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STATUTORY INSTRUMENTS

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**2018 No. 409**

**IMMIGRATION**

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

<i>Made</i>	- - - -	<i>22nd March 2018</i>
<i>Laid before Parliament</i>		<i>27th March 2018</i>
<i>Coming into force</i>	- -	<i>2nd July 2018</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 157(1) and (3) and 166(3) of, and paragraph 1 of Schedule 12 to, the Immigration and Asylum Act 1999<sup>(1)</sup>.

**PART 1**

**Citation and commencement**

1. These Rules may be cited as the Short-term Holding Facility Rules 2018 and come into force on 2nd July 2018.

**Interpretation**

2. In these Rules—

“contracted out short-term holding facility” means a short-term holding facility in respect of which there is a contract entered into by the Secretary of State under regulation 2 of the Immigration (Short-term Holding Facilities) Regulations 2002<sup>(2)</sup>;

“directly managed short-term holding facility” means a short-term holding facility which is not a contracted out short-term holding facility;

“health care professional” means a registered medical practitioner or a registered nurse;

“holding room” means a short-term holding facility where a detained person may be detained for a period of not more than 24 hours unless a longer period is authorised by the Secretary of State;

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<sup>(1)</sup> 1999 c. 33; section 157(1) and paragraph 1 of Schedule 12 were amended by section 66(2) and (3) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

<sup>(2)</sup> S.I. 2002/2538.

“legal adviser” means a detained person’s counsel, representative or solicitor, and includes a clerk acting on behalf of that solicitor;

“manager” means—

- (a) in relation to a directly managed short-term holding facility, the official of the Secretary of State designated to complete the tasks that fall to a manager under these Rules;
- (b) in relation to a contracted out short-term holding facility, a member of the contractor’s staff—
  - (i) designated to complete the tasks that fall to a manager under these Rules, and
  - (ii) certified as a detainee custody officer.

“member of staff” means a person working at a short-term holding facility;

“officer” means—

- (a) an official of the Secretary of State;
- (b) an employee of the contractor;
- (c) a detainee custody officer (and includes a detainee custody officer who is authorised to perform escort functions in accordance with section 154 of the Immigration and Asylum Act 1999(3)), or
- (d) an immigration officer.

“port” includes airport.

## PART 2

### APPLICATION

#### **Application of these Rules**

**3.** Subject to rules 4 (places of detention), 5 (directly managed short-term holding facilities) and 6(4) to (8) (holding rooms) these Rules apply to a short-term holding facility and to a detained person detained in a short-term holding facility.

#### **Places of detention**

**4.—(1)** These Rules do not apply to the facilities listed in paragraph (2) or to a detained person who is detained in such a facility.

(2) The facilities are—

- (a) a police station;
- (b) a hospital;
- (c) a young offender institution;
- (d) a prison or remand centre;
- (e) in the case of a person under 18, a place of safety, and
- (f) any premises at which appeals or reviews under Part 5 of the Nationality, Immigration and Asylum Act 2002(4) or under the Special Immigration Appeals Commission Act 1997(5) are heard or any place provided specifically for the purpose of detention in such premises.

(3) Section 154(5) has been substituted by section 65(1) of the Nationality, Immigration and Asylum Act 2002.

(4) Part 5 was amended by sections 26 to 31 and 33 of, and Schedules 2 and 4 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), sections 1 to 7 and 11 to 14 of, and Schedules 1 and 3 to, the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 19 and 54 of, and the Schedule to, the UK Borders Act 2007 (c. 30), paragraph 54 of

- (3) For the purposes of paragraph (2) “place of safety”—
- (a) in England and Wales, has the same meaning as in the Children and Young Persons Act 1933(6);
  - (b) in Scotland, has the same meaning as in the Children’s Hearings (Scotland) Act 2011(7);
  - (c) in Northern Ireland, means a home provided under Part 7 of the Children (Northern Ireland) Order 1995(8), any police station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18.

### **Directly managed short-term holding facilities**

5.—(1) These Rules apply to directly managed short-term holding facilities except for rule 41 (staff employed by the contractor) and subject to the modifications set out in paragraphs (2) to (6).

(2) Rule 9(11) (detained person’s property) applies as if for “joint authority of the manager and the contract monitor” there were substituted “authority of the manager”.

- (3) Rule 17(3) (food) applies as if—
- (a) for “The contract monitor” there were substituted “The manager”, and
  - (b) after “and drink” there were omitted “and must report any deficiency or defect to the manager”.
- (4) Rule 34 (requests and complaints) applies as if paragraph (4) were omitted.
- (5) Rule 35 (removal from association) applies as if—
- (a) in paragraph (1) for “The Secretary of State” there were substituted “The manager”, and
  - (b) paragraph (2) were omitted.
- (6) Rule 37 (temporary confinement) applies as if—
- (a) in paragraph (1) for “The Secretary of State” there were substituted “The manager”, and
  - (b) paragraph (2) were omitted.

### **Holding rooms**

6.—(1) Subject to paragraph (2), a detained person must not be detained in a holding room for a period of more than 24 hours.

(2) The Secretary of State may authorise this period to be extended if the Secretary of State determines that exceptional circumstances require it.

(3) These Rules apply to a holding room and to a detained person detained in a holding room except for those provisions listed in paragraph (4) and subject to the modifications in paragraphs (5) to (8).

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Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), Part 2 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), sections 51 to 54 of the Crime and Courts Act 2013 (c. 22), sections 15 and 17 of, and Part 4 of Schedule 9 to, the Immigration Act 2014 (c. 22), section 63 of the Immigration Act 2016 (c. 19), and by S.I. 2010/21 and 2011/1043.

- (5) 1997 c. 68; amended by Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 35 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), section 4 of and Schedules 7 and 9 to the Nationality, Immigration and Asylum Act 2002, Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Schedule 17 to the Constitutional Reform Act 2005 (c. 4), section 16 of the Prevention of Terrorism Act 2005 (c. 2), Schedule 1 to the Immigration, Asylum and Nationality Act 2006, section 91 of the Counter-Terrorism Act 2008 (c. 28), section 15 of and Schedule 2 to the Justice and Security Act 2013 (c. 19), paragraph 26 of Schedule 9 to the Immigration Act 2014, section 66 of the Criminal Justice and Courts Act 2015 (c. 2) and section 64 of and Schedule 10 to the Immigration Act 2016.
- (6) “Place of safety” is defined in section 107(1) of that Act (1933 c. 12); the definition was amended by paragraph 12(2) of Schedule 5 to the Children and Young Persons Act 1969 (c. 54).
- (7) 2011 asp 1.
- (8) S.I. 1995/755 (N.I.2).

- (4) The provisions are—
- (a) rule 13 (accommodation);
  - (b) rule 14 (sleeping accommodation);
  - (c) rule 15(1) and (2) (families and minors);
  - (d) rule 16 (clothing);
  - (e) rule 18(1)(b) and (c) (hygiene);
  - (f) rule 24 (correspondence);
  - (g) rule 25 (visits);
  - (h) rule 29 (access to the internet);
  - (i) rule 30 (medical screening);
  - (j) rule 32 (special illnesses and conditions);
  - (k) rule 35 (removal from association);
  - (l) rule 37 (temporary confinement);
  - (m) rule 48 (visitors).
- (5) Rule 20(2) (time in open air) applies as if it provided —
- “(2) Time in the open air may be refused—
- (a) in exceptional circumstances where necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons, or
  - (b) where the location or design of the short-term holding facility means that it is not reasonably practicable for detained persons to spend time in the open air.”
- (6) Rule 23 (outside contacts) applies as if it provided—
- “**23.**—(1) Subject to paragraph (2), a detained person may enjoy communications with a person outside a short-term holding facility in accordance with rule 28 (use of telephones).
- (2) A detained person is not permitted to have communications with a person outside the short-term holding facility to the extent to which the communication would prejudice the interests of the security of the short-term holding facility or the safety of the detained person or other persons.”
- (7) Rule 27 (legal adviser) applies as if—
- (a) in paragraph (1) for “paragraph (2)” there were substituted “paragraphs (2) and (3)”, and
  - (b) at the end there were inserted—
- “(3) A detained person is not permitted to meet with their legal adviser if the person is detained within an area of a port which non-travelling members of the public are not permitted to enter (but they may consult with their legal adviser by telephone).”
- (8) Rule 31 (general medical care) applies as if it provided—
- “**31.** If a detained person becomes—
- (a) ill, or
  - (b) sustains an injury,
- such that the detained person requires attention by a health care professional, prompt access to a health care professional must be provided and any arrangements made for supervision, care or transfer to hospital that appear necessary to the manager.”

**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(9) (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.

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(9) 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.

(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—

- (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(10) 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).

### *Facilities*

#### **Accommodation**

**13.**—(1) The Secretary of State must be satisfied that sufficient accommodation is provided for the detained persons in every short-term holding facility.

(2) No room is to be used as sleeping accommodation for a detained person unless the Secretary of State has certified that—

- (a) its size, lighting, heating, ventilation and fittings are adequate for health;
- (b) it has adequate storage facilities (subject to the interests of the security of the short-term holding facility and the safety of detained persons and of other persons), and
- (c) it allows the detained person to communicate with an officer at any time.

(3) No room is to be used for the purposes of—

- (a) removal from association under rule 35, or
- (b) temporary confinement under rule 37,

unless the Secretary of State has certified that its size, lighting, heating, ventilation and fittings are adequate for health and safety and it allows the detained person to communicate with an officer at any time.

(4) A certificate given under this rule in respect of any room must specify the maximum number of detained persons who may be accommodated in that room.

#### **Sleeping accommodation**

**14.** Subject to rule 15 (families and minors), a detained person must be provided with separate sleeping accommodation from detained persons of the opposite sex.

#### **Families and minors**

**15.**—(1) Where members of the same family are detained in a short-term holding facility they are entitled to enjoy family life at the short-term holding facility save to the extent necessary in the interests of the security of the short-term holding facility and the safety of a detained person or other persons.

(2) The following must be provided with sleeping accommodation which is inaccessible to unrelated detained persons aged 18 or over—

- (a) a detained person under the age of 18, and

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



(b) a detained family.

(3) A detained person must be provided with everything reasonably necessary for the protection, safety, well-being, maintenance and care of any person under the age of 18 detained with them for whom they are responsible.

### **Clothing**

**16.**—(1) A detained person may wear clothing of their own if and insofar as it is suitable and clean and may arrange for the supply to them of sufficient clean clothing from outside the short-term holding facility.

(2) If required, a detained person must be provided with clothing adequate for warmth and health in accordance with arrangements approved by the Secretary of State.

### **Food**

**17.**—(1) A detained person must be provided with adequate food and drink.

(2) The food provided must be varied, nutritionally balanced and must where practicable meet all religious, dietary, cultural and medical needs.

(3) The contract monitor must regularly inspect the food and drink and must report any deficiency or defect to the manager.

### **Hygiene**

**18.**—(1) Subject to paragraph (2) a detained person must be—

- (a) provided with toiletries necessary for personal health and cleanliness if required;
- (b) allowed to have a daily bath or shower, and
- (c) allowed to shave daily.

(2) The entitlements in paragraph (1) may be withheld if there are reasonable grounds to believe that such entitlement would be contrary to the security of the short-term holding facility or the safety of the detained person or other persons.

### **Recreation**

**19.** A detained person must be provided with recreational facilities so far as is reasonably practicable.

### **Time in open air**

**20.**—(1) Subject to paragraph (2), a detained person must be given the opportunity to spend at least one hour in every 24 in the open air.

(2) Time in the open air may be refused in exceptional circumstances where necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

## *Religion*

### **Diversity of religion**

**21.** A detained person's cultural and religious needs must be catered for so far as is practicable.

**Religious denomination**

22. If a detained person wishes to make a declaration of observance of a particular religion the manager must record that information as soon as reasonably practicable.

*Communications***Outside contacts**

23.—(1) Subject to paragraph (2), a detained person may enjoy visits from, or communication with, a person living outside a short-term holding facility in accordance with rules 24 (correspondence), 25 (visits), 28 (use of telephones) and Part 6 (persons having access to short-term holding facilities).

(2) A detained person is not permitted to be visited by, or have communications with, a person living outside the short-term holding facility to the extent to which the visit or communication would prejudice the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

**Correspondence**

24.—(1) Subject to such reasonable conditions as are imposed by the Secretary of State, a detained person may (at their own expense)—

- (a) send and receive as many letters as desired;
- (b) send facsimiles within reasonable limits set by the manager, and
- (c) receive facsimiles.

(2) If a detained person does not have the necessary funds to do so the Secretary of State—

- (a) must bear the postage expense of any letter and the cost of any facsimile to the detained person's legal adviser, the European Court of Human Rights, the Court of Justice of the European Union, the High Court, the Court of Session, the Special Immigration Appeals Commission, the First-tier Tribunal or the Upper Tribunal (or any court entitled to hear an appeal against a decision of those bodies);
- (b) must bear the postage expense of any letter and the cost of any facsimile to the UN Refugee Agency (UNHCR), Members of the United Kingdom Parliament and any Embassy or Consulate, and
- (c) may bear the postage expense of any reasonable number of other letters and the cost of any reasonable number of other facsimiles which that person wishes to send.

(3) A detained person must be provided on request with the materials necessary for the purposes of sending letters and facsimiles pursuant to paragraph (1).

**Visits**

25.—(1) Subject to such reasonable limits and conditions as are imposed by the Secretary of State, a detained person may receive as many visits from persons outside the short-term holding facility as the detained person wishes.

(2) A visit to a detained person must take place in the sight of an officer unless the Secretary of State directs otherwise.

(3) Subject to rule 27 (legal adviser) a visit to a detained person must take place out of the hearing of an officer unless the Secretary of State otherwise directs in a particular case in the interests of the security of the short-term holding facility or the safety of the detained person or other persons, in which case the detained person must be given reasons for the direction in advance.

(4) A person visiting a detained person at a short-term holding facility must not, without the authority of the Secretary of State—

- (a) take a photograph whilst there;
- (b) take any other form of digital or electronic record whilst there.

### **Official interviews**

**26.**—(1) The persons listed in paragraph (2) may interview a detained person at a short-term holding facility if —

- (a) the detained person is obliged to attend an interview with them, or
- (b) the detained person is otherwise willing to be interviewed by them.

(2) The persons are—

- (a) a constable;
- (b) an immigration officer;
- (c) an official of the United Kingdom Government;
- (d) a consular officer.

### **Legal adviser**

**27.**—(1) Subject to paragraph (2), a detained person must be permitted to meet with their legal adviser in confidence.

(2) A meeting between a detained person and their legal adviser may be in the sight of but must not be in the hearing of an officer.

### **Use of telephones**

**28.**—(1) Subject to paragraph (3) a detained person must have access to a telephone at a short-term holding facility.

(2) A telephone system must be provided for incoming calls, and the detained persons must be notified promptly of such calls.

(3) The Secretary of State may impose reasonable limits and conditions on a detained person's use of the telephone.

(4) If a detained person does not have the necessary funds, the Secretary of State may bear the expense of any reasonable number of telephone calls which that person wishes to make.

### **Access to the internet**

**29.**—(1) Subject to paragraphs (2) and (3), a detained person must have access to the internet at a short-term holding facility.

(2) The Secretary of State may impose reasonable limits and conditions on a detained person's access to the internet.

(3) The manager may suspend a detained person's access to the internet where they consider this is necessary but must notify the Secretary of State of any such suspension as soon as possible.

(4) A detained person whose access to the internet has been suspended must be given written reasons for such suspension.

## *Health Care*

### **Medical screening**

**30.**—(1) Subject to paragraphs (2) and (4), a detained person must be screened by a health care professional within two hours of admission to a short-term holding facility.

(2) A detained person's consent must be obtained before screening.

(3) Subject to paragraph (4), a detained person is entitled, if they so request, to be screened only by a health care professional of the same sex and the manager must ensure that a detained person is aware of that entitlement prior to any screening.

(4) In the event that a health care professional of the same sex is not available within the two hour time period, the manager must ensure that the screening is conducted as soon as practicable.

### **General medical care**

**31.**—(1) The manager must ensure that a detained person has access to a health care professional.

(2) A request by a detained person to see a health care professional must—

(a) be recorded by the officer to whom it is made; and

(b) be promptly passed to the manager.

(3) The manager must ensure that a health care professional is promptly notified of any request made by a detained person to see a health care professional.

(4) The health care professional notified under paragraph (3) must see the detained person as soon as practicable.

(5) Subject to paragraph (6), a detained person is entitled, if they so request, to be seen only by a health care professional of the same sex.

(6) In the event that a health care professional of the same sex is not immediately available upon request, the manager must ensure that one is available as soon as practicable.

(7) Subject to the conditions in paragraph (8), a detained person is entitled to have access to a health care professional other than the health care professional notified under paragraph (3) or those consulted by that health care professional under paragraph (11).

(8) The conditions are—

(a) the detained person pays any expenses incurred;

(b) the manager and the Secretary of State are satisfied that there are reasonable grounds for the request, and

(c) the attendance is in consultation with the health care professional notified under paragraph (3).

(9) Subject to any directions given in a particular case by the Secretary of State, a health care professional selected by or on behalf of a detained person who is party to legal proceedings must be afforded reasonable facilities and opportunity for examining that detained person in connection with those proceedings.

(10) A health care professional at a short-term holding facility must observe all applicable professional guidelines relating to medical confidentiality.

(11) A health care professional at a short-term holding facility may consult with other health care professionals.

(12) A health care professional at a short-term holding facility must obtain, so far as reasonably practicable, medical information relating to each detained person in the short-term holding facility.

- (13) A health care professional at a short-term holding facility must ensure that—
- (a) a summary of any medical condition affecting a detained person and any treatment which a detained person has received since being detained, or continues to receive, is forwarded as appropriate following the transfer of the detained person or on discharge from the short-term holding facility, and
  - (b) a copy of all medical records relating to a detained person is also kept in the discharging short-term holding facility to enable effective audit.

(14) Where a member of staff has any concern about the physical or mental health of a detained person they must notify a health care professional at the short-term hold facility of that concern.

### **Special illnesses and conditions**

**32.**—(1) A health care professional at a short-term holding facility must report to the manager in relation to the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.

- (2) If a health care professional suspects a detained person of having suicidal intentions—
- (a) this must be reported to the manager;
  - (b) the detained person must be placed under special observation for so long as those suspicions remain, and
  - (c) a record of the detained person’s treatment and condition must be kept throughout that time.

(3) Where a health care professional has concerns that a detained person may have been a victim of torture this must be reported to the manager.

(4) Where a report has been made under paragraphs (1), (2) or (3) the manager must send a copy of any relevant written reports to the Secretary of State promptly.

(5) A health care professional must pay special attention to a detained person whose mental condition appears to require it and make any special arrangements which appear necessary for the detained person’s supervision or care.

(6) For the purposes of this rule, “torture” means any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which—

- (a) the perpetrator has control (whether mental or physical) over the victim, and
- (b) as a result of that control, the victim is powerless to resist.

### **Notification of illness or death**

**33.**—(1) If a detained person dies, becomes seriously ill, sustains a severe injury or is removed to hospital, the manager must inform the Secretary of State without delay.

- (2) Upon receipt of the information in paragraph (1) the Secretary of State must at once inform—
- (a) the detained person’s spouse, civil partner or next of kin (if their contact details are known), and
  - (b) any other person whom the detained person has reasonably asked to be informed.

(3) In any case in which the Secretary of State is under a duty to inform the detained person’s spouse, civil partner or next of kin under paragraph (2), this must be done in person by an official of the Secretary of State if it is reasonably practicable to do so.

(4) Without prejudice to paragraph (1), if a detained person dies at a short-term holding facility, the manager must give notice without delay to—

- (a) the police;

- (b) the coroner or, in Scotland, the procurator fiscal having jurisdiction, and
- (c) the Visiting Committee<sup>(11)</sup> responsible for the short-term holding facility.

#### *Requests and complaints*

#### **Requests and complaints**

**34.**—(1) Any request or complaint to the manager, Visiting Committee or the Secretary of State relating to a detained person's detention may be made orally or in writing by or on behalf of the detained person.

(2) A written request or complaint under paragraph (1) may be made in the language of the detained person.

(3) A detained person may make a request or complaint under paragraph (1) in confidence and may place the request or complaint in an envelope with the addressee clearly indicated.

(4) The manager must bring to the attention of the contract monitor a complaint involving allegations by a detained person against any officer as soon as practicable.

## PART 4

### MAINTENANCE OF SECURITY AND SAFETY

#### **Removal from association**

**35.**—(1) The Secretary of State may make arrangements for a detained person to be removed from association with other detained persons, either generally or for particular purposes, where it appears necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

(2) In cases of urgency, the manager may assume the responsibility of the Secretary of State under paragraph (1) but must notify the Secretary of State without undue delay after making the necessary arrangements.

(3) A detained person must not be removed under this rule as a punishment.

(4) A detained person must not be removed under this rule for a period of more than 24 hours without written authorisation of the Secretary of State.

(5) Authorisation under paragraph (4) must not be for a period exceeding seven days from the time of reception of the detained person into the short-term holding facility.

(6) Authorisation under paragraph (4) may be renewed from time to time for a further period not exceeding seven days from the time of reception of the detained person into the short-term holding facility.

(7) Authorisation under paragraph (4) must state the grounds for the removal and the period during which it may continue.

(8) Written reasons for the detained person's removal from association must be given to the detained person—

- (a) within two hours of the initial removal, and
- (b) within two hours of any authorisation under paragraph (4),

unless, in exceptional circumstances, to do so would be contrary to the interests of the security of the short-term holding facility or the safety of the detained person or other persons.

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<sup>(11)</sup> See section 152 of the Immigration and Asylum Act 1999.

(9) The manager must record the particulars of each removal from association.

(10) Notice of a detained person's removal from association under this rule must be given to a member of the Visiting Committee.

(11) The manager must visit a detained person who is removed from association at least once every 24 hours for the duration of that removal.

(12) The manager must arrange for a health care professional to visit a detained person who is removed from association at least once every 24 hours for the duration of that removal.

(13) Subject to paragraph (14), arrangements for the detained person to resume association with other detained persons may be made at the manager's discretion.

(14) The manager must make arrangements for a detained person to resume association with other detained persons if the health care professional notified in accordance with rule 31(3) or the health care professional visiting the detained person under paragraph (12) of this rule so advises on medical grounds.

### **Use of force**

**36.—**(1) A detainee custody officer or an immigration officer dealing with a detained person must not use force unnecessarily and, when the application of force to a detained person is necessary, no more force than is reasonable may be used.

(2) No officer may act deliberately in a manner calculated to provoke a detained person.

(3) Particulars of every case of use of force must be recorded by the manager and must be reported to the Secretary of State without undue delay.

### **Temporary confinement**

**37.—**(1) The Secretary of State may order an unmanageable or violent detained person to be confined temporarily in special accommodation until satisfied that the detained person is no longer unmanageable or violent.

(2) In cases of urgency, the manager may assume the responsibility of the Secretary of State under paragraph (1) but must notify the Secretary of State without undue delay after making the necessary arrangements.

(3) A detained person must not be confined in special accommodation as a punishment.

(4) A detained person must not be confined in special accommodation for a period of more than 24 hours without written authorisation of the Secretary of State.

(5) Authorisation under paragraph (4) must not be for a period exceeding 48 hours but may be renewed from time to time for a further period not exceeding seven days from the from the time of reception of the detained person into the short-term holding facility.

(6) Authorisation under paragraph (4) must state the grounds for the confinement and the time during which it may continue.

(7) Written reasons for the detained person's temporary confinement must be given to the detained person—

(a) within two hours of initial confinement, and

(b) within two hours of any authorisation under paragraph (4),

unless, in exceptional circumstances, to do so would be contrary to the detained person's safety or the safety of another person at the short-term holding facility.

(8) The manager must record the particulars of each case of temporary confinement.

(9) Notice of a detained person's temporary confinement under this rule must be given to a member of the Visiting Committee.

(10) The manager must visit a detained person in temporary confinement at least once every 24 hours for the duration of that confinement.

(11) The manager must arrange for a health care professional to visit a detained person in temporary confinement at least once every 24 hours for the duration of that confinement.

## PART 5

### STAFF OF SHORT-TERM HOLDING FACILITIES

#### General duty of staff

**38.**—(1) It is the duty of every member of staff to comply with these Rules.

(2) A member of staff must promptly inform the manager and the Secretary of State of any suspected abuse or impropriety which comes to that member of staff's attention.

#### Gratuities

**39.** A member of staff must not without authorisation receive any fee, gratuity or other consideration in connection with their office.

#### Transactions with detained persons

**40.**—(1) A member of staff must not take part in any business or pecuniary transaction with or on behalf of a person detained at a short-term holding facility without the authorisation of the Secretary of State.

(2) A member of staff must not without authorisation—

- (a) bring in or take out of a short-term holding facility,
- (b) attempt to bring in or take out of a short-term holding facility,
- (c) knowingly allow to be brought in or taken out of a short-term holding facility, or
- (d) deposit in any place,

any item whatsoever, with intent that it should come into the possession of a person detained at a short-term holding facility.

#### Staff employed by the contractor

**41.** A member of staff employed by a contractor at a short-term holding facility must facilitate the exercise of the contract monitor's statutory functions.

#### Search of staff

**42.**—(1) A member of staff must submit to being searched by a detainee custody officer or an immigration officer in the short-term holding facility if the manager so directs.

(2) A search conducted under paragraph (1) must be conducted in as seemly a manner as is consistent with discovering anything concealed and may not require a person to remove any of their clothing other than an outer coat, jacket or glove.

(3) A detainee custody officer or an immigration officer may seize and retain 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.

(4) Any item seized under paragraph (3) may be disposed of in such manner as the manager may direct.

### **Contact with former detained persons or the friends and relatives of detained or former detained persons**

**43.** A member of staff must not, without the authorisation of the Secretary of State, communicate with any person who the member of staff knows to be—

- (a) a person formerly detained at a short-term holding facility or removal centre,
- (b) a relative or friend of a person detained at a short-term holding facility or removal centre, or
- (c) a relative or friend of a person formerly detained at a short-term holding facility or removal centre,

in such a way as could be seen to compromise that member of staff in the execution of their duty or the safety, security or control of the short-term holding facility.

## **PART 6**

### **PERSONS HAVING ACCESS TO SHORT-TERM HOLDING FACILITIES**

#### **Authorisation for access**

**44.** A person must not have access to a short-term holding facility unless authorised by any enactment, the manager or the Secretary of State.

#### **Prohibited items**

**45.—(1)** No person may, without authorisation—

- (a) convey into or out of or throw into or out of or deposit in a short-term holding facility,
- (b) convey to a person detained at a short-term holding facility, or
- (c) deposit in any place with intent that it will come into the possession of a person detained at a short-term holding facility,

any item whatsoever.

(2) Anything so conveyed, thrown or deposited may be confiscated by the manager and disposed of in such manner as the manager may direct.

#### **Control of persons and vehicles**

**46.—(1)** A person or vehicle entering or leaving a short-term holding facility may be stopped, examined and searched by a detainee custody officer or an immigration officer and that search may include a search of any property found on their person or in the vehicle.

(2) A search of a person under paragraph (1) must be carried out in as seemly a manner as is consistent with discovering anything concealed and may not require a person to remove any of their clothing other than an outer coat, jacket or glove.

(3) 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.

(4) Any item seized under paragraph (3) may be disposed of in such manner as the manager may direct.

(5) If a person does not leave a short-term holding facility when required to do so, a detainee custody officer or immigration officer may use reasonable force where necessary to remove that person if directed by the manager.

### **Viewing of short-term holding facilities**

47. A person must not view inside a short-term holding facility unless authorised to do so by any enactment, the manager or the Secretary of State.

### **Visitors**

48.—(1) Without prejudice to any other powers to prohibit or restrict entry to short-term holding facilities, or to the powers under rule 25 (visits), the Secretary of State may—

- (a) with a view to ensuring the security of the short-term holding facility, the safety of any person or the prevention of crime, or
- (b) in the interests of any person,

restrict visits by a particular person to a short-term holding facility or to a particular detained person in a short-term holding facility for such periods of time as necessary.

(2) Paragraph (1) does not apply in relation to any visits to a short-term holding facility or to a detained person by a member of the Visiting Committee of the short-term holding facility or by a legal adviser for the purposes of a meeting under rule 27 (legal adviser).

## **PART 7**

### **VISITING COMMITTEES**

#### **Conflict of interest**

49.—(1) Members of the Visiting Committee must avoid situations in which they have a direct or indirect interest that conflicts, or potentially conflicts, with their position as a member of the Visiting Committee.

(2) Such interests may include (but are not limited to) the exploitation of information, property, or opportunity for financial gain or other personal purposes.

(3) The duty under paragraph (1)—

- (a) extends to the interests of any person connected to the member, and
- (b) continues to apply following cessation of membership of the Visiting Committee in relation to knowledge gained whilst a member.

(4) A member of the Visiting Committee who has such a conflict or potential conflict must immediately vacate office as a member.

## Visiting Committees

**50.**—(1) A member of the Visiting Committee for a short-term holding facility appointed by the Secretary of State under section 152 of the Immigration and Asylum Act 1999<sup>(12)</sup>, subject to paragraphs (5), (6) and (7), holds office for three years or such lesser period as the Secretary of State may specify.

(2) A relevant member for the purposes of paragraphs (3) and (4) is a member who is either appointed to a Visiting Committee—

(a) for the first time, or

(b) following a gap of a year or more in their membership of a Visiting Committee.

(3) The first 12 months of a relevant member's appointment are on a probationary basis.

(4) During the first 12 months of a relevant member's appointment that member must undertake adequate training.

(5) The Secretary of State may terminate the appointment of a member of a Visiting Committee if satisfied that the member —

(a) has failed to perform their duties satisfactorily;

(b) has failed to undertake training as required under paragraph (4), by the end of the period specified in that paragraph;

(c) is by reason of physical or mental illness, or for any other reason, incapable of carrying out a member's duties, or

(d) has been convicted of such a criminal offence, or their conduct has been such, that it is the Secretary of State's opinion that it is not appropriate for that person to remain a member.

(6) Where the Secretary of State—

(a) has reason to suspect that a member of a Visiting Committee has conducted themselves in a way which would make them liable to have their appointment terminated under paragraph (5)(a) or (d), and

(b) is of the opinion that the suspected conduct is of such a serious nature that the member cannot be permitted to continue to perform their functions as a member of the committee pending the completion of the Secretary of State's investigations into the matter and any decision as to whether the member's appointment should be terminated,

the member may be suspended from office by the Secretary of State for such a period or periods as may reasonably be required in order to complete investigations and determine whether or not the appointment of the member should be so terminated.

(7) A member suspended under paragraph (6) is not regarded as being a member of the Visiting Committee during the period of the suspension, other than for the purposes of this paragraph and paragraphs (1) and (5).

(8) A Visiting Committee must have a chair and a vice-chair who shall be members of the committee.

(9) The Visiting Committee must—

(a) upon its constitution for the first time, appoint a chair and a vice-chair from among its members to hold office for a period not exceeding 12 months;

(b) thereafter but before the date of the first meeting of the committee in any year of office of the board, appoint a chair and a vice-chair from among its members for that year, and

(c) promptly fill a casual vacancy in the office of chair or vice-chair for the remainder of that year.

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<sup>(12)</sup> Section 152 was amended by section 66(2)(a) and (b) and (3)(e) of the Nationality, Immigration and Asylum Act 2002.

(10) The Visiting Committee or the Secretary of State may terminate the appointment of a member as chair or vice-chair if satisfied that the member has—

- (a) failed satisfactorily to perform the functions required of the member as chair or vice-chair, or
- (b) has acted with gross misconduct whilst performing those functions.

#### **Proceedings of Visiting Committees**

**51.**—(1) The Visiting Committee of a short-term holding facility must meet—

- (a) once a month, or
- (b) if they resolve for reasons specified in the resolution that less frequent meetings are sufficient, not fewer than eight times in 12 months.

(2) The committee may fix a quorum of not fewer than three members for proceedings.

(3) The committee must keep minutes of their proceedings.

(4) The proceedings of the committee are not invalidated by a vacancy in the membership or a defect in the appointment of a member.

#### **Members visiting short-term holding facilities**

**52.**—(1) The members of the Visiting Committee for a short-term holding facility must visit the short-term holding facility frequently and must arrange a rota whereby at least one of its members visits the short-term holding facility at least once a month.

(2) A member of the committee must have access at any time to every part of the short-term holding facility and to every detained person and they may interview any detained person out of the hearing of an officer.

(3) A member of the committee must have access to those records of the short-term holding facility necessary to enable the member to discharge their duties under these Rules.

#### **General duties of Visiting Committees**

**53.**—(1) The Visiting Committee of a short-term holding facility must inspect —

- (a) the state of the short-term holding facility premises;
- (b) the administration of the short-term holding facility, and
- (c) the treatment of the detained persons held at the short-term holding facility.

(2) The committee must inquire into and report upon any matter into which the Secretary of State asks them to inquire.

(3) The committee must direct the attention of the manager to any matter which calls for the manager's attention, and must report to the Secretary of State any matter which they consider expedient to report.

(4) The committee must inform the Secretary of State immediately of any abuse which comes to their attention.

(5) The committee must bring to the attention of the Secretary of State any aspect of the process of consideration of the status of a detained person that causes them concern insofar as it affects that detained person's continued detention.

(6) Subject to paragraph (5) the committee must not concern themselves with any issue directly relating to the immigration status of any detained person under the Immigration Acts.

(7) Before exercising any power under these Rules the committee or a member of the committee must consult the manager in relation to any matter which may affect the safety of any person or the security of the short-term holding facility.

### **Particular duties**

**54.**—(1) A member of the Visiting Committee must visit all detained persons who are, at the time of the visit, subject to—

- (a) removal from association under rule 35, or
- (b) temporary confinement under rule 37.

(2) Where a visit takes place under paragraph (1), the Visiting Committee must ensure that correct procedures have been followed in the exercise of rules 35 and 37.

(3) The Visiting Committee and any member of that committee must consider a complaint or request which a detained person wishes to make to the individual member or the committee.

(4) The committee must arrange for the food of the detained persons to be inspected by a member of the committee at regular intervals.

(5) The committee must inquire into a report made to them, whether or not by a member of the committee, that a detained person's mental or physical health, is likely to be injuriously affected by any conditions of their detention.

### **Reports**

**55.**—(1) Subject to paragraph (4) a Visiting Committee must produce a written report to the Secretary of State each year covering the preceding 12-month period starting with the date that the committee is constituted for the first time.

(2) A report under paragraph (1) is to be produced as soon as reasonably practicable after the end of the relevant 12-month period.

(3) A report under paragraph (1) must consider the treatment of detained persons, the state and administration of any or all of the short-term holding facilities within the Committee's jurisdiction and must include any advice and suggestions they consider appropriate.

(4) A Visiting Committee must comply with any directions given to them by the Secretary of State as regards producing a further report in addition to that referred to in paragraph (1).

## **PART 8**

### **SUPPLEMENTAL**

#### **Delegation by the manager or person for the time being in charge**

**56.** The manager of a short-term holding facility may, with the authorisation of the Secretary of State, delegate any of the powers and duties under these Rules to a detainee custody officer or an immigration officer.

## PART 9

### MISCELLANEOUS

#### **Extension of Part 8 of the Immigration and Asylum Act 1999 to short-term holding facilities**

**57.** The following provisions of Part 8 of the Immigration and Asylum Act 1999<sup>(13)</sup> are extended to short-term holding facilities—

- (a) section 151 (intervention by Secretary of State);
- (b) section 152(1) to (4) (visiting committees and inspections);
- (c) section 158 (wrongful disclosure of information), and
- (d) section 159 (power of constable to act outside his jurisdiction).

22nd March 2018

*Caroline Nokes*  
Minister of State  
Home Office

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<sup>(13)</sup> Part 8 was amended by section 66(2) and (3) of the Nationality, Immigration and Asylum Act 2002 and section 59(1) of the Immigration, Asylum and Nationality Act 2006.

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

Short-term holding facilities are places either used solely for the detention of immigration detainees for a period of not more than seven days (or, in the case of a holding room, for a period of not more than 24 hours unless a longer period is authorised) or used for the detention of immigration detainees for not more than seven days or for such other period as may be prescribed and for other persons for any period. These Rules make provision for the regulation and management of short-term holding facilities, including the treatment of detained persons and the conduct and duties of officers in the facility. The Rules provide for matters such as the admission and discharge of detained persons, their welfare, food, clothing, accommodation, recreation and religious observance, correspondence, visits, health care and any complaints they may wish to make, as well as the use of security measures such as powers of search.

The Rules also extend to short-term holding facilities provisions of the Immigration and Asylum Act 1999 relating to the detention of immigration detainees.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.