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## **Response to consultation on draft Removal Centre Rules 2019**

### **Detention Action**

Dear Alison,

Many thanks for your letter of 26<sup>th</sup> March 2019 inviting us to submit views and comments on the draft Removal Centre Rules 2019 (the Rules). We at Detention Action greatly welcome the opportunity to contribute to this consultation.

Detention Action was founded in 1993, and exists to support people held in immigration detention and to campaign for fundamental reform. Detention Action provides practical and emotional support for people who are detained at Colnbrook, Harmondsworth, and Morton Hall IRCs and for people detained under immigration powers in London prisons. Independent from the government and from the detention centres, the charity campaigns for reform of the detention system, including the introduction of a 28-day time limit and the expansion of community-based alternatives.

Where we refer to individual Rules below, we are (unless otherwise specified) referring to the draft 2019 Rules. Reference to the existing, 2001 Rules will refer to 'Old Rules'.

### **Summary**

1. We welcome a revision of the Rules, particularly in light of the time that has passed since the original Rules were issued in 2001 and the significant changes that have taken place in the immigration detention estate over the past 18 years.

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2. We welcome a number of positive additions to the Rules, for example the requirement to explain bail and entitlements to legal advice, the right for detained persons to receive an explanation for their detention, the definition of 'family', and the detailed of rights to Internet access and to receive support from a welfare officer.
3. However, there are a number of areas where we have serious concerns, both relating to changes in the revised Rules which we believe to be negative, and areas where the Rules continue to fall short in terms of providing adequate clarity and protection of people detained. We would in particular wish to highlight:
  - The failure of the amended Rules to provide provision for appropriate assessment of the mental capacity of detained persons.
  - The inadequate construction of Rule 35 and subsequent inadequate protection for vulnerable people, who should not be held in detention.
  - The problematic definition of torture within Rule 35.
  - The removal of the purpose statement at the start of the Rules, which provided key commitments to provide a 'safe' and 'humane' environment.
  - The statement that an impact assessment has not been carried out for these proposed Rule changes.
  - The failure to elaborate sufficiently regarding the responsibilities of the Independent Monitoring Board (IMB).
  - The constriction of the privileges system, despite recommendations by (for example) HM Inspectorate of Prisons (HMIP), and in particular the link between privileges and compliance with removal.
  - The inadequate provisions and protections for detained people who do not speak fluent English.
  - The need for some largely positive additions to the Rules – for example, the provision of a welfare officer, and of Internet access – to include a guarantee of sufficient resources being needed to provide these services sufficiently.
4. We draw your attention to, and endorse, the submissions you will also be receiving from the Association of Visitors to Immigration Detainees (AVID), Bail of Immigration Detainees (BID), Medical Justice and Freedom from Torture. At various points in our comments below we will refer you to more detailed comments on a particular area from one of the agency's submissions.

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## **Comments regarding proposed revised Rules**

### **Part 1**

5. The Rules previously contained an introductory section that described the purpose of detention. This has been taken out; it should be restored. The Purpose included protection for IRCs to permit 'as much freedom of movement and association as possible'. The removal of language stating that detention should be a 'secure', 'safe' and 'humane' environment is particularly concerning in light of the increasing concerns raised about failings in precisely these areas by HM Inspectorate of Prisons (HMIP), Stephen Shaw's Welfare in Detention of Vulnerable Persons reports (Stephen Shaw), the Joint Committee on Human Rights (JCHR), and the Home Affairs Select Committee (HASC), amongst other sources.

### **Part 2 – Chapter 1: Admissions and Discharge**

#### **Information to detained persons**

6. We welcome the inclusion of an explicit requirement to provide information on applying for bail and the right to see legal advice. However, the wording should be amended to include the requirement to ensure detained persons know *how* to seek legal advice. We refer you to, and endorse, the comments by BID regarding this Rule (Rule 4).

#### **Personal record**

7. Rule 5 states that 'a personal record *may* include...details of the detained person's next of kin' (my italics). This should be worded more strongly, as recommended in reports into deaths within detention<sup>1</sup> (Rule 5(2)).

#### **Detained person's property**

8. Detained persons can be denied any books, newspapers, etc 'that the manager considers...objectionable on the grounds that they are likely to offence to others'. Without further defining what might be 'objectionable', this appears to allow a subjective judgement to be made by the manager, with a clear risk to detained persons' religious freedoms, for example (Rule 6(8a)).
9. Previously, property left by a detained person at the IRC after the individual's departure would be stored for a year before being destroyed. Under the revised Rules, such property would be destroyed after 28 days (or six months in event of a detained person's death). This appears an extreme measure given the many circumstances that might reasonably prevent a detained person retrieving their property promptly (for example, removal from the UK, or having been released into destitution) (Rule 6(10)).

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<sup>1</sup> *Investigation into the death of a man at Morton Hall Immigration Removal Centre in September 2014*, Nigel Newcomen CBE (2014) – 103 (p25)

## **Search**

10. Rule 7 states a search of a detained person 'must not be carried out by or in the presence of...a person of the opposite sex'. There are, however, circumstances where it could be a person of the same sex who may make a detained person uncomfortable. This should be reflected in these provisions (Rule 7(3b)).
11. The language defining what constitutes a 'full search' in terms of items of clothing is unclear. We ask that this section be reworded to clarify this (Rule 7(8)).

## **Custody outside of removal centres**

12. The previous restrictions on the use of restraints have been taken out altogether (Old Rule 43). Through our direct work in IRCs, we believe there to be presently considerable overuse of restraints, for example when detained persons are taken to external medical appointments. Strict restrictions on use of restraints should be restored and strengthened, with rigorous risk assessments carried out to ensure that restraints are only ever used when absolutely necessary, and never arbitrarily (Rule 8).

## **Reasons for detention and update of claim**

13. We welcome the new requirement to ensure that detained persons understand their reasons for detention and have been provided with these in writing in a language that they can understand (Rule 9).
14. The requirement to provide information as to how to access legal advice is welcome but is insufficient given the current issues in seeing a solicitor in good time within IRCs. This Rule should require that IRCs guarantee detained persons an appointment to receive legal advice (Rule 9 (2c)).
15. The requirement that the Secretary of State must provide updates 'within a reasonable time' is too vague. What timescale constitutes a 'reasonable time'? This should be clarified (Rule 9(4)).
16. The listing of 'relevant matters' excludes a number of key matters that may be affecting a detained person, for example the provision of bail accommodation. A catch-all term here ('all immigration and detention matters') may be preferable to an exhaustive list (Rule 9(5)).
17. We refer you to, and endorse, the comments by BID regarding this Rule (Rule 9).

## **Part 2 – Chapter 2: Facilities**

### **Accommodation**

18. Accommodation provided within the IRC should be 'adequate' in addition to 'sufficient' (Rule 10).

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## **Sleeping accommodation**

19. Sleeping accommodation should be 'inaccessible to' not just 'separate from' people of the opposite sex. This Rule should be reworded to clarify that this should also apply to bathroom facilities (Rule 11).

## **Families**

20. It should be clarified that the reference to detained children applies only to Pre-Departure Accommodation at Tinsley House. Detention Action would like to stress that we continue to believe that children should never be detained (Rule 12).

## **Food**

20. The language protecting the right to adequate and appropriate food has been weakened, with 'nutritious' becoming 'nutritionally balanced' and the commitment to providing food that meets 'all religious, dietary, cultural and medical needs' is now qualified by the phrase 'where practicable'. The previous language should be restored (Rule 14).

## **Hygiene**

21. Rule 16 states that hygiene provision can be withheld for security reasons. This may be understandable in case of access to (for example) shaving equipment, but it is not clear how this could justify withdrawing the stated right for a detained person to be allowed a bath or a shower (Rule 16).
22. We welcome the new commitment to provide sanitary products. It should, however, be clarified that these items should be freely available to access in bathrooms and that detained persons should not have to request them (Rule 16(2)).

## **Recreation**

23. The provision of education classes is welcome but it should be stated that these classes must cover a range of levels. The provision of – for example – English tuition is clearly of benefit to some detained people but of no relevance to others. The equivalent section in the existing Rules makes reference to the aim of 'relief of boredom'. This phrase should be restored; we fear there is a risk of reduced resources being made available at IRCs (Rule 17).
24. The requirement to provide a library has been replaced with provision of 'a resource centre', which is a more ambiguous term. We hope that this does not give scope for IRCs to reduce the provision of library facilities (Rule 17).

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### **Time in the open air**

24. Rule 18 should be clarified in significant detail. The guarantee of a detained person being allowed 'at least one hour out of every 24 hours in the open air' is presumably a bare minimum that should only be applied in the most extreme and exceptional of circumstances. This minimum timeframe should be increased, with a commitment to allowing as much freedom of movement and association as possible. There should be explicit reference to and awareness of the damaging effects of restricting detained persons to their rooms or wings any more than is necessary. We refer you to, and endorse, the comments by Freedom from Torture and BID regarding this Rule (Rule 18).

### **Privileges**

25. We take issue with the notion of privileges within immigration detention, and certainly where these are linked to compliance with the removal process. We refer you, and endorse, the comments by AVID, Medical Justice and Freedom from Torture on this area (Rule 19).

### **Welfare officer**

26. We welcome the addition of a requirement for IRCs to appoint a welfare officer. This Rule should, however, add provision of information about bail, signposting to specialist organisations, and assistance regarding the recovery of property to the duties of welfare officers. The welfare officer should have a responsibility to report any unidentified vulnerabilities in detained persons as appropriate. 2(a) should also be amended to read 'prepare for removal *or release*' (Rule 20).
27. In addition, the provision of welfare officers should include a maximum ratio of detained persons per welfare officer. In our experience, welfare teams within the IRCs are frequently overwhelmed with detained persons requiring assistance. The welcome provision of welfare services requires a commitment that this will be adequately resourced (Rule 20).

## **Part 2 – Chapter 3: Religion**

### **Religious denomination and diversity of religion**

27. The requirement for 'a detained person's cultured and religious needs (to) be catered for as far as is practicable' should be strengthened and clarified. An explicit commitment, for example, should be given to the protection of appropriate food provision and freedom of movement and association during Ramadan (Rule 21).

## **Part 2 – Chapter 4: Communications**

### **Correspondence**

28. The language protecting the right to send and receive faxes (previously 'as many (faxes) as he wishes') is now qualified by the phrase 'within reasonable limits'. The right to receive and send a

large number of faxes, sometimes of considerable length, can be crucial to a detained person's case. The confidentiality of faxes sent and received also requires explicit protection (Rule 26).

29. Clarity is required here that 'emails' refers to 'personal emails' (Rule 26 (1b)).

### **Visits**

30. Social visitors should be allowed to bring pen and paper into to the visits hall. Rule 27 should also be expanded to include enabling access to local visitors' groups through the AVID network. We refer you to, and endorse, the comments by AVID regarding this Rule (Rule 27).

### **Use of telephones**

31. The requirement for telephone access to be guaranteed should be strengthened, with detained persons having the right to keep their own SIM card and telephone contacts in the event of having to surrender their own handset on arrival to the IRC. Beyond ensuring that 'a telephone system is provided', a duty should also be placed on the IRC to ensure adequate signal exists to support calls to and from mobile telephones at the centres at all times. We know poor signal to be a frequent issue at all current IRCs; this presents a serious barrier to detained persons accessing legal assistance and other support effectively (Rule 30).

### **Access to the internet**

32. We welcome the introduction of requirements regarding access to the Internet. However, the proposed language regarding detained persons' rights to access the Internet risk giving the IRC too much leeway in terms of restricting access ('...may impose reasonable limits and conditions...on access to the internet'). Through our extensive casework in IRCs, we know that websites are frequently blocked without explanation being given; this includes access to useful NGOs or to forms of legal assistance. It is highly likely that Internet access will become ever-more crucial to a detained person's ability to seek information related to their case, to seek and communicate with representatives, and to represent themselves. Additionally, access to the Internet for social, recreational and educational purposes should be a protected right within IRCs. Any restrictions on Internet access should be detailed so that the justification for blocking a particular site is clear and reasonable. A principle should be established of open access to the Internet being the default position (Rule 31).
33. In addition to written reasons being given for suspension of Internet access, the detained person should also have a right of appeal against the decision (Rule 31(5)).
34. The provision of Internet access must explicitly contain a commitment to adequate resourcing and a ratio of computer terminals made available given the number of people detained in the particular IRC. Particularly in light of the absence of smart phones within IRCs, the right to access the Internet holds little meaning if access to computers is over-subscribed (Rule 31).
35. We refer you to, and endorse, the comments by AVID and BID regarding this Rule (Rule 31).

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## **Part 2 – Chapter 5: Healthcare**

### **Medical practitioner and health care team**

36. The expansion of the definition of the healthcare team is welcome. However, we have a number of concerns regarding Rule 33. The wording as it stands appears to give a detained person the right only 'to consult a member of the health care team'; it should be clarified that this is a right to see a doctor. The healthcare team should be required to include at least one General Practitioner. Appropriate training for the healthcare team should be specified, and a provision included covering the requirement to use appropriate interpreters wherever this is needed. We refer you to, and endorse, the comments by Freedom from Torture on this area (Rule 33).
37. The right to be seen by a second medical practitioner was previously subject to a manager's approval, but in the revised Rules this has been amended to 'the manager and the Secretary of State'. It is not clear why this potential barrier or delay has been introduced, or indeed why the Secretary of State would be likely to take a view on this (Rule 33(11)).

### **Medical screening**

38. We welcome the change introducing a requirement to screen detained persons within two hours of admission to the IRC change, and for an appointment to be offered with the healthcare team within 24 hours. There should be a clear link between Rule 34 and Rule 35, with responsibilities and timeframes clarified regarding the identification of vulnerabilities. The screening examination should include a mental capacity assessment. We refer you, and endorse, the comments by Medical Justice and Freedom from Torture on Rule (Rule 34).

### **Special illnesses and conditions (including torture claims)**

39. Rule 35 as currently worded provides inadequate protection for adults at risk and should be replaced. We have a number of serious concerns with this Rule as it stands and as revised. The revised Rule no longer requires a medical practitioner to complete a Rule 35 report; it can now be completed by 'a member of the healthcare team'. This change should be reversed. Rule 35 now includes a definition of torture, but this is too narrow. The wording requires a torture victim (survivor) to be in 'a situation of powerlessness'. This is complex, exclusionary, and places an unreasonable extra evidential burden on the detained person; it also requires the healthcare team to reach judgements that are not reasonable. The most likely common outcome of this will be vulnerable people continuing to be detained. Rule 35 should be reworded to detail other vulnerabilities and risk categories, in addition to covering victims of torture. We refer you, and endorse, the comments by Medical Justice and Freedom from Torture regarding this Rule, including the proposed rewording of the Rule in the Medical Justice submission (Rule 35).



## **Medical examinations required in the interests of others**

40. The wording regarding the requirement for a detained person to submit to a medical examination being 'asked to consent' has been removed. This phrase should be restored (Rule 37).

## **Part 2 - Chapter 6 – Requests and complaints**

41. We welcome the introduction of right for a complaint to be made on behalf of (as well as by) a detained person. The right to make a complaint in the detained person's own language is welcome but should not lead to a delay in the processing of the complaint. In the existing Rules there is a requirement for the manager to hear complaints daily but this has been taken out. Timescales for the handling of complaints should be introduced (Rule 38).

## **Part 3 – Maintenance of Security and Safety**

### **Removal from association**

42. We welcome the change clarifying that removal of association should not be used as a form of punishment. However, we have a number of serious concerns regarding Rule 40. The wording of Rule 40(5)) opens up the possibility of repeated 14 day extensions, meaning in effect that there is no time limit on removal of association. There is no reference to vulnerable people in this Rule; this should be rectified, with a clear prohibition against the removal of association for adults at risk. An appeal right and process should be introduced for detained persons or their representatives to contest Rule 40 decisions. We refer you, and endorse, the comments by Medical Justice and Freedom from Torture regarding this Rule (Rule 40).

### **Use of force**

43. There should be a responsibility for the IMB to be informed of, report on and monitor any use of force (Rule 41).

### **Temporary confinement**

44. The meaning of 'unmanageable' in the context of Rule 42 (1) ('an unmanageable or violent detained person') should be clarified. It should be made clear that this relates to a risk to the detained person themselves or to others within the IRC, rather than relating to a refusal to cooperate with removal. As with Rule 40, the stipulation that detained persons should not be confined as a punishment is positive (Rule 42(3)). It should also be clarified that detained persons should no longer be segregated if they cease to be 'unmanageable'. As with Rule 40, the provision allowing confinement to be extended for further periods of up to three days 'from time to time' effectively allows confinement to be extended indefinitely (Rule 42(5)). As with Rule 40, a right of appeal against confinement decisions should be provided. We welcome the reduction in time allowed before reasons must be given (now two hours). We refer you to, and

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endorse, the comments by Medical Justice and Freedom from Torture regarding this Rule (Rule 42).

### **Compulsory testing for drugs and alcohol**

45. In describing the provision of ‘a sample’, it is no longer clear what this could be a sample of. In the existing Rules this is explicitly urine or breath. The reduced clarity increases the risk of more intrusive sample collection (Rule 43).

### **Part 4 – Officers of Removal Centres**

#### **General duty of officers**

46. Rule 44 should include a prohibition regarding officers having sexual relationships with detainees (Rule 44).

#### **Search of officers**

47. In contrast to the provision for full searches of detained persons (Rule 7), Rule 48 states that an officer will not be required ‘to remove any of their clothing other than an outer coat, jacket or glove’. We do not see the justification for having different rules regarding the treatment of officers and detained persons in terms of searches (Rule 48).

### **Part 5 – Access to Removal Centres**

#### **Control of persons or vehicles**

48. Rule 52 authorises IRC staff to use ‘reasonable force’ to remove a visitor. It is not clear why this would be a matter for IRC staff at all, rather than for the police (Rule 52(5)).

### **Part 6 – Visiting Committees**

#### **Conflict of interest**

49. We welcome the significantly more detailed description of conflict of interest situations that IMB members must avoid (Rule 55).

#### **Visiting Committees**

50. We welcome IMB membership being subject to a probationary period (Rule 56(3)).

#### **General duties of Visiting Committees**

51. The new duty on the IMB to monitor transit to and from the IRC is welcome. However, Rule 59 should be expanded to clarify further the scope of IMB’s role, particularly in light of revelations

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of abuse and mistreatment of vulnerable people within IRCs, for example as captured by Panorama at Brook House. IMB's duties should include responding to concerns raised by other agencies visiting IRCs (Rule 59).

### **Particular duties of Visiting Committee**

52. The requirement for an IMB member to visit any detained person affected by Rule 40 or Rule 42 has been weakened from 'within 24 hours' to no timescale at all. The justification for this in the accompanying notes to the changes is that '24 hours...is not always possible or practicable to fulfill'. We do not believe that it is reasonable to remove a crucial safeguard such as this purely on the grounds of limited resource (Rule 60).

### **Explanatory note**

53. While we note that the explanatory note 'is not part of the Rules', the last line of this note states that 'an impact assessment has not been produced...as no impact on the private or voluntary sectors is foreseen'. We believe that this statement is in itself debatable, but more importantly fails to recognize why an impact assessment should be required. As outlined above, non-exhaustively, a number of the proposed changes to the Rules have a potentially negative effect and therefore a full impact assessment is necessary.

### **Proposed additions**

54. There are a number of key additions which we believe are required to strengthen the Rules.
55. We believe that there are presently inadequate measures providing for **the identification of people who lack mental capacity**, and for subsequent provision for people in this situation. Following the ruling in VC vs SSHD and the recommendation of the JCHR, we believe that a duty should be placed on IRCs to ensure the provision of permanent on-site experts able to assess capacity. We refer you to, and endorse, the comments by Medical Justice and Freedom from Torture regarding this proposed addition.
56. We believe the Rules should include provision for **whistleblowing by IRC staff**, detailing how any such concerns can be raised and how they will be handled. We refer you to, and endorse, the comments by Freedom from Torture regarding this proposed addition.
57. We believe that the Rules should introduce **a systematic record-keeping process** for all IRCs to adhere to. This process should be used to produce regular statistics, encourage transparency and facilitate the monitoring and evaluation of IRCs. We refer you to, and endorse, the comments by Freedom from Torture regarding this proposed addition.
58. We believe that the Rules should include an overarching Rule providing for **adequate interpretation and translation** wherever required in IRCs. We refer you to, and endorse, the comments by AVID regarding this proposed addition.

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59. We believe that **the Rules should also be applied to those currently being held under immigration powers in prisons.** For the avoidance of doubt, Detention Action in no way approves of people being detained in prisons for the purposes of immigration administration. It is fundamentally wrong and seriously undermines these individuals' rights. However, while this practice continues, those in this situation should receive equal protection, under the Rules, as those held in IRCs.

Please do not hesitate to contact me if you would like me to clarify any of the points raised, or if we can in any way further assist this consultation.

Yours sincerely,



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