

Annex A

Changes that feature in the revised draft STHF Rules

Main changes

1. The most significant change to the Rules is that the provision which ran through a number of them and had the effect of requiring special arrangements to apply in the “interests of not prejudicing investigations” no longer features (this provision applied only to the STHF at Colnbrook). This reflects that it has not been necessary for operational colleagues to use the facility in the way envisaged originally.
2. The previous Rule 3 (ie “Purpose of short-term holding facilities”) no longer features. The reason for change is necessary because in practice it is not in itself a Rule but is instead an expression of principle. The Rules are not the appropriate vehicle for such expressions. While we appreciate that such a statement already exists within the Detention Centre Rules 2001 the language of Statutory Instruments are now required to be rather more tightly drawn and the legal advice we have received is that such matters are no longer considered appropriate for the Rules. The statement of principle will be expressed in the Explanatory Memorandum that travels with the Rules and will be underpinned in the operating standards and guidance that support them.
3. New Rule 3 now covers the position of those who are detained under the UK Borders Act 2007.
4. New Rule 4 provides a breakdown on the separate arrangements that apply to directly managed facilities (as opposed to contracted out ones). This simply removes the need to repeat in the Rules concerned (in the way that the Detention Centre Rules do) that separate arrangements apply depending on whether the facility is contracted out or directly managed. We consider that this offers more clarity.
5. The Rules now make reference to the role of Visiting Committees (VCs), but now known as Independent Monitoring Boards (IMBs). I am afraid we are bound to refer to VCs because we have not yet secured a change in term. The relevant provisions are similar to those that appear in the Detention Centre Rules.
6. The previous Rule 31 (General security and safety) no longer features and again this is because its wording was simply a statement of principle. This does not dilute the issue rather the issues of safety and security are covered in the relevant Rules.

Rule changes for reasons of clarity

7. In some cases the language of the Rules has been tightened or the provisions have been broken down in order to make certain Rules clearer and so better understood. Rules amended in this way are (5 (holding rooms), 6 (Information to detained persons...), 8 (Property), 9 (Search), 12 (Certification of accommodation), 14 (Families and minors), 16 (Food - as it applies to residential facilities), 18 (Recreation), 19 (Time in open air), 20 (Diversity of religion), 21 (Religious denomination), 26 (Legal adviser), 31 (Notification of illness), 35 (Temporary confinement), 39 (Transactions with other detainees), 42 (Search of staff), 44 (Communication with the press), 46 (Prohibited articles) and 47 (Control of persons and vehicles).

8. Please note that because of other changes the numbers of some Rules have changed since the original version – the above references relate to the revised version.

Rules that have changed in the light of the earlier external consultation exercise and as a consequence of further consideration in UKBA

9. Rule 6 (2) (information to detained persons...) as suggested it now includes a reference to “in a language the detainee understands”.

10. Rule 9 (Search) now refers to the need to “record” reasons for subsequent searches and also provides that strip searches must not only not be conducted in the sight but also not in the “presence” of another detainee, an officer or other person not of the same sex.

11. Rule 10 (2) (Custody outside of a short-term holding facility) no longer features in the revised Rules and this reflects that the subsection does not add anything to the provision of the Rule.

12. Rule 11 (Reasons for detention and up-date of claim) has been expanded (see (3) (h)) to include applications for temporary admission or temporary release.

13. Rule 13 (formerly Rule 11) has been changed to reflect the title “Sleeping accommodation” as opposed to “Female detained persons”. This title is more appropriate because it covers the position of both males and females whereas the previous title was rather misleading in this respect.

14. Rule 17 (Hygiene) now provides a new subsection (2) which we consider necessary in the interests of preventing detainees harming themselves or others. The operating standards that underpin the Rules will require staff to record the reasons why a detainee was not allowed, for example to have a razor.

15. Rule 22 (Outside contacts) no longer features the restrictive elements (as referred to in paragraph 1 above). Another change is the removal of the reference to “family members” and in its place, “persons”. It now also makes explicit that there may be circumstances (in the interests of security and safety” not to permit certain visitors.

16. Rule 23 (Correspondence) no longer features the restrictive elements. Although we do not consider it absolutely necessary (because the terms of the previous Rule already covers the position, albeit not explicitly) we have made explicit that legal correspondence is privileged although that is not to say it may not be opened in certain circumstances. Its provisions now makes clear that writing materials will also be provided where necessary and we have included, as requested, a reference to “legal adviser” and facsimiles (see 23 (2) (a)& (3) respectively).

17. Rules 24 (Visits) and 27 (Use of telephones) no longer features the restrictive elements. We indicated earlier that we would refer to “mobile phones”, but the legal advice is that it is unnecessary to do so.

18. We previously had Rule 27 which was entitled “Medical care” and we have since decided that its provisions should be covered in two separate Rules. The revised draft therefore covers :Rule 28 (medical screening) and 29 (general medical care). The Rules also now reflect what a detainee can expect by way of medical provision, eg that they can expect to be screened within two hours of their arrival at a residential facility. Where a detainee wishes to be seen by a healthcare professional of the same sex and this is not immediately possible detainees must be screened by such a person within 24 hours. The Rule has also been amended to provide that a detainee may (subject to conditions) be entitled to have access to healthcare provision other than that available at the facility (this mirrors Rule 33(7) of the Detention Centre Rules).

19. Rule 30 (Special illnesses and conditions) is a new Rule as far as the STHFs Rules are concerned although it already featured in the Detention Centre Rules (ie Rule 35). The provisions of the Rule are not a direct read across and this reflects, for example that it may not be possible to provide counselling services at the facility (because of the limited time a person can stay in a residential STHF). However, where a detainee is considered suitable for counselling and is being transferred to a removal centre such information would go to the healthcare team at the centre.

20. Rule 33 (Removal from association) now requires (subsection (7) refers) a healthcare professional to visit a detainee removed from association every day for the duration of the removal.

21. Rule 36 (Interpretation) is a new and is necessary to ensure that all those employed at a facility are covered by the provisions covered by the Rules that flow from it. To take one instance, it makes explicit that ancillary staff are also caught by the Rule forbidding gratuities (see Rule 38).

22. Rule 37 (was Rule 34) (General duty of staff) no longer contains subsections (3) and (4). The reason for this is similar to that which applies to the need to remove the original Rule 3 (Purpose of short-term holding facility). The wording of the sub-sections concerned do not actually achieve anything for the purpose of the Rules; again that is not to say that we do not expect staff to set an example, rather that the Rules are not the appropriate vehicle for making expressions of this kind.

Unchanged Rules

23. Rules that have not changed are: 15 (Clothing), 21 (Religious denomination), 25 (Official interviews), 34 (Use of force), 40 (Contract monitor), 41 (Contractor's staff)

24. There may be further minor changes to the Rules.

DSPU
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