

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part VIII: Detention centres and detained persons

403. This part of the Act is concerned with placing on a statutory footing the operation and management of immigration detention centres which are used solely to hold those detained under the provisions of the 1971 Act. In particular, it sets out the powers and responsibilities of detainee custody officers and requires the introduction of statutory rules for the regulation and management of detention centres.

Section 148: Management of detention centres

404. This section requires the appointment of a detention centre manager at every detention centre. In the case of contracted-out centres, the appointed person must be a detainee custody officer whose appointment is approved by the Secretary of State. In appointing a manager of a contracted-out centre the Secretary of State will have regard to the experience and qualities necessary for running a custodial institution. The section also provides that the functions of detention centre managers will be set out in detention centre rules.
405. The section requires that detention centre managers who are private contractors must not deal with disciplinary matters in relation to detainees, nor may they authorise segregation or restraint of detainees other than in an emergency. These limitations are similar to those that apply to directors of private prisons.

Section 149: Contracting out of certain detention centres

406. The section allows the Secretary of State to contract out the provision or running of detention centres or parts of detention centres. The section also provides for the Secretary of State to appoint a contract monitor, who will be a Crown servant, for each contracted-out centre; sets out the key functions of the monitor; and requires the contractor to assist the monitor in the exercise of these functions.

Section 150: Contracted-out functions at directly managed detention centres

407. This section allows the Secretary of State to enter into a contract for the fulfilment of specific functions at a detention centre which is being directly managed by the Home Office. It will allow detainee custody officers, or prisoner custody officers, to be provided by another person, while management of the centre would remain a matter for the Secretary of State. There are currently no detention centres that are directly managed, nor are there any plans to introduce any in the foreseeable future, but the Government considers that it would be imprudent to rule out the possibility at some future point.

Section 151: Intervention by Secretary of State

408. This section sets out the circumstances in which the Secretary of State can intervene in the management of a detention centre and the appointment of a Controller. The powers of the Controller are set out and provision is made for termination of his appointment by the Secretary of State. It is envisaged that only a person with sufficient relevant experience will be appointed as a Controller and that this person will take charge of a centre for a temporary period, until order is restored.

Section 152: Visiting Committees and inspections

409. This section provides for the appointment of Visiting Committees for every detention centre and makes provision for the functions of those committees to be set out in detention centre rules. In particular, the section requires that the rules must include functions of the type listed in subsection (3). Every member of a Visiting Committee for a detention centre is entitled to enter the centre at any time and have free access to any part of it and to every person detained there. Visiting Committee members are drawn from a wide range of occupational backgrounds, reflecting the needs of detained persons, and are subject to Home Office departmental security checks before being appointed.

Section 153: Detention centre rules

410. This section provides that the Secretary of State must make rules for the operation and management of detention centres.

Section 154: Detainee custody officers

411. This section sets out the arrangements for the appointment of detainee custody officers. It provides for the Secretary of State to issue certificates of authorisation without which they will not be allowed to perform custodial or escort functions. All detainee custody officers will be subject to pre-employment checks in addition to Home Office departmental security vetting.

Section 155: Custodial functions and discipline etc. at detention centres

412. This section establishes that only detainee custody officers or, in certain circumstances, prison officers or prisoner custody officers, may discharge custodial functions at detention centres.

Section 156: Arrangements for the provision of escorts and custody

413. This section allows the Secretary of State to make arrangements for the escorting of detained persons by contract or otherwise. It provides a regulatory framework for the movement and escorting of detained persons which is designed to be transparent and to safeguard staff, detainees and members of the public.

Section 157: Short-term holding facilities

414. This section allows the extension of any provision of Part VIII, to the extent not already so extended, to short-term holding facilities. It also allows the Secretary of State to make rules for the regulation and management of short-term holding facilities.

Section 158: Wrongful disclosure of information

415. This section creates an offence of disclosure, by certain persons employed at detention centres or in accordance with escort arrangements, of information relating to detained persons. The offence will apply to information acquired in the course of employment where disclosure is made outside the course of duty and has not been authorised by the Secretary of State. This will not prevent detainee custody officers from disclosing

*These notes refer to the Immigration and Asylum Act 1999
(c.33) which received Royal Assent on 11 November 1999*

information when ordered to do so by a court, nor is the offence restricted only to information about those currently detained.

Section 159: Power of constable to act outside his jurisdiction

416. This section provides constables who are engaged in undertaking escorts of detainees with the power to conduct such escorts outside their jurisdiction.