

EXPLANATORY MEMORANDUM TO
THE SHORT-TERM HOLDING FACILITY RULES 2018
2018 No. 409

1. Introduction

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

2. Purpose of the instrument

- 2.1. Section 157(3) of the Immigration and Asylum Act 1999 (“the 1999 Act”) provides for the making of statutory rules for the regulation and management of short-term holding facilities (a type of immigration detention facility), although there is no requirement to do so.
- 2.2. Nevertheless, it has long been recognised that there is a need to place the day-to-day operation of such facilities on a statutory basis, in the same way in which the Detention Centre Rules 2001 do in respect of immigration removal centres.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None.

Other matters of interest to the House of Commons

- 3.2. As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1. Part 8 of the 1999 Act established the statutory framework for the management and operation of immigration detention facilities, including short-term holding facilities, and for the custody and management of detained persons. Short-term holding facilities are defined in section 147 of the 1999 Act, which also imposes a time limit of seven days on detention in such facilities.
- 4.2. Persons detained under Immigration Act powers may be detained lawfully at places designated in the Immigration (Places of Detention) Direction 2014 (No.2), made under paragraph 18(1) of Schedule 2 to the Immigration Act 1971. Short-term holding facilities are among the places so designated.

5. Extent and Territorial Application

- 5.1. The instrument extends to the United Kingdom.
- 5.2. The territorial application of this instrument is to the whole of the United Kingdom and to short-term holding facilities within the control zone at Coquelles in northern France.

6. European Convention on Human Rights

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

7. Policy background

- 7.1. The Immigration Minister is making these Rules in order to place the arrangements under which short-term holding facilities are operated and managed on a statutory footing. Although there is no requirement in law to do so, this approach is in line with that taken in respect of immigration removal centres, which are regulated by the Detention Centre Rules 2001. In his review of the welfare of vulnerable people in immigration detention, published in January 2016, Stephen Shaw recommended the production of short-term facility rules. These Rules will come into force on 2 July 2018.
- 7.2. Immigration detention is an important part of the UK's immigration control. Short-term holding facilities are places of detention in which detainees may be held for limited periods of time. They come in two forms: residential short-term holding facilities; and non-residential short-term holding facilities (the latter are called "holding rooms"). The former are relatively small detention facilities with sleeping accommodation in which detainees may, in law, be held for up to a maximum of seven days. There is currently only one residential short-term holding facility in operation (Larne House in Northern Ireland), though a second (Pennine House at Manchester airport) is due to open later in 2018 to replace a previous facility at Manchester airport which closed in 2017. The statutory time limit that applies to both detention in holding rooms and short-term holding facilities is seven days. In practice detained persons are held in holding rooms for a much shorter period, and usually for far less than 24 hours. This position is reflected by these Rules which impose a 24-hour time limit, extendable in exceptional circumstances. Holding rooms are effectively secure waiting rooms without formal sleeping accommodation at reporting centres and air, sea and rail ports in the UK, and at the juxtaposed control zone at Coquelles.
- 7.3. The Rules cover issues such as: admission and discharge; accommodation; food; hygiene; recreation; communications, including visits; healthcare; security and safety; and independent monitoring. The Rules apply to both residential and non-residential short-term holding facilities (holding rooms), though some rules are dis-applied from, or modified for, holding rooms. This is because it would not be possible or practical for the rules in question to be met, given the limited nature of the accommodation holding rooms provide and the facilities available in them. All dis-applications and modifications are set out in rule 6. An earlier iteration of the Short-term Holding Facility Rules was the subject of a targeted consultation with key detention stakeholders in 2016.
- 7.4. **Part 1** rule 2 (interpretation) provides that individuals may be detained for a period of no more than **24** hours in a holding room unless, in exceptional circumstances, a longer period is authorised by the Secretary of State. This could include circumstances in which a return flight is delayed for a person refused entry at an airport. If needed, such authorisations will be given by a Border Force official of at least Senior Executive/Senior Officer grade for any detention in a port holding room beyond 24 hours.

- 7.5. **Part 2** rule 3 (application) makes clear that these Rules apply to short-term holding facilities and persons detained in them. Rule 3 also sets out a series of places of detention to which the Rules do not apply. Rule 6 sets out those individual rules that have been dis-applied, or modified, in respect of holding rooms because they are not relevant, are not practicable, or because modified arrangements must necessarily apply. They reflect the particular nature and role of holding rooms, including the limited accommodation, facilities and normal duration of stay as compared to ‘residential’ short-term holding facilities.
- 7.6. **Part 3** (detained persons) includes: a series of rules governing the admission and discharge of detainees in short-term holding facilities (rules 7 to 12); the nature of the accommodation and facilities available to detainees (rules 13 to 20); arrangements for detainees to practise their religion (rules 21 to 22); communications with people outside the short-term holding facility (rules 23 to 29); health care (rules 30 and 31); and the arrangements for detainees to make requests or complaints (rules 34).
- 7.7. Rule 9 (detained person’s property) is concerned with the arrangements for recording and storing detainees’ property. Given the very limited storage space available in short-term holding facilities, and the high volume of detainees passing through the facilities, the Home Office considers that 28 days is a reasonable length of time to retain any detainee property which remains unclaimed when someone is discharged from detention. The Home Office is conscious that rule 6 of the Detention Centre Rules 2001 currently provides for a 12 month retention period in relation to immigration removal centres in such circumstances. As part of its forthcoming review of the Detention Centre Rules 2001 the Home Office will consider whether this remains an appropriate retention period for immigration removal centres.
- 7.8. Rule 10 (search) provides that detainees will be searched when they are first detained, again on their reception at the short-term holding facility, and thereafter when it is considered necessary. This includes children under the age of 18. Although the routine detention of children ended in 2010, there remain limited circumstances in which, exceptionally, it is necessary to detain children. Excluding children under 18 years from the searching requirement may lead to prohibited/unauthorised items being brought into short-term holding facilities, including items which might endanger the safety or security of the short-term holding facility and/or persons in it. Any item located during such a search which is considered likely to compromise the security of the facility or the safety of any person may be seized, retained and disposed of. Where a person under the age of 18 is detained with their parent(s) or a carer, wherever possible the parent(s) or carer must be present when the child is being searched. The rule explicitly prohibits “full searches” (which means a search involving removal of clothing worn next to the skin), in line with the definition set out in rule 10(10), of anyone under 18 years of age. The rule also provides for the confiscation and disposal of any unauthorised item which may endanger the security of the short-term holding facility or any person.
- 7.9. Rule 14 (sleeping accommodation) provides that detainees in residential short-term holding facilities will have separate sleeping accommodation from detainees of the opposite sex. There is an exception for family members detained together. It has been dis-applied from holding rooms given the absence of sleeping accommodation. Rule 15 (families and minors) is concerned with ensuring that detained families in residential short-term holding facilities are able to enjoy family life whilst they are detained, consistent with the need to maintain security and safety. This rule has

necessarily been dis-applied from holding rooms to reflect their inherently communal nature. For the purposes of rule 15 “a family” would be considered to be as set out in the Home Office’s published Detention Services Order (DSO) 1/2014 (Definition of a Family).

- 7.10. Rule 20 (time in open air) requires detainees to be permitted to spend at least one hour in every 24 hours in the open air. This may be refused in exceptional circumstances where this is necessary in the interests of the security of the facility or the safety of the detainee or any other person. Access to the open air may additionally be refused in the case of holding rooms where the design or location of the facility means that such access is not reasonably practicable. This is due to the inherent practical limitations of holding rooms and the fact that the period of detention in holding rooms is limited as per rule 2.
- 7.11. Rules 23 to 29 cover detainee communications and visits, including the imposition of restrictions for reasons of security and safety. Rule 25 (visits) provides for detainees in residential short-term holding facilities to receive visits, though they may be restricted in certain circumstances. Such visits must take place within the sight, though out of hearing, of a member of staff, unless directed otherwise. There is an exception to this for legal advisers, who must be able to meet detainees in confidence. This rule has been dis-applied from holding rooms, though this dis-application does not extend to legal visits or visits by members of Visiting Committees (Independent Monitoring Boards). Rule 27 (legal adviser) provides for detainees to meet with their legal advisers in confidence in short-term holding facilities. Such visits may be in the sight of an officer but must not be in their hearing. This rule is modified in relation to holding rooms and prevents legal adviser visits to individuals detained in port holding rooms if they are in an area of a port that cannot be accessed by the general public. The location of some holding rooms, together with the security restrictions which necessarily operate at ports, means that it is not possible to provide legal advisers with an absolute right to visit their clients. Notwithstanding this, such a detainee must be able to contact their legal adviser by telephone.
- 7.12. Rule 28 (use of telephones) provides that detainees in short-term holding facilities must have access to a telephone to make calls, and the means to receive incoming telephone calls. Reasonable limits and conditions may, however, be placed on a detainee’s use of the telephone. Where detainees do not have the funds to make calls these may be paid for, again within reasonable limits. Rule 29 provides for detainees in residential short-term holding facilities to have access to the internet, subject to reasonable limits and conditions. Access to the internet may be suspended by the manager of the short term holding facility where this is considered necessary. Where this happens, the individual must be given written reasons for this and the Secretary of State must be notified of the suspension as soon as possible. This rule has been dis-applied from holding rooms, which do not have internet facilities for detainees.
- 7.13. Rule 30 (medical screening) and rule 31 (general medical care) set out arrangements for detainees in residential short term holding facilities to receive a health care screening within two hours of their initial admission to detention and also if they need a health care appointment during their period of detention. Both rules provide for detainees to request a medical screening or health care appointment by an individual of the same sex as themselves. If such a health care professional is not immediately available the manager must ensure that one is available as soon as practicable. In practice, where, despite the manager’s best efforts, it is not possible to source a health

care professional of the requisite sex, the individual would be transferred to an immigration removal centre for this purpose.

- 7.14. Rule 32 (special illnesses and conditions) sets out arrangements for health care professionals in residential short-term holding facilities to report to the Secretary of State cases in which they have concerns that a detainee's health may be injuriously affected by continued detention, if they suspect a detainee of having suicidal intentions, or where they are concerned that an individual may have been a victim of torture. Reports made under rule 32 may be made by either doctors or nurses. This reflects the fact that day-to-day health care provision in residential short term holding facilities is provided by nurses, rather than doctors. Providing for nurses as well as doctors to make reports ensures that they may be completed without undue delay and, as a consequence, the individual's suitability for continued detention reviewed by the Home Office at the earliest opportunity.
- 7.15. **Part 4** (Maintenance of security and safety) sets out the principles under which, if necessary, force may be used on detainees in short-term holding facilities, as well as the arrangements that apply to detainees in residential short-term holding facilities who need to be removed from association with other detainees for reasons of security or safety (rule 35), or to be placed in temporary confinement as a result of their violent or unmanageable behaviour (rule 37). Rules 35 and 37 are clear that detainees must not be removed from association or placed in temporary confinement as a punishment. Both rules are necessary in order to ensure the safe and efficient running of the short-term holding facilities.
- 7.16. **Part 5** (Staff of short-term holding facilities) contains provisions in relation to the obligations and duties of staff employed at short-term holding facilities to ensure that the facilities can be run safely and efficiently
- 7.17. **Part 6** (Persons having access to short-term holding facilities) is concerned with the security of short-term holding facilities, principally by ensuring that there is no access to a short-term holding facility by an unauthorised person. It also contains provisions relating to the arrangements for searching individuals and vehicles seeking to enter a short-term holding facility and for the confiscation of prohibited items. These provisions ensure that the facilities can be run safely and efficiently.
- 7.18. **Part 7** (Visiting Committees) sets out a series of provisions relating to the constitution, role and duties of Visiting Committees (commonly known as Independent Monitoring Boards) for short-term holding facilities.
- 7.19. **Part 8** (Supplemental) provides for the manager of a short-term holding facility to delegate the powers and duties in the rules to a detainee custody officer or an immigration officer.
- 7.20. **Part 9** (Miscellaneous) extends certain provisions of the 1999 Act to short-term holding facilities.
- 7.21. A policy equality statement on the Short-term Holding Facility Rules is being published on gov.uk.,.

Consolidation

- 7.22. These Rules are the first to be made under section 157(3) of the Immigration and Asylum Act 1999. The issue of consolidation does not arise.

8. Consultation outcome

- 8.1. The Home Office undertook a targeted consultation of a group of key detention stakeholders on an earlier draft of these Rules between February and April 2016. They included a number of non-governmental organisations and the independent oversight bodies for immigration detention (HM Chief Inspector of Prisons, the Prisons and Probation Ombudsman and the Independent Monitoring Boards). The results of that consultation were used to inform these Rules.

9. Guidance

- 9.1. The Home Office will develop non-statutory guidance for Home Office staff and for the relevant staff of the contracted service provider(s) on the operation of these Rules in due course. The Rules will also be underpinned by a set of non-statutory Operating Standards, setting out minimum auditable requirements.

10. Impact

- 10.1. The impact on business, charities or voluntary bodies is minimal. There is a small impact on business where facilities are managed by private contractors on behalf of the Home Office. The Rules mainly serve to put on a statutory basis current arrangements for the way in which facilities are operated and managed. There is no impact on charities or voluntary bodies.
- 10.2. There is no impact on the public sector.
- 10.3. A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1. The Rules do not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1. The Short-term Holding Facility Rules 2018 will be subject to review in 2019.

13. Contact

- 13.1. Liz Rhodes at the Home Office can answer questions regarding the instrument.
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