



25 January 2000

Karen Milne
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Enforcement Directorate
Apollo House
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Our ref JR

Dear Ms Milne

Detention: New forms and procedures

Thank you for your letter inviting our response to the new instructions and written reasons for detention forms. This is a joint response from ILPA, the Immigration Advisory Service and the Refugee Legal Centre. We are grateful to you for the opportunity to comment on the new forms and instructions and hope that our comments and observations will be of benefit when they are reviewed in line with the promises made in the House of Lords during the debate on Third Reading.

As a general point, we believe that the most crucial issue is that of written reasons for detention. We believe that these should, so far as is possible, be tailored to the individual and that as much information should be given as possible. If that is done, it may of course be that the doubt which led to the decision to detain can be allayed, or that further information be provided, thus allowing the detainee to be released and avoiding the need for a bail hearing.

A further concern is the issue of minors. If it has not already been done, we would suggest that an instruction is issued that in all cases the relevant local social services are informed. In the case of large ports, presumably fixed arrangements could be made.

New IS81

We welcome the fact that it will now be possible to identify the moment at which a detainee's detention begins. We also note that this will be initially for four hours only. The only comment we have on the content of the form is that it should clearly state on its face that the detention is limited to four hours duration. We would also suggest that the form be printed in several different languages so that it is comprehensible to the vast bulk of immigration detainees. This may, of course, be helpful when no appropriate interpreter is available. We suggest that the form should specify the right to contact a legal representative.

New IS91

1 Instructions to staff

We appreciate that the new procedures are streamlined and should lead to less bureaucracy. We note that information will be added to the form IS91 over time, such as when special needs become apparent, as is contemplated by instruction 4.3. We are concerned that such information is transmitted back to DEPMU or the port responsible, as clearly that information will affect the decision to maintain detention.

2 The form itself.

Following on from the point made above, we suggest that the form makes it clear that if, at any time, an addition is made to the Special Needs Section, that information must be passed on. We also note that no space has been filled in to take note of the fact that it may become apparent that a detainee may be a victim of torture. That information should surely be passed quickly to those with responsibility for the decision to detain.

3 Detention authority guidance

We are concerned at the negative impression given by guidance note 1.3. We do not think it appropriate that immigration officers should be discouraged from identifying special needs on the basis of cost. The safety and well-being of the detainee is of paramount importance.

4 Special needs categories

These are generally clear. We are concerned, however, that they are expressed in such a way that those taking the decision to detain are not compelled to enquire as to whether one of the categories applies. We realise that enquiry may not always be appropriate but immigration officers should take a more active role in identifying those with special needs. If this is not done, the scheme of treating such people, for very good reason, according to their needs will not work.

In particular, we would suggest that the section on "Minors" be amended to include those appearing to be under 18 years old. Given that ministers have continually stressed that minors should only be detained if absolutely necessary, immigration officers should take a proactive approach when faced with a detainee who appears under 18. Such persons may hold documents indicating an age greater than 18, but these may not be genuine. We would suggest that it is good practice to examine more closely those cases in order to avoid the detention of minors.

Reasons for Detention and Bail Rights - Form IS91R

We do not consider this form to be adequate in any way. The checklist fails to give any information and is certainly not tailored to individual circumstances in any way. It is important for the form to the Refugee Legal Centre as well as the IAS as a source of legal advice and representation.

This form was discussed at both Report and Third Reading in the House of Lords, and was subject to a good deal of criticism, for precisely the same reasons, much of which was accepted by Ministers. We refer specifically to the assurances given by Lord Mostyn of Williams that:

"that detailed check-list will be tailored to individual circumstances and to relevant exceptions".--[Official Report, 18/10/99; col. 897.]

and

"Many of the points raised by the noble Lords I identified by name are properly raised. It is a great pity that the need to give this information was not included in the instructions to immigration officers requiring that written reasons for detention be given in each case"- [Official Report, 2/11/99; Col 780]

We are, however, pleased to note the Minister's assurance, also at Col 78:

"We cannot bind ourselves to the content of the form, but the points seemed to both of us to be well made and we have the opportunity of reviewing the instructions and written reasons. I have to say that the immediate feeling of both of us is that the more information that can sensibly and helpfully be given, the better. I do not think that I can make our position plainer than that and I trust that it accords with your Lordships' views.

In light of the above, we trust that our comments will be taken into account.

The categories used in the form are mostly predicated on the basis of some fact or facts which has come to the attention of the officer taking the decision to detain. This information will, of course, have to be included in a bail summary later, and it would seem sensible that it is available to the detainee and/or his representatives at the earliest possible opportunity. Despite that, space is not given anywhere on the form to identify that fact which has been found.

We believe that the categories must be fewer in number and much more closely related to the categories set out in the Immigration and Asylum Act 1999.

We therefore suggest that the form be redesigned to include space for the appropriate information to be recorded as follows:

- a Full reasons must be given for the opinion formed

- b Details of the information required should be given
- c The date of removal should be given
- d This category is too vague. If it is because of the person's age, or health, this should be made clear together with the type of care required.
- e Full reasons for this should be given
- 1 This appears out of date, given that a person in that situation would be supported by the NASS. In any event, details must be given to justify that conclusion.
- 2 The failures should be detailed so that any errors can be corrected
- 3 Details of the escape should be given
- 4-7 These are most unspecific and full details should be given as well as details of what does constitute satisfactory evidence. These requirements must be objective.
- 8 Reasons for this should be given. In this case the detainee should be informed that social services have a duty towards him and that steps are being taken (if that is the case) to ensure that such duty is exercised.
- 9 Further details must be given here. The disease should be identified, preferably with reference to a particular medical examination.
- 10-11 Details , including date of such decision should be given
- 12 This is not an objective criterion and should be deleted.
- 13 Details of failure should be given

To conclude, the form's categories ought to be limited to the exceptions to the presumption of bail contained in the 1999 Act. There should be specific reasons given as to why an exception applies to that individual detainee, which must include the facts which led the officer to that conclusion. Given that in many cases it will be necessary to prepare a bail summary which will no doubt be based on the facts which led to the decision to detain, time may be saved by preparing fuller reasons for detention. Although the new Routine Bail Hearing scheme will not be in operation until April 2001, we would suggest that the new procedures are in place before then to ensure that the tight timetable set out in the Act can be achieved.

Finally, we should like to thank you once again for this opportunity to contribute to your review of the detention process. Notwithstanding our concerns with regard to form IS91R, we hope that our comments are constructive. We trust that there will be other opportunities for consultation as the forms are revised again to take into account the implementation of Part III of the 1999 Act, and the amendments to the 1971 Act.

Yours sincerely



FP

Andrew Nicol QC
Chair of ILPA