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STATUTORY INSTRUMENTS

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**2018 No. 409**

**The Short-term Holding Facility Rules 2018**

**PART 3**

**DETAINED PERSONS**

*Admission and discharge*

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

7.—(1) The following information must be available at a short-term holding facility for consultation by a detained person—

- (a) a copy of these Rules;
- (b) information about any procedures in place for applying for bail;
- (c) information about the right to seek legal advice;
- (d) any other information about the procedures in the short-term holding facility relevant to the detained person's rights and responsibilities, and
- (e) any translation of these Rules and of the information in sub-paragraphs (b) to (d) which is available, if required by the detained person.

(2) In the following cases the manager must ensure that the information in paragraph (1) is explained in a language which the detained person understands to the extent necessary to enable the detained 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 information.

**Record, photograph and fingerprinting**

8.—(1) For purposes of identification and welfare a personal record must be prepared and maintained for each detained person.

(2) A personal record—

- (a) must include the name and date of birth of the detained person, and
- (b) may include other information, including details and measurements of external physical characteristics.

(3) A personal record or a copy of it must not be given to any person unless they are authorised by the Secretary of State to receive it.

(4) A detained person may be photographed by an officer on reception and subsequently.

(5) A photograph of a detained person or a copy of it must not be given to any person, unless they are authorised by the Secretary of State to receive it.

(6) A detained person's fingerprints may be taken in accordance with section 141 of the Immigration and Asylum Act 1999(1) (fingerprinting).

### **Detained person's property**

9.—(1) The manager of a short-term holding facility may refuse to permit a detained person to store property in the facility if it is excessive in weight or size.

(2) A detained person must not store in the short-term holding facility property belonging to another detained person.

(3) Subject to paragraph (4) of this rule and rule 10(7) and (8) (search), a detained person may retain for personal use property admitted to the short-term holding facility.

(4) A detained person must not store or retain property for personal use if it is considered by the manager to be—

- (a) contrary to the interests of the security of the short-term holding facility;
- (b) contrary to the safety of any person, or
- (c) incompatible with the storage facilities provided at the short-term holding facility.

(5) Any property which a detained person has at a short-term holding facility but is not allowed to retain for personal use under this rule must be surrendered by the detained person into the manager's custody.

(6) An inventory of a detained person's property must be kept and the detained person must be requested to sign it after having an opportunity to establish that it is correct.

(7) Any cash or other valuable items that a detained person does not wish to keep in their possession must be deposited with the manager for safekeeping and a receipt must be issued which the detained person must be requested to sign after having an opportunity to establish that it is correct.

(8) A detained person may have reasonable access to any cash or other valuable items deposited with the manager for safekeeping under paragraph (7).

(9) Subject to paragraph (12), upon a detained person's discharge from the short-term holding facility—

- (a) any property surrendered to the manager under paragraph (5) and any cash or other valuable item deposited with the manager under paragraph (7) must be returned to the detained person, and
- (b) the detained person must be requested to sign the inventory referred to in paragraph (6) to confirm receipt of any item that is returned.

(10) An item belonging to a detained person which remains unclaimed for a period of more than—

- (a) 28 days after the detained person is discharged from the short-term holding facility, or
- (b) 6 months after the detained person dies,

may be sold or otherwise disposed of.

(11) The net proceeds of any sale under paragraph (10) must be applied, under the joint authority of the manager and the contract monitor, to purposes for the benefit of detained persons.

(12) Any item which a detained person is not permitted to retain under paragraph (4)(a) or (b) may—

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(1) Section 141 was amended by section 66 of the Nationality, Immigration and Asylum Act 2002, section 15 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 28 of the Immigration, Asylum and Nationality Act 2006, section 51 of the Borders, Citizenship and Immigration Act 2009 (c. 11), Schedule 9 to the Immigration Act 2014, section 57 of, and Schedules 10 and 11 to the Immigration Act 2016, and by S.I. 2017/617.

- (a) be returned to the detained person upon discharge from the short-term holding facility in accordance with paragraph (9), or
- (b) may be disposed of in such manner as the manager may direct.

## **Search**

**10.**—(1) Every detained person must be searched by a detainee custody officer or an immigration officer for reasons of the security of the short-term holding facility and the safety of the detained person or other persons—

- (a) when taken into custody by a detainee custody officer or an immigration officer;
- (b) on reception into a short-term holding facility, and
- (c) subsequently as the manager thinks necessary.

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

(3) Where a detained person under the age of 18 is detained at the same short-term holding facility as their parent or carer, that parent or carer must, where possible, be present during any search of the detained person under the age of 18.

(4) A full search may be carried out under paragraph (1), but such a search must not be carried out within the presence of—

- (a) another detained person, or
- (b) a person of the opposite sex.

(5) A full search of a detained person under the age of 18 must not be carried out under this rule.

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

(7) A detainee custody officer or an immigration officer may confiscate any item located as a result of a search under paragraph (1) that the detainee custody officer or immigration officer has reasonable grounds to believe may compromise the security of the short-term holding facility or the safety of any person.

(8) The manager may at any time confiscate an unauthorised item found concealed or deposited anywhere within the short-term holding facility.

(9) Any item confiscated under paragraph (7) or (8) may be disposed of in such manner as the manager may direct, which may include returning the item to the detained person upon discharge from the short-term holding facility.

(10) For the purposes of this rule “full search” means a search which involves the removal of an item of clothing which—

- (a) is being worn wholly or partly on the trunk, and
- (b) is being so worn either next to the skin or next to an article of underwear.

(11) For the purposes of paragraph (6) “intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth.

## **Custody outside short-term holding facilities**

**11.**—(1) A person being taken to or from a short-term holding facility in custody must be exposed as little as possible to public observation and care must be taken to protect that person from curiosity and insult.

(2) A detained person required to be taken into custody anywhere outside a short-term holding facility must be kept in the custody of a detainee custody officer, an immigration officer or a constable.

### **Reasons for detention and update of claim**

**12.**—(1) The Secretary of State must provide a detained person with written reasons for their detention when they are first detained and following any review of their detention.

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

(3) For the purposes of paragraph (2) “relevant matter” means—

- (a) a claim for asylum;
- (b) an application for 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 European Union law;
- (e) a claim for a right of residence in the United Kingdom under a provision of European Union law;
- (f) the proposed removal or deportation of the detained person from the United Kingdom;
- (g) an application for bail under the Immigration Acts<sup>(2)</sup> or under the Special Immigration Appeals Commission Act 1997, or
- (h) an appeal against, or an application for administrative review or judicial review in relation to, any decision taken in connection with a matter referred to in sub-paragraphs (a) to (g).

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(2) See section 61 of the UK Borders Act 2007.