



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART VIII

DETENTION CENTRES AND DETAINED PERSONS

Interpretation

147 Interpretation of Part VIII

In this Part—

“certificate of authorisation” means a certificate issued by the Secretary of State under section 154;

“certified prisoner custody officer” means a prisoner custody officer certified under section 89 of the Criminal Justice Act 1991, or section 114 of the Criminal Justice and Public Order Act 1994, to perform custodial duties;

“contract monitor” means a person appointed by the Secretary of State under section 149(4);

“contracted out detention centre” means a detention centre in relation to which a detention centre contract is in force;

“contractor”, in relation to a detention centre which is being run in accordance with a detention centre contract, means the person who has contracted to run it;

“custodial functions” means custodial functions at a detention centre;

“detained persons” means persons detained or required to be detained under the 1971 Act;

“detainee custody officer” means a person in respect of whom a certificate of authorisation is in force;

“detention centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;

“detention centre contract” means a contract entered into by the Secretary of State under section 149;

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“detention centre rules” means rules made by the Secretary of State under section 153;

“directly managed detention centre” means a detention centre which is not a contracted out detention centre;

“escort arrangements” means arrangements made by the Secretary of State under section 156;

“escort functions” means functions under escort arrangements;

“escort monitor” means a person appointed under paragraph 1 of Schedule 13;

“prisoner custody officer”—

(a) in relation to England and Wales, has the same meaning as in the Criminal Justice Act 1991;

(b) in relation to Scotland, has the meaning given in section 114(1) of the Criminal Justice and Public Order Act 1994;

(c) in relation to Northern Ireland, has the meaning given in section 122(1) of that Act of 1994;

“short-term holding facility” means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed.

Detention centres

148 Management of detention centres

- (1) A manager must be appointed for every detention centre.
- (2) In the case of a contracted out detention centre, the person appointed as manager must be a detainee custody officer whose appointment is approved by the Secretary of State.
- (3) The manager of a detention centre is to have such functions as are conferred on him by detention centre rules.
- (4) The manager of a contracted out detention centre may not—
 - (a) enquire into a disciplinary charge laid against a detained person;
 - (b) conduct the hearing of such a charge; or
 - (c) make, remit or mitigate an award in respect of such a charge.
- (5) The manager of a contracted out detention centre may not, except in cases of urgency, order—
 - (a) the removal of a detained person from association with other detained persons;
 - (b) the temporary confinement of a detained person in special accommodation; or
 - (c) the application to a detained person of any other special control or restraint (other than handcuffs).

149 Contracting out of certain detention centres

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any detention centre or part of a detention centre.

- (2) While a detention centre contract for the running of a detention centre or part of a detention centre is in force—
 - (a) the detention centre or part is to be run subject to and in accordance with the provisions of or made under this Part; and
 - (b) in the case of a part, that part and the remaining part are to be treated for the purposes of those provisions as if they were separate detention centres.
- (3) If the Secretary of State grants a lease or tenancy of land for the purposes of a detention centre contract, none of the following enactments applies to the lease or tenancy—
 - (a) Part II of the Landlord and Tenant Act 1954 (security of tenure);
 - (b) section 146 of the Law of Property Act 1925 (restrictions on and relief against forfeiture);
 - (c) section 19(1), (2) and (3) of the Landlord and Tenant Act 1927 and the Landlord and Tenant Act 1988 (covenants not to assign etc.);
 - (d) the Agricultural Holdings Act 1986;
 - (e) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses);
 - (f) the Agricultural Holdings (Scotland) Act 1991;
 - (g) section 14 of the Conveyancing Act 1881;
 - (h) the Conveyancing and Law of Property Act 1892;
 - (i) the Business Tenancies (Northern Ireland) Order 1996.
- (4) The Secretary of State must appoint a contract monitor for every contracted out detention centre.
- (5) A person may be appointed as the contract monitor for more than one detention centre.
- (6) The contract monitor is to have—
 - (a) such functions as may be conferred on him by detention centre rules;
 - (b) the status of a Crown servant.
- (7) The contract monitor must—
 - (a) keep under review, and report to the Secretary of State on, the running of a detention centre for which he is appointed; and
 - (b) investigate, and report to the Secretary of State on, any allegations made against any person performing custodial functions at that centre.
- (8) The contractor, and any sub-contractor of his, must do all that he reasonably can (whether by giving directions to the officers of the detention centre or otherwise) to facilitate the exercise by the contract monitor of his functions.
- (9) “Lease or tenancy” includes an underlease, sublease or sub-tenancy.
- (10) In relation to a detention centre contract entered into by the Secretary of State before the commencement of this section, this section is to be treated as having been in force at that time.

150 Contracted out functions at directly managed detention centres

- (1) The Secretary of State may enter into a contract with another person—
 - (a) for functions at, or connected with, a directly managed detention centre to be performed by detainee custody officers provided by that person; or

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- (b) for such functions to be performed by certified prisoner custody officers who are provided by that person.
- (2) For the purposes of this section “detention centre” includes a short-term holding facility.

151 Intervention by Secretary of State

- (1) The Secretary of State may exercise the powers conferred by this section if it appears to him that—
 - (a) the manager of a contracted out detention centre has lost, or is likely to lose, effective control of the centre or of any part of it; or
 - (b) it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a person (to be known as the Controller) to act as manager of the detention centre for the period—
 - (a) beginning with the time specified in the appointment; and
 - (b) ending with the time specified in the notice of termination under subsection (5).
- (3) During that period—
 - (a) all the functions which would otherwise be exercisable by the manager or the contract monitor are to be exercisable by the Controller;
 - (b) the contractor and any sub-contractor of his must do all that he reasonably can to facilitate the exercise by the Controller of his functions; and
 - (c) the staff of the detention centre must comply with any directions given by the Controller in the exercise of his functions.
- (4) The Controller is to have the status of a Crown servant.
- (5) If the Secretary of State is satisfied that a Controller is no longer needed for a particular detention centre, he must (by giving notice to the Controller) terminate his appointment at a time specified in the notice.
- (6) As soon as practicable after making an appointment under this section, the Secretary of State must give notice of the appointment to those entitled to notice.
- (7) As soon as practicable after terminating an appointment under this section, the Secretary of State must give a copy of the notice of termination to those entitled to notice.
- (8) Those entitled to notice are the contractor, the manager, the contract monitor and the Controller.

152 Visiting Committees and inspections

- (1) The Secretary of State must appoint a committee (to be known as the Visiting Committee) for each detention centre.
- (2) The functions of the Visiting Committee for a detention centre are to be such as may be prescribed by the detention centre rules.
- (3) Those rules must include provision—

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- (a) as to the making of visits to the centre by members of the Visiting Committee;
 - (b) for the hearing of complaints made by persons detained in the centre;
 - (c) requiring the making of reports by the Visiting Committee to the Secretary of State.
- (4) Every member of the Visiting Committee for a detention centre may at any time enter the centre and have free access to every part of it and to every person detained there.
- (5) In section 5A of the Prison Act 1952 (which deals with the appointment and functions of Her Majesty's Chief Inspector of Prisons), after subsection (5), insert—
- “(5A) Subsections (2) to (5) apply to detention centres (as defined by section 147 of the Immigration and Asylum Act 1999 and including any in Scotland) and persons detained in such detention centres as they apply to prisons and prisoners.”

153 Detention centre rules

- (1) The Secretary of State must make rules for the regulation and management of detention centres.
- (2) Detention centre rules may, among other things, make provision with respect to the safety, care, activities, discipline and control of detained persons.

Custody and movement of detained persons

154 Detainee custody officers

- (1) On an application made to him under this section, the Secretary of State may certify that the applicant—
- (a) is authorised to perform escort functions; or
 - (b) is authorised to perform both escort functions and custodial functions.
- (2) The Secretary of State may not issue a certificate of authorisation unless he is satisfied that the applicant—
- (a) is a fit and proper person to perform the functions to be authorised; and
 - (b) has received training to such standard as the Secretary of State considers appropriate for the performance of those functions.
- (3) A certificate of authorisation continues in force until such date, or the occurrence of such event, as may be specified in the certificate but may be suspended or revoked under paragraph 7 of Schedule 11.
- (4) A certificate which authorises the performance of both escort functions and custodial functions may specify one date or event for one of those functions and a different date or event for the other.
- (5) If the Secretary of State considers that it is necessary for the functions of detainee custody officers to be conferred on prison officers or prisoner custody officers, he may make arrangements for that purpose.
- (6) A prison officer acting under arrangements made under subsection (5) has all the powers, authority, protection and privileges of a constable.

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(7) Schedule 11 makes further provision about detainee custody officers.

155 Custodial functions and discipline etc. at detention centres

- (1) Custodial functions may be discharged at a detention centre only by—
- (a) a detainee custody officer authorised, in accordance with section 154(1), to perform such functions; or
 - (b) a prison officer, or a certified prisoner custody officer, exercising functions in relation to the detention centre—
 - (i) in accordance with arrangements made under section 154(5); or
 - (ii) as a result of a contract entered into under section 150(1)(b).
- (2) Schedule 12 makes provision with respect to discipline and other matters at detention centres and short-term holding facilities.

156 Arrangements for the provision of escorts and custody

- (1) The Secretary of State may make arrangements for—
- (a) the delivery of detained persons to premises in which they may lawfully be detained;
 - (b) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under the 1971 Act or this Act;
 - (c) the custody of detained persons who are temporarily outside such premises;
 - (d) the custody of detained persons held on the premises of any court.
- (2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers.
- (3) “Court” includes—
- (a) adjudicators;
 - (b) the Immigration Appeal Tribunal;
 - (c) the Commission.
- (4) Escort arrangements may include entering into contracts with other persons for the provision by them of—
- (a) detainee custody officers; or
 - (b) prisoner custody officers who are certified under section 89 of the Criminal Justice Act 1991, or section 114 or 122 of the Criminal Justice and Public Order Act 1994, to perform escort functions.
- (5) Schedule 13 makes further provision about escort arrangements.
- (6) A person responsible for performing a function of a kind mentioned in subsection (1), in accordance with a transfer direction, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements.
- (7) “Transfer direction” means a transfer direction given under—

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- (a) section 48 of the Mental Health Act 1983 or section 71 of the Mental Health (Scotland) Act 1984 (removal to hospital of, among others, persons detained under the 1971 Act); or
- (b) in Northern Ireland, article 54 of the Mental Health (Northern Ireland) Order 1986 (provision corresponding to section 48 of the 1983 Act).

157 Short-term holding facilities

- (1) The Secretary of State may by regulations extend any provision made by or under this Part in relation to detention centres (other than one mentioned in subsection (2)) to short-term holding facilities.
- (2) Subsection (1) does not apply to section 150.
- (3) The Secretary of State may make rules for the regulation and management of short-term holding facilities.

Miscellaneous

158 Wrongful disclosure of information

- (1) A person who is or has been employed (whether as a detainee custody officer, prisoner custody officer or otherwise)—
 - (a) in accordance with escort arrangements,
 - (b) at a contracted out detention centre, or
 - (c) to perform contracted out functions at a directly managed detention centre,is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular detained person.
- (2) A person guilty of such an offence is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (3) “Contracted out functions” means functions which, as the result of a contract entered into under section 150, fall to be performed by detainee custody officers or certified prisoner custody officers.

159 Power of constable to act outside his jurisdiction

- (1) For the purpose of taking a person to or from a detention centre under the order of any authority competent to give the order, a constable may act outside the area of his jurisdiction.
- (2) When acting under this section, the constable concerned retains all the powers, authority, protection and privileges of his office.