STATUTORY INSTRUMENTS

2018 No. 409

IMMIGRATION

The Short-term Holding Facility Rules 2018

Made - - - -	*22nd March 2018*
Laid before Parliament	*27th March 2018*
Coming into force - -	*2nd July 2018*

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 157(1) and (3) and 166(3) of, and paragraph 1 of Schedule 12 to, the Immigration and Asylum Act 1999(**1**).

PART 1

Citation and commencement

1. These Rules may be cited as the Short-term Holding Facility Rules 2018 and come into force on 2nd July 2018.

Interpretation

2. In these Rules—

"contracted out short-term holding facility" means a short-term holding facility in respect of which there is a contract entered into by the Secretary of State under regulation 2 of the Immigration (Short-term Holding Facilities) Regulations 2002(**2**);

"directly managed short-term holding facility" means a short-term holding facility which is not a contracted out short-term holding facility;

"health care professional" means a registered medical practitioner or a registered nurse;

"holding room" means a short-term holding facility where a detained person may be detained for a period of not more than 24 hours unless a longer period is authorised by the Secretary of State;

(**1**) 1999 c. 33; section 157(1) and paragraph 1 of Schedule 12 were amended by section 66(2) and (3) of the Nationality, Immigration and Asylum Act 2002 (c. 41).
(**2**) S.I. 2002/2538.

"legal adviser" means a detained person's counsel, representative or solicitor, and includes a clerk acting on behalf of that solicitor;

"manager" means—

(a) in relation to a directly managed short-term holding facility, the official of the Secretary of State designated to complete the tasks that fall to a manager under these Rules;

(b) in relation to a contracted out short-term holding facility, a member of the contractor's staff—

(i) designated to complete the tasks that fall to a manager under these Rules, and

(ii) certified as a detainee custody officer.

"member of staff" means a person working at a short-term holding facility;

"officer" means—

(a) an official of the Secretary of State;

(b) an employee of the contractor;

(c) a detainee custody officer (and includes a detainee custody officer who is authorised to perform escort functions in accordance with section 154 of the Immigration and Asylum Act 1999(**3**)), or

(d) an immigration officer.

"port" includes airport.

PART 2

APPLICATION

Application of these Rules

3. Subject to rules 4 (places of detention), 5 (directly managed short-term holding facilities) and 6(4) to (8) (holding rooms) these Rules apply to a short-term holding facility and to a detained person detained in a short-term holding facility.

Places of detention

4.—(1) These Rules do not apply to the facilities listed in paragraph (2) or to a detained person who is detained in such a facility.

(2) The facilities are—

(a) a police station;

(b) a hospital;

(c) a young offender institution;

(d) a prison or remand centre;

(e) in the case of a person under 18, a place of safety, and

(f) any premises at which appeals or reviews under Part 5 of the Nationality, Immigration and Asylum Act 2002(**4**) or under the Special Immigration Appeals Commission Act 1997(**5**) are heard or any place provided specifically for the purpose of detention in such premises.

(**3**) Section 154(5) has been substituted by section 65(1) of the Nationality, Immigration and Asylum Act 2002.

(**4**) Part 5 was amended by sections 26 to 31 and 33 of, and Schedules 2 and 4 to, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), sections 1 to 7 and 11 to 14 of, and Schedules 1 and 3 to, the Immigration, Asylum and Nationality Act 2006 (c. 13), sections 19 and 54 of, and the Schedule to, the UK Borders Act 2007 (c. 30), paragraph 54 of

(3) For the purposes of paragraph (2) "place of safety"—

(a) in England and Wales, has the same meaning as in the Children and Young Persons Act 1933(**6**);

(b) in Scotland, has the same meaning as in the Children's Hearings (Scotland) Act 2011(**7**);

(c) in Northern Ireland, means a home provided under Part 7 of the Children (Northern Ireland) Order 1995(**8**), any police station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18.

Directly managed short-term holding facilities

5.—(1) These Rules apply to directly managed short-term holding facilities except for rule 41 (staff employed by the contractor) and subject to the modifications set out in paragraphs (2) to (6).

(2) Rule 9(11) (detained person's property) applies as if for "joint authority of the manager and the contract monitor" there were substituted "authority of the manager".

(3) Rule 17(3) (food) applies as if—

(a) for "The contract monitor" there were substituted "The manager", and

(b) after "and drink" there were omitted "and must report any deficiency or defect to the manager".

(4) Rule 34 (requests and complaints) applies as if paragraph (4) were omitted.

(5) Rule 35 (removal from association) applies as if—

(a) in paragraph (1) for "The Secretary of State" there were substituted "The manager", and

(b) paragraph (2) were omitted.

(6) Rule 37 (temporary confinement) applies as if—

(a) in paragraph (1) for "The Secretary of State" there were substituted "The manager", and

(b) paragraph (2) were omitted.

Holding rooms

6.—(1) Subject to paragraph (2), a detained person must not be detained in a holding room for a period of more than 24 hours.

(2) The Secretary of State may authorise this period to be extended if the Secretary of State determines that exceptional circumstances require it.

(3) These Rules apply to a holding room and to a detained person detained in a holding room except for those provisions listed in paragraph (4) and subject to the modifications in paragraphs (5) to (8).

Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), Part 2 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), sections 51 to 54 of the Crime and Courts Act 2013 (c. 22), sections 15 and 17 of, and Part 4 of Schedule 9 to, the Immigration Act 2014 (c. 22), section 63 of the Immigration Act 2016 (c. 19), and by S.I. 2010/21 and 2011/1043.

(**5**) 1997 c. 68; amended by Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), section 35 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), section 4 of and Schedules 7 and 9 to the Nationality, Immigration and Asylum Act 2002, Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Schedule 17 to the Constitutional Reform Act 2005 (c. 4), section 16 of the Prevention of Terrorism Act 2005 (c. 2), Schedule 1 to the Immigration, Asylum and Nationality Act 2006, section 91 of the Counter-Terrorism Act 2008 (c. 28), section 15 of and Schedule 2 to the Justice and Security Act 2013 (c. 19), paragraph 26 of Schedule 9 to the Immigration Act 2014, section 66 of the Criminal Justice and Courts Act 2015 (c. 2) and section 64 of and Schedule 10 to the Immigration Act 2016.

(**6**) "Place of safety" is defined in section 107(1) of that Act (1933 c. 12); the definition was amended by paragraph 12(2) of Schedule 5 to the Children and Young Persons Act 1969 (c. 54).

(**7**) 2011 asp 1.

(**8**) S.I. 1995/755 (N.I.2).

(4) The provisions are—

(a) rule 13 (accommodation);

(b) rule 14 (sleeping accommodation);

(c) rule 15(1) and (2) (families and minors);

(d) rule 16 (clothing);

(e) rule 18(1)(b) and (c) (hygiene);

(f) rule 24 (correspondence);

(g) rule 25 (visits);

(h) rule 29 (access to the internet);

(i) rule 30 (medical screening);

(j) rule 32 (special illnesses and conditions);

(k) rule 35 (removal from association);

(l) rule 37 (temporary confinement);

(m) rule 48 (visitors).

(5) Rule 20(2) (time in open air) applies as if it provided —

"(2) Time in the open air may be refused—

(a) in exceptional circumstances where necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons, or

(b) where the location or design of the short-term holding facility means that it is not reasonably practicable for detained persons to spend time in the open air.".

(6) Rule 23 (outside contacts) applies as if it provided—

"**23.**—(1) Subject to paragraph (2), a detained person may enjoy communications with a person outside a short-term holding facility in accordance with rule 28 (use of telephones).

(2) A detained person is not permitted to have communications with a person outside the short-term holding facility to the extent to which the communication would prejudice the interests of the security of the short-term holding facility or the safety of the detained person or other persons.".

(7) Rule 27 (legal adviser) applies as if—

(a) in paragraph (1) for "paragraph (2)" there were substituted "paragraphs (2) and (3)", and

(b) at the end there were inserted—

"(3) A detained person is not permitted to meet with their legal adviser if the person is detained within an area of a port which non-travelling members of the public are not permitted to enter (but they may consult with their legal adviser by telephone).".

(8) Rule 31 (general medical care) applies as if it provided—

"**31.** If a detained person becomes—

(a) ill, or

(b) sustains an injury,

such that the detained person requires attention by a health care professional, prompt access to a health care professional must be provided and any arrangements made for supervision, care or transfer to hospital that appear necessary to the manager.".

PART 3

DETAINED PERSONS

Admission and discharge

Information to detained persons about these Rules and the short-term holding facility

7.—(1) The following information must be available at a short-term holding facility for consultation by a detained person—

(a) a copy of these Rules;

(b) information about any procedures in place for applying for bail;

(c) information about the right to seek legal advice;

(d) any other information about the procedures in the short-term holding facility relevant to the detained person's rights and responsibilities, and

(e) any translation of these Rules and of the information in sub-paragraphs (b) to (d) which is available, if required by the detained person.

(2) In the following cases the manager must ensure that the information in paragraph (1) is explained in a language which the detained person understands to the extent necessary to enable the detained person to understand their rights and responsibilities—

(a) where the detained person is under the age of 18, or

(b) where the detained person appears to have difficulty understanding that information.

Record, photograph and fingerprinting

8.—(1) For purposes of identification and welfare a personal record must be prepared and maintained for each detained person.

(2) A personal record—

(a) must include the name and date of birth of the detained person, and

(b) may include other information, including details and measurements of external physical characteristics.

(3) A personal record or a copy of it must not be given to any person unless they are authorised by the Secretary of State to receive it.

(4) A detained person may be photographed by an officer on reception and subsequently.

(5) A photograph of a detained person or a copy of it must not be given to any person, unless they are authorised by the Secretary of State to receive it.

(6) A detained person's fingerprints may be taken in accordance with section 141 of the Immigration and Asylum Act 1999(**9**) (fingerprinting).

Detained person's property

9.—(1) The manager of a short-term holding facility may refuse to permit a detained person to store property in the facility if it is excessive in weight or size.

(**9**) Section 141 was amended by section 66 of the Nationality, Immigration and Asylum Act 2002, section 15 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 28 of the Immigration, Asylum and Nationality Act 2006, section 51 of the Borders, Citizenship and Immigration Act 2009 (c. 11), Schedule 9 to the Immigration Act 2014, section 57 of, and Schedules 10 and 11 to the Immigration Act 2016, and by S.I. 2017/617.