

EXPLANATORY MEMORANDUM TO
THE SHORT-TERM HOLDING FACILITY (AMENDMENT) RULES 2022
2022 No. 1345

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The Short-term Holding Facility Rules 2018 (SI 409/2018) govern detention in short-term holding facilities (STHFs). There are currently two types of short-term holding facilities: residential STHFs for which the time limit is 5 days (though this can be extended to an absolute maximum of 7 days if removal directions for the person are set within that 5-day period) and non-residential STHFs (otherwise known as holding rooms) for which the time limit is 24 hours (subject to extension in exceptional circumstances).
- 2.2 The purpose of this SI is to amend the Short-term Holding Facility Rules 2018 to create a third type of short-term holding facility, known as a “residential holding room”, to which a detention time limit of 96 hours (subject to extension in exceptional circumstances) will apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 157(3) of the Immigration and Asylum Act 1999 provides the power to make a set of statutory rules for the regulation and management of short-term holding facilities. This was achieved via the Short-term Holding Facility Rules 2018 (SI 409/2018) (“the STHF Rules 2018”), which came into force on 2 July 2018.
- 6.2 As indicated above, there are currently two different types of short-term holding facilities to which the STHF Rules 2018 apply: non-residential STHFs (otherwise known as holding rooms) and residential STHFs.

- 6.3 These types of facilities have different legal requirements and time limits. Residential STHFs are subject to the STHF Rules 2018 in full and have a normal detention time limit of 5 days, though this can be extended to an absolute maximum of 7 days if removal directions are set to remove the person within those following 2 days. Holding rooms are subject to a normal time limit of 24 hours and, to reflect the limited nature of their facilities, several of the provisions of the STHF Rules 2018 are disapplied for holding rooms or apply in modified form.

7. Policy background

What is being done and why

- 7.1 People who have crossed the English Channel in an irregular way from France or Belgium in small boats are detained for a short period at the Manston facility in Kent, which is our main reception facility for small boat arrivals. At this facility, individuals undergo initial processing and security checks.
- 7.2 Manston has hitherto been operating as a holding room. Consequently, under the STHF Rules 2018 the 24-hour detention time limit referred to above applies to it. However, when there are significant numbers of arrivals within a short period it has proved very challenging to undertake processing within this 24-hour timeframe.
- 7.3 Manston is a unique type of detention facility, distinct from a holding room, and therefore bespoke rules are required to process migrant arrivals. This SI therefore amends the STHF Rules 2018 to create a third category of STHF, known as a “residential holding room” (“RHR”). A RHR will have a detention time limit of up to 96 hours, extendable in exceptional circumstances if authorised by the Secretary of State. Where required, this will provide staff with sufficient time to process people and complete initial checks, thereby reducing pressures at times when there are large numbers of arrivals.
- 7.4 A RHR will need to provide more extensive facilities than are available in holding rooms to reflect the fact it may be used for a longer period of detention. Several of the provisions of the STHF Rules 2018 that do not apply to holding rooms will be modified and/or applied to RHRs. These include rule 13 (accommodation), rule 14 (sleeping accommodation), rule 16 (clothing), rule 18 (hygiene), rule 20 (time in open air), rule 30 (medical screening) and rule 32 (special illnesses and conditions). Rule 15 (families and minors), rule 23 (outside contacts), rule 27 (legal adviser) and rule 31 (general medical care) which apply to holding rooms in a modified form will be amended to apply to RHRs. A number of the STHF rules which are disapplied insofar as holding rooms are concerned will be similarly disapplied for RHRs.
- 7.5 The STHF Rules 2018 operational guidance will be updated to set out the requirements of RHRs in further detail.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This SI makes relatively limited amendments to the STHF Rules 2018, so on balance it is considered consolidation is not appropriate.

10. Consultation outcome

- 10.1 Although the STHF Rules 2018 were subject to a targeted stakeholder consultation by the Home Office before being made, there was no statutory requirement to do so. There is therefore no statutory requirement to undertake a consultation in amending these Rules.

11. Guidance

- 11.1 In 2018 the Home Office published a piece of non-statutory operational guidance on the operation of the STHF Rules 2018. This guidance will subsequently be updated to include RHRs and published on GOV.UK.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument as there is expected to be no, or no significant, impact on business, charities or voluntary bodies. Such an assessment would therefore be disproportionate.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument will be subject to the normal post-legislative review.

15. Contact

- 15.1 Charlotte Murfin, Home Office, email: Charlotte.Murfin@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Bligh, Deputy Director for Enforcement and Criminality Policy can confirm that the Explanatory Memorandum meets the required standard.
- 15.3 Robert Jenrick, Minister for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.