ILPA comments on the draft rules for short term holding facilities

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations. ***For further information please get in touch with Alison Harvey, Legal Director or Zoe Harper, Legal Officer, on 0207 251 8383, Alison.Harvey@ilpa.org.uk; Zoe.Harper@ilpa.org.uk***

History and genesis of the rules

The genesis of these rules spans nearly 15 years. Rules were said to be in development again in 2012. A promise to produce the current draft was made over a year ago with the draft originally promised by July 2015[1]. Our expectations of the draft were high. We set out the history in the annex. As recorded therein, ILPA responded to the 2006 Home Office consultation on draft rules[2] and to two consultations in 2009[3].

The draft bears a great deal of resemblance to the 2009 version. It has many of its flaws. We do not understand, given the contents of the current draft, what prevented its being published prior to the July 2015 recess as Lord Taylor of Holbeach had promised Lord Avebury (see annex). We do not know whether it is because of lack of awareness of them or for another reason that a number of matters raised in responses to previous consultations have not been addressed. In contrast to the 2009 drafts, no detailed commentary on the reasons why the latest draft has or has not changed from earlier drafts has been provided. We therefore ask that all three of ILPA responses, available online at the links in footnote three, be considered alongside this response.

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[1] Hansard, HL Deb, Column 1140, 03 March 2014 at: http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140303-0001.htm

[2] See also www.ilpa.org.uk/resources.php/1889/home-office-to-ilpa-of-7-august-2006-re-draft-short-term-holding-facility-sthf-rules.

[3] See www.ilpa.org.uk/resources.php/13062/uk-border-agency-further-consultation-of-the-draft-short-term-;yxcvbholding-facility-sthf-rules-ilpas-furt and http://www.ilpa.org.uk/resource/32029/ilpa-response-to-the-further-consultation-on-the-draft-short-term-holding-facility-sthf-rules-17-apr. See also The Lord Brett, Parliamentary Under Secretary of State to The Lord Avebury of 11 August 2009 re time limits for detention in Short-term Holding Facilities at www.ilpa.org.uk/resources.php/2919/the-lord-brett-parliamentary-under-secretary-of-state-to-the-lord-avebury-of-11-august-2009-re-time- ; Refugee Council to Kristian Armstrong, Children's Champion, UK Border Agency of 5 August 2009 re short-term holding facilities and child protection www.ilpa.org.uk/resources.php/2940/refugee-council-to-kristian-armstrong-childrens-champion-uk-border-agency-of-5-august-2009-re-short-

We recall the commitment to provide us an opportunity to comment on a draft of the operating standards in due course and look forward to receiving these.

During the period since last we provided comments there has been ample evidence that short-term holding facilities as currently operating are unsafe. Home Office statistics on "self-harm," a term which encompasses suicide and attempted suicide, record one death in the period July to September 2013, of a 43-year old man from Pakistan, at Pennine House Short Term Holding Facility in 2013[4]. That year, the UN Committee Against Torture called for:

> *…an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee's recommendation and ensure that similar rules apply to short term holding facilities*[5]

Subsequent to the March 2015 promise to produce rules being made, further evidence of the gravity of the situation has emerged. In his review of immigration detention, Stephen Shaw paid special attention to the problems of short-term holding facilities and to the dreadful conditions in some of them. His concerns lead him to recommend that a discussion draft of the short term holding facility rules should be published as a matter of urgency[6]. He records at paragraph 1.39

> "*It was noted that formal rules and regulations had not been published despite a series of consultations and promises/commitments from the Home Office.*"

He also writes

> *3.219 I note that neither Pennine House nor Larne House is governed by statutory rules, and that the absence of short term holding centre rules is of long standing.45 This is not acceptable as a matter of good public administration.*

PART 1

Missing rule: Purpose

There is no equivalent to rule 3 of the Detention Centre Rules (SI 2001/238). We said in our second response in 2009

> *As regards the explanation for "changes that feature in the revised draft STHF Rules" (Annex A), we wish to draw attention to our dissatisfaction with the explanation provided at paragraph 2, which we reproduce in full below:*
>
> > "*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 itself a Rule but is*

[4] For the 2014 figures, not all dis-aggregated in ways that would provide information about short-term holding facilities, see https://www.gov.uk/government/publications/incidents-of-self-harm-in-immigration-detention-in-2014 (accsesed 8 April 2016).

[5] *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session* (6-31 May 2013), CAT/C/GBR/CO/5, 24 June 2013.

[6] ***

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 supports them."

9. It is not correct that statements of principle or purpose are not appropriate for inclusion in Rules or Statutory Instruments. Indeed, it is vital that such statements are contained either in the relevant Rules or Statutory Instruments or in governing or primary legislation to which the relevant Rules or Statutory Instruments are subordinate. The reason for this is plain. The Rules should be drafted to meet a purpose. As such they must be subordinate to the purpose, and interpreted by reference to that purpose. To remove, as proposed in the explanation given, such statements to Explanatory Memoranda or operating standards and guidance is to deny the force or effectiveness of such statements by subordinating them to the very Rules they ought to govern. …

10. It may serve as a useful reminder of the significance of these observations in respect of the draft Rules, to recall the terms of the rule that has been removed:

"*3(1) The purpose of short-term holding facilities shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with the time detained and with maintaining a safe and secure environment… whilst respecting in particular the dignity and the right to individual expression…*"

The Detention Centre Rules continue to have a "purpose" rule. We continue to be of the view that a rule on purpose is required here.

Interpretation Rule 2

We consider that the definition of a manager and of an officer in the rules is unsafe and fails clearly to identify the persons responsible in particular cases.

We are pleased to see the inclusion of a definition of a "place of safety".

PART III APPLICATION

Rule 3, read with Rule 6 *Holding Rooms*

We said in our second response in 2009:

We remain concerned that numerous rules are disapplied from holding rooms. The logic for this is in the main part to do with perceived limitations on space and the convenience of the detaining authorities rather than the interests of the detainees themselves.

> *There is an assumption that detainees will be kept in holding rooms for short periods of time. However, a detainee may be detained for up to 18 hours, or up to 24 hours if authorised by the Secretary of State, in a holding room. This means that a person could spend 18 or 24 hours in a room without the right to retain their personal property, without any sleeping accommodation, without the right to receive sufficient clean clothing from outside, without any entitlement to be provided with toiletries or facilities for a shower or a bath or (for men) to shave, without the right to receive any*
> *incoming telephone calls.*
>
> *27. It must be recalled that those held in a holding room may, both prior and after the period of detention in that place, be without opportunity for sleep, clean clothing, opportunity to wash or shave or to receive a telephone call for several hours – e.g. during a journey to the UK, to another place of detention or to accommodation in the UK.*

It is the case in the draft current rules that a person may be in a holding room without sleeping accommodation (rule 14, disapplied by Rule 6(4)(a)), without sleeping accommodation separate from detained persons of the opposite sex (Rule 15, disapplied by rule 6(4)(b)), without the obligation otherwise placed on the Home Office to provide warm or otherwise suitable clothing to those with none (Rule 17, disapplied by Rule 6(4)(d)); that families may be without separate accommodation or opportunities to maintain family life (Rule 16(1) and (2) disapplied by Rule 6(4)(c)) and that persons may be denied outside contact (Rule 24, disapplied by Rule 6(4)(h)).

The problems with holding rooms have most recently been described by the Chief Inspector of Prisons in his comments on Longport Freight Shed in Dover. Aside the dire state of the facilities, the report records

> ***"****The Longport freight shed was a wholly unacceptable environment in which to hold people. From 31 August to 3 October 2015, a total of 569 people were detained there, including 90 children…the longest single period of detention was for 21 hours 25 minutes and was of an unaccompanied child. …* ***on various occasions Home Office staff told us that they did not consider Longport to be a place of detention…despite detainees being in possession of legal authority to detain documentation and obviously being unable to leave. At this facility, the normal mechanisms of internal oversight and accountability that should apply to any form of detention were lacking.***[7]

We recall Stephen Shaw's comments on Dover dock

> *3.164 Evaluation of the detention log for May 2015 revealed that a third of those detained that month had been in the facility for more than 24 hours, with 28 of those detained for more than 36 hours. Given the very limited arrangements, I do not believe a stay of more than 24 hours is acceptable.*
>
> *3.183 One room housed a mother and her 14 year-old daughter. The mother was clearly distressed and was having difficulty contacting her husband using the phone she had been given.*

[7] *Report on an unannounced inspection of the short-term holding facilities at Longport freight shed, Dover Seaport and Frontier House* by HM Chief Inspector of Prisons 7 September, 1–2 and 5–6 October 2015, published March 2016, available at https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/03/2015-Longport-Dover-Seaport-and-Frontier-web-2015.pdf

When this was pointed out to holding room staff they were able to help, but there had clearly been little attention paid hitherto to the needs of the woman or her child.

He describes the "offensively insanitary" lavatory, expresses concern at the lack of a medical professional on site, and describes its being "very cold".

His comments on holding areas[8] provide ample evidence of why Rule 6 (4) is too broadly drafted:

Heathrow Terminal Two

3.170 During my visit, two male detainees were seen to get progressively more direct in their attentions to a female detainee. The female detainee was only moved to the quieter area at my team's suggestion.

Terminal Three

3.175 A female detainee was searched in front of several people. Interviews with detainees took place in full hearing of everyone present. A detainee … was advised to keep money on her for security reasons.

Heathrow Terminal 4

3.181 This was described to me as the worst of the holding rooms. I felt it was dire and in chronic need of improvement

Cayley House

3.192 One male detainee was trying to resolve how he was to get home from the airport to which would be flown. He had no money for the 800 kilometre journey to his village, but enquiries were met with a blank. I was told that money would be found if he "kicked up a fuss and resisted removal".

3.194 I understand that it is the Government's view that holding rooms are not residential, and for that reason proper beds should not, indeed cannot, be provided. However, I agree with HM Chief Inspector of Prisons that lounger seats are not adequate substitutes for sleeping facilities, and I wonder if something between a proper bed and a lounger would be possible.

Tascor cross hatch area

3.221 …Detainees were held on vans at all times, however, and this could be problematic in temperature extremes. I am told that if it is very hot or cold then the vans' motors are kept running and they are moved to the car park directly outside to avoid asphyxiation. This does not seem a very sophisticated solution, and suggest that the Home Office ask Tascor to consider some form of temperature control within the Heston cross hatch area.

Lunar House

3.224 I suggest that the Home Office redesign the exit to the holding area to provide greater privacy and security.

[8] *Welfare of Vulnerable Persons in Detention*, Stephen Shaw, paragraph 3.156ff.

In the light of the reports of Stephen Shaw and of Her Majesty's Inspector of Prisons, we identify a need, if any rules as to the welfare and rights of detainees are to be disapplied in cases of holding rooms, to have equivalent rules for holding rooms.

In rule 4(5), it is not acceptable that persons be held for any length of time without access to the open air and a shorter time limit should be placed on holding people in rooms which lack this facility.

As to Rule 4(6), it is necessary to make express provision that a person may consult with a legal advisor by telephone in a place where they are within sight of, but not within the hearing of, an officer of the detention facility. Such a person should also always be given the opportunity to make photocopies and to send facsimiles to their legal advisor and these being subject to legal professional privilege should not be inspected. Consideration should always be giving to moving a person "airside" who wishes to consult with a legal advisor to a place where they can do so.

The substitution suggested in Rule 4(7) is not acceptable and should be reviewed in the light of the comments of Stephen Shaw and of the Her Majesty's Inspector of Prisons. Those held should have access to health care professionals, of the same sex if this is their wish. Where a person is not held in a place to which the travelling public does not have access (i.e. airside etc.), then an independent medical professional should be permitted to attend them.

It is not acceptable that access to a health care professional be reserved to cases of "serious" illness or "severe" injury. Illness may endanger the detainee or others held in the holding room and should be treated. An injury may give rise to complications not identified by a person who is not a medical professional. The proposals are unsafe. It is not specified to whom it should "appear" necessary to transfer a person to hospital. This should be the health professional present and when one is not yet present, the staff member first on the scene or their manager if an ambulance has not been summoned by the time the manager arrives.

PART III DETAINED PERSONS

CHAPTER 1 ADMISSION AND DISCHARGE

Specific provision should be made for those who are detained unexpectedly to be given an opportunity to recover property and money that is not with them, or to secure property that They cannot take with them to the short-term holding facility. For example, if someone drives to a reporting centre in his or her own car and is then unexpectedly detained, provision should be made for the car to be secured in a safe place. People should be given an opportunity to return to their dwelling to pack belongings. People should also be able to withdraw money from cash points. It is inadequate for the Home Office to say, as was said in consultation on previous drafts of the rules that if there happens to be a friend available to do this, it will be facilitated.

Examples of problems (these relate to Pennine House) include:

> One seven months' pregnant woman whose husband was detained had to find her own way back to London.

Persons who had travelled by car had cars parked in car parks at the time of their detention and no arrangements were made to move these.

A number of detainees who had travelled to Liverpool by car and whose spouse had no driving licence were understandably concerned that their vehicle had been subject to parking charges and penalties before someone they knew and trusted was able to access keys, travel to Liverpool and retrieve it.

In addition, we understand that couples have been prevented from meeting after the conclusion of their interviews. One man reports being unable to give his wife access to funds for her return travel and to make arrangements for her to be met.

We do not consider it adequate that the rules be "readily available". Detainees should be given the opportunity to have, or to make, a copy.

We are pleased to see that information about the procedures in place for applying for bail will be provided, but in addition bail application forms should be provided to detainees. In our second response in 2009 we wrote

> *20. We also wish to draw attention to the response to our proposal that the Rules include that information be available to detainees about how to apply for bail, and that forms be available in order to make such applications. Similarly, temporary release and temporary admission should be addressed. The bare assertion that "this is not a matter for the Rules" is inadequate. While we acknowledge that a commitment is given that the "planned operating standards" will cover these issues, we maintain that the importance of the right to liberty and to be able to apply for liberty are so fundamental as to justify requiring in the Rules that such information and forms are made available to detainees. There should be a similar requirement that information be available to detainees as to the availability of legal representation and legal aid.*

We repeat these comments insofar as they have not been addressed. Rule 8(2) does not work. How will it be determined that a person does not understand information that is "readily available"? What if, because of their lack of understanding, they have not tried to access it? A person who in a short term holding centre is likely to be in a state of confusion and anxiety: either because they have just been detained or because removal may be imminent. In these circumstances it is important that all persons receive an oral explanation of what information is available, be shown copies of the documents and have someone on hand who will answer their questions or explain further if they cannot read the language in which the documents are provided, if they request this, or if they appears to have difficulty in understanding the information, whether because of lack of comprehension, distress or otherwise. Express reference should be made to making use of telephone interpreting services.

We do not consider that "such languages as directed by the Secretary of State" provides sufficient guarantee that adequate translations will be provided and suggest that reference be made to "a variety of languages" as in the Detention Centre Rules, rule 4(5).

Rule 9 Record, photograph and fingerprinting.

The purpose of the personal record should be stated, as in the Detention Centre Rules, rule 5(1): "For the purposes of identification and welfare".

We do not understand the reference in rule 9(4) to photographing a person "as many times as may be required" given the short period for which a person may be held in a short term holding facility. We suggest that once should be sufficient.

Rule 9(6), the words "if specifically directed by the Secretary of State" should be inserted as in rule 5(4) of the Detention Centre Rules.

Rule 10 Detained Person's Property

In paragraph 10(1) we suggest the insertion of the word "reasonably" before "directs". The maxima and minima set by the Secretary of State should be a function of the nature of the facility and the safety and welfare of the persons therein and not of other facilities.

Rule 10(2) is easily avoided by the transfer of title in the property between detainees by way of gift. We recommend that it be deleted.

The insertion of obligation to request that the detainee sign to confirm receipt of returned at paragraph 10(8) is not in the Detention Centre Rules. We have no objection on a requirement to a staff member to make the request, but it must be made clear that if a detainee does not wish to sign his/her property must nonetheless be returned.

In Rule 10(9) we consider that the six month limit on the destruction of property should apply in all cases. Particularly if a person is removed, they may not be able to make arrangements at once for the4 collection of the property.

In rule 10(11) the words "considered by the manager" should be deleted to bring the rule into line with the Detention Centre Rules. The test should be an objective test. See also our comments on Rule 2.

Rule 11 Search

Given the short time for which persons are to be held in short term holding facilities, we consider that to search a person when taken into custody and on reception could lead to duplication of searches and that given that a person is held for a short time it should be wholly exceptional that a person is searched subsequently and this should be made clear.

We should be grateful for an explanation of why paragraphs (5) to (7) of Rule 11 are considered necessary when these are not in the detention centre rules. Absent such an explanation, these rules should be deleted.

Rule 12 Custody outside short term holding facilities

In rule 12(1) the word practicable should be replaced with possible to provide consistency with the detention centre rules. It is easier for staff to understand language with which they have been wording for some time and a change of language, even if no change of meaning be intended, might be read by some staff as reducing the protection for detainees. In paragraph 12(2) express reference should be made to not handcuffing people, for example for medical appointments.

Rule 13 Reasons for detention and update of claim
Given the short term for which persons are held in short term holding facilities we consider that detention should be reviewed daily and written reasons provided.

The rule should make clear that the detained person may make a request for the purposes of paragraph (2) to a member of staff at the short-term holding facility.

To facilitate the right to be able to request an update, there needs to be specific provision so that, where it is clear that a detained person who cannot speak English wishes to communicate with short-term holding facility staff, a staff member shall use a telephone interpreting service. Similar provision should be made in other Rules (e.g. in relation to healthcare, correspondence and requests or complaints). The Rule should make provision for the information to be provided "in a language which the detained person understands".

Rule 15 Sleeping accommodation
See comments on Rule 4 above. Families with children must be detained for the shortest possible time. Minors should not be detained but should be transferred to the care of social services as soon as possible.

Rule 16 Families and minors
See comments on Rule 4 above. Families with children must be detained for the shortest possible time. Minors should not be detained but should be transferred to the care of social services as soon as possible.

The reference to being provided with accommodation "suitable to their needs" which exists in the Detention Centre Rules should be repeated here. See the Shaw review.

Rule 17
See comments on Rule 4 above. We consider that the reference to "suitable and adequate clothing on release" applies as much to a person detained on arrival in a short term holding facility and then released as to a person detained on arrival who goes into detention and that rule 12(3) of the Detention Centre Rules should be reproduced.

We consider that facilities for handwashing and drying should be provided as persons may have items they wish to rinse.

Rule 18 food
The reference in the Detention Centre Rules (Rule 13(3)(a)) to food's being "well prepared" should be repeated here as should the reference to the inspection of food both before and after it is cooked. See the comments in the Shaw review on food.

As with the Detention Centre Rules rule 13(3)(a), the reference to food meeting all religious, dietary, cultural and medical needs should not be qualified by "where practicable". A person should not be asked to eat food that puts them at medical risk, or that is contrary to the precepts of their religion and face insufficient food as an alternative.

Reference should be made in rule 18(2) to drink to ensure that there are standards as to drink and its preparation and service.

Rule 19 Hygiene
The reference to toiletries being replaced as necessary, which exists in the Detention Centre Rules at Rule 16(2) should be repeated here.

Draft Rule 19(2) should be deleted, The provision of toiletries and facilities for a daily bath or shower should not be withheld and arrangements should be made to manage concerns about safety (for example use of toiletries or of shaving equipment under supervision; a person's taking a bath or shower within earshot, although not within sight, of a staff member and remaining in communication with them). The test "if it is suspected" is vague and ill-suited to application in practice or to monitoring. Nor can we identify any circumstances in which a person's bathing, for example, would constitute a danger to others

Recreation Rule 20
The reference to "so far as is reasonably practicable" should be removed. While the nature of recreational facilities will be different in a short term holding facility from an "immigration removal centre" appropriate facilities should be made available. Books should always be provided, as they are, for example, in the short term holding facility in Lunar House.

CHAPTER 3 RELIGION

Rule 22 Diversity of religion
Religious books should be made available. Where a person is not held "airside" or equivalent, they should be able to request and receive visits (including in holding rooms) from a minister of religion.

Rule 23 Religious denomination
How will a person know that they can do this, and what is perceived to be the purpose of so doing?

CHAPTER 4 COMMUNICATIONS

Rule 24 Outside contacts
Rule 24(2) is broadly worded and there is a risk that staff will misinterpret it as permitting a wider prohibition on visits or communications than is proper. Express reference should be made to legal professional privilege.

The rule should specify who can conclude that communications would prejudice the interests of security etc. The passive voice means that no one is identified and it must be clear where the responsibility lies. Provision should be made for the reasons for reaching such a conclusion to be recorded formally in writing

Rule 25 Correspondence
See comments on Rule 4.

We do not consider that the caveat in rule 25(1), which is absent from the equivalent provision in the Detention Centre Rules (Rule 27(1)), is appropriate or is compatible with Articles 5 of the European Convention on Human Rights. Simililarly for the repletion of the restriction in

draft Rule 25(10(b). The only reason for limiting the number of facsimiles a person can send at their own expense is if this is interfering with the ability of others to do likewise.

In rule 25(3), the text should be amended to read "writing and sending" as a person may not have pen and paper.

Express reference should be made to legal professional privilege.

Rule 28 Legal Advisor

In our second comments on the rules in 2009 we wrote

> *16…we wish to draw attention to the responses to our general suggestion, in relation to what were rules 6, 24 and 33, that the Rules provide for legal representatives to be notified in certain circumstances. The general response is that it is for the detainee to inform his or her representative, not for officials or staff. The response is inadequate.*
>
> *17. We had proposed that the record maintained at each STHF should include details of any legal representative that the detainee has; and that the representative should be notified of the detainee's detention at the particular STHF, of any interviews to be conducted with the detainee by the police, immigration officers or other Government officials and of any decision to confine the detainee in "special accommodation". The reason for requiring notification of the representative of these matters is that these each relate to legal and human rights in respect of which the representative is responsible for protecting the detainee. Our proposal was not that the UK Border Agency or STHF staff should thereby become responsible for ensuring that the detainee was legally represented, but that they should ensure that where a detainee had instructed a legal representative, officials respected the detainee's wish and right to the protection of his or her legal and human rights by such representation.*
>
> *18. By abrogating the responsibility of notifying the representative to the detainee, the draft Rules fail to demonstrate adequate respect for the detainee's right to representation and the particular vulnerability of those who are detained. We recall the observations of Anne Owers, HM Chief Inspector of Prisons, to which we referred in our original response, and the wider observations we made under the heading "General Observations" in that response, including the reference to clear examples as to how detainees are inadequately protected by failure or refusal to give notice to their representatives.*
>
> *We note also the increased vulnerability of many immigration detainees by reason of language and cultural barriers, and lack of familiarity with legal systems or rights. The response to our original comments fails to address these concerns.*
>
> *19. Moreover, … the suggestion that the responsibility for notifying representatives should be left to detainees ignores the fact that the detainee's liberty is by definition restricted and hence his or her ability or opportunity to notify a representative may be impeded.*
>
> *For instance, if a detainee is required to now attend an interview of which he or she has not had any or adequate notice, the opportunity to notify any representative is outside of the detainee's control – unless he or she is prepared to resist attendance or participation in the interview. The Rules should protect against such circumstances, and as currently drafted they do not. The clearest way in which such protection could be provided would be to require notification to legal representatives in the circumstances we originally proposed.*

Rule 29 Use of Telephones
As with the Detention Centre Rules rule 31(3), a separate telephone should be provided for incoming calls. There should be an obligation, as in that rule, promptly to notify a detained person of such calls.

Draft Rule 29(3) has no equivalent in the Detention Centre Rules and should be omitted or modified. The only reason for limiting calls is if this is interfering with the rights of another detainee to make or receive calls and our comments on having a separate line for incoming calls is pertinent here.

We assume that persons in short term holding facilities will be permitted under the rules to retain mobile 'phones. Sufficient Facilities should be provided for charging these.

In previous correspondence it was said in relation to an earlier commitment to make express reference to mobile telephones, it is now said in Annex A that "*the legal advice is that it is unnecessary to do so*". We should welcome some more explicit explanation of why it is said to be unnecessary.

Investigatory Powers Bill

We draw attention to Clause 44 *Interception in immigration detention facilities* of the Investigatory Powers Bill currently before the House of Commons. Under Clause 44, conduct is authorized if it is done in the exercise of any power conferred by rules for short term holding facilities on made under s 157 of the Immigration and Asylum Act 1999.

We share the concerns expressed by the Don't Spy on Us coalition in its briefing paper[9] as to the haste with which the Bill is proceeding and the lack of clarity in its provisions and its failure to protect the privileged communications between lawyers and their clients.

We do not see evidence in the draft rules of consideration having been given to safeguards that would need to be in place were the Bill to become law. It would be helpful to see a memorandum on what changes to the rules would be envisaged were the Bill to become law.

CHAPTER 5 HEALTH CARE

There is no provision for medication to be retained or recovered by the detained person. If a person is detained at a reporting centre, for instance, and is on medication which they do not have with them, there should be a specific duty for that medication to be recovered.

Rule 30 Medical Screening
If a person does not consent to screening on arrival provision should be made for a prompt response in the circumstances that they change their mind.

Rule 31 General Medical Care

[9] https://www.dontspyonus.org.uk/assets/site/dontspyonus/files/investigatory_powers_bill_how_to_make_it_fit-for-purpose.pdf

Rule 31(1) provides for prompt access to a "health care professional". As set out in Rule 2, this may be a registered medical practitioner or a registered nurse.

Rule 31(2) the Word "forthwith" rather than "promptly" is used in the detention centre rules and we consider that it better conveys a sense of urgency and should be preferred here also.

Rule 31(9) It would be helpful if draft rule 31(9)(a) were redrafted to say "the detained person meets" rather than "pays". The costs of the consultation may be or those acting on his or her behalf"

The obligation to forward records set out in rule 33(9) of the Detention Centre Rules should be repeated here.

Rule 31(12) is an unwarranted interference with a person's ability to present his/her case and to enjoy unimpeded access to the courts and should be deleted.

See comments on Rule 4. It is not acceptable that this provision does not apply in holding rooms.

No mention is made of infectious diseases. We find this a surprising omission given that persons may just have disembarked from trains and 'planes and are now held in close association with others. There is no explanation of how the health of other detainees (and staff) is to be protected, either in terms of discovering that a person has an infectious disease or when this is discovered. Some diseases may have been identified to, or by, the Port Medical Officer but it cannot be assumed that all diseases will be identified in this manner.

Rule 32 Special illnesses and conditions

This provision does not appear to work given the timescales for which a person is held in short term holding facility. No timescales are set for how quickly the actions described must be carried out and we identify a risk that the person will have left the short-term holding facility by the time they are carried out. We draw attention to Stephen Shaw's comments on the inadequacies of the Rule 35 process. A person should not be moved to another place of detention if there are concerns that, for example, they have been tortured, but neither should their stay in the short-term holding facility be prolonged. All reports should reach the Secretary of State and the Secretary of State should make a decision on release within the normal (not extended) period for which a person can be held in a short term holding centre and this should be expressly stated in the rule.

As per our previous comments on draft rules to reduce the risk of self-harm, the Rules should contain a specific duty to ensure that ligature points are removed to the greatest extent possible, and for staff to have ready access to ligature cutters.

See comments on Rule 4. It is not acceptable that this provision does not apply in holding rooms.

Rule 33 Notification of Illness or death

We consider that the wording of Rule 33(3) should use "wherever it is reasonably practicable" as in the Detention Centre Rules rather than "if it is" as has been used in the draft.

ILPA has recently commented on the Detention Services Order on Death and we invite you to refer to those comments.

See comments on Rule 4. It is not acceptable that this provision does not apply in holding rooms.

CHAPTER 6 REQUESTS AND COMPLAINTS

Rule 34 Requests and complaints

Rule 34(1) – "shall" is to be preferred to "must" in this sentence, as in the Detention Centre Rules.
The rule should mirror rule 38 of the Detention Centre Rules in that express provision should be made for the manager to hear complaints every day.

Rule 38(5) of the Detention Centre Rules should be replicated: a person should be able to complain in confidence and express provision should be made for this. As in the Detention Centre Rules, there should be provision for complaints to be placed in a sealed envelope.

We recall the following comments on previous drafts of the Rules, which have not been addressed:

- There should be a duty to have CCTV monitoring and recording in order to enhance the safety of everyone in an short-term holding facility.

- There should be a specific duty for staff in short-term holding facilities to wear a badge clearly identifying them, whether by name or number. This would reduce the possibility that a detained person, who considers he or she has cause for complaint, is hindered in pursuing a complaint because of the difficulty in identifying a particular member of staff.

The undercover Channel 4 news report into Yarls' Wood underscores the need for these safeguards.

PART IV MAINTENANCE OF SECURITY AND SAFETY

Rule 35 Removal from Association

Rules 35(2) should, as in the Detention Centre Rules, use the language of "as soon as possible" not "without undue delay" which does not convey the sense of urgency as clearly.
It is not appropriate to have reference to removal from association for seven days given the timescales for which persons are held in short-term holding facilities.

We do not consider that it is permissible to withhold from a person information about their removal from Association. No provision is made for this in the Detention Centre Rules

The words "without delay" should be inserted into subparagraph (7) on notification to the visiting committee.

Rule 37 Temporary confinement
In 37(2) as in the Detention Centre Rules, use the language of "as soon as possible" not "without undue delay" which does not convey the sense of urgency as clearly.
In paragraph 37(4), is it intended that authorization be given by the Secretary of State in person. If not, and authorization can be given by an officer, the words "not being an officer of the short-term holding facility" should be inserted, mirroring the Detention Centre Rules.

We consider that the period for which a person may be confined is far too long. If there is any reason for confining them for longer than 24 hours we question whether they should remain in a short term holding facility at all.

Re paragraphs (10) and (11), an officer of the Secretary of State should also visit a person in temporary confinement at least once a day.

The rule would be improved by the insertion of definitions of "refractory" and "special accommodation".

PART V STAFF OF SHORT TERM HOLDING FACILITIES

Rule 39 General Duty of Staff
We suggest that subparagraph 39(2) be amended to read "attention or knowledge" to ensure that it is comprehensive. In the light of the comments in the Shaw report and in the reports of Her Majesty's Inspector of Prisons we consider it important the rules contain the equivalent of paragraphs 45(3) to (6) of the Detention Centre Rules and provide for staff to pay special attention to the well-being of detained person; to notify the health professional of any concern they have about the physical or mental health of a detainee and to treat detained persons in a manner geared toward enlisting their willing cooperation and encouraging self-respect and a sense of both personal responsibility and tolerance towards others.

Rule 45 Communication with the press
Members of staff are prohibited from making public matters relating to the administration of any short term holding facility or a person detained at a short term holding facility. We consider that the rules should include express protection from whistle-blowers and a means for them to raise their concerns and have them examined. Whistle-blowers must not be gagged or intimidated

PART VI PERSONS HAVING ACCESS TO SHORT TERM HOLDING FACILITIES

Rule 48 Control of persons and vehicles
The words "and that search may include a search of any property found on their person or in the vehicle" as well as subparagraph 48(3) on retention are not included in the Detention Centre Rules and should not be included here. They describe intrusive powers. A person carrying objects not permitted may be denied access to a short term holding facility but that is

not a reason to interfere with their property and to do so risks breaching Article 1 of Protocol 1 to the European Convention on Human Rights.

As to subparagraph 48(5), Immigration Officers have a general power under section 146(1) to use reasonable force. No additional provision is made in the Detention Centre Rules at 55, the equivalent rule, for such use of force and none should be made here. In the light of the cases of abuse which have come to light, it is inappropriate that staff of private contractors be given powers to use force. They should call on the police or immigration officers as required. Express provision should be made for respect for legal professional privilege.

PART VII VISITING COMMITTEES

Rule 54 Members visiting short-term holding facilities

Paragraph 54(2) should provide, as do the Detention Centre Rules, powers for visiting committee members to interview detainees out of both sight and hearing, not just sight of an officer. This is the only way in which conditions can be created that provide at least some opportunity for a detained person to report abuse, including sexual abuse, and ill-treatment, particularly where they are struggling to communicate.

Rule 56 Particular duties

As with the Detention Centre Rules (Rule 62), provision should be made in paragraph 56(10 for members of the Committee to visit those removed from association or temporarily confined, within 24 hours. Given the timescales for which persons remain in short-term holding facilities and that those in them include persons newly arrived, a rapid response is necessary.

We prefer the expression "hear" a complaint or request as this implies face to face contact where required.

PART VIIII SUPPLEMENTAL

We consider that delegation by the manager to an immigration officer is acceptable but delegation to a detainee custody officer, who could be a member of staff of a private contractor, is not and does not provide the necessary oversight or guarantee of safety.

Other matters

The following comments provided on previous drafts of the Rules have not been addressed:

> *There should be specific provision made in respect of a detained person's release, particularly their onward travel to accommodation. Unless it is clear that the person can pay for this travel, reasonable facilities or financial support should be provided – e.g. a taxi, where an individual cannot be expected to find their way by bus; properly completed rail travel warrants. Similarly, where it is not clear that the person can provide for his or her immediate needs, financial support ought to be available. Generally, there should be a duty to be concerned for the person's wellbeing on release.*

We are happy to provide copies of previous correspondence on request.

ANNEX – HISTORY OF THESE RULES

ILPA has a long history of commenting on these rules. While measures governing the regulation and management of short-term holding facilities were made in 2002[10], it was not until 2006 that draft rules were published. As with the current draft, these covered similar ground for short-term holding facilities as do the Detention Centre Rules for Immigration Removal Centres. In 2006 the Home Office consulted on draft rules[11]. ILPA responded[12]. In 2009 the Home Office consulted on another draft of the rules[13]. Again, ILPA responded[14].

A number of freedom of information requests[15] and parliamentary questions followed. On 30 April 2012 at HC col 1086W, Dr Julian Huppert MP asked:

> *(2) for what reason the Short Term Holding Facility Rules that would apply to the Cedars secure pre-departure accommodation have not yet been published; which rules apply to the operation of the Cedars secure pre-departure accommodation; and whether the Cedars secure pre-departure accommodation may operate without published rules.*

The then Minister, Damian Green MP, replied:

> *The Short-term Holding Facility Rules remain under development at present[16].*

In October 2013, Lord Ramsbotham asked the Parliamentary Under-Secretary of State for the Home Office, Lord Taylor of Holbeach, when the rules governing short-term holding facilities would be published. Lord Taylor of Holbeach replied:

> *The draft Short-Term Holding Facility Rules have yet to be finalised and, as such, there is at present no fixed date for when they will be made."[17]*

On 03 March 2014, during the passage of the Immigration Bill, Lord Taylor of Holbeach gave a commitment that rules governing the management and operation of short-term holding facilities and the Cedars pre-departure accommodation would be introduced before the summer recess, saying:

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[10] The Immigration (Short-term Holding Facilities) Regulations 2002 (SI 2002/2538).
[11] See www.ilpa.org.uk/resources.php/14494/home-office-draft-short-term-holding-facilities-rules-2006.
[12] See also www.ilpa.org.uk/resources.php/1889/home-office-to-ilpa-of-7-august-2006-re-draft-short-term-holding-facility-sthf-rules.
[13] See www.ilpa.org.uk/resources.php/20183/uk-border-agency-ukba-to-ilpa-re-further-consultation-on-the-draft-short-term-holding-facility-sthf-
[14] See www.ilpa.org.uk/resources.php/13062/uk-border-agency-further-consultation-of-the-draft-short-term-;yxcvbholding-facility-sthf-rules-ilpas-furt . See also The Lord Brett, Parliamentary Under Secretary of State to The Lord Avebury of 11 August 2009 re time limits for detention in Short-term Holding Facilities at www.ilpa.org.uk/resources.php/2919/the-lord-brett-parliamentary-under-secretary-of-state-to-the-lord-avebury-of-11-august-2009-re-time- ; Refugee Council to Kristian Armstrong, Children's Champion, UK Border Agency of 5 August 2009 re short-term holding facilities and child protection www.ilpa.org.uk/resources.php/2940/refugee-council-to-kristian-armstrong-childrens-champion-uk-border-agency-of-5-august-2009-re-short-
[15] See e.g. https://www.whatdotheyknow.com/request/short_term_holding_facilities_2 , https://www.whatdotheyknow.com/request/short_term_holding_facilities_3
[16] Hansard, Written Answers, 30 April 2012, column 1086W at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120430/text/120430w0001.htm#120430180000026
[17] http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131030w0001.htm

> *I am aware that there has also been a lack of legislative framework governing the operation of the short-term holding facilities. As has been pointed out by noble Lords, this has been a matter of concern for years to a number of interested parties, including Her Majesty's Chief Inspector of Prisons, who has responsibility for inspecting the UK's detention facilities. The delay in introducing these rules is regretted, but it has been a case of unavoidable delay being caused by a number of different reasons, including, most recently, the discussions surrounding the legislative framework that should apply to Cedars, which we have just discussed, which initially had been classified as a short-term holding facility and, as such, would have been covered by these rules. We have just debated those amendments. Accordingly, today, I give my noble friend a commitment that separate sets of rules governing the management and operation of short-term holding facilities and the Cedars pre-departure accommodation will be introduced before the Summer Recess. With that, I hope that my noble friend will feel able to withdraw his amendment*[18].

Lord Avebury was informed before recess that the commitment would not be met.

In a written answer of 24 October 2014 to a question by Lord Avebury on conditions in the short term holding facilities at Heathrow, Lord Bates indicated that rules on short-term holding facilities remained pending:

> *We are currently exploring a range of measures as part of the rules governing Short Term Holding Facilities to balance the welfare of those people being held, with effective management of the facilities and immigration control. I welcome the noble Lord's continued interest in this area and his views on the final content of these Rules.*[19]

He continued to pursue this.[20] Draft rules were finally published on 18 February 2016, almost a decade after the first draft was published and some 14 years after they were envisaged.

[18] Hansard, HL Deb, Column 1140, 03 March 2014 at: http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140303-0001.htm

[19] Hansard, Written Answer HL2190 at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2014-10-20/HL2190

[20] HL Deb 24 October 2014, Lord Bates to Lord Avebury, Written Answer HL2190 at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2014-10-20/HL2190