform escort functions in accordance with section 154(a) of the Immigration and Asylum Act 1999);

“manager” means the member of staff designated to complete the tasks that fall to a manager under these rules.

PART II DETAINED PERSONS

CHAPTER 1 CONTRACTED-OUT SHORT-TERM HOLDING FACILITIES

Persons detained under the UK Borders Act 2007

3.—(1) These rules shall apply to a person detained at a short-term holding facility under section 2 (detention) of the UK Borders Act 2007 subject to paragraph (2).

(2) A person detained at a short-term holding facility under section 2 of the UK Borders Act 2007 may not be detained for any longer than permitted by subsection (3) of that section.

Directly managed short-term holding facilities

4.—(1) These Rules shall apply to directly managed short-term holding facilities except for those rules listed in (2) and subject to the modifications set out in paragraphs (3) to (7).

(2) The rules are—

- (a) rule 39 (contract monitor)
- (b) rule 40 (contractor’s staff)

(3) In rule 7 (detained person’s property) in paragraph (8) for “joint authority of the manager and the contract monitor” substitute “authority of the manager”.

(4) In rule 15 (food) in paragraph (3)—

- (a) for “the contract monitor” substitute “the manager”; and
- (b) after “and drinks” omit “and shall report any deficiency or defect to the manager”.

(5) In rule 30 (requests and complaints) omit paragraph (5).

(6) In rule 32 (removal from association)—

- (a) in paragraph (1) for “the Secretary of State” substitute “the manager”;
- (b) in paragraph (5) for “an officer of the Secretary of State” substitute “the manager”; and
- (c) omit paragraph (9)

(7) In rule 34 (temporary confinement)—

- (a) in paragraph (1) for “the Secretary of State” substitute “the manager”;
- (b) in paragraph (5) for “an officer of the Secretary of State” substitute “the manager”; and
- (c) omit paragraph (8)

(a) Section 154(5) has been substituted by section 65(1) of the Nationality, Immigration and Asylum Act 2002, c.41.

CHAPTER 2 HOLDING ROOMS

Holding rooms

5.—(1) The number of detained persons detained in a holding room shall not exceed the number of seats in that holding room.

(2) These Rules shall apply to holding rooms and to any detained person detained in a holding room except for those rules listed in paragraph (3) and subject to the modifications in paragraphs (4) and (5).

(3) The rules are—

- (a) rules 6(record, photograph and fingerprinting) paragraphs (1) to (5)
- (b) rules 7(detained persons' property) paragraphs (1) and (2)
- (c) rule 12 (sleeping accommodation)
- (d) rules 13(families and minors) paragraphs (1) and (2)
- (e) rule 14 (clothing)
- (f) rule 11 (certification of accommodation)
- (g) rules 16 (hygiene) paragraphs (1)b and (c)
- (h) rule 17 (recreation)
- (i) rule 20 (religious domination)
- (j) rule 21 (outside contacts)
- (k) rule 22 (correspondence)
- (l) rule 23 (visits)
- (m) rule 26 (use of telephones) paragraph (2)
- (n) rule 28 (special illness and conditions)
- (o) rule 32 (removal from association)
- (p) rule 34 (temporary confinement)
- (q) rule 48 (visitors).

(4) In rule 15 (food) omit paragraphs (2) and (3).

(5) In rule 27 (medical care) —

(a) for paragraphs (1) and (2) substitute —

“(1) If a detained person becomes seriously ill or sustains any severe injury, the manager shall ensure that prompt medical treatment is provided by a health care professional and shall make any arrangements for supervision, care or transfer to hospital that appear necessary.”; and

(b) omit paragraphs (3) to (11).

CHAPTER 3 ADMISSION AND DISCHARGE

Information to detained persons about these Rules and the short-term holding facility

6.—(1) The following information shall be readily available at all short-term holding facilities for consultation by detained persons—

- (a) a copy of these Rules;
- (b) any other information about the procedures in the short-term holding facility which a detained person must know in order to understand their rights and responsibilities; and
- (c) any translation of the information in sub-paragraphs (a) and (b) which is available pursuant to paragraph (3) if required.

(2) In the following cases the manager shall ensure that the information in paragraph (1) is explained in a language which the detained person understands to the extent necessary to enable that person to understand their rights and responsibilities—

- (a) where the detained person is under the age of 18; or
- (b) where the detained person appears to have difficulty understanding that written information.

(3) These Rules and the information referred to in paragraph (1) (b) shall be translated into a variety of languages as directed by the Secretary of State.

Record, photograph and fingerprinting

7.—(1) A personal record shall be prepared and maintained for each detained person in such a manner as directed by the Secretary of State.

(2) A personal record—

- (a) shall include the name and date of birth of the detained person; and
- (b) may include other information, including such details and measurements of external physical characteristics as directed by the Secretary of State.

(3) The record shall not be given to a person who is not authorised by the Secretary of State to receive it.

(4) A detained person may be photographed on reception and subsequently as many times as may be required by the Secretary of State.

(5) A photograph of a detained person or a copy of it shall not be given to a person not authorised to receive it by the Secretary of State.

(6) A detained person's fingerprints may be taken in accordance with section 141(a) of the Immigration and Asylum Act 1999 (fingerprinting).

Detained persons' property

8.—(1) A detained person shall be entitled to retain personal property for personal use at the short-term holding facility save where such retention is considered to be contrary to the interests of the security of the short-term holding facility or to the safety of the detained person or other persons, or is incompatible with the storage facilities provided at the short-term holding facility.

(2) Any property which a detained person has at a short-term holding facility but is not allowed to retain for personal use as a result of paragraph (1) shall be taken into the manager's custody.

(3) An inventory of a detained person's property shall be kept and the detained person shall be required to sign it after having proper opportunity to establish that it is correct.

(4) Any cash that a detained person does not wish to keep in their possession shall be deposited with the manager for safekeeping and a receipt shall be issued, which the detained person shall be required to sign after having a proper opportunity to establish that it is correct.

(5) A detained person shall be entitled to reasonable access to any cash deposited with the manager for safekeeping under paragraph (4).

(6) Upon discharge from the short-term holding facility any property or cash which a detained person has deposited with the manager in accordance with these Rules shall be returned to the detained person.

(7) An article belonging to a detained person may be sold or otherwise disposed of if it remains unclaimed for a period of more than one year after the detained person is discharged from the short-term holding facility, or dies.

(8) The net proceeds of any sale under paragraph (7) shall be applied, under the joint authority of the manager and the contract monitor, to purposes for the benefit of detained persons.

(9) The manager may at any time confiscate an unauthorised article found—

- (a) in the possession of a detained person after reception into a short-term holding facility; or

(a) Section 141 has been amended by section 66 of the Nationality, Immigration and Asylum Act 2002 and section 15 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).

- (b) concealed or deposited anywhere within a short-term holding facility.

Search

9.—(1) For the security of the short-term holding facility and the safety of the detained person or other persons, a detained person shall be searched on reception into a short-term holding facility and subsequently, subject to the manager recording the reasons for doing so as the manager thinks necessary, or as directed by the Secretary of State.

(2) A detained person shall be searched in as seemly a manner as is consistent with discovering anything concealed.

(3) If it is necessary in accordance with paragraph (2) for a detained person to be stripped and searched neither will be done within the sight or presence of:

- (a) another detained person; or
 - (b) an officer or other person not of the same sex.
- (4) An intimate search may not be carried out under this rule.

Custody outside of a short-term holding facility

10. A person being taken to or from a short-term holding facility in custody shall be exposed as little as reasonably practicable to public observation and proper care shall be taken to protect him from curiosity and insult.

Reasons for detention and up-date of claim

11.—(1) The Secretary of State shall provide a detained person with written reasons for their detention when they are first detained.

(2) Where a detained person requests an update on the progress of any relevant matter the Secretary of State should provide that update within a reasonable time.

(3) For the purposes of paragraph (2) “relevant matter” means any of the following:

- (a) a claim for asylum;
- (b) an application for, or for the variation of, leave to enter or remain in the United Kingdom;
- (c) an application for British nationality;
- (d) a claim for a right of admission into the United Kingdom under a provision of Community law;
- (e) a claim for a right of residence in the United Kingdom under a provision of Community law;
- (f) the proposed removal or deportation of the detained person from the United Kingdom;
- (g) an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997(a);
- (h) an application for temporary admission or temporary release (which in appropriate cases will be on a restriction order) under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997;
- (i) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (h).

(a) 1997 c. 68.

CHAPTER 4
FACILITIES

Certification of accommodation

12.—(1)The Secretary of State shall be satisfied that there is sufficient accommodation provided for the detained persons in a short-term holding facility.

(2) No room shall be used as sleeping accommodation for a detained person unless the Secretary of State has certified that—

- (a) its size, lighting, heating, ventilation and fittings are adequate for health;
- (b) it has adequate storage facilities (consistent with the interests of the security of the short-term holding facility and the safety of the detained person and of other persons); and
- (c) it allows the detained person to communicate with an officer at any time.

(3) A certificate given under paragraph (2) in respect of a room shall specify the maximum number of detained persons who may be accommodated in that room.

Sleeping accommodation

13. Subject to rule 13, a detained person shall be provided with separate sleeping accommodation from detained persons not of the same sex.

Families and minors

14.—(1) Where members of the same family are detained in a short-term holding facility they shall be entitled to enjoy family life at the short-term holding facility save to the extent necessary in the interests of the security of the short-term holding facility and the safety of the detained person or other persons.

(2) Detained persons under the age of 18 and families shall be provided with sleeping accommodation which is inaccessible to single male detained persons.

(3) Detained persons shall be provided with everything reasonably necessary for their protection, safety and well-being and for the maintenance and care of infants and children.

Clothing

15.—(1) A detained person may wear clothing of their own if and insofar as it is suitable and clean, and shall be permitted to arrange for the supply to them of sufficient clean clothing from outside the short-term holding facility.

(2) If required, a detained person shall be provided with clothing adequate for warmth and health in accordance with arrangements approved by the Secretary of State.

Food

16.—(1) A detained person shall be provided with adequate food and drink.

(2) The food provided shall be varied, balanced and shall meet all religious, dietary, cultural and medical needs.

(3) The contract monitor shall regularly inspect the food and drink and shall report any deficiency or defect to the manager.

Hygiene

17.—(1) Subject to paragraph (2)—

- (a) a detained person shall be provided with toilet articles necessary for personal health and cleanliness if required;
- (b) a detained person shall be allowed to have a daily bath or shower;
- (c) a male detained person shall be allowed to shave daily.

(2) The provisions in sub-paragraphs (a) to (c) of paragraph (1) shall be refused if it is suspected that such provision would be contrary to the safety of the detained person or others in the short-term holding facility

Recreation

18. A detained person shall be provided with recreational facilities as far as is reasonably practicable.

Time in open air

19.—(1) Subject to paragraph (2) a detained person shall be given the opportunity to spend at least one hour in the open air every day.

(2) Time in the open air may be refused —

- (a) in exceptional circumstances where necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons;
- (b) where the location or design of a short-term holding facility means that it is not reasonably practicable for detained persons to spend time in the open air.

CHAPTER 5

RELIGION

Diversity of religion

20. A detained person's cultural and religious needs will be catered for so far as is practicable at the short-term holding facility.

Religious denomination

21. If a detained person wishes to make a declaration of membership to a particular religion the manager shall record that information as soon as reasonably practicable.

CHAPTER 6

COMMUNICATIONS

Outside contacts

22.—(1) Subject to paragraph (2), a detained person may enjoy visits from, or communication with a person living outside of a short-term holding facility in accordance with rules 22 (correspondence), 23 (visits) and 46 (control of persons and vehicles).

(2) A Detained person shall not be permitted to be visited by or have communications with, a person living outside of the short-term holding facility to the extent to which the visit or communication would prejudice the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

Correspondence

23.—(1) A detained person may send (at their own expense) and receive as many letters and facsimiles as desired, subject to such reasonable conditions as directed by the Secretary of State either generally or in a particular case.

(2) If a detained person does not have the necessary funds to do so the Secretary of State—

- (a) shall bear the postage expense of any letter and the cost of any facsimile to the detained person's legal adviser, the European Court of Human Rights, the European Court of Justice, the High Court, the Court of Session, the Special Immigration Appeals Commission, the Asylum and Immigration Tribunal (or any court entitled to hear an appeal against a decision of those bodies); and

- (b) may bear the postage expense of any reasonable number of letters and the cost of any reasonable number of facsimiles which that person wishes to send.
- (3) A detained person shall be provided on request with the materials necessary for the purposes of sending letters and faxes pursuant to paragraph (1).
- (4) No letter or other written communication to or from a detained person may be opened, read or stopped unless—
 - (a) the manager has reasonable cause to believe that its contents may endanger the security of the short-term holding facility or the safety of the detained person or other persons or are otherwise of a criminal nature; or
 - (b) it is not possible to determine the addressee or the sender without opening the correspondence.
- (5) A detained person shall be given reasons in advance if any correspondence is to be opened read or stopped under paragraph (4) and shall be given the opportunity of being present when any correspondence is opened or read.

Visits

- 24.**—(1) Subject to paragraph (2) a detained person may receive as many visits from persons outside of the short-term holding facility as the detained person wishes.
- (2) The Secretary of State may direct, either generally or in a particular case, reasonable limits and conditions which apply in respect of the visits a detained person may receive.
 - (3) Every visit to a detained person shall take place in the sight of an officer unless the Secretary of State directs otherwise.
 - (4) A visit to a detained person shall take place out of the hearing of an officer unless, subject to rule 25 (legal adviser) and paragraph (11) of rule 27 (medical care), the Secretary of State otherwise directs in a particular case in the interests of the security of the short-term holding facility or the safety of the detained person or other persons (in which case the detained person shall be given reasons for the direction in advance).
 - (5) A person visiting a detained person at a short-term holding facility shall not take a photograph without the authority of the Secretary of State.

Official interviews

25. A police officer, immigration officer or any other government official may interview a detained person who is obliged to attend an interview with them or who is otherwise willing to be interviewed by them.

Legal adviser

- 26.**— (1) Subject to paragraph (2) a detained person shall be able to meet with their legal adviser in confidence.
- (2) A meeting between a detained person and their legal adviser may be in the sight but not the hearing of an officer.

Use of telephones

- 27.**—(1) Subject to paragraph (3) a detained person shall have access to a telephone at the short-term holding facility.
- (2) A telephone system shall be provided for incoming calls.
 - (3) The Secretary of State may direct, either generally or in a particular case, reasonable limits and conditions which apply to a detained person's use of the telephone.
 - (4) If a detained person does not have the necessary funds to do so, the Secretary of State may bear the expense of any telephone calls (within reasonable limits) which that person wishes to make.

CHAPTER 7
HEALTH CARE

Screening

28.—(1) Subject to paragraphs (2) and (4) a detained person shall be screened by a health care professional within 2 hours of admission to a short-term holding facility.

(2) A detained person's consent must be obtained before screening.

(3) Subject to paragraph (4), a detained person shall be entitled, if they so request, to be screened only by a health care professional of the same sex and the manager shall ensure that a detained person is aware of that entitlement prior to any screening.

(4) In the event that a health care professional of the same sex is not immediately available upon request, the manager shall ensure that one is available within 24 hours of the request being made.

General

29.—(1) The manager must ensure that a detained person has access to a health care professional.

(2) A request by a detained person to see a health care professional shall be recorded by the officer to whom it is made and promptly passed to the manager who shall ensure that it is passed promptly to a health care professional.

(3) The health care professional shall observe all applicable professional guidelines relating to medical confidentiality.

(4) It is a matter for the health care professional whether or not to consult with other health care professionals.

(5) Subject to the conditions in paragraph (10) a detained person shall be entitled:

(a) to have access to a health care professional; or

(b) to have access to a dentist.

other than the health care professional notified under paragraph (2), or those consulted by the health care professional, under paragraph (8).

(6) The conditions are—

(a) the detained person will pay any expenses incurred;

(b) the manager is satisfied that there are reasonable grounds for the request; and

(c) the attendance is in consultation with the health care professional notified under paragraph (2).

(7) Subject to any directions given in a particular case by the Secretary of State, a health care professional selected by or on behalf of a detained person who is party to legal proceedings shall be afforded reasonable facilities and opportunity for examining that detained person in connection with those proceedings.

Special illnesses and conditions

30.—(1) The health care professional shall report to the manager on the case of a detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.

(2) If the health care professional suspects a detained person of having suicidal intentions—

(a) this shall be reported to the manager:

(b) the detained person shall be placed under special observation for so long as those suspicions remain; and

(c) a record of the detained person's treatment and condition shall be kept throughout that time in a manner directed by the Secretary of State.

(3) Where the health care professional has concerns that the detained person may have been a victim of torture this shall be reported to the manager.

(4) Where a report has been made under paragraphs (1), (2) or (3) the manager shall send a copy of any relevant written reports to the Secretary of State without delay.

(5) The health care professional shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements which appear necessary for the detained person's supervision or care.

Notification of illness or death

31.—(1) If a detained person dies, becomes seriously ill, sustains any severe injury or is removed to hospital on account of mental disorder, the manager shall inform the Secretary of State without delay.

(2) Upon receipt of the information in paragraph (1) the Secretary of State shall at once inform—

- (a) the detained person's spouse or next of kin (if their contact details are known); and
- (b) any other person who the detained person has reasonably asked to be informed.

(3) In any case in which the Secretary of State is under a duty to inform the detained person's spouse or next of kin under paragraph (1), this shall be done in person by an appropriate officer wherever it is reasonably practicable to do so.

(4) Without prejudice to paragraph (1), if a detained person dies at a short-term holding facility, the manager shall give notice without delay to—

- (a) the police;
- (b) the coroner or procurator fiscal having jurisdiction; and
- (c) the Secretary of State.

CHAPTER 8

REQUESTS AND COMPLAINTS

Requests and complaints

32.—(1) A request or complaint to the manager or the Secretary of State relating to a detained person's detention shall be made orally or in writing by the detained person in accordance with such procedures directed by the Secretary of State.

(2) A request or complaint made to the manager under paragraph (1) shall be considered by the manager within 24 hours.

(3) A written request or complaint under paragraph (1) can be made in the language of the detained person.

(4) A written request or complaint made under paragraph (1) may be made in confidence and, if the detained person so wishes, shall be sealed in an envelope with the addressee clearly indicated.

(5) The manager shall bring to the attention of the contract monitor a complaint involving allegations against any officer as soon as practicable.

PART III

MAINTENANCE OF SECURITY AND SAFETY

Removal from association

33.—(1) The Secretary of State may make arrangements for a detained person to be removed from association with other detained persons, either generally or for particular purposes, where it appears necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

(2) A detained person shall not be removed under this rule for a period of more than 24 hours without the authority of the Secretary of State.

(3) An authority under paragraph (2) shall not be for a period exceeding 7 days from the time of initial removal.

(4) A detained person who has been removed from association shall be given written reasons for such removal within 2 hours of that removal unless, in exceptional circumstances, to do so would be contrary to the detained person's safety or the safety of another person at the short-term holding facility.

(5) An officer of the Secretary of State shall record the particulars of each removal from association in a manner directed by the Secretary of State.

(6) The manager shall visit a detained person who is removed from association at least once each day for the duration of that removal.

(7) The manager shall arrange for a health care professional to visit a detained person who is removed from association at least once each day for the duration of that removal.

(8) In a case of removal from association –

(a) subject to sub-paragraph (b) and paragraphs (2) and (3), arrangements for the detained person to resume association with other detained persons may be made at the manager's discretion;

(b) the manager shall make arrangements for a detained person to resume association with other detained persons if a health care professional so advises on medical grounds.

(9) In cases of urgency the manager may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after making the necessary arrangements.

Use of force

34.—(1) A detainee custody officer may only use such reasonable force as is necessary for the security of the short-term holding facility or the safety of the detained person or other persons when dealing with a detained person.

(2) No officer shall act deliberately in a manner calculated to provoke a detained person.

(3) Particulars of every case of use of force shall be recorded by the manager in a manner directed by the Secretary of State, and shall be reported to the Secretary of State.

Temporary confinement

35.—(1) The Secretary may order a refractory or violent detained person to be confined temporarily in special accommodation until satisfied that the detained person is no longer refractory or violent.

(2) A detained person shall not be confined in special accommodation as a punishment.

(3) A detained person shall not be confined in special accommodation for longer than 24 hours without a direction in writing given by an officer of the Secretary of State (not being an officer of a short-term holding facility).

(4) The direction shall state the grounds for the confinement and the time during which it may continue (not exceeding three days from the time of initial confinement).

(5) A copy of the direction shall be given to the detained person before the 27th hour of the confinement unless, in exceptional circumstances, it would be contrary to the safety of that detained person or other persons at the short-term holding facility to do so.

(6) An officer of the Secretary of State shall record the particulars of each case of temporary confinement in a manner directed by the Secretary of State.

(7) The manager shall visit a detained person in temporary confinement at least once each day for the duration of that confinement.

(8) The manager shall arrange for a health care professional to visit a detained person in temporary confinement at least once each day for the duration of that confinement.

(9) In cases of urgency, the manager may assume the responsibility of the Secretary of State under paragraph (1) above but shall notify the Secretary of State as soon as possible after making the necessary arrangements.

PART IV
STAFF OF SHORT-TERM HOLDING FACILITIES

Interpretation

36. In this Part, “staff” means persons employed at a short-term holding facility.

General duty of Staff

37.—(1) A member of staff shall comply with these Rules and the rules and regulations of the short-term holding facility.

(2) A member of staff shall promptly inform the manager and the Secretary of State of any suspected abuse or impropriety which comes to that member of staff’s attention.

Gratuities forbidden

38. A member of staff shall not receive any unauthorised fee, gratuity or other consideration in connection with their office.

Transactions with detained persons

39.—(1) A member of staff shall not take part in any business or pecuniary transaction with or on behalf of a detained person without the authority of the Secretary of State.

(2) A member of staff shall not without authority—

- (a) bring in or take out of the short-term holding facility;
- (b) attempt to bring in or take out of the facility;
- (c) knowingly allow to be brought in or taken out of the facility; or
- (d) deposit in any place

any article whatsoever, with intent that it should come into the possession of a detained person.

Contract monitor

40.—(1) The contract monitor shall investigate a complaint made against a member of staff at short-term holding facility promptly.

(2) Paragraph (1) is without prejudice to the duties of the contract monitor under section 149(7)(a) of the Immigration and Asylum Act 1999.

Contractors’ staff

41. All contractors’ staff employed at a short-term holding facility shall facilitate the exercise of the contract monitor’s statutory functions.

Search of staff

42.—(1) A member of staff shall submit to being searched in the short-term holding facility if the manager so directs.

(2) A search conducted under paragraph (1) shall be conducted in as seemly a manner as is consistent with discovering anything concealed.

(3) An intimate search may not be carried out under this rule.

(a) Section 149 of the Immigration and Asylum Act 1999 was extended to short-term holding facilities by the Immigration (Short-term Holding Facilities) Regulations 2002, S.I. 2002/2538.

Contact with former detained persons or the friends and relatives of detained or former detained persons

43. A member of staff shall not, without the authority of the Secretary of State, communicate with any person whom the member of staff knows to be—

- (a) a former detained person;
- (b) a relative or friend of a detained person; or
- (c) a relative or friend of a former detained person

in such a way as could be seen to compromise that officer in the execution of their duty or the safety, security or control of the short-term holding facility.

Communication with the press

44.—(1) A member of staff shall not directly or indirectly communicate to—

- (a) a representative of the press; or
- (b) any other person

a matter which has become known to that person in the course of duty without prior authorisation.

(2) A member of staff shall not publish a matter or make a public pronouncement relating to—

- (a) the administration of any short-term holding facility; or
- (b) any detained person accommodated there.

PART V

PERSONS HAVING ACCESS TO SHORT-TERM HOLDING FACILITIES

Authorisation for access

45. No person shall have access to a short-term holding facility unless authorised by statute, the manager or the Secretary of State.

Prohibited articles

46.—(1) No person shall, without authority—

- (a) convey into or out of or throw into or out of or deposit in a short-term holding facility;
- (b) convey to a detained person; or
- (c) deposit in any place with intent that it shall come into the possession of a detained person any article whatsoever.

(2) Anything so conveyed, thrown or deposited may be confiscated by the manager.

Control of persons and vehicles

47.—(1) A person or vehicle entering a short-term holding facility may be stopped, examined and searched.

(2) A search of a person under paragraph (1) shall be carried out in as seemly a manner as is consistent with discovering anything concealed.

(3) If a person does not leave a short-term holding facility when required to do so the manager may direct the removal of that person.

Viewing of short-term holding facilities

48. A person shall not be permitted to view inside a short-term holding facility unless authorised to do so by statute or the Secretary of State.

Visitors

49.—(1) Without prejudice to any other powers to prohibit or restrict entry to short-term holding facilities, or to the powers under rule 23 (visits), the Secretary of State may—

- (a) with a view to ensuring the security of the short-term holding facility, the safety of the detained person or other person or the prevention of crime; or
- (b) in the interests of any person

restrict visits by a particular person to a short-term holding facility or to a particular detained person in a short-term holding facility for such periods of time as considered necessary.

(2) Paragraph (1) shall not apply in relation to any visits to a short-term holding facility or to a detained person by a member of the visiting committee of the short-term holding facility or to a visit by a legal adviser for the purposes of a meeting under rule 25 (legal adviser).

PART VI

VISITING COMMITTEES

Disqualification for membership

50. – (1) A person interested in a contract for the supply of goods or services to a short-term holding facility shall not be a member of the visiting committee for that short-term holding facility.

(2) A member of the visiting committee for a short-term holding facility who becomes interested in a contract of the kind described in paragraph (1), shall vacate office as a member.

Visiting committees

51.—(1) A member of the visiting committee for a short-term holding facility appointed by the Secretary of State under section 152(a) of the Immigration and Asylum Act 1999 shall, subject to paragraphs (3) (4) and (5), hold office for three years or such lesser period as the Secretary of State may appoint.

- (2) A member—
 - (a) appointed for the first time to the visiting committee for a particular short-term holding facility; or
 - (b) re-appointed to the committee following a gap of a year or more in that member's membership of it

shall, undertake such training as may be required by the Secretary of State during the period of 12 months following the date of that appointment or (as the case may be) re-appointment.

- (3) The Secretary of State may terminate the appointment of a member if satisfied that—
 - (a) the member has failed to perform duties satisfactorily;
 - (b) the member has failed to undertake training as required under paragraph (2), by the end of the period specified in that paragraph;
 - (c) the member is by reason of physical or mental illness, or for any other reason, incapable of carrying out a member's duties; or
 - (d) the member has been convicted of such a criminal offence, or their conduct has been such, that it is the Secretary of State's opinion that it is not appropriate for that person to remain a member.

(a) Section 152 of the Immigration and Asylum Act 1999 has been amended by section 66 of the Nationality, Immigration and Asylum Act 2002.

- (4) Where the Secretary of State—
 - (a) has reason to suspect that a member of the visiting committee has conducted themselves in a way which would make them liable to have their contract terminated under paragraph (3) (a) or (d) above; and
 - (b) is of the opinion that the suspected conduct is of such a serious nature that the member cannot be permitted to continue to perform their functions as a member of the committee pending the completion of the Secretary of State’s investigations into the matter and any decision as to whether the member’s appointment should be terminated,

the member may be suspended from office by the Secretary of State for such a period or periods as may be reasonably required in order to complete investigations and determine whether or not the appointment of the member should be so terminated.

(5) A member suspended under paragraph (4) shall not, during the period of the suspension, be regarded as being a member of the visiting committee, other than for the purposes of this paragraph and paragraphs (1) and (3).

(6) A committee shall have a chair and a vice chair, who shall be members of the committee.

(7) The Secretary of State shall—

- (a) upon the constitution of a committee for the first time, appoint a chair and a vice chair to hold office for a period not exceeding twelve months;
- (b) thereafter, but before the date of the first meeting of the committee in any calendar year, appoint a chair and a vice chair for that year, having first consulted the committee; and
- (c) promptly fill any casual vacancy in the office of chair or vice chair, after having first consulted the committee.

(8) The Secretary of State may terminate the appointment of a member as chair or vice chair of the committee if satisfied that the member has-

- (a) failed to satisfactorily perform the functions required of the chair or vice chair (as the case may be); or
- (b) has acted with gross misconduct whilst performing those functions.

Proceedings of visiting committees

52.—(1) The visiting committee of a short term holding facility shall meet once a month or, if they resolve for reasons specified in the resolution that less frequent meetings are sufficient, not fewer than eight times in each calendar year.

(2)The committee may fix a quorum of not fewer than three members for proceedings.

(3)The committee shall keep minutes of their proceedings.

(4)The proceedings of the committee shall not be invalidated by a vacancy in the membership or a defect in the appointment of a member.

Members visiting short-term holding facilities

53.—(1) The members of the visiting committee for a short-term holding facility shall (subject to paragraph (4)) visit the short-term holding facility frequently, and the committee shall arrange a rota whereby at least one of its members visits the short-term holding facility at least than once a month.

(2) A member of the committee shall have access to every part of the short-term holding facility and to any detained person at any time.

(3) A member of the committee may interview a detained person out of the hearing of but within the sight of an officer.

(4) A member of the committee shall have access to the records of the short-term holding facility.

(5) In exceptional circumstances, the Secretary of State may temporarily restrict visits by members of the committee in the interests of the security of a short term holding facility or the safety of a detained person or other persons.

General duties of visiting committees

- 54.**—(1) The visiting committee of a short-term holding facility shall inspect—
- (a) the treatment of detained persons within and in transit from the short-term holding facility;
 - (b) the state of the short-term holding facility premises; and
 - (c) the administration of the short-term holding facility.
- (2) The committee shall inquire into and report upon any matter into which the Secretary of State asks them to inquire.
- (3) The committee shall direct the attention of the manager to any matter which calls for the manager's attention, and shall report to the Secretary of State any matter which they consider expedient to report.
- (4) The committee shall inform the Secretary of State immediately of any abuse ? which comes to their attention.
- (5) The committee shall bring to the attention of the Secretary of State to any aspect of the process of consideration of the immigration status of a detained person that causes them concern insofar as it affects that detained person's continued detention.
- (6) Subject to paragraph (5) the committee shall not concern themselves with any issue directly relating to the immigration status of any detained person under the Immigration Acts.
- (7) Before exercising a power under these Rules the committee or a member of the committee shall consult the manager in relation to any matter which may affect the security of the short-term holding facility or the safety of the detained person or other persons.

Particular duties

- 55.**—(1) A member of the visiting committee shall visit all detained persons who are, at the time of the visit, subject to—
- (a) removal from association under rule 32; or
 - (b) temporary confinement under rule 34.
- (2) The visiting committee shall ensure that correct procedures have been followed in the exercise of rules 32 and 34.
- (3) The visiting committee and any member of that committee shall hear a complaint or request which a detained person wishes to make—
- (a) to the committee; or
 - (b) to an individual in the committee
- during the course of a visit to the short-term holding facility.
- (4) The committee shall arrange for the food of the detained persons to be inspected by a member of the committee at regular intervals.
- (5) The committee shall inquire into a report made to them, whether or not by a member of the committee, that a detained person's health, mental or physical, is likely to be injuriously affected by any conditions of that person's detention.

Annual report

- 56.**—(1) Subject to paragraph (4), a visiting committee shall produce a written report to the Secretary of State as soon as reasonably practicable after 31st December each year covering the twelve month period ending on that date or, for a committee, constituted for the first time during that period, for such a part of the period during which the committee was in existence.
- (2) A report under paragraph (1) shall consider the treatment of detained persons within, the physical condition of and the administration of any or all of the short-term holding facilities within the committee's jurisdiction and shall include any recommendations the committee considers appropriate. A visiting committee shall produce a report under paragraph (1) at least once in every twelve months.

(3) In addition to a report under paragraph (1) the visiting committee may produce a written report to the Secretary of State concerning the treatment of detainees within, the physical condition of and the administration of any or all of the short-term holding facilities within the committee's jurisdiction including any advice or suggestions they consider appropriate.

(4) Subject to paragraph (2), a visiting committee shall comply with any directions given to them by the Secretary of State as to the following matters either in respect of a particular report or generally—

- (a) the short-term holding facilities to be covered in a report under paragraph (1);
- (b) the period to be covered by a report under paragraph (1);
- (c) the frequency with which such a report is to be made; and
- (d) the length of time from the end of the period covered by such a report within which it is to be made.

PART VII SUPPLEMENTAL

Delegation by the manager or person for the time being in charge

57. The manager of a short-term holding facility may, with the leave of the Secretary of State, delegate any of the powers and duties under these Rules to another officer of that short-term holding facility.

Home Office
2009

Minister of State

EXPLANATORY NOTE

(This note is not part of the Rules)

Short-term holding facilities are places used mainly for the detention of immigration detainees for a period of not more than seven days (or in the case of a holding room for a period of not more than 18 hours or, with the authorisation of the Secretary of State, 24 hours). These Rules make provision for the regulation and management of short-term holding facilities, including the treatment of detained persons and the conduct and duties of officers in the facility. The Rules provide for matters such as the admission and discharge of detained persons, their welfare, food, clothing, accommodation, recreation and religious observance, correspondence, visits, health care and any complaints they may wish to make, as well as the use of security measures such as powers of search. In addition, the Rules make provision as to the making of visits by members of the Visiting Committee and for the making of reports by them to the Secretary of State.