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Your Ref
Date 7 August 2006

Dear Elizabeth,

DRAFT SHORT-TERM HOLDING FACILITY (STHF) RULES

I am sorry not to have replied before now to your e-mail of 14 February with which you attached ILPA's comments on the draft STHF Rules. We have been discussing these amongst other comments received and I am afraid that the process has taken rather longer than anticipated. With one exception our responses to your comments are in the attached Annex and are dealt with in the order raised in your correspondence.

You were particularly concerned about those parts of the Rules that made reference to the need for special arrangements to apply in the interests of not prejudicing investigations. This was concerned with providing circumstances in which it might be necessary to keep detainees separate from each other and so allow operational colleagues to undertake enquiries which might otherwise be necessary to hold at a police station. The relevant provisions applied to the STHF at Colnbrook only. In the light of your concerns and that enquiries revealed that it has not been necessary for operational colleagues to use the facility in the way envisaged it has been decided to remove the restrictive elements from the Rules.

Another development concerns the role of Visiting Committees (VCs) which will now be reflected in the Rules. That they did not do so before reflects an earlier decision that it was sufficient for Her Majesty's Chief Inspector of Prisons to monitor these facilities. Our position on that has now changed. We are bound to refer to VCs in the Rules (as opposed to independent Monitoring Boards) because we were unable to secure a change to the term by means of the most recent legislation. The relevant provisions will be similar to those which appear in the Detention Centre Rules 2001.

06.08.13

A further change made relates to specific and related changes to the Rules concerning detainees' property, search and correspondence. The purpose of this is to introduce a power for officers at the facilities to search for and retain evidence of nationality or identity where a detainee is otherwise seeking to conceal this. This is in addition to the existing grounds of search in relation to security and safety.

Yours sincerely,

Barbara Nicholson

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Annex

Information to detainees about the Rules and facilities

Rule 5: you want information to be available to detainees about how to apply for bail and that we ensure that a stock of forms are available for this purpose. You also want details of legal representatives to be available.

This is not a matter for the Rules but we will ensure that the issues are covered in the planned operating standards.

Record, photograph and fingerprinting

Rules 6(1),(2) and(3):you queried why holding rooms are exempted from opening a record. I should explain that records will be held by holding rooms but the difference is that a personal record will not be opened for each individual and this reflects the fact that a large number of individuals pass through the system within a matter of hours. Detainee Transferable Documents will be opened for those individuals that go into short term residential facilities. If a person is transferred to a removal centre a personal record would be opened there.

You have suggested that the record should include details of a detainee's legal representative and that the Rules should reflect that it is the duty of officers at the facilities to inform a detainee's representative of the detention. You add that this would enable officials to be informed of any outstanding and unresolved applications.

The Rules do not spell out every detail that might be recorded and therefore issues relating to legal representatives and the need to record such information will be a matter covered in the planned operating standards. You will see that in relation to the operating standards that apply to removal centres (Access to Legal Services) there is a similar requirement.

We do not accept that it is a matter for officers of the facility to inform a detainee's representative about the detention. Detainees will have access to a telephone and will be in a position to contact their representative should they wish to do so. Whilst we note your view that your proposal would make it possible for officers to be informed of any outstanding or unresolved applications it will not be a function of the officers at the facility to be in a position to deal with such issues or to be knowledgeable about them. Such issues are ones that should be brought to the attention of the port or local enforcement office dealing with the particular case. Detainees will be able to make contact with such offices or failing that pursue the matter with his legal adviser or representative.

Clothing

Rule 13(2) you suggested that detainees should be provided with clothing on request rather than at the discretion of officials.

There is nothing in the Rule that prevents a detainee requesting clothing but the Rule cannot be drafted in such a way as to suggest that clothing must be provided regardless of whether or not it is necessary to have it. We have no reason to believe that officers would not provide clothing where required.

Outside contacts

Rule 21(1) you commented that visits should not be confined to family members and that it should be extended to apply to others such as friends and workmates.

06.08.13

You will know that the Rule mirrors its equivalent in the Detention Centre Rules and that friends and family can visit detainees. But you are right to raise the issue given that as drafted the Rules do suggest that only family members can visit. We will amend the Rules (and the DC Rules) to reflect that friends are also covered. There is no need to refer to "workmates" as this would be covered by "friends".

Correspondence

Rule 22(2) you were concerned about the provisions of this Rule – it is one of those that have been deleted for the reasons stated in the covering letter.

Rule 22(3) you have asked for a reference in the Rules to detainees having free access to facsimiles and free postage for letters sent within the UK. The Rule already allows for postage to be paid where detainees do not have necessary funds. We are not minded to extend its application to those who do have funds. We will, however, ensure that the Rules refer to the use of facsimiles and that those without funds will have free access.

Rule 22(5) you are concerned that legal correspondence should be privileged and so not caught by the provisions of the Rule. The amended Rule will reflect that such correspondence is privileged although it will also make clear that there may be circumstances where it may be opened.

Rule 22(7) a reference to facsimiles was requested and this has been agreed.

Rule 23(2) this related to the proposed restrictions at Colnbrook which no longer feature in the Rules.

Rule 23(4) the legal privilege issue was raised and as with Rule 22 (3) this position will be reflected in the Rules.

Official interviews

Rule 24 you suggest that in those circumstances where a detainee is to be interviewed by the police, an immigration officer or any other official that the detainee's legal adviser should be advised before any such interview takes place. You are also concerned that the reference to "government" official could mean that detainees are obliged to see officials of their own government and so want to make clear that such officials are not covered.

Issues about advising detainees' representatives is not something for the Rules and in any event we suggest that this is a matter for the detainee himself. It is a matter for the detainee to contact his representative if he regards it necessary to do so. The Rules refer to UK Government officials although of course detainees can be seen by officials of their own Government, for example where documentation is being sought. Detainees cannot be forced to cooperate with that process.

Use of telephones

Rule 26 you recommend that all facilities (not just residential ones) should have a system of receiving incoming calls and that calls should be free of charge. Detainees will be able to make outgoing calls and if they have no funds calls will be paid for. Where detainees have a mobile phone that meets conditions of use they will be able to keep it in their possession and so be in a position to make and receive calls. The Rules will be amended to refer to mobile phones.

We will investigate whether there is a need for a system to receive incoming calls, but in the meantime the Rules will exempt holding rooms from this requirement.

06.08.13

Health care

You asked that Rule 35 of the Detention Centre Rules should be mirrored in the STHF Rules. AVID made a similar suggestion.

We have agreed that it would be appropriate to include most, but not all of the provisions of Rule 35. Subsections (1) and (2) and elements of subsections (4) and (5) will apply. For example, subsection (5) in the DC Rules may require arrangements for counselling to be made where necessary. We anticipate that it would be unlikely, given the limited time spent in such facilities, for such counselling to be undertaken there. But that is not to say that where counselling was recommended that this would not be noted. If the person concerned was transferred to a removal centre one would expect arrangements for counselling to be made.

Requests and complaints

Rule 29 you have asked that not only should complaints be heard each day but that they should also be resolved and responded to within 24 hours.

This is not for the Rules although we can cover details in the operating standards. But we need to acknowledge that some complaints may not be ones that the facility can respond to within 24 hours. For example, it might be that the complaint related to something that happened at a removal centre or perhaps during escort. These are not matters that the facility can take responsibility for.

Temporary confinement

Rule 33 you are concerned that there is no definition of "refractory" and that legal representatives should be advised when an individual is placed in temporary confinement. We do not consider it necessary to define the term "refractory" beyond its accepted dictionary definition. However, when a person is placed in temporary confinement there will be a requirement to record the reasons for the decision. The detainee will also have a record of the decision which he will be able to raise with his representative should he wish to do so. We do not accept that there should be a requirement to advise a person's legal representative of the decision.

06.08.13