



UK Visas
& Immigration

Audit of Rule 35 Processes: Summary of Findings

April 2015

Background to Rule 35

1. Rule 35 of the statutory Detention Centre Rules 2001 (SI 238/2001) requires doctors working in immigration removal centres (IRCs) to report to the Home Office concerning any detainee about whom they have health-related concerns. Receipt of a Rule 35 report triggers a review of the appropriateness of the person's continued detention by the Home Office responsible officer managing the case, taking account of the information contained in the report.
2. There are three types of Rule 35 report: Rule 35(1) covers cases where a doctor has concerns that a detainee's health may be injuriously affected by continued detention or any conditions of detention; Rule 35(2) covers cases in which a doctor has concerns a detainee may have suicidal intentions; and Rule 35(3) covers cases where a doctor has concerns the individual may have been a victim of torture. The majority of Rule 35 reports fall into the final category.
3. Following a doctor's completion of a Rule 35 report, Home Office Contact Management Teams (CMTs) in IRCs send it to the relevant responsible officer for consideration. The responsible officer is then required to consider the report and respond within 2 working days, with a decision on whether the individual's detention should be maintained, or whether they should be released. The CMT are responsible for relaying the decision to the detainee and ensuring that they understand the response.
4. Home Office guidance for IRC doctors, IRC CMTs and case workers on the Rule 35 process is set out in the following documents: Chapter 55.8 A of the Home Office Enforcement Instructions and Guidance (EIG); the Asylum Instruction "*Detention Rule 35 process*"; and Detention Services Order (DSO) 17/2012 "*Application of Detention Centre Rule 35*". Links to these documents are below:

[Section 55.8A of the Enforcement Instructions and Guidance](#); [Detention Rule 35 Process Instruction](#); [Detention Services Order 17/12](#)

Rule 35 Audit

5. In February 2011 the [Detention centre Rule 35 audit report](#) outlining the findings of an audit of the operation of Rule 35, focussing on the administrative processes and timeliness of responses rather than the quality of reports and responses, was published by the (then) UK Border Agency. As a result of the findings of this report existing Rule 35 processes were improved and associated guidance updated. Training on Rule 35 was also introduced for those Home Office case workers with responsibility for managing detained cases and for IRC doctors.
6. After the audit report was published in 2011 the Home Office committed to carry out a further follow-up audit which would also include looking at quality. This audit, undertaken by the Home Office's Quality Analysis Team (QAT), was originally planned in isolation to the previous audit and uses the Next Generation quality framework. The audit took place between April and June 2014.
7. The QAT audited a random sample of 60 cases in which Rule 35 reports were completed between January-March 2014. The purpose was to assess the extent to which the instructions in the [Detention Rule 35 Process Instruction](#) and [Detention Services Order 17/12](#) were followed by doctors, CMT staff and case workers, as well as providing an assessment of the content of the Rule 35 reports and the responses to them.

Methodology

8. The Home Office's Case Information Database (CID) indicates that, in the first quarter of 2014 (January-March), **487** Rule 35 reports were opened on the system and had a corresponding case outcome (detention maintained or released)¹ recorded. To place this figure in context, published Home Office figures from Migration Statistics (accessible from <https://www.gov.uk/government/statistics/tables-for-immigration-statistics-january-to-march-2014>) show that a total of **7,032** people entered detention in the same period.
9. As previously indicated, the QAT audited a random sample of **60** cases in which Rule 35 reports were submitted between January-March 2014. These cases represented 12% of total Rule 35 outcomes over this 3 month period. **Of the 60 cases, 7 were Rule 35(1) reports, 2 were Rule 35(2) reports and 51 were Rule 35(3) reports.**
10. All case types were represented in the audit, including asylum cases, criminal cases and general enforcement cases.
11. The audit looked at the various elements of Rule 35 report handling (report creation and content; report referral; response content, including the decision to maintain detention or authorise release; service of response). Those elements were considered against a range of criteria and cases were awarded overall markings of "satisfactory", "weak" or "fail". Cases marked "satisfactory" were considered to have been handled correctly or only contained minor errors; those marked "weak" contained one or more serious errors; those marked "fail" contained one or more critical errors.
 - "Critical" errors are considered to have placed the detainee at risk of having been inappropriately detained, for example in a case where the Rule 35 report constitutes independent evidence of torture and there are no very exceptional circumstances to justify maintaining detention.
 - "Serious" errors are those in which there has been a failure to adhere to legislation/process/policy which poses a risk to the Home Office's reputation/resources or could have a potentially significant negative impact on the detainee. However these errors do not mean that the detainee or UK is placed at risk, such as to their safety or security or that the detainee has been inappropriately detained. For example, a failure to adhere to guidance relating to procedural issues (i.e. updating CID) may result in a serious error and this may have resource or Management Information (MI) implications for the Home Office, but a failure to update CID in most cases will not place the detainee at risk. While the correct decision to maintain detention has been made, a failure to fully explain the reasons for maintaining detention in the response means that the detainee does not fully understand the reason for maintaining detention and this may lead to a Judicial Review with significant resource and cost implications.
 - "Minor" errors relate to failures to adhere fully to legislation/process/policy but without significant detriment to the decision reached.

¹ Case Information database (CID) is the Home Office database which is used to record and manage all types of in country case work. Once a Rule 35 report is received by the decision maker a Rule 35 case is opened on CID and once the report has been considered and responded to the Rule 35 case is updated with an outcome of 'Detention Maintained' or 'Detainee Released'. The data was recorded from 08/04/14.

Findings

Case Outcomes

12. None of the cases were considered to have “critical” errors. No cases therefore received a “fail” marking. None of the detainees’ in the sample were exposed to an unacceptable level of risk, such as to their safety or well-being.
13. Release from detention was authorised in 15% (9) of the cases audited. Detention was maintained in 85% (51) of the cases.
14. Overall there was positive evidence that the correct decision as to whether detention should be maintained was reached in 82% (49) cases. To assess this auditors reviewed the Rule 35 report, the guidance in the Rule 35 AI and all other factors relevant to the case (including very exceptional circumstances where appropriate) to come to a view as to whether the correct decision had been reached.
15. The remaining 18% were cases in which the Rule 35 report was found not to be on the detainee’s Home Office file so it was impossible for auditors to reach a view on the appropriateness of detention review decisions (12%) or cases which had “serious” errors relating to whether detention should be maintained (6%).
16. While four Rule 35(3) cases were assessed as being weak and having serious errors (6% as referred to in paragraph 15) relating to the decision as to whether detention should be maintained, it is important to note that in these cases, no incorrect decisions were observed by auditors which led to victims of torture being inappropriately detained. The reasons for these serious errors were as follows. Two cases where a decision had been reached to maintain detention in respect of Rule 35, but in both cases Rule 35 reports had not been raised either by a medical practitioner or anyone else at any stage. Rule 35 decisions were therefore not required. One case was assessed as weak because for the purpose of Rule 35 the detainee was released, however the correct course of action was to maintain detention. Lastly one case was assessed as being weak because the Rule 35 report was lacking in detail and therefore a fully considered decision could not be reached.
17. A high number of Rule 35(3) reports contained little or no medical evidence or commentary from the doctor completing the report, with no indication that anything other than an unsupported allegation prompted the doctor to have concerns. For example, 29 Rule 35(3) reports simply passed on the allegations of the detainee that they had been tortured. This suggests that medical practitioners are taking a very cautious approach when deciding whether or not to produce a Rule 35 report - issuing them in circumstances when they may not be necessary.
18. In 36% (16) cases it was unclear from the Rule 35(3) report what had led the doctor to have concerns that the detainee may have been a victim of torture notwithstanding the fact that where a doctor reports concerns about a detainee but has little or no medical evidence in support there is a requirement in Home Office guidance to make this clear in the report.
19. 75% (45) cases demonstrated correct understanding on the part of responsible officers of the purpose and content of the Rule 35 report and of the requirements of DSO 17/2002 in considering the contents of Rule 35 reports. In the context of Rule 35(3) decision makers demonstrated an understanding that they needed to assess whether the report constituted independent evidence of torture, and if so whether there were very exceptional circumstances such that detention is appropriate.

20. 53% (32) of Rule 35 responses contained satisfactory reasoning to explain the responsible officer's decision whether to maintain detention, although 22 cases were considered "weak" in this respect. Despite not fully explaining to the detainee why detention was being maintained or alternatively why they were being released, the weak reasons did not lead to detainees being inappropriately detained. This conclusion was reached based upon other evidence available in the case.
21. The Rule 35 report was not on the file of six cases so it was not possible to tell whether the reasoning in the response addressed the issues in the report.

Process Matters

22. All Rule 35 reports in the sample received a response, with 88% (53) meeting the 2 working day deadline for a response. This is in marked contrast to the audit published in February 2011 in which it was reported that only 35% of cases met the 2 working day deadline for a response, and 33% received no response.
23. In 68% (41) cases the responsible officer's response to the Rule 35 report had the appropriate level of clearance at either SEO/HMI level, as required by DSO 17/2012. In the remaining 32% of cases (19) there was no evidence recorded on CID that the response had received the appropriate level of clearance although it does not follow automatically that the responses in question had not been cleared at the appropriate level.
24. In 88% (53) of the cases there was evidence recorded on CID that the detainee had been provided with a copy of the Rule 35 response.
25. In 77% (17 out of 22) of cases where the detainee was recorded as having legal representatives at the time of the referral of the Rule 35 report, there was no evidence recorded on CID that the doctor's Rule 35 report had been forwarded to the legal representatives.
26. In 40% (12 out of 30) of cases where the detainee was recorded as having legal representatives at the time the Rule 35 response was served, there was no evidence that it had been sent to the detainee's legal representatives.
27. In 37% (22) of the 60 cases there was no evidence recorded on CID that a copy of the responsible officer's response had been sent to the doctor who submitted the Rule 35 report.
28. In 90% of cases the Rule 35 outcome (detention maintained or release authorised) was correctly recorded on CID.

Recommendations

- **Existing Home Office staff guidance on Rule 35 should be improved and republished.** In particular, a brief section on consideration of Rule 35(1) and Rule 35(2) reports should be added to the existing Detention Rule 35 Asylum Instruction.
- **Communications should be sent to all Home Office case workers and clearance officers involved in the Rule 35 process.** This should remind them of key requirements of existing Rule 35 guidance, in particular, that:
 - Rule 35 reports must be stored on the detainee's Home Office file, as well as on CID;

- Rule 35 reports are not medico-legal reports and must not be considered defective because they do not contain the level of detail that would be expected of such a report or because they have not been written according to the Istanbul Protocol or other similar standards;
 - the detention review triggered by the Rule 35 report must be completed in line with published detention policy. This includes ensuring that all responses are cleared at SEO/HMI level, with clearance appropriately recorded on CID;
 - Rule 35 responses must be sent to the detainee's legal representatives (where they have one) and evidence of this recorded on CID;
 - the Rule 35 Process Instruction should be followed for all Rule 35 responses. More use should be made of the helpful example responses in this instruction.
- **Communications should be sent to CMTs and responsible officers reminding them of the need to accurately input and update CID with Rule 35 data.**
 - **Communications should be sent to medical practitioners working in IRCs.** This should remind them of the instructions set out in Detention Services Order (DSO) 17/2012 governing the completion of Rule 35 reports, as they apply to doctors.
 - **Communications should be sent to IRC Contact Management Teams.** This should remind them of a number of key requirements in line with common errors observed during the audit, in particular that:
 - the doctor's original Rule 35 report must be sent by the CMT to the detainee's legal representative (if they have one);
 - the relevant Home Office responsible officer must be contacted by CMT and alerted to the fact a Rule 35 report has been forwarded to them;
 - a copy of the Rule 35 response must be forwarded by the CMT to the medical practitioner who completed the original report;
 - where a detainee does not understand English the CMT must ensure they are provided with translation assistance so they can properly understand the Home Office response.