

EXPLANATORY MEMORANDUM TO

The Attorney General's Human Rights Guidance (Youth Justice Agency – Conditions of Detention) Order (Northern Ireland) 2015

SR 2015 No. 50

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule brings into operation human rights guidance for the Youth Justice Agency in relation to conditions of detention by the Attorney General for Northern Ireland on the exercise of Youth Justice Agency functions in a manner consistent with international human rights standards.

3. Background

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Youth Justice Agency as required by section 8(3)(c) of the 2004 Act.

4. Consultation

- 4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

5. Equality Impact

- 5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.
- 5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment is not required.

7. Financial Implications

- 7.1. Not applicable.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.
- 10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

11. Additional Information

- 11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

HUMAN RIGHTS GUIDANCE FOR THE YOUTH JUSTICE AGENCY IN RELATION TO CONDITIONS OF DETENTION

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.
2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU law.

THIS GUIDANCE IS ADDRESSED TO THE YOUTH JUSTICE AGENCY IN RELATION TO CONDITIONS OF DETENTION

3. This guidance draws on the International Human Rights Standards of most relevance and assistance to the Youth Justice Agency in Northern Ireland (“the Agency”). Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. As a matter of domestic law, the Youth Justice Agency must comply with the Juvenile Justice Centre Rules (Northern Ireland) 2008 (“The Rules”). This guidance either supplements the Rules or constitutes a guide to how the Rules should be applied.

INTERNATIONAL STANDARDS

4. This guidance reflects the international standards from the following instruments:

- United Nations Convention on the Rights of the Child;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);
- Recommendation (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules;
- Recommendation (1998) 7 of the Committee of Ministers to member states concerning the ethical and organisational aspects of health care in prison;
- Recommendation (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- United Nations Standard Minimum Rules for the Treatment of Prisoners;
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“The Bangkok Rules”);

- United Nations Resolution 43/173 on a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- United Nations Guidelines for Action on Children in the Criminal Justice System;
- United Nations Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh guidelines”);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”);
- World Health Organisation publication on Preventing Suicide in Jails and Prisons 2007.

GENERAL PRINCIPLES

5. In all decisions affecting children detained under a juvenile justice centre order, the best interests of the child should be a primary consideration. The vulnerability of a child in detention, arising from that detention, should be recognised. The Agency is responsible for protecting the child’s physical and mental integrity and fostering his or her well-being. Detention should therefore be implemented in a manner that ensures respect for the child’s human rights and does not aggravate the detriment inherent in it.
6. Children in detention should be treated in a manner:

- consistent with the promotion of the child's sense of dignity and worth;
 - which reinforces the child's respect for the human rights and fundamental freedoms of others; and
 - which takes into account the child's age and the desirability of promoting reintegration and the child's assuming a constructive role in society.
7. Life in detention should approximate as closely as possible the positive aspects of life in the community and reflect the rehabilitative aims of juvenile detention.
 8. As far as possible, children in detention should be consulted and allowed to freely express their views about decisions taken in respect of them. Due weight should be given to those views in accordance with the child's age and maturity.
 9. The rights and responsibilities of parents or a legal guardian of a child in detention should be respected. They should be involved as far as possible unless this is not in the best interests of the child.
 10. The Agency should work with other agencies in order to ensure a comprehensive approach to the care of a child in detention.
 11. Particular attention should be paid to the needs of:
 - a) Younger children;
 - b) Children with drug or alcohol abuse problems;
 - c) Children with physical or mental health problems or disabilities;
 - d) Children deprived of their liberty for long periods;

- e) Children who have experienced physical, mental or sexual abuse;
 - f) Socially isolated children;
 - g) Pregnant girls and young mothers; and
 - h) Other particularly vulnerable offender groups.
12. Children in detention should not be discriminated against on the grounds of gender, age, religious belief or political opinion, racial or ethnic group, disability or sexual orientation.

HEALTH AND WELL-BEING

This section of the Guidance supplements Rules 27, 28, 29, and 30.

13. Children in detention should have access to appropriate health care in line with recognised medical standards applicable in the wider community. This should include preventative health care and health education and be part of a multidisciplinary programme of care.
14. Full and accurate records relating to the child's physical and mental health should be up to date and easily accessible to the appropriate staff, healthcare professionals and agencies. The records should be consolidated with the child's overall health file to ensure a full picture of the child's health status is always available while the child is in detention, and in order to provide streamlined transition of care from the community to the detention centre.
15. Special policies should be implemented to prevent suicide and self-harm, particularly during high risk periods such as that following initial detention. This should include risk assessment on admission, training of staff to identify ongoing risk factors for suicide and self-harm, monitoring at a level appropriate to risk,

ensuring the physical environment does not pose a risk and maintaining a positive ethos within the centre.

16. Health care professionals may operate with complete independence within the bounds of their qualifications and competence. Procedures should ensure that a qualified medical practitioner is available without delay in cases of urgency. Clear and accessible guidelines should be readily available for those responding to health emergencies in urgent or potentially fatal cases; active participation and commitment of Agency staff is essential in supporting the work of health care personnel.
17. Medicines should be administered only for necessary treatment and with informed consent unless, in exceptional circumstances, it is not possible to obtain such consent. Informed consent to medical treatment must be obtained in accordance with the provisions of the Age of Majority Act (Northern Ireland) 1969 and established policies for assessing the competence and capacity of a child to give consent. If a child is not competent, consent must be obtained from his or her parent or guardian. Care must be taken to ensure that consent is freely given.
18. Children who are suffering from mental illness and who are to be deprived of their liberty should, where appropriate, be held in settings suitable for their particular care needs.

RELIGIOUS FREEDOM

This section of the Guidance supplements Rule 22.

19. The child's freedom of thought, conscience and religion should be respected.
20. A child's freedom to practise his or her religion should be respected to the extent that it does not interfere with the rights

and freedoms of other children in the centre. Restriction on the religious practices or observances of children should only be applied where necessary to protect the interests of order within the centre, public health, safety, or decency. The rights and duties of the child's parent or guardian to provide direction to the child in the exercise of religious freedom or philosophical conviction must be respected. This should be in a manner consistent with the developing capacities of the child.

21. Where a child receives a visit from an ordained Minister from his or her denomination the confidentiality of that visit should be respected. A child's choice and possession of religious or spiritual texts should not be subject to restrictions save where these are necessary to protect the interests of order, public health, safety or decency.
22. A child should not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or accept a visit from a representative of any religion or belief.

ACCOMMODATION

This section of the Guidance supplements Rules 56, 57, and 58.

General

23. Children in detention should be accommodated in conditions with the least restrictive security and control arrangements consistent with an assessment of the risk of their harming themselves or others, or of escape.
24. The number of children in a centre should be small enough to enable individualised care. The physical environment of the accommodation should be in keeping with the rehabilitative aim of juvenile detention with due regard for privacy, opportunities

for association with peers, physical exercise and leisure-time activities.

Sleeping Accommodation

This section of the Guidance supplements Rule 56.

25. Children should normally be accommodated during the night in individual bedrooms.
26. Sleeping accommodation should respect human dignity and, as far as possible, privacy. All accommodation should meet health and hygiene requirements accounting for adequate floor space, ceiling height, light, heating and ventilation.
27. Sleeping accommodation should be clean at the time of reception, and regularly maintained throughout. Children should be taught to keep their own clothing and sleeping accommodation clean and tidy and provided with the means to do it. Beds and bedding should be clean, in good order and appropriate to climatic conditions.
28. The centre should be clean and maintained in good order.

HYGIENE

This section of the Guidance supplements Rule 20.

29. There should be ready access to sanitary facilities that are hygienic and respect privacy. There should be adequate facilities to permit daily bathing or showering at a temperature suitable to the climate. Particular consideration should be given to the sanitary and hygiene needs of girls in detention.

CLOTHING

This section of the Guidance supplements Rule 17.

30. All children in detention should be permitted to wear their own clothing, if suitable. Where the child does not have sufficient suitable clothing of their own they should be provided with appropriate clothing by the Agency. This clothing should be adequate for the climate, not degrading or humiliating and should not pose a risk to security or safety.

FOOD

This section of the Guidance supplements Rule 16.

31. Each child in detention should be provided with a nutritious diet that takes into account the child's age, health, physical condition, religion, culture and physical activity. Where appropriate, children in detention should be given the opportunity to cater for themselves.
32. The Agency should ensure that all food and drink provisions are stored properly, and meals are hygienically prepared and served at an appropriate temperature.
33. Clean drinking water should be available and easily accessible at all times.
34. There should be at least three regular meals a day with reasonable intervals between them, particularly between the last meal of one day and the first meal of the next. Consideration should be given to those who require higher food intake than others because of their health or physical condition; effort should be made to accommodate specific nutritional needs under the supervision of appropriate health care professionals.

ADMISSION

This section of the Guidance supplements Rule 15.

35. Upon admission, the following details should be recorded:

- a) The identity of the child and his or her parents or guardians;
- b) The date, time and reason for admission and the authority responsible for commitment;
- c) An inventory of the personal property of the child to be held in safe-keeping;
- d) Any visible injuries or allegations of prior ill-treatment;
- e) Any information and any report about the child's past and his or her educational and welfare needs; and
- f) Any information about the child's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the child or others.

36. The rules of the centre and the rights and obligations of the child should be explained in a language the child understands, in writing and orally.

37. As soon as possible after admission:

- a) The detained child should be interviewed and an initial mental health, educational and social assessment should be made identifying factors relevant to the specific type and level of care and intervention required;
- b) The appropriate level of security should be established taking into consideration any specific needs or risk factors;
- c) An overall plan of educational and training programmes should be developed and implemented (except in the case of very short periods of detention); and
- d) The child should be medically examined and where appropriate, treatment of any illness or injury initiated.

38. In developing programmes for a child, his or her views should be taken into account.

EDUCATION AND ACTIVITIES

This section of the Guidance supplements Rules 21, 43 and 44.

39. Every child in detention of compulsory school age has the right to education at a level appropriate to his or her needs and abilities and designed to prepare him or her for return to the community. A young person above compulsory school age also has the right to appropriate education or vocational training. Schooling and vocational training should be given priority over work.
40. Education and training should be provided by qualified personnel through programmes integrated with the general education system to ensure that schooling can continue in as streamlined a manner as possible following release. Where possible, the child's education should take place in the community. In assessing whether education in the community is possible for an individual child, consideration should be given, among other factors, to the expected length of detention, the risk presented by the child, and whether attendance at a particular school or college is impractical by reason of its distance from the centre.
41. Each centre should have a library that is adequately stocked with both instructional and recreational reading material.
42. Any certificate or diploma awarded while in detention should not indicate in any way that the child has been detained.
43. An individual plan of activity should be prepared for each child based on his or her specific needs. Children should be enabled from the outset to make the best use of their time and to

develop skills that enable them to re-integrate into society. The plan will permit a child to spend as many hours a day outside his or her sleeping accommodation as is necessary for an adequate level of social interaction.

44. Activities may include education or vocational training, personal and social development, development of social skills, anger management, addiction counselling, individual and group therapy, physical education and sport, creative leisure time, activities outside the centre and preparation for release.
45. All children should be permitted to exercise for a minimum of two hours per day of which one hour should be in the open air, subject to weather conditions and risk assessment.
46. Meaningful activities should also be provided on weekends and holidays.
47. Children in detention should be given the opportunity to learn skills for work. Where possible and appropriate, a child should be provided with the opportunity to perform remunerated work in the community, as a complement to vocational training, in order to enhance employability on his or her return to the community.

ETHNIC OR LINGUISTIC MINORITIES

This section of the Guidance supplements Rule 11.

48. Special arrangements should be made to meet the needs of children who belong to ethnic or linguistic minorities. As far as practicable the cultural practices of different groups should be allowed to continue in prison. The language needs of children should be met by using competent interpreters and by providing written material in the range of languages used in the centre.

COMMUNITY CONTACT

This section of the Guidance supplements Rules 12, 31, and 33 to 42.

49. Children in detention should be allowed to communicate with their families as often as possible by letter or telephone, with the reasonable costs being met by the Agency. Regular visits should be facilitated to allow the child to maintain and develop family relationships in as normal a manner as possible. Regular correspondence and visits should be seen as part of a family member's right to respect for family life rather than a privilege, and should not be revoked as punishment or used as an incentive to better behaviour. The Agency should provide information and assistance to family members on transport to the centre for visits. This should include, where appropriate, providing transport or assisting with travel costs.
50. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of crime and protection of victims of crime; but there should nevertheless remain a basic acceptable level of contact.
51. Children in detention, otherwise than on remand, should normally be allowed regular periods of leave. If regular periods of leave are not practicable, by reason, for example, of difficulties in managing risk, provision should be made for additional or extended visits by family members or other persons who can make a positive contribution to the child's development.
52. Agency staff should keep the parent or guardian of a child in detention informed of any critical information regarding the child, including the child's admission to detention, death or

serious illness or injury, or the urgent transfer of the child to a hospital or other institution.

53. Children should be informed promptly of the death or serious illness or injury of a close family member, and positive assistance should be given to support the child. Following due consideration and authorisation, children in detention, otherwise than on remand, should normally be permitted leave to visit a sick relative or attend a funeral.
54. All children in detention are entitled to and should be made clearly aware of the availability of legal advice, and reasonable facilities should be available for gaining access to such advice including, as far as possible, unrestricted and unsupervised visits by legal advisors.

SEARCHES

This section of the Guidance supplements Rule 47.

55. Searching should be carried out only when authorised by law and in accordance with procedures which should be explained to the child before the search takes place. Searches should respect the dignity of the child and his or her possessions and should be carried out by staff of the same gender as the child. Related intimate examinations should only be carried out by a medical practitioner.
56. Visitors to the child should only be searched where there is reasonable suspicion that they may have something in their possession that threatens the safety and security of the centre.

SECURITY AND SAFETY

This section of the Guidance supplements Rules 46 and 49 to 55.

Discipline

57. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary matter. There should be a consistent level of tolerance of normal adolescent behaviour. Sanctions should be selected, as far as possible for their educational impact and should be proportionate to the seriousness of the behaviour. For the avoidance of doubt, collective punishment, corporal punishment, placement in a dark cell, solitary confinement, reduction in contact with family members and all forms of inhuman and degrading treatment are prohibited.

Behaviour Management: Separation and Physical Restraint

Separation

58. The removal of a child to a bedroom or other locked area (separation) for behaviour management purposes should only occur when a child is acting in a way which presents a danger to himself/herself or others. Separation should be for a specified period of time, which should be as short as possible. Any decision to separate a child should be subject to regular review. A medical practitioner should be informed and given access to a child who is subject to separation.

Physical Restraint

59. Physical restraint techniques should only be used as a last resort. Methods of physical restraint that are intrinsically dangerous to life should not be employed on a child.

60. Clear procedures should govern the use of physical restraint. These procedures should make provisions for:

- a) The methods of physical restraint that can be used;

- b) The circumstances in which each method of restraint may be used;
- c) The members of staff entitled to use methods of restraint;
- d) The level of authority required before any restraint is used;
- e) The reports that must be completed once physical restraint has been used; and
- f) The process for reviewing the above reports.

TRANSFER

- 61. During transfer a child in detention should be exposed to public view as little as possible and proper safeguards should be adopted to secure their anonymity.
- 62. Transfer vehicles should have adequate ventilation and light and should not subject any child to unnecessary hardship or indignity.
- 63. All relevant information and data, including medical notes and records relating to the child should be transferred in order to ensure continuity of care.

RELEASE

- 64. A child in detention should be assisted in making the transition to life in the community. As far as possible, steps should be taken to ensure a gradual return of the child to the community including additional leave, and partial or conditional release combined with effective support.
- 65. From the beginning of the child's period of detention, the Agency should work closely with other organisations to enable the child to be re-established in the community upon release, and to

lessen prejudice against him or her. This should include assistance in returning the child to his or her family or foster family, finding suitable accommodation, continuing education or training or finding employment, referral to appropriate social and health-care agencies, and providing information on benefit entitlement and how to get financial support.

CHILD PROTECTION

66. Effective child protection policies should be in place to protect children in detention from physical, emotional or sexual abuse or neglect. Children should be made aware of reporting mechanisms in language they can understand. Staff should take steps to minimise the risk of secondary victimisation of a child who has reported abuse.

COMPLAINTS

This section of the Guidance supplements Rule 42.

67. A child or his or her parent or guardian should be able to make requests or complaints using a simple and effective procedure. Decisions should be taken promptly with mediation and restorative conflict resolution used, where appropriate, as a means of resolving complaints.
68. If a request or complaint is rejected the Agency should provide reasons to the person who made it, and he or she should be made aware of the right to seek legal relief against rejection. The Agency should facilitate monitoring by an independent body or bodies, to whom children in detention should have confidential access, and whose findings are made public.

STAFF RECRUITMENT AND TRAINING

69. Staff should be provided with comprehensive initial training which is regularly reinforced and developed through continuing training, supervision, performance reviews and appraisals.
70. Staff working with untried children should be trained so as to be able to take full account of their particular status and needs.

PRE-TRIAL DETENTION

This section of the Guidance supplements Rule 25.

71. The treatment of remanded children should always reflect their status as a person not convicted of any offence.

GENERAL

72. The Youth Justice Agency should ensure that the above guidance is circulated to all staff and ensure that it is properly taken into account.
73. The Youth Justice Agency should ensure that this guidance is available to all children in detention and their parents or guardians.
74. Regard must be had to this guidance when making or reviewing contractual or other agreements with statutory agencies.

REVIEW AND MONITORING

75. Difficulties encountered in the application of this guidance by the Youth Justice Agency should be notified to the Attorney General as soon as possible.
76. The Attorney General will formally seek the views of the Youth Justice Agency on the revision or amendment of this guidance annually. It is open to the Youth Justice Agency to suggest revision or amendment of this guidance at any time.

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