



Home Office

Policy equality statement (PES)

Name of Policy/Guidance/Operational Activity

Short-term Holding Facility Rules 2018 (SI 409/2018)

These Rules have been made under section 157(1) and (3) and 166(3) of, and paragraph 1 of Schedule 12 to, the Immigration and Asylum Act 1999. They set out the statutory framework for the regulation and management of short term holding facilities (STHFs). They are analogous to the Detention Centre Rules 2001 (SI 238/2001), which govern the regulation and management of immigration removal centres and cover the same range of subject areas. This includes admission and discharge of detainees, facilities within STHFs, including for the practice of religion, communications and healthcare, safety and security, requests and complaints, access by other persons to the facility and staffing.

There are two types of STHFs: residential STHFs and non-residential STHFs (also known as holding rooms). The former are small detention facilities with sleeping accommodation, whilst the latter are, in effect, secure waiting rooms without formal sleeping accommodation at most seaports/airports and Home Office reporting centres.

The provisions of these Rules also apply in respect of STHFs within the control zone at Coquelles in northern France.

By virtue of section 147 of the Immigration and Asylum Act 1999 individuals may be detained in residential STHFs for no more than seven days.

Hitherto there has not been any separate statutory time limit on detention in holding rooms, being by default subject to the general time limit for STHFs. However, rule 6(1) and (2) of these rules specifies that individuals may be detained in a holding room for no more than 24 hours, unless a longer period is authorised by an official of SEO/Senior Officer grade, or above, acting on behalf of the Secretary of State, where exceptional circumstances require it. Although the vast majority of individuals spend considerably less than 24 hours detained in non-residential STHFs, in most cases just a few hours, there may be circumstances in which a longer period of detention is unavoidable. This would most often arise at ports in the context of unforeseen flight delays for persons refused entry to the UK who are to be returned to their departure point. The ability to extend the time limit beyond the 24 hours therefore provides for this eventuality. It will not in practice affect reporting centre holding rooms as these facilities are not operated on a 24-hour basis.

A number of provisions of the Rules have necessarily been disapplied, or modified, as far as holding rooms are concerned to take account of the fact that their facilities are more limited than those in residential STHFs and individuals spend a very short amount of time detained in STHFs. These dis-applications/modifications are set out in rule 6 subparagraphs (4) to (8).

The STHF Rules are required to place the day-to-day operation of short term holding facilities on a statutory basis. They are analogous to the Detention Centre Rules 2001, which regulate the operation of immigration removal centres.

All detention and escorting supplier staff must undergo an extensive training programme during their initial training course in order to be certified and accredited to work as a detainee custody officer (DCO). Mandatory training includes:

- An overview of Detention Services Orders, including the adults at risk policy, pregnant women in detention and standards for the treatment of women in immigration detention and under escort;
- An overview of the Human Rights Act 1998 and European Convention on Human Rights
- Diversity (including race relations and cultural awareness)
- Interpersonal skills and communication
- Self-harm and suicide prevention
- Safeguarding of children, including Section 55 to the Borders, Citizenship and Immigration Act 2009

DCOs are also required to undergo a minimum of eight hours per annum refresher sessions in areas such as control and restraint, first aid and bespoke training for those working with children or families.

This training is relevant to each of the eight protected characteristics under section 149 of the 2010 Act.

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

The public sector equality duty ("PSED") under section 149 of the Equality Act 2010 (the "2010 Act") requires that in exercising their functions public authorities have due regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct prohibited by the 2010 Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The PSED covers the following eight protected characteristics under section 149 of the 2010 Act: age; disability; gender reassignment; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation.

In drafting the Rules due regard was given to the PSED, the need to demonstrate due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

The Rules have been drafted in conjunction with Home Office Legal Advisers and policy and operational colleagues across the Home Office.

In considering whether the Home Office has had due regard to the PSED in drawing up these Rules, consideration has also been given to the views expressed during a targeted consultation of key external detention stakeholders carried out between February and April 2016.

Account has also been taken of comments made about STHFs by the former Prisons and Probation Ombudsman, Stephen Shaw CBE, in his independent review of detainee welfare (published January 2016).

Disability

The Equality Act defines “disability” as being “*A physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on an individual’s ability to carry out normal daily activities.*”

Policy

Published Home Office detention policy does not operate with absolute exclusions in relation to specific groups. This includes those with a mental or physical disability.

However, on 12 September 2016, the Home Office introduced the adults at risk in immigration detention policy as part of the Government’s response to the independent review of detainee welfare carried out by the former Prisons and Probation Ombudsman, Stephen Shaw CBE. Building on the existing legal framework surrounding detention, the policy strengthens the presumption against the detention of those who are regarded as being vulnerable to harm in detention, including those with serious physical or mental health disabilities. Under this policy an individual considered to be “at risk” will be detained only when the immigration control factors outweigh the evidence of vulnerability presented in their particular case. Having a serious mental or physical disability, including suffering from post-traumatic stress disorder, are specified as indicators of risk under the policy. The adults at risk policy applies to individuals detained in STHFs.

The Home Office does not publish data on the number of people detained in STHFs who have a disability, or are subsequently revealed to have a disability.

Impacts

It is not anticipated that the introduction of these Rules will have an impact on the number of individuals with a disability entering STHFs. However, the Home Office accepts that individuals with this protected characteristic may be adversely affected by their experience of detention. Disabled people may have particular medical needs and/or require aids or other facilities, though this will vary depending on the nature or severity of an individual’s disability. The design/configuration of residential STHFs may affect disabled detainees, particularly those with mobility issues or a visual impairment.

Those with learning disabilities may have difficulties in understanding why they have been detained and how to access legal advice, apply for immigration bail or in understanding the procedures that apply in the short-term holding facility in which they are held. This point was raised by a number of respondents to the stakeholder consultation in 2016.

Mitigations

Any negative impacts experienced by individuals with disability are, in part, mitigated by the short periods of time that detainees may remain detained in

STHFs.

The adults at risk policy provides additional protection to detainees with serious mental or physical disabilities, ensuring they are detained only when immigration control factors outweigh the evidence of vulnerability presented in their case. Furthermore, the Home Office now has an internal Detention Gatekeeper Team in place, established in response to Stephen Shaw's review of detainee welfare, to provide a "second pair of eyes" for all admissions to the detention estate, ensuring that issues of vulnerability, including disability, have been taken into account properly in deciding to detain an individual. Where a decision has been taken to detain someone with the protected characteristic of disability the Home Office Detention Services Order 8/2016 (Management of Adults at Risk), which applies to STHFs, governs the treatment of those considered vulnerable, including where there is a change in their physical or mental health which may have an impact on the decision to detain them.

Following the publication of DSO 08/2016, work is underway to develop a new "Vulnerable Adult Care Plan" (VACP) for use across the detention estate, including in STHFs. This will ensure that a consistent approach will be taken by all Home Office, supplier and healthcare staff working with detainees to identify and record changes to the physical or mental health of a detainee, or a change in the nature/severity of any previously identified vulnerability, alongside the current risk assessment process. Any vulnerability that may impact on the safety and wellbeing of a detainee must be addressed and reasonable adjustments be put in place, which must be documented in the VACP.

Separately, rule 30 (medical screening) provides that all detainees must undergo a health care screening within two hours of admission to a residential STHF, thereby providing the means to identify individuals with a mental or physical disability, where that is not otherwise apparent. Rule 31 (general medical care) requires detainees to have access to a health care professional once they have been detained, ensuring that any medical needs arising as a result of their disability can be addressed. A substitution for this rule has been included in respect of holding rooms to take account of the very short time most detainees spend detained in holding rooms, and the fact they do not have on-site healthcare staff to undertake screening examinations. This substitution requires prompt access to health care to be arranged if the detainee becomes ill (or sustains an injury) whilst detained in a holding room and requires attention by a healthcare professional.

Rule 32 (special illnesses and conditions) of the STHF Rules provides a means by which health care staff can alert the Home Office to a detainee in a residential STHF whose health is likely to be injuriously affected by remaining in detention or any conditions of detention in order that the appropriateness of their continued detention may be reviewed by the Home Office. This would include those suffering from mental or physical disabilities. Rule 32 is equivalent to rule 35 of the Detention Centre Rules 2001 (DC Rules). However, given that on-site health care in residential STHFs is provided by nursing staff, rule 32 of the STHF Rules provides that such reports may be submitted by nurses, thereby ensuring that reports can be completed as soon as possible and the individual's suitability for continued detention reviewed by the Home Office at the earliest opportunity. Those not considered suitable for continued detention will be released. Nurses who are completing the reports will have been given relevant and adequate training in this regard.

The combination of the VACP and the rule 32 process means that where a vulnerability is identified that cannot be addressed or mitigated by the STHF

staff, the individual's suitability for detention would have to be re-assessed. Where a healthcare assessment deems that restricting an individual to his or her room during night state would have an adverse effect on his/her health, the individual would have to be considered for transfer to an immigration removal centre in accordance with published Detention Services Order 03/2016 'Consideration of detainee placement'. Where an individual exhibits one of the indicators of risk set out in the adults at risk policy, they must be considered for release by the Home Office caseworker under that policy.

Detention Services Order (DSO) 2/2017 (Removal from Association and Temporary Confinement) is clear that, in immigration removal centres, rule 40 (removal from association) and rule 42 (temporary confinement) accommodation should not be used to manage detainees with serious psychiatric illnesses or presenting with mental health difficulties. This principle applies to all detained accommodation.

At residential STHFs a specific care plan would be opened for any disabled detainee. Checks would also be made on their welfare every 15 minutes.

Facilities for disabled people are limited in port and reporting centre holding rooms. This is linked to the very short periods of time that individuals are detained in these particular types of STHF.

Taken together the Home Office considers that these various measures provide adequate protections for those with the protected characteristic of disability where they are held for very short periods.

Race (includes colour, nationality and national or ethnic origins-section 9 of the Equality Act 2010)

Policy

Published Home Office detention policy does not exclude any groups from immigration detention on the grounds of race or nationality: any individual subject to immigration control may, in principle, be detained, provided that the statutory powers of detention apply and that their detention is in line with published Home Office policy on the use of detention.

The Home Office publishes data on the number of people leaving immigration detention by nationality. However, it does not disaggregate this further by place of detention so it is not possible to show how many people of each nationality were held in STHF.

Top 5 nationalities of people leaving detention, 2017

Nationality	Leaving detention	% Returned on leaving detention¹	% Granted TA/TR² on leaving detention
Pakistan	2,465	30%	46%
Albania	2,288	73%	15%
India	2,252	31%	46%
Romania	1,879	94%	2%

Bangladesh	1,365	25%	52%
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Source:

[Table dt 08.g](#) (detention tables).

Table notes:

1. 'Returned on leaving detention' includes enforced returns, voluntary returns and those refused entry at port (in the UK) who were subsequently detained and then departed the UK.
2. Temporary admission or release.

Impacts

It is not anticipated that the introduction of these Rules will have an impact on the number of people entering STHFs by national origin. However, an individual's nationality or ethnicity may be a relevant factor in a number of issues related to detention. For example, it may be the case that individuals who do not speak English as a first language, or who have a poor command of written or spoken English may face more difficulties in understanding why they have been detained and their rights and responsibilities whilst in detention. This was raised by a number of respondents to the 2016 stakeholder consultation.

Certain individuals may be more likely to be at risk of being victims of bullying by virtue of their particular national/ethnic origins. Such persons may be disproportionately affected by being detained in close proximity to other detainees who may, for example, hold racist views.

A person's ethnic/national origins may be a relevant factor in relation to the food they eat and the clothes they wear.

Some detainees, depending on their particular ethnic/cultural background, are also likely to have objections to being searched by a member of staff of the opposite sex to themselves, or to undergoing medical examinations by a health care professional who is not of their own sex.

Mitigations

For detainees whose first language is not English or who have a poor command of the English language, staff in port and reporting centre holding rooms and residential STHFs have access to telephone translation services. Within port holding rooms, if it is felt that having an interpreter physically present would assist the detainee, this can be arranged via the Home Office interpreters' database. Although Home Office forms are currently only provided in English, the immigration bail information sheet is now available in around 18 languages. In contractor-managed port holding rooms if a detainee wishes to raise a complaint about the way in which they have been treated (for example if they feel they have been subject to mistreatment on the basis of their race/nationality, though for other reasons also) there are detainee complaint forms available in around ten languages. These forms are collected by Border Force staff from secure "drop boxes". Information posters about the availability of legal assistance are also displayed in a number of different languages.

The Home Office has a zero-tolerance policy on bullying and harassment. Furthermore, a room-sharing risk assessment is undertaken on an individual's admission to detention to ensure that they are not required to share a room with others who may pose a threat to them. DSO 3/2016 (Consideration of detainee

placement) sets out mandatory instructions for completing a structured risk assessment before a detainee is placed in any type of immigration detention facility, including an STHF. Such risk assessments are reviewed and updated at intervals during a detainee's stay if additional risks are identified to ensure that the individual's detention remains appropriate and the residential STHF can manage the needs of the person. Therefore, where problems in this respect emerge after two detainees have been placed in a room together this would be identified at the earliest opportunity and action taken to place them in separate rooms. The detention supplier responsible for staffing STHF on behalf of the Home Office also has their own Standard Operating Procedure on dealing with harassment and bullying.

The Home Office recognises that certain detainees will have specific needs owing to their particular nationality/ethnic origins. Rule 17 (food) requires that food available in an STHF must, where practicable, meet the cultural needs of detainees. At residential STHFs there would always be a vegetarian option available at meals and, in certain circumstances it may be appropriate for detainee custody officers to purchase alternative food items for detainees if needed. At reporting centres, a range of meals and snacks are available to meet detainees' religious and dietary requirements. At holding rooms at the larger ports vegetarian meals are provided for detainees, along with halal and kosher food. Provision of food in smaller holding rooms will vary, depending on the location.

Similarly, rule 16 (clothing) provides that detainees are permitted to wear their own clothes, or arrange for clothing to be sent to them from outside the STHF, thereby ensuring that detainees are able to dress in accordance with their ethnic/cultural background. Provisions set out in rule 34 (requests and complaints) provide for detainees to access the detainee complaints process, allowing them to submit a complaint where they feel they have been the victim of mistreatment in detention because of, amongst other things, their national or ethnic origins.

Rule 10 (search) provides that "full searches" of a detainee (as defined by rule 10(10)) must not take place in the presence of someone of the opposite sex (or indeed another detainee). Although there are no such limitations in respect of other types of (lower level) searches, where a detainee nevertheless had cultural objections to being searched by a member of the opposite sex to themselves then account would be taken of this. In larger port holding rooms detainee custody officers work in pairs of male and female officers so it should not be necessary for detainees to be searched by officers of the opposite sex. At smaller port holding rooms Border Force seeks to respect the cultural (and other) sensitivities of detainees in this respect. Electronic wands would therefore be used where necessary to mitigate this risk if operational problems arise.

The staffing complement of residential STHFs and reporting centre holding centres is such that it should not be necessary for detainees to be searched by a member of staff of the opposite sex to themselves. Again, if this is not possible for operational reasons, searches can be conducted by means of electronic wands.

Where a detainee has cultural objections to undergoing a medical screening conducted by a health care professional of the opposite sex to themselves then rule 30 (medical screening) and rule 31 (general medical care) provide detainees with the right to request a screening examination or health care

examination by a health care professional of the same sex as themselves. Earlier iterations of the STHF Rules proposed that a same-sex health care professional must be provided within 24 hours of a detainee making such a request. In practice, however, this may not always be possible. Accordingly, the time limit has now been removed and replaced with an obligation to provide a health care professional of the appropriate gender “as soon as practicable”. Where, in practice, it proves impossible to do this the individual would be transferred to an immigration removal centre (IRC), which has a full health care team, to allow their medical screening/health care appointment to be conducted by someone of their preferred gender. This does not mean that a detainee has an automatic right to be transferred from an STHF to an IRC.

Gender

Policy

Published Home Office policy does not exclude individuals from detention by virtue of their gender. Men and women are equally likely to be detained provided that one of the statutory powers of detention apply and their detention would be in line with published Home Office detention policy. However, victims of gender-based violence, who are more likely to be women, fall explicitly within the adults at risk policy: they will be detained only where immigration control considerations outweigh vulnerability considerations.

Home Office data highlights that fewer than 15% of those entering detention in 2017 were women.¹ These figures are not broken down by place of detention, but they show that men are more likely to be detained than women.

Impacts

We do not believe that the Rules will have an impact on the number of people entering or remaining detained in STHFs, based on gender.

STHFs are mixed-sex environments, both in terms of the detainees held there and their staffing complement: for operational and practical reasons, it is not possible to operate single sex residential STHFs or holding rooms. The Home Office accepts that detainees may feel uncomfortable as a result of being held in an STHF alongside unrelated detainees of the opposite sex, or in close proximity to detainee custody officers (DCOs) of the opposite sex.

Mitigations

Rule 14 (sleeping accommodation) provides that, with the exception of detained families, detainees must be provided with separate sleeping accommodation from detainees of the opposite sex.

During the consultation, several respondents argued that this Rule should be amended to require that sleeping accommodation in residential STHFs must be inaccessible to *unrelated* detainees of the opposite sex. The Home Office understands these concerns. However, in practice the configuration of residential STHF accommodation means that it is impossible to introduce a provision to this effect. Although there is a “female corridor” at Larne House, this cannot be locked off. However, detainee custody officers carry out regular patrols to prevent males entering female rooms. When the newly-designed Pennine House opens shortly, women will be located in a “vulnerable wing”

¹ <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-are-detained-or-returned>

that can be locked off from the rest of the site. Males will not be allowed to enter female accommodation without prior agreement. Again, there will be regular patrols by detainee custody officers and CCTV coverage to mitigate this risk.

The new Pennine House residential STHF (when open) will have a completely separate sleeping, living and toilet/washing facility for female detainees that will be able to accommodate a maximum of five women. This area has CCTV, the ability to be locked from the inside and an intercom system linked to a reception area which is staffed for 24 hours per day. The toilet and shower area also have the ability to be locked from the inside (thumb lock that can only be opened from the outside with a key). In the male shower area there will be doors on all showers to ensure privacy whilst showering for the male population. Larne House has toilet and shower areas that can be separated for males and females.

Male and female detainees in residential STHFs are allocated separate male and female bedroom/bathroom space but, if they wish, can use shared association spaces and dining room.

Since the stakeholder consultation was carried out the Home Office has published DSO 6/2016 (Women in the Detention Estate) which applies to residential STHFs, as well as immigration removal centres. It recognises that women in detention have particular needs by virtue of their sex and sets out consistent requirements for their treatment across the detention estate generally. This covers matters such as reception into detention, health care whilst in detention, hygiene and personal care, diet, activities and welfare and counselling support.

DSO 09/2012 'Searching policy', which applies to residential STHF states that in the case of female detainees, staff members conducting the search must be female. To avoid the potential for double-searching prior to removal or transfer, the search should usually be conducted by those receiving the individual into their care (usually the escort service provider).

As already indicated rule 10 (search) provides that "full searches" of a detainee (as defined by rule 10(10)) must not take place in the presence of someone of the opposite sex (or indeed another detainee). Although there is no such limitation in respect of other types of (lower level) searches, where a detainee nevertheless had cultural objections to being searched by a member of the opposite sex to themselves, then account would be taken of this. In larger port holding rooms detainee custody officers work in pairs of male and female officers so the issue should not arise. At smaller port holding rooms Border Force seeks to respect the sensitivities of detainees in this respect. Where necessary electronic wands would be used to search detainees to mitigate the risk as far as possible.

The staffing complement of residential STHFs and reporting centre holding centres is such that it should not be necessary for detainees to be searched by a member of staff of the opposite sex to themselves. Again, if this is not possible for operational reasons searches, can if necessary be conducted by means of electronic wands.

As previously indicated, rules 30 (medical screening) and 31 (general medical care) provide for detainees to request medical screenings/examinations by a health care professional of the same sex as themselves, should they so wish. Earlier iterations of the STHF Rules proposed a 24-hour time limit on the

provision of a same-sex health care professional, where a detainee makes a request to that effect. Operational constraints however, mean that it may not always be possible to provide a health care professional of the appropriate gender within this timescale. Accordingly, the time limit has now been removed and replaced with an obligation to provide a health care professional of the appropriate gender “as soon as practicable”. Where, in practice, it proves impossible to do this, the individual would be transferred to an immigration removal centre (IRC), which has a full health care team, to allow their medical screening/healthcare appointment to be conducted by a health care professional of their preferred gender. This does not amount to a right to be transferred from an STHF to an IRC.

For individuals suspected of being victims of trafficking/modern slavery (who are more likely to be female) as indicated above, Border Force has a Safeguarding and Modern Slavery team at all of its locations. These are Border Force officers who have undergone specific training and who manage cases where particular vulnerabilities are identified including engaging with local social services where applicable.

Supplier staff, DCOs and Home Office staff working in residential and non-residential STHFs receive training in equality and diversity.

Age

Policy

The Home Office no longer routinely detains families with children under 18 years for removal. However, to secure the UK border it remains necessary on occasion to detain families with children at ports pending a decision on whether to grant them entry or, having been refused entry, pending their return flight.

Unaccompanied children under the age of 18 may also be detained for short periods of time in a limited number of very exceptional circumstances. Most commonly, this may occur in port holding rooms on arrival in the UK, pending alternative care arrangements being made for the child with friends or relatives, or local authority children’s services. Detention for short periods of time in such circumstances is necessary to safeguard the child’s welfare. Section 5 of the Immigration Act 2014 has amended paragraph 16(2) of Schedule 2 to the Immigration Act 1971 to restrict the detention of an unaccompanied child for removal to a short term holding facility for a maximum of 24 hours, though in practice unaccompanied children are not detained in residential STHFs.

Individuals who are initially detained as adults, whose age is later disputed as being under 18 years, may have already been detained prior to the age dispute issue having arisen. Where the individual in question meets the published Home Office “age dispute” criteria, they will be released from detention to the care of local authority children’s services at the earliest opportunity, whilst their age is established.

At the other end of the age spectrum, the adults at risk policy specifies being aged 70 years or over as an indicator of risk of harm in detention. People falling into this group will be detained only when immigration control considerations in their case outweigh their inherent vulnerability.

Although the Home Office publishes data on the number of adults entering detention it is not subdivided by age groups. It is therefore not possible to say how many adults in each age bracket, including those aged 70 or over were detained in residential STHFs.

Although the Home Office publishes data on the number of children under the age of 18 entering detention subdivided into separate age groups, this data is not subdivided further by place of detention. Accordingly, it is not possible to say how many children were detained in residential STHFs.

Impacts

We do not believe the Rules will have a quantitative impact on the number of children or elderly people entering detention in STHFs, though rule 34 of the STHF Rules may have an impact on the number of elderly people remaining in detention in STHFs.

The Home Office accepts that children can be vulnerable by virtue of their age. There are therefore safeguarding risks as a result of their being detained in STHFs, potentially alongside unrelated adults. This is likely to be a particular risk for unaccompanied children, in the absence of parents/carers.

The limited space and facilities available in STHFs, particularly in holding rooms, means that younger children, in particular, who need space and facilities in which to play are likely to be adversely affected by their experience of detention.

The Home Office accepts that elderly people may be adversely affected by detention, given that infirmity increases with age. Older people are also more likely to suffer from physical disabilities or have particular medical needs. No comments were received during the consultation in relation to the detention of elderly people.

Mitigations

Rule 10(3) (search) requires that where someone under 18 is detained in an STHF alongside their parent/carer the latter must, where possible, be present during any search the child is required to undergo. Similarly, full searches (as defined by rule 10(10)) of under 18s are prohibited by virtue of rule 10(5). The Home Office has a Detention Services Order (DSO) 19/2012 on Safeguarding Children which Home Office and contractor staff are obliged to follow. This is supported by the contractor's own Standard Operating Procedure on the same subject.

Rule 15(2) (families and minors) requires that a detainee under the age of 18 in a residential STHF must be provided with sleeping accommodation that cannot be accessed by unrelated detainees of the opposite sex. This rule is necessarily disapplied insofar as non-residential STHFs are concerned because of the inherently communal nature of port holding rooms; it is not relevant to reporting centre holding rooms because these facilities do not operate on a 24-hour basis.

During the stakeholder consultation, concern was expressed that the Rules do not contain specific provisions in relation to the detention of children generally and the way children will be treated in relation to specific matters such as recreation, communications, health care and use of force. The Home Office considers this unnecessary because section 55 of the Borders, Citizenship and Immigration Act 2009 already requires that the Secretary of State's functions in relation to immigration must be discharged having regard to the need to promote and safeguard the welfare of children. Furthermore, the Immigration Act 2014 has restricted an unaccompanied child's detention to a short-term holding facility (not an immigration removal centre) and to a maximum of 24

hours. This Act has also restricted the detention of families with children being returned via Pre-Departure Accommodation to a normal maximum of 72 hours, though this can be extended to an absolute maximum of one week in exceptional circumstances, provided there is Ministerial authority in place for this. Published Home Office guidance is already clear that any use of force on children/young people under 18 years is restricted to the prevention of harm, either to the child or to other persons. The position on these matters is thus clear from existing legislation and published Home Office policy, and does not therefore need to be repeated in these Rules.

Where a decision is taken to detain a person aged 70 years or over their treatment whilst in detention would be in line with DSO 8/2016 (Management of Adults at Risk).

As already indicated, Border Force has a Safeguarding and Modern Slavery team at all of its locations. These are Border Force officers who have undergone specific training and who manage cases where particular vulnerabilities are identified (for example in the case of unaccompanied children), including engaging with local social services where applicable.

Religion/Belief

Policy

Published Home Office policy does not exclude individuals from detention by virtue of their religion or belief. Any individual may in principle be detained regardless of their particular religion or belief (or absence of it), provided that one of the statutory powers of detention is engaged and their detention would be in line with published Home Office policy on the use of detention.

The Home Office does not publish data on the number of people entering detention in STHFs (or other detention facilities) broken down by religion or belief.

Impacts

We do not believe that the Rules will have an impact on the number entering, or remaining detained in STHFs on the basis of religion.

The Home Office recognises that individuals may require the provision of specific facilities (eg access to ministers of religion, religious books or facilities to pray) to allow them to practise their religion whilst detained. A detainee's religion may also affect the food they eat and/or clothes they wear. Where this is the case, individuals will be adversely affected if the appropriate provision is not available.

Some detainees may also have objections, for religious reasons, to being searched or undergoing medical examinations by a member of the opposite sex.

Mitigations

Rule 21 (diversity of religion) provides that a detained person's religious and cultural needs must be catered for as far as practicable. Rule 22 (religious denomination) provides that, where a detainee in a residential STHF wishes to make a declaration of observance of a particular religion, that information must be recorded as soon as reasonably practicable. These two rules apply to both

residential STHFs and holding rooms.

Larne House and the new Pennine House residential STHFs have (or will have) prayer/contemplation rooms. Unlike the position in immigration removal centres, detainees in residential STHFs are not confined to their rooms during night time hours and therefore are able to access prayer/contemplation rooms 24 hours a day.

Rule 17 (food) requires that food provided in both residential and non-residential STHFs must, where practicable, meet detainees' religious needs. Rule 16 (clothing) allows detainees to wear their own clothing, or arrange for clothing to be brought from outside a residential STHF, thereby allowing individuals to dress in line with any religious requirements whilst in detention. This Rule has necessarily been dis-applied in respect of non-residential STHFs because of the practical and operational constraints involved in receiving visits in holding rooms and the very short period time that most detainees spend in detention there.

Where a detainee has religious objections to being searched by a member of the opposite sex to themselves then account would be taken on this. In larger port holding rooms detainee custody officers work in pairs of male and female officers so it should not be necessary for detainees to be searched by officers of the opposite sex. At smaller port holding rooms Border Force seeks to respect cultural (and other) sensitivities of detainees in this respect. Electronic wands would therefore be used where necessary to mitigate this risk if operational problems arise. The staffing complement of residential STHFs and reporting centre holding centres is such that it should not be necessary for detainees to be searched by member of the opposite sex to themselves. Again, if this is not possible for operational reasons, searches can be conducted by means of electronic wands.

DSO 9/2012 (Searching) emphasises the respect that must be accorded by staff when they are searching detainees' religious clothing, headwear or religious books and artefacts.

Rule 21 requires that detainees' religious needs be "catered for so far as possible". Notwithstanding this, religious books are provided in all reporting centre holding rooms and residential STHFs; dedicated prayer rooms exist in some locations. At Larne House and the new Pennine House there are (or will be) prayer/contemplation rooms and arrangements for ministers of religion to visit detainees if they so wish. Religious texts from the major religions are provided at the larger port holding rooms, some of which will also have prayer rooms. Religious provision in the smaller port holding rooms varies at present and may inevitably be subject to practical constraints as to what can reasonably be provided.

Where an individual has religious objections to undergoing health care examinations by a person of the opposite sex to themselves, rules 30 (medical screening) and 31 (general medical care) provide for detainees to request medical screenings/examinations by a health care professional of the same sex as themselves, should they so wish. Earlier iterations of the STHF Rules proposed a 24-hour time limit on the provision of a same-sex health care professional, where a detainee makes a request to that effect. Operational constraints, however, mean that it may not always be possible to provide a health care professional of the appropriate gender within this timescale. Accordingly, the time limit has now been removed and replaced with an

obligation to provide a health care professional of the appropriate gender “as soon as practicable”. Where in practice it proves impossible to do this the individual would be transferred to an immigration removal centre (IRC), which has a full health care team, to allow their medical screening/health care appointment to be conducted by a health care professional of their preferred gender. This does not amount to a right to be transferred from an STHF to an IRC.

Supplier staff, DCOs and Home Office staff working in residential and non-residential STHFs receive training in equality and diversity.

Sexual Orientation

Policy

In his 2016 review of detainee welfare, Stephen Shaw did not recommend that being lesbian, gay or bisexual (LGB) should be grounds for exclusion from detention. Accordingly, individuals who identify as LGB are just as likely to be detained as their heterosexual counterparts provided that the statutory powers of detention are engaged and their detention would be in line with published Home Office policy.

The Home Office does not collate data on the number of people entering detention in STHFs (or other types of detention facility) broken down by sexuality.

Impacts

We do not believe that the Rules will impact on the number entering or remaining in detention based on sexuality. However, the Home Office recognises that, where an LGB detainee’s sexuality is openly expressed, or otherwise known, they may be more likely to be at risk of being a victim of bullying and therefore may be more likely to be adversely affected by their experience of detention.

Mitigations

There are measures already in place to provide adequate protection to any lesbian, gay or bisexual detainees. The Home Office has in place DSO 2/2016 (Lesbian, gay and bisexual detainees in the detention estate). This instruction, which applies to STHFs as well as to immigration removal centres, provides for consistent standards of treatment across the detention estate for detainees belonging to these groups in order to safeguard their welfare whilst in detention. Rule 34 also provides that detainees may complain where they feel that they have been the victim of mistreatment. This would include where they felt they had been victimised (either by staff or fellow detainees) because of their sexuality.

The Home Office’s no tolerance policy on bullying and harassment applies to all individuals, regardless of their individual circumstances and/or protected characteristic. Please also see the section on action taken to deal with bullying and harassment in detention in the “Nationality/Race” section of this document, which applies equally to those who have been subject to mistreatment on the basis of their sexuality.

As indicated, supplier staff, DCOs and Home Office staff working in residential and non-residential STHFs receive training in equality and diversity.

Gender Reassignment

Policy

The Equality Act defines a transsexual person as someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.

Home Office detention policy does not exclude individuals from detention by virtue of the fact that they are undergoing, or have undergone, gender reassignment. However, under the adults at risk policy being a transsexual person is specified as an indicator of risk of harm in detention. Someone falling into this category may therefore be detained only when the immigration control factors outweigh the evidence of their vulnerability.

The Home Office does not collate data on the number of people entering detention in STHFs (or other types of detention facility) broken down by gender reassignment. However, anecdotally these numbers are known always to have been very small. It is assumed that they have reduced still further following the introduction of the adults at risk policy.

Impacts

Of themselves, we do not believe that the STHF Rules will have an impact on the number of people entering, or remaining, in detention in STHFs who are undergoing, or have undergone, gender reassignment.

The Home Office accepts that transsexual people may be more likely to be at risk of being victims of bullying. They may therefore be adversely affected by being detained in close proximity to other individuals, some of whom may hold trans-phobic views.

They may also require specific medical interventions (in particular provision of hormone treatment) and access to appropriate clothing allowing them to “pass” in their acquired gender.

Mitigations

The Home Office does not consider that the STHF Rules require specific provisions in relation to gender reassignment: there are already measures in place to provide adequate safeguards for transsexual persons in detention, whether in STHFs or elsewhere in the detention estate.

The Detention Gatekeeper provides a “second pair of eyes” to ensure that transsexuals are detained only in line with the adults at risk policy. To support the adults at risk policy the Home Office has in place DSO 8/2016 (Management of Adults at Risk) which governs the treatment of those considered vulnerable, including where there is a change in vulnerability factors which may have an impact on the decision to detain them. Alongside this instruction is DSO 11/2012 (Care and Management of Transsexual Detainees), which covers the specific needs of transsexual persons in detention, including residential STHFs and holding rooms. It covers matters such as creating a positive environment in detention for transgender detainees, anti-bullying strategies, making them aware of the complaints system (in the event of their receiving adverse treatment in detention as a result of their gender reassignment) and welfare support available in detention. The DSO requires that detention staff must treat transsexual detainees as members of the gender in which they live.

By virtue of Rule 34 (requests and complaints), detainees in STHFs are entitled

to submit complaints, and have those complaints investigated, where they feel they have been the victim of mistreatment, including as a result of gender reassignment. Please also see the section on action taken to deal with bullying and harassment in detention in the “Nationality/Race” section of this document, which applies equally to those who have been subject to mistreatment on the basis of gender reassignment.

Supplier staff, DCOs and Home Office staff working in residential and non-residential STHFs receive training in equality and diversity.

Pregnancy/Maternity

Policy

Section 60 of the Immigration Act 2016, which came into force on 12 July 2016, provides that a pregnant woman detained pending removal or deportation may be detained only if her removal or deportation will take place shortly or there are exceptional circumstances to justify her detention. In either case, detention may last for no more than 72 hours although, in exceptional circumstances, this may be extended up to an absolute maximum of 7 days if that extension is authorised by a Minister.

The Home Office only began collating information on the number of pregnant women in detention comparatively recently, though anecdotally numbers have always known to have been small. Figures show that three pregnant women entered detention at Larne House in 2017, or were subsequently found to be pregnant. There was one pregnant woman detained at Pennine House in 2017, prior to its closure.

The Home Office does not collate national data on the number of pregnant women detained in port and reporting centre holding rooms.

Impacts

Of themselves, we do not believe that the Rules will have a quantitative impact on the number of pregnant women entering detention in STHFs.

The Home Office accepts that pregnant women may be adversely affected by detention as a result of the particular medical needs they have as a result of being pregnant. This risk is likely to be affected by factors such as the woman’s age, her medical history and the stage her pregnancy has reached.

Pregnant women may also be affected by the limited space/facilities available, particularly in holding rooms.

Mitigations

The internal Home Office Detention Gatekeeper function provides a second pair of eyes check to ensure that, where a pregnant woman is detained at a residential STHF, it would only be in line with the statutory constraints of section 60 of the 2016 Act above. Furthermore, her treatment whilst in detention would be in line with that set out in DSO 5/2016 (Pregnant Women in the Detention Estate). This covers matters such as her reception and induction to detention, release from detention, as well as her care whilst in detention. There is a specific section of that guidance covering the provision of facilities for pregnant women in STHFs.

DSO 07/2016 (Use of restraints) and DSO 5/2016 (Care and management of pregnant women) is clear that no restraints or force can be used on a pregnant detainee, unless to prevent imminent harm to the woman herself or others.

SCS sign off	Alison Samedi	Name/Title	Head of IMISE, BICS Policy
<p>I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</p>			
Directorate/Unit	BICS Policy	Lead contact	Liz Rhodes
Date	19 March 2018	Review Date	19 March 2020

**Retain the completed PES for your records and send a copy to
[Diversity team@homeoffice.gsi.gov.uk](mailto:Diversity.team@homeoffice.gsi.gov.uk) and your relevant business area
 Equality and Diversity Lead.**

Part 2 - Policy Equality Sign-off

N.B. The PES can be completed throughout the development of a policy but is only signed at the point the policy is made public i.e. finalised and implemented.

To assist in evaluating whether there is robust evidence that could withstand legal challenge, the following questions must be asked prior to sign-off.

- Q.** Has 'due regard' been made to the three aims of the General Duty (Section 149 of the Equality Act 2010)? **Yes**
- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
 - **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
 - **Foster good relations** between people who share a protected characteristic.
- Q.** Have all the **protected characteristics** been considered – age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex; and sexual orientation? **Yes**
- Q.** Have the relevant stakeholders been involved and/or consulted? **Yes**
- Q.** Has all the relevant **quantitative and qualitative data** been considered and been subjected to **appropriate analysis**? **Yes**
- Q.** Have lawyers been consulted on any legal matters arising? **Yes**
- Q.** Has a date been established for reviewing the policy? The Rules will be reviewed in 2019.

Further resources including: Case Law; Equality Assurance Table; examples of best practice are available on Horizon.