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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<sup>M1</sup> (fingerprinting).

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3. (See end of Document for details)*

### Marginal Citations

**M1** 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](#).

### 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—

- (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.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3. (See end of Document for details)*

(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 [F1retained EU law] ;
- (e) a claim for a right of residence in the United Kingdom under a provision of [F2retained EU 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>M2</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).

#### Textual Amendments

- F1** Words in rule 12(3)(d) substituted (31.12.2020) by [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019 \(S.I. 2019/745\)](#), regs. 1(2), **44(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in rule 12(3)(e) substituted (31.12.2020) by [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019 \(S.I. 2019/745\)](#), regs. 1(2), **44(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M2** See section 61 of the UK Borders Act 2007.

### 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
- (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.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3. (See end of Document for details)*

(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,<sup>13</sup>... 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).

#### Textual Amendments

- F3** Words in [rule 24\(2\)\(a\)](#) omitted (31.12.2020) by virtue of [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019 \(S.I. 2019/745\)](#), regs. 1(2), **44(3)** (with [Sch. 2 para. 7](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### 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.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3. (See end of Document for details)*

### **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.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3. (See end of Document for details)*

(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>M3</sup> responsible for the short-term holding facility.

### **Marginal Citations**

**M3** See section 152 of the Immigration and Asylum Act 1999.

### *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.

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the The Short-term Holding Facility Rules 2018, PART 3.