Chapter 31 Section 1 - Detention and Detention Policy in Port Cases

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Immigration Directorates' Instructions

Chapter 31 Section 1

Detention and detention policy in port cases

1. General

The power to detain must be retained in the interests of maintaining an effective immigration control. However, there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are used (see ch31 Section 2 Temporary Admission). Detention is most usually appropriate:

- to effect removal;
- initially to establish a person's true identity or the basis of their claim; or
- where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.

A process under which asylum applicants may be detained where it appears that their claim is straightforward and capable of being decided quickly commenced at Oakington in March 2000. A Detained Fast Track Process was subsequently introduced at Harmondsworth in spring 2003 and the former “Oakington criterion” was widened so as to be capable of applying to a fast track process at any removal centre. The policy in relation to the suitability of applicants for detention in fast track processes is set out in the DFT and DNSA – Intake Selection document (see paragraph 11 below).

To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with stated policy.

As well as the presumption in favour of temporary admission or release, special consideration must be given to family cases where it is proposed to detain one or more family member and the family includes children under the age of 18. Similarly, special consideration must be given when it is proposed to use detention powers to hold unaccompanied children pending their hand over to a local authority, or to escort such children when removing them e.g. to an EU member state. Section 55 of the Borders, Citizenship and Immigration Act 2009 (s.55) requires certain Home Office functions to be carried out having regard to the need to safeguard and promote the welfare of children. Staff must therefore ensure they have regard to this need when taking decisions on detention involving or impacting on children under the age of 18 and must be able to demonstrate that this has happened, for example by recording the factors they have taken into account. Key arrangements for safeguarding and promoting the welfare of children are set out in the statutory guidance issued under s.55.

A properly evidenced and fully justified explanation of the reasoning behind the decision to detain must be retained on file in all cases.

Detention must be used sparingly and for the shortest period necessary. It is not an effective use of detention space to detain people for lengthy periods if it would be practical to effect detention later in the process once any rights of appeal have been exhausted. However, a person who has an appeal pending or representations outstanding might have more incentive to comply with any restrictions imposed, if released, than one who is removable.

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1.1. Criminal Casework Directorate Cases

Cases concerning foreign national offenders – handled by CCD – are subject to the general policy set out in paragraph 1 above, including the presumption in favour of temporary admission or release. Thus, the starting point in these

cases remains that the person should be released on temporary admission or release unless the circumstances of the case require the use of detention. However, the nature of these cases means that special attention must be paid to their individual circumstances. Please see chapter 55 of the Enforcement Instructions and Guidance (EIG) for details.

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2. Implied limitations on the statutory powers to detain

In order to be lawful, immigration detention must be for one of the statutory purposes for which the power is given and must accord with the limitations implied by domestic and ECHR case law. Detention must also be in accordance with stated policy on the use of detention. Detention involving or impacting on children under 18 must demonstrably comply with the statutory duty under section 55 of the Borders, Citizenship and Immigration Act 2009 which requires the Home Office to have regard to the need safeguard and promote the welfare of children whilst carrying out certain functions.

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2.1. Article 5 of the ECHR and domestic case law

Article 5(1) of the ECHR provides:

“Everyone has the right to liberty and security of person”

No one shall be deprived of his liberty save in the circumstances specified in Article 5(1) (a)-(f) and in accordance with a procedure prescribed by law. Article 5(1) (f) states that a person may be arrested or detained to prevent his effecting an unauthorised entry into the country, or where action is being taken against them with a view to deportation or extradition.

To comply with Article 5 and domestic case law, the following should be borne in mind:

a) The relevant power to detain must only be used for the specific purpose for which it is authorised. This means that a person may only be detained under immigration powers for the purpose of preventing his unauthorised entry or with a view to his removal (not necessarily deportation). Detention for other purposes (such as a deterrent to other) where detention is not for the purposes of preventing unauthorised entry or effecting removal of the individual concerned is **not** compatible with Article 5 and would be unlawful in domestic law;

b) The detention may only continue for a period that is reasonable in all the circumstances;

c) If before the expiry of the reasonable period it becomes apparent that the purpose of the power, for example, removal, cannot be effected within that reasonable period, the power to detain should not be exercised; and

d) The detaining authority (be it the immigration officer or the Secretary of State), should act with reasonable diligence and expedition to effect removal (or whatever the purpose of the power in question is).

Article 5(4) states that everyone who is deprived of his liberty shall be entitled to take proceedings by which the lawfulness of his detention is decided speedily by a court. This article is satisfied by a detainee's right to challenge the lawfulness of a decision to detain by habeas corpus or judicial review in England and Wales or by judicial review in Scotland.

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2.2. Article 8 of the ECHR

Article 8(1) of the ECHR provides:

"Everyone has the right to respect for private and family life…."

Article 8 is a qualified right. Interference with the right to family life is permissible under Article 8(2) if it is (i) in accordance with the law; (ii) for a legitimate aim and (iii) proportionate. In family cases, the right extends to every member of the household and there should be consideration given to whether there is any interference with the rights of each individual and, if there is, whether it is lawful and proportionate to the legitimate aim.

It may be necessary on occasion to detain the head of the household or another adult who is part of the care arrangements for children, thus separating a family. Depending on the circumstances of the case, this may represent an interference with Article 8 rights. It is well established that the interests of the State in maintaining an effective immigration policy for the economic well-being of the country and for the prevention of crime and disorder, justifies interference with rights under Article 8(1). It is therefore arguable that a decision to detain which interferes with a person's right to family life in order to enforce immigration control and maintain an effective immigration policy pursues a legitimate aim and is in accordance with the law. It is only by considering the needs and circumstances of each family member that a determination can be made as to whether the decision is, or can be managed in a way so that it is, proportionate.

Home Office staff should be clear and careful when deciding that the decision to detain (and thereby interfere with family life) was proportionate to the legitimate aim pursued. Assessing whether the interference is proportionate involves balancing the legitimate aim in Article 8(2) against the seriousness of the interference with the person's right to respect for their family life. The assessment must also have regard to the need to safeguard and promote the welfare of children. Even though the decisions may have been taken to avoid detaining the children with their head of family, or other adult who is part of their care arrangements, in the interest of their welfare, the impact of the separation must be considered carefully. Any information concerning the children that is available or can reasonably be obtained must be considered.

The conclusion reached will depend on the specific facts of each case and will therefore differ in every case. Regular reviews of detention should consider proportionality with regard to each individual, including any new information that is obtained.

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3. The immigration officer's power to detain

Paragraphs 16 (1), (1A) and (2) of Schedule 2 to the Immigration Act 1971 give power to an immigration officer to authorise detention pending examination or further examination for a decision on the grant, refusal or cancellation of leave, pending the giving of removal directions and pending the removal of the person from the UK.

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4. Persons refused entry on board or placed on board for removal

Under paragraphs 16(3) and (4) of Schedule 2 to the Immigration Act 1971, an immigration officer may require the captain of a ship or aircraft to prevent from disembarking a person who has been refused leave to enter on board or refused leave to enter ashore and placed on board for removal. Paragraph 16 authorises the captain to detain the person on board if necessary.

The immigration officer should not, except under special instructions, authorise the removal of a person to detention ashore **if the captain of a ship is able to take satisfactory steps to prevent his disembarking**. Where a person is removed to detention ashore under special instructions no attempt should be made to recover the expenses of detention and removal.

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4.1. Persons examined on board and required to submit to further examination

It should be noted that the 1971 Act places no obligation on the captain of a ship or aircraft to detain on board a person **who has been required to submit to further examination**. The occasion will not normally arise with aircraft but if a person awaiting further examination is to remain on board a ship all the alternatives relating to detention should be deleted from form IS 81.

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5. The Detainee Escorting and Population Management Unit (DEPMU)

DEPMU is responsible for the co-ordination of detention in immigration detention accommodation and Prison Service accommodation for individual cases. Chief Immigration Officers at each port are responsible for liaising with local police for detention in police cells.

Initial detention in port or police accommodation should be arranged locally, but DEPMU should be advised immediately when there is an anticipated or actual requirement for detention accommodation within the detention estate.

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5.1. Allocation of detention space

Detention space is allocated via local detention gatekeepers through the detention co-ordinators based at DEPMU (single detainees) at Feltham which is staffed 24 hours a day and by the Family Detention Unit (family units with or without children) which is staffed 0700-2100 weekdays and 0830-1700 at weekends (responsibility reverts to DEPMU at other times).

The DEPMU CIO/HEO and Family Detention Unit have the authority to:

- refuse to accept any person/family for detention in the immigration detention estate;

In addition the DEPMU CIO/HEO has the authority to:

- refuse to accept any person for transfer by the in-country escorting contractor;
- arrange for a detainee to be moved in order to meet local demands or to provide more secure accommodation;
- decide on the priority of tasks to be handled by the in-country escorting contractor

Ports/local enforcement offices (LEOs) should initially approach their local Command detention co-ordinator for approval to use one of the regional ring-fenced beds. When this approval has been given, DEPMU should be faxed the following information:

- full name, with family name in CAPITAL LETTERS;
- all risk factors on form IS91RA, part A;
- any relevant references – port/LEO, Home Office, Prison, IAA, previous removal centre;
- a contact name and telephone number so that DEPMU can inform the port of where the detainee has been placed.

There is no ring fencing of family removal beds. The Family Detention Unit should be faxed the information as above, along with a completed family detention pre-booking form.

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5.2 Detention space allocation priorities

DEPMU is responsible for allocating detainees to the most suitable accommodation.

Detention space priorities are managed amongst Home Office Teams through ring-fenced allocations. The ring-fenced allocation owners are: Border Force, CCD, each of the six regions, Fast-Track, Third Country Unit (TCU), Asylum Screening Unit (ASU) and Non-Suspensive Appeals (NSA). Ring-Fenced Owners (RFOs) manage their own allocations.

Detention allocation priorities are reviewed regularly and will change according to the business need, but the priority will always be to detain to remove.

When DEPMU is in a position to allocate a detention space, the port will be contacted to advise them of the DC reference number which should be noted on the port file and on all forms relating to detention. In all subsequent communications regarding detention, the detainee's name, DC reference number and place of detention should be specified.

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5.3. Importance of keeping DEPMU informed of changes in ports' requirements

The main objectives of the co-ordinator system are to ensure that the best use is made of all available detention accommodation and to provide an efficient means of allocating spaces. In order to realise these advantages it is **essential** that DEPMU is informed immediately of any foreseeable change in the port's needs e.g. cancellation of removal directions, or a space about to be

come available because an individual is to be removed or granted temporary admission.

It should be borne in mind that Prison Service establishments are not normally able to accept or release detainees outside the hours of 1000 to 1600 Monday to Friday save in exceptional circumstances.

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5.4. Arranging detention outside a port's district

Any port accommodation arranged outside a district should be made only following consultation with and via the receiving district. Where removal is being arranged via Heathrow or Gatwick by other ports, overnight detention in the London area should be avoided wherever possible, but if unavoidable, should be arranged via DEPMU.

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6. Searching of baggage before transferring passengers to places of detention

The baggage of any person being transferred to a place of detention should be searched to ensure that it contains nothing dangerous or harmful.

The in-country escorting contractor should be advised of any valuables or alcohol in the detainee's possession, so that appropriate arrangements may be made for safe custody.

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7. Decision to detain (excluding fast track and CCD cases)

1. There is a presumption in favour of temporary admission or temporary release – there must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified.

2. All reasonable alternatives to detention must be considered before detention is authorised.

3. Each case must be considered on its individual merits, including consideration of the duty to have regard to the need to safeguard and promote the welfare of any children involved.

Please see chapter 55 of EIG for additional guidance on the decision to detain in CCD cases.

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7.1. Factors Influencing a decision to detain

The following factors must be taken into account when considering the need for initial or continued detention.

- What is the likelihood of the person being removed and, if so, after what timescale?

- Is there any evidence of previous absconding?

- Is there any evidence of a previous failure to comply with conditions of temporary release or bail?

- Has the subject taken part in a determined attempt to breach the immigration laws (e.g. entry in breach of a deportation order, attempted or actual clandestine entry)?

- Is there a previous history of complying with the requirements of immigration control (e.g. by applying for a visa, further leave, etc)?

- What are the person's ties with the United Kingdom? Are there close relatives (including dependants) here? Does anyone rely on the person for support? If the dependant is a child or vulnerable adult, do they depend heavily on public welfare services for their daily care needs in lieu of support from the detainee? Does the person have a settled address/employment?

- What are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch?

- Is the subject under 18?

- Does the subject have a history of torture?

- Does the subject have a history of physical or mental ill health?

Please see chapter 55 of EIG for further guidance on deciding to detain in CCD cases.

Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.

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8. Detention and release orders (forms IS 81, 91, 91M, 91R, 91RA and IS 106)

Written reasons for detention should be given in all cases at the time of detention and thereafter at monthly intervals. Recognising that most people

are detained for just a few hours or days, initial reasons should be given by way of a checklist similar to that used for bail in a magistrate's court.

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8.1 **IS81 Authority to detain for examination/further examination** - this sets out the reasons for the initial detention and should be used only while the passenger remains solely in the custody of the immigration officer. Once a passenger served with form IS81 is handed over to a detaining authority (escorting or removal centre contractor, Prison Service, Police) forms IS91 (Detention Authority) and IS91R (Reasons for Detention) must be served. No person should be detained using form IS81 for longer than four hours, even in the sole custody of an immigration officer. If a passenger remains in detention any longer, form IS91R must be served.

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8.2 **IS91 Authority to detain** - this is issued once and once only for any continuous period of detention, irrespective of how many detaining agents there are during the course of a person's detention. The exception to this is cases where there is alteration in risk factors when DEPMU will authorise the issue of a new IS91, which should be sent to the detention location to be attached to the original form. Where there is a change in the detaining agent, for example from the police to the escort contractor, it is for the first detaining agent to complete the Transfer Record on the form and forward it to the second detaining agent along with the detainee. Form IS91 must be issued for each person detained including for each child. The immigration officer **must complete all sections of the form as indicated.** The completed form should then be handed to the detaining authority (e.g. the in-country escorting contractor). The detaining authority will not accept a detainee without correct original documentation.

Form IS91 must be served by the IO on the detaining agent. This allows for the subject to be detained in their custody under Immigration Act powers. The IO must complete the first three sections of the form, transferring the

assessment of risk as notified by DEPMU onto section 3, complete the first entry of section 4 transfer record and sign and date the form on page 1. The detaining agent completes the further entries on section 4 of the form, the Transfer Record. The IO must staple a photograph of the detainee to the form and authenticate this by signing and dating it before handing the form, in a clear plastic pouch, to the detaining agent. **Detaining agents have been instructed not to accept detainees without the correct documentation.**

IS91s are to be returned by the final detaining agency to the Detention Costs Recovery Unit (DCRU) of Border Force Resources Directorate, 9th floor, Lunar House (Long Corridor). Any IS91s that are returned to a port at the end of a period of detention must be forwarded to DCRU without delay.

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8.3 **IS91M Movement Notification** - this form will only be used in very few cases where neither the detention nor the movement of a detainee is being arranged via DEPMU. The form must be completed and used to notify both the detaining authority and the escorting agency of the proposed move.

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8.4 **IS91R Reasons for Detention –** this form is in three parts and is served on every person, including each child, at the time of their initial detention. The IO must complete all three sections of the form. The IO must specify the power under which a person has been detained, the reasons for detention and the basis on which the decision to detain was made. In addition, there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases. This should complement the IS 91R form, though is separate from it. The detainee must also be informed of his bail rights and the IO must sign, both at the bottom of the form and overleaf to confirm the notice has been explained to the detainee (using an interpreter where necessary) and that he has been informed of his bail rights.

It should be noted that the reasons for detention given could be subject to judicial review. It is therefore important to ensure they are always **justified and correctly stated.** A copy of the form must be retained on the caseworking file. If any of the reasons for detention given on the form IS91R change it will be necessary to prepare and serve a new version of the form. Again, any such changes must be fully justified and correctly stated by the IO completing the form.

It is important that the detainee understands the contents of the IS91R. If he does not understand English, officers should ensure that the form's contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act (Article 5(2) of the ECHR refers).

The six possible reasons for detention are set out on form IS91R and are listed below. The IO must tick **all** the reasons that apply to the particular case:

- You are likely to abscond if given temporary admission or release
- There is insufficient reliable information to decide on whether to grant you temporary admission or release
- Your removal from the United Kingdom is imminent
- You need to be detained whilst alternative arrangements are made for your care
- Your release is not considered conducive to the public good
- I am satisfied that your application may be decided quickly using the fast track asylum procedures

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Fourteen factors are listed below which will form the basis of the reasons for the decision to detain. The IO must tick **all** those that apply to the particular case:

- You do not have enough close ties (e.g. family or friends) to make it likely that you will stay in one place

- You have previously failed to comply with conditions of your stay, temporary admission or release
- You have previously absconded or escaped
- On initial consideration, it appears that your application may be one which can be decided quickly
- You have used or attempted to use deception in a way that leads us to consider that you may continue to deceive
- You have failed to give satisfactory or reliable answers to an Immigration Officer's enquiries
- You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the United Kingdom
- You have previously failed, or refused to leave the United Kingdom when required to do so
- You are a young person without the care of a parent or guardian
- Your health gives serious cause for concern on grounds of your own wellbeing and/or public health or safety
- You are excluded from the United Kingdom at the personal direction of the Secretary of State
- You are detained for reasons of national security, the reasons are/will be set out in another letter
- Your previous unacceptable character, conduct or associations
- I consider this reasonably necessary in order to take your fingerprints because you have failed to provide them voluntarily

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8.5 **IS91RA Risk Assessment** – once it has been identified that the person is one who should be detained, consideration should be given as to what, if any, level of risk that person may present whilst in detention. IOs should undertake the checks detailed on form IS91RA part A 'Risk Factors'.

The results of these checks should be considered by the IO along with information available regarding other aspects of behaviour (as detailed on the form) which may present a risk, and the conclusions regarding each aspect

identified.

Where it is proposed to detain any child under the age of 18 with their parents or guardians, the IO must actively search for any information relevant to the requirement to have regard to the need to safeguard and promote their welfare.

It is vital to the integrity of the detention estate that all potential risk factors detailed on this form are addressed, with the form being annotated appropriately. Conclusions should be recorded as to whether or not the individual circumstances may present a potential area of risk. Amplifying notes must be added in the 'comments' section as appropriate and the form must be signed and dated. In the case of children, the Detainee Escorting and Population Management Unit (DEPMU) and the Family Detention Unit (FDU) need to be confident that a child's known needs can be met whilst in detention before the detention is agreed.

Once detention space is required the IS91RA must be faxed to DEPMU (in the case of single adults) or Family Detention Unit (for family cases). The appropriate Unit will assess risk based upon the information provided on the IS91RA part A and decide on the detention location appropriate for someone presenting those risks and/or needs. The issue of an IS91 Detention Authority will be authorised with the identified risks recorded in the "risk factors" section of this form. Risk assessments should also be completed on the appropriate forms for fast track cases.

Risk assessment is an ongoing process. Should further information become available to the port which impacts on potential risk (either increasing or decreasing risk) during a detainee's detention, that information should be forwarded to DEPMU using form IS91RA part C. On receipt of this form (which can also be completed by other Home Office or removal centre management/medical staff) DEPMU will reassess risk and reallocate detention location as appropriate. Any alteration in their assessment of risk

will require a new IS91 to be issued on which up-to-date risk factors will be identified. The port must fax this new IS91 to the detention location on receiving DEPMU's reassessment of alteration in potential risk.

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8.6 **IS106 Release Order** – this form should only be issued by the immigration officer in cases where the detainee is released by being given his freedom to move within the community (this includes the issue of CIO's bail but does **not** apply to immigration judge's bail). In all cases where detention has been arranged through DEPMU, the DC must be notified of the detainee's release.

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8.7 Importance of accuracy of detention and release orders

Officers should ensure that all detention and release orders are accurately and legibly completed, that they show clearly to whom they are addressed and contain the correct identifying particulars of the detainee (ie full name, sex, date of birth, nationality. Where a photograph is required, one must be attached), the port reference number, the DC reference number, the prison number (if applicable) and the address and telephone number of the immigration office issuing the order. The signature of the officer authorising detention or release must be legible, and the form must be clearly dated (usually with the immigration officer's date stamp).

If any amendments are made to forms, the amendment must be authenticated with the amending officer's signature, name, grade and the date. Failure in this area may result in the detaining agency's refusal to accept a detainee.

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9. Levels of authority to detain

Although the power in law to detain an illegal entrant rests with the IO, or the relevant non-warranted immigration caseworker under the authority of the

Secretary of State, in practice, an officer of at least CIO rank, or a HEO caseworker, must give authority. Detention must then be reviewed at regular intervals.

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9.1 Authority to detain - special cases

Detention in the following circumstances must be authorised by an officer of **at least** the rank stated:

- **Sensitive cases**: Inspector/SEO or Assistant Director

- **Spouses of British Citizens or EEA nationals**: initially, an Inspector/SEO, but if strong representations are made, Assistant Director

- **Unaccompanied young persons, under 18, whilst urgent alternative care arrangements are made (including age dispute cases where the person concerned is being treated as a child)**: initially, an Inspector/SEO but as soon as possible by an Assistant Director. The decision to detain must take account of the duty to have regard to the need to safeguard and promote the welfare of children and this must be demonstrable in line with the statutory guidance issued by the Secretary of State under section 55 of the 2009 Act. Such persons may only be detained overnight and in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales) or the Children (Scotland) Act 1995 (for Scotland). For Northern Ireland, place of safety is defined as: a home provided under Part VII of the Children (Northern Ireland) Order 1995; any police station; any hospital or surgery; or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18 – see 10A.2. In non-CCD cases, detention must not be authorised in any other circumstances, including for the purpose of a pending removal, subject to the following exception: unaccompanied children who are to be returned to an

EU Member State under the Dublin Regulation or, in the case of both asylum and non-asylum applicants, to their home country may be detained in order to support their removal with appropriate escorts. Such detention will occur only on the day of the planned removal to enable the child to be properly and safely escorted to their flight and/or to their destination. Detention in such cases must be authorised by an Assistant Director. In CCD cases, detention of an ex-Foreign National Offender (FNO) under the age of 18 may be authorised by a Deputy Director in exceptional circumstances where it can be shown that they pose a serious risk to the public.

- **Families with children**: Inspector/SEO in advance of their detention other than in exceptional circumstances.

- **Detention in police cells for longer than two nights**: Inspector/SEO

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10. Detention procedures

10.1. Procedure when detaining

- Obtain the appropriate authority to detain;

- Issue IS 98 and 98A (bail forms) and advise the person of his right to apply for bail;

- Conduct 'risk assessment' procedures as detailed above;

- Complete IS91 in full for the detaining agency;

- Complete and serve form IS91R on the person being detained, explaining its contents to the person (via an interpreter if necessary);

- Confirm detention to DEPMU as soon as possible and they will allocate a reference number;

- Complete IS93 for the port casework file;

- Always attach a 'detained' flag, securely stapled, to the port casework file;

- Review detention as appropriate.

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10.2. Detention reviews

Initial detention must be authorised by a CIO/HEO or Inspector/SEO (see paragraph 9). In all cases of persons detained solely under Immigration Act powers, continued detention must as a minimum be reviewed at the points specified in the appropriate table below. At each review, robust and formally documented consideration should be given to the justification for continued detention, including in particular the removability of the detainee. Furthermore, robust and formally documented consideration should be given to all other information relevant to the decision to detain. Additional reviews may also be necessary on an ad hoc basis e.g. where there is a change in circumstances relevant to the reasons for detention. Where detention involves or impacts on children under the age of 18, reviewing officers should have received training in children's issues (i.e. Tiers 1 and 2 of Keeping Children Safe) and must demonstrably have regard to the need to safeguard and promote the welfare of children.

Rule 9 of the Detention Centre Rules 2001 sets out the statutory requirement for detainees to be provided with written reasons for detention at the time of initial detention, and thereafter monthly (in this context, monthly means every 28 days). The written reasons for continued detention at the one month point and beyond should be based on the outcome of the review of detention.

Apart from the statutory requirement above, detention should also be reviewed during the initial stages, i.e. in the first 28 days. Detention reviews are necessary in all cases to ensure that detention remains lawful and in line with stated detention policy at all times.

Table 1, below, sets out the minimum requirements in respect of the specific stages and levels at which reviews must be conducted.

The review of detention involving Third Country Unit (TCU) and Criminal Casework Directorate (CCD) cases are subject to different arrangements which are outlined in Tables 2 and 3 respectively.

In addition to reviews conducted by the port, detention involving families with children is subject to enhanced reviews by the Family Detention Unit (see paragraph 15). The decision makers in any review involving a child under the age of 18 in detention should have received the appropriate training in children's issues i.e. Tiers 1 and 2 of Keeping Children Safe. In cases involving or impacting on children under the age of 18, staff must also have regard to the need to safeguard and promote the welfare of children and must be able to demonstrate this.

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Table 1: Review of detention (non-CCD/TCU cases)

Period in Detention	Reviewer
24 hours	Inspector/SEO
7 days	CIO/HEO
14 days	Inspector/SEO
21 days	CIO/HEO
28 days	Inspector/SEO
2 months	Inspector/SEO

Period in Detention	Reviewer
3 months	Inspector/SEO
4 months	Inspector/SEO
5 months	Inspector/SEO
6 months	Assistant Director
7 months	Assistant Director
8 months	Assistant Director
9 months	Deputy Director
10 months	Deputy Director
11 months	Deputy Director
12 months and monthly thereafter	Director

If there is a significant/material change in circumstances between weekly reviews during the initial stages of detention, an Inspector/SEO must conduct a review. Where there is a significant/material change in circumstances during later stages of detention, a review must be conducted by the relevant grade for the length of time in detention at the point of the change.

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TCU Cases[1]

TCU cases are reviewed on a weekly basis as well as at other specific points indicated in Table 2, below. Detainees should be provided with written reasons for detention at the time of initial detention and monthly thereafter.

Table 2: Review of detention in TCU cases[1]

Period in Detention	Reviewer
24 hours	CIO/HEO

[1] Except Damaged Fingerprint Cases and cases where the detainee has lodged an application for judicial review, which has not yet been resolved – these reviews are conducted in accordance with Table 1.

Period in Detention	Reviewer
7 days	CIO/HEO
14 days	CIO/HEO
21 days	CIO/HEO
28 days	Inspector/SEO
Weekly reviews between 28 and 40 days	Inspector/SEO
40 days	Assistant Director
Weekly reviews between 40 and 80 days	Inspector/SEO
80 days	Assistant Director
Weekly reviews between 80days and 6 months	Inspector/SEO
Weekly reviews between 6 and 11 months	Deputy Director
12 months and over	Director

CCD cases

There is no requirement for adult detention to be reviewed during the early stages (first 28 days) in CCD cases. Reviews should be conducted monthly at the levels indicated in Table 3, below.

Table 3: Review of detention in CCD cases

Period in Detention	Reviewer
1 month	SEO/Inspector
2 months	Assistant Director
3 months	HEO/CIO
4 months	SEO/Inspector
5 months	HEO/CIO
6 months	HEO/CIO
7 months	Assistant Director
8 months	HEO/CIO

Period in Detention	Reviewer
9 months	SEO/Inspector
10 months	Assistant Director
11 months	Deputy Director
12 months	Director
13 months	SEO/Inspector
14 months	Assistant Director
15 months	Deputy Director
16 months	SEO/Inspector
17 months	Assistant Director
18 months	Director
19 months	SEO/Inspector
20 months	Assistant Director
21 months	Deputy Director
22 months	SEO/Inspector
23 months	Assistant Director
24 months	Director
24 months plus	Return to cycle beginning at 13 months

Family cases

Detention involving families with children is subject to review by the Port at 24 hours (SEO/Inspector), day 7 (HEO/CIO), and days 14, 21 and 28 days (all at Assistant Director level). In addition to reviews conducted by the Port, detention of families is subject to enhanced reviews by the Family Detention Unit (FDU) at the levels indicated in Table 4 below. In addition, FDU hold authority to require release of any family, when necessary, on welfare grounds raised during the enhanced reviews (See also paragraph 15 below).

Table 4: FDU review of detention in cases involving families with children

Period in Detention	Review Authorised by:
7 days	HEO/CIO
10 days	SEO/Inspector
14 days and every 7 days thereafter	Assistant Director

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10.3 Rule 35 – Special illnesses and conditions

Rule 35 of the Detention Centre Rules 2001 sets out requirements for healthcare staff at removal centres in regards to:

- any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention;
- any detained person suspected of having suicidal intentions; and
- any detained person for whom there are concerns that they may have been a victim of torture.

Healthcare staff are required to report such cases to the centre manager and these reports are then passed, via Home Office contact management teams in centres, to the office responsible for managing and/or reviewing the individual's detention.

The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case. If it appears that the matters being considered under Rule 35 represent a significant risk to children, then it should be referred to the case owner and the Children's Champion simultaneously for advice on how to safeguard the children and promote their welfare.

Upon receipt of a Rule 35 report, caseworkers must review continued

detention in light of the information in the report (see 10.2 – Detention Reviews) and respond to the centre, within two working days of receipt, using the appropriate Rule 35 pro forma.

If the detainee has an asylum or HR claim (whether concluded or ongoing), consideration must be given to the instruction:

http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/rule35reports.pdf?view=Binary

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10A. Special cases

10A.1. Detention of women

Pregnant women should not normally be detained. The exceptions to this general rule are: where removal is imminent and medical advice does not suggest confinement before the due removal date; or, for pregnant women of less than 24 weeks gestation, at Yarl's Wood as part of a fast-track asylum process.

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10A.2. Young persons

Unaccompanied children/young persons under the age of 18 must only ever be detained in the most exceptional circumstances and then only normally overnight, with appropriate care, whilst alternative arrangements for their care and safety are made. This exceptional measure is intended to deal with unexpected situations where it is necessary to detain unaccompanied young persons under 18 very briefly for their care and safety, e.g. when they are encountered in circumstances where there are no relatives or other appropriate

adults immediately available to take responsibility for them; to separate them from adults thought to be a risk to them; or to prevent them from absconding pending a care placement being arranged. As part of the decision making process in all such cases, staff must have regard to the need to safeguard and promote the welfare of children and must be able to demonstrate that this has happened. In CCD cases, detention of an FNO under the age of 18 may be authorised in exceptional circumstances where it can be shown that they pose a serious risk to the public and a decision to deport or remove has been taken. In non-CCD cases, children, including age dispute cases where the applicant is being treated as a child, should not be routinely detained except in the circumstances set out below:

Unaccompanied children who are to be returned to an EU Member State under the Dublin Regulation or, in the case of both asylum and non-asylum applicants, to their home country may be detained in order to support their removal with appropriate escorts. Such detention will occur only on the day of the planned removal to enable the child to be properly and safely escorted to their flight and/or to their destination. Detention in such cases must be authorised by an Assistant Director.

In circumstances where responsible family or friends in the community cannot care for children they should be placed in the care of the local authority. Placement in these circumstances should be by means of temporary admission (IS96) and **not** by means of detention (IS91). If the Social Services request a detention order their attention should be drawn to their responsibilities to an unaccompanied child under the Children Act 1989. If a detention order is insisted upon, reference should be made to Border Force Policy Implementation (BFPI).

In non-CCD cases where a child unexpectedly needs to be detained whilst alternative care arrangements are made, detention must be authorised by an Inspector/SEO. This guidance should not prevent every effort being made to transfer the child to the care of a local authority or to the relevant police force if

necessary. An Assistant Director must review detention at the earliest opportunity and in every case of an unaccompanied child normally on the morning following the decision to detain. In CCD cases, detention must be authorised by a Deputy Director.

In all cases, the decision-making process must be informed by the duty to have regard to the need to safeguard and promote the welfare of children.

Juveniles may only be detained in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales), the Children (Scotland) Act 1995 (for Scotland) or below (for Northern Ireland). The Children and Young Persons Act 1933 defines a place of safety as "a community home provided by a local authority or a controlled community home, any police station or any hospital, surgery or any other suitable place, the occupier of which is willing temporarily to receive a child or young person". The Children (Scotland) Act 1995 defines a place of safety as "a residential or other establishment provided by a local authority; a community home within the meaning of section 53 of the Children Act 1989; a police station; a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child; the dwelling-house of a suitable person who is so willing; or any other suitable place, the occupier of which is so willing". For Northern Ireland, place of safety means: a home provided under Part VII of the Children (Northern Ireland) Order 1995; any police station; any hospital or surgery; or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18.

If detention accommodation is required exceptionally for a young person, the request must be made via the DEPMU CIO/HEO.

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10B. Persons considered unsuitable for detention

Certain persons are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration accommodation or prisons. Others are unsuitable for immigration detention accommodation because their detention requires particular security, care and control.

In CCD cases, the risk of further offending or harm to the public must be carefully weighed against the reason why the individual may be unsuitable for detention. There may be cases where the risk of harm to the public is such that it outweighs factors that would otherwise normally indicate that a person was unsuitable for detention.

The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:

- unaccompanied children and young persons under the age of 18 (but see 10A.2. above);
- the elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention;
- pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this (but see paragraph 11 below for the detention of women in the early stages of pregnancy at Yarl's Wood);
- those suffering from serious medical conditions which cannot be satisfactorily managed within detention
- those suffering from serious mental illness which cannot be satisfactorily managed within detention (in CCD cases, please contact the specialist Mentally Disordered Offender Team). In exceptional cases it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act;
- those where there is independent evidence that they have been tortured;

- people with serious disabilities which cannot be satisfactorily managed within detention;
- persons identified by the Competent Authorities as victims of trafficking (as set out in Chapter 9 of the Enforcement Instructions and Guidance.

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11. Detained Fast Track Asylum Processes

The Home Office has operated a fast track asylum process since March 2000. The first fast track processing centre was at Oakington. Detention for a short period of time to enable a rapid decision to be taken on an asylum/human rights claim has been upheld as lawful by domestic courts and the European Court of Human Rights [Saadi v UK 13229/03]. In November 2002, a process of handling cases which are capable of being certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 (commonly referred to as non-suspensive appeal (NSA) cases) was introduced at Oakington. If a case is certified as clearly unfounded, an applicant has no right of appeal against that decision whilst in the United Kingdom.

A Detained Fast Track (DFT) process, which includes an expedited in-country appeals procedure for adult male claimants, commenced at Harmondsworth in spring 2003. In May 2005, the Detained Fast Track was expanded to include the processing of adult female claimants at Yarl's Wood. Claimants in the Detained Fast Track process that carries an in-country right of appeal may be detained only at sites specified in the relevant Statutory Instrument (currently the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (as amended) which came in to force on 4 April 2005. The current designated sites are: Harmondsworth, Yarl's Wood, Colnbrook and Campsfield. Detention other than for fast track processing must be arranged via the normal process.

Since the autumn of 2006, Yarl's Wood has dealt with female detained NSA cases as well as female DFT cases. Oakington ceased to be a NSA location on

1 October 2008 and male NSA cases are now processed at Harmondsworth. In practice, neither the DFT nor the detained NSA cases involve the detention of children. Where there are child dependants, the consideration about splitting families will apply.

The policy in relation to the suitability of applicants for detention in Fast Track processes is set out in the DFT and DNSA – Intake Selection document: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary

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12. Liaison with the escorting contractor

The in-country escorting contractor is responsible for transporting detainees within the United Kingdom. This covers a wide variety of movements including to and from detention, to appeal hearings, to the port of removal or as required by the Home Office.

The contractor's resources are limited and there will be times when demand exceeds supply and they simply cannot undertake any further work. On such occasions their workload has to be prioritised and this task is undertaken by the contractor in consultation with the DEPMU CIO/HEO.

The provision of additional in-country escorting resources above contract levels or the use of other contractors will be authorised by DEPMU only in exceptional circumstances.

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13. Escort of detainees to and from prison service establishments

Except in "dual" detention cases or where security or other considerations

render it inappropriate, the in-country escorting contractor will normally escort detainees being transferred to detention in a Prison Service establishment, or to and from such an establishment for appeal hearings, visits to High Commissions or Embassies or to a port for removal, etc.

The authority to use another contractor or agency to undertake this task can only be given by DEPMU, who will give such authority only in exceptional circumstances.

Movements in "dual" detention cases remain the responsibility of the Prison Service until the commencement of sole immigration detention.

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13A. Detention in national security cases

When contacted by the relevant unit that deals with national security cases with a request to detain, staff will be provided with a copy of the notice sent to the person setting out the reasons for his detention. This notice will alert staff to the fact that the person is being detained in the interests of national security and is therefore to be detained in Prison Service accommodation. Staff should ensure that section 3 of form IS91 is completed when issued to Prison Service authorities and that in addition to any other information put on this form, the following wording is inserted:

"[Name] has been detained under powers contained in the Immigration Act 1971 and the Home Secretary has personally certified that his detention is necessary for reasons of national security. [Name] should not be transferred from HM Prison [name of place of detention] to another Prison Service establishment or place of detention without prior reference to the Home Office section named on this form."

Should the Prison Service contact the port because consideration is being given to transferring the detainee to another prison, the prison authorities

should be advised to contact the Population Management Unit of NOMS (National Offender Management Service), indicating that they, in turn, should consult the caseworking officer from the relevant unit for background information, before the detainee is moved.

These cases are particularly sensitive and it is essential that the above procedure is followed.

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14. Persons claiming to be under 18

The Home Office will accept an individual as under 18 (including those who have previously presented themselves as an adult) unless one or more of the following categories apply (please note this does not apply to individuals previously sentenced by the criminal courts as an adult):

A. There is credible and clear documentary evidence that they are 18 or over.

B. A Merton compliant age assessment by a local authority is available stating that they are 18 years of age or over.

C. Their physical appearance / demeanour very strongly suggests that they are **significantly** over 18 year of age and no other credible evidence exists to the contrary.

D. The individual:

- prior to detention, gave a date of birth that would make them an adult and/or stated they were an adult; and
- only claimed to be a child **after** a decision had been taken on their asylum claim; and
- only claimed to be a child **after** they had been detained; and
- has not provided credible and clear documentary evidence proving their claimed age; and
- does not have a Merton compliant age assessment stating they are a child; and
- does not have an unchallenged court finding indicating that they are a child; and
- physical appearance / demeanour very strongly suggests that

they are 18 years of age or over.

(all seven criteria within category D must apply).

If an individual claims to be a child in detention the decision on whether to maintain detention or release should be made as promptly as possible.

If one or more of the above categories apply, the following actions, where appropriate, should be completed:

- Only if **C** or **D** apply: Before a decision is taken, the assessing officer's countersigning officer (who is at least a Chief Immigration Officer (CIO) / Higher Executive Officer (HEO) must be consulted to act as a 'second pair of eyes'. They must make their own assessment of the individual's age. If the countersigning officer agrees, the individual should be informed that their claimed age is not accepted.
- **All cases:** Form IS.97M must be completed, signed by the countersigning officer, served on the individual and a copy sent to DEPMU. Form BP7 (ASL.3596) must also be completed, signed and held on file.
- **All cases:** The individual's date of birth within the 'Person Details' screen on CID must be updated to reflect the Agency's assessed date of birth – **not** the individual's claimed date of birth. Failure to complete this action will result in DEPMU refusing to allocate detention space in adult accommodation. For further guidance refer to section '3.3 Updating the individual's case file and CID' of the Assessing age AI.
- **All cases:** If officers receive relevant **new** evidence, they should promptly review any previous decision to treat an individual as an adult.

Individual found to be a child

If none of the above categories apply (A-D), the individual must not be detained or must be released from detention into the care of a local authority and treated as a child, in accordance with the Processing an asylum application from a child AI. Care should be taken to ensure the safety of the individual during any handover arrangements, preferably by agreement with the local authority.

Individuals previously sentenced by the criminal courts as an adult

If an individual claims to be a child in detention but was previously sentenced by the criminal courts as an adult, there is no credible evidence to support their claim to be a child and detention is considered appropriate (having regard to the prospects of removal, the risk of absconding, and the risk posed to the public), a local authority should be requested to conduct a Merton compliant age assessment and submit the report to the Agency as soon as possible. The individual's detention should be maintained until a final decision on their age has been made.

It is appropriate to treat these individuals differently from others because they have previously presented themselves as an adult during the criminal court procedure and any custodial sentence will have been served in an adult prison. Due to the imperative to protect the public from harm, and after careful consideration, it has been determined that they should not be released until it is clear that the Agency's policy for the detention of adults does not apply.

Recording the age assessment process

All responses from the individual, local authorities or legal representatives must be noted and retained on file, since these may have a bearing on future appeal hearings.

Section 55 of the Borders, Citizenship and Immigration Act 2009 and the assessing age detention policy

The assessing age detention policy has in-built protections to ensure it is compliant with the section 55 duty. The threshold that must be met for individuals to enter or remain in detention following a claim to be a child is a high one and is only met if the benefit of doubt afforded to all individuals prior to any assessment of their age is made is then displaced because the individual has met one or more of the categories listed at the start of section 14.

If an individual claims to be a child in detention they will be appropriately managed and a risk assessment of the individual including consideration of the facilities of the IRC (e.g. only permitting limited observed contact with adults and/or segregating the individual from adult detainees as appropriate) will be conducted whilst a prompt decision on their age is made. It is necessary to appropriately protect individuals at this point in the process

because it ensures they are not exposed to risks which might compromise their safety or welfare in the meantime. Officers should also refer to '2.2 Section 55 of the Borders, Citizenship and Immigration Act 2009' of the Assessing age AI.

Whilst this policy is set at a high threshold and compliant with the section 55 duty, the Home Office continually monitors the case details of individuals detained under this policy to ensure that, if necessary, the policy could be promptly amended to avoid the detention of children.

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15. Families

The decision to detain an entire family should always be taken with due regard to Article 8 of the ECHR (see paragraph 2.2) and, where there are children under the age of 18 present, the duty to have regard to the need to safeguard and promote the welfare of children. Families, including those with children, can be detained on the same footing as all other persons liable to detention. This means that families may be detained in line with the general detention criteria. Form IS91 must be issued for each person detained including for each child/young person under 18.

In family cases, it is particularly important to ensure that detention involving children is a matter of the last resort, e.g. alternatives have been refused by the family and an exhaustive check has detected no barriers to removal. It should be for the shortest possible time, i.e. removal directions are in place.

Detention of an entire family must be justified in all circumstances and, as in any case, there will continue to be a presumption in favour of granting temporary admission. Detention must be authorised by an Inspector/SEO at whatever stage of the process it is considered necessary and, although it should last only for as long as is necessary, it is not subject to a particular time limit.

Family detention accommodation should be pre-booked by arrangement with the Family Detention Unit. Full details of all family members to be detained must be provided to the Family Detention Unit. As a matter of policy we should aim to keep the family as a single unit.

However, it will be appropriate to separate a child from its parents if there is evidence that separation will protect the child from significant harm. The local authority's social services department will make this decision.

As long as the child is taken into care in accordance with the law, and following a decision of a competent authority, Article 8 of the ECHR will not be breached. **In no case should Home Office staff take an administrative decision to separate a breastfeeding mother from her child. However, it may be necessary to separate a breastfeeding mother from her child where there are good welfare reasons for doing so. This should be addressed by social workers but Home Office staff should exercise their own judgment in an emergency where it appears that the child is at risk of immediate harm.**

No families should be detained simply because suitable accommodation is available.

Detained children are subject to enhanced detention reviews, and the Family Detention Unit reviews the detention of children at days 7, 10, 14 and every seven days thereafter. The Family Detention Unit will also seek weekly authorisation to continue detention from the Minister for those families with children who remain in detention beyond 28 days.

Since December 2009, as part of the Home Office's implementation of the S55. duty to safeguard and promote the welfare of children, the Family Detention Unit (FDU) holds the authority to require release of any family with children on the basis of welfare grounds raised during the FDU enhanced reviews.

Such authority will override wider enforcement grounds for detention when necessary and any requirement to release should be complied with expeditiously.

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16. The effect of the Police and Criminal Evidence Act 1984 (PACE) on port cases

Section 56 of the Police and Criminal Evidence Act 1984 provides, briefly, that a person who has been arrested and held in custody is entitled to have intimation of his arrest and detention sent to one person named by him. Section 56 applies only to persons **arrested**, ie deprived of their liberty in the United Kingdom and subsequently detained in custody. It does **not** apply to persons who are not at liberty in the United Kingdom, e.g. **passengers** or **seamen** who are detained pending further examination or removal following refusal of leave to enter. Similarly, seamen detained pending removal because they are suspected of an intention to desert have not been arrested even if they were on shore leave, nor are persons taken back into detention after a period on temporary admission.

Despite this, and although it is not a requirement of the Immigration Rules, a passenger should, where possible, be given, before removal, the opportunity to telephone friends or relatives in this country (but see **Chapter 9, Section 6, under paragraph heading "Communications with friends etc by persons refused entry"**).

Further instructions as to the application of the Police and Criminal Evidence Act is provided in the Instructions to Enforcement Officers.

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17. Notification of detention to Consulates and High Commissions

The following procedures apply in the case of any person who is detained under the authority of an immigration officer, irrespective of whether he has been detained pending further examination, following refusal of leave to enter, as a seaman or as an illegal entrant. They also apply when a person has been arrested, is detained under the authority of an immigration officer and has exercised his right under Section 56 of the Police and Criminal Evidence Act 1984 (PACE) to have a nominated person advised of his detention but has not nominated his Consul or High Commission.

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17.1. Advice to persons detained

All persons who are detained should be asked if they wish to contact their High Commission or Consulate and those who wish to do so should be given the appropriate telephone number. The immigration officer should record on the port file that this advice was given. In this respect "detention" should be interpreted as detention other than in port control accommodation while examination is continuing.

When a person is likely to be detained for more than 24 hours he should be asked if he wishes his High Commission or Consul to be notified of his detention. If he does form IS 94 should be sent by first class post to the appropriate representative of the High Commission or Consulate. A case requiring urgent attention should be notified by telephone, fax or telex to the High Commission or Consulate, in addition to the written notification.

The immigration officer should record on the port file a note to the effect that this notification has been sent.

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17.2. Nationals of countries with which the United Kingdom has a Consular Convention

The UK has a bilateral consular convention relating to detention with a number of countries (listed below). The convention imposes an obligation on detaining authorities to notify the consular representative of a detainee even if the detainee has not requested this. When a national of such a country is likely to be detained for more than 24 hours, **and there is or has been no asylum claim or suggestion a claim might be forthcoming**, the appropriate High Commission or Consulate must be notified by the immigration officer on form IS 94 sent by first class post. The detainee must be informed of this disclosure.

A consular representative should, if the person detained agrees, be permitted to visit, converse privately with and arrange legal representation for him. A case requiring urgent attention should be notified to the High Commission or Consulate by telephone or fax in addition to the written notification.

Communications from the person detained to his High Commission or Consulate should be forwarded without delay.

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17.3. List of countries with which the United Kingdom has bi-lateral consular conventions relating to detention

Armenia	Kazakhstan
Austria	Kyrgyzstan
Azerbaijan	Latvia
Belarus	Lithuania
Belgium	Mexico
Bosnia-Herzegovina	Moldova

Bulgaria	Mongolia
China	Netherlands
Croatia	Norway
Cuba	Poland
Czech Republic	Romania
Denmark	Russia
Egypt	Serbia
Estonia	Slovenia
France	Spain
Georgia	Sweden
Germany	Tajikistan
Greece	Turkmenistan
Hungary	Ukraine
Italy	USA
Japan	Uzbekistan

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18. “Dual” detention

When a passenger who has either not been granted or has been refused leave to enter is prosecuted for an offence and is remanded or sentenced to imprisonment in respect of the offence, the procedure set out in **Chapter 32 Section 1 "Prosecution Cases at Ports" - "Deciding whether or not to detain under Immigration Act powers"** should be followed.

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19. Detention costs

Whenever a person is detained, form IS 91 should be completed to indicate either that the cost of detention for any period (not exceeding 14 days) and any escort should be charged to the relevant owners or agents, or that there is no charge (i.e. that the owners or agents are not responsible for the costs).

See **Chapter 9, Section 6 - "Refusal of leave to enter - Procedure"** if

further advice is required.

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19.1. Notification that carrier has ceased to be liable for detention costs

If the owners or agents subsequently cease to be responsible for detention costs, eg because the person is given leave to enter, makes a voluntary departure or is deported, the port must notify the Detention Costs Recovery Unit, 9th Floor, Lunar House, the detention contractor or the prison concerned even if, meanwhile, the person has been given temporary admission or transferred to other detention accommodation. This notification should be made on form IS 106B.

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19.2. No charges in respect of children under 2 years of age

No charges are raised by the Home Office in respect of the detention of children under 2 years old. At any time when a child under 2 is given into the custody of a detention or escorting contractor, the IS 81 or IS 91 should be endorsed with the age of the child or children. This will ensure that no charge is levied.

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20. Incidents in the detention estate

DEPMU must be notified of all serious incidents in any removal centre, short-term holding facility or under escort, such as deaths, incidences of self-harm, escapes, attempted escapes, food/fluid refusals and any other potentially high-profile occurrence. Staff at ports are responsible for reporting such incidents in port accommodation and any detention accommodation under local control to DEPMU.

In centres holding children, special care should be taken to report incidents

because of their vulnerability. Reports in such cases should be sent additionally to FDU and to OCC for the attention of the Children's Champion.

Detailed instructions on the reporting of incidents to the Operations arm of Detention Services' are issued separately to staff at DEPMU and at all removal centres.

Additionally, consideration should be given as to whether such actions may prompt reassessment of potential risk in which case form IS91RA part C should be sent to DEPMU as under paragraph 8.5 above.

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21. Bed guards

All requests for bed guards must be made to the DEPMU CIO/HEO.

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22. Places of detention

Detained persons may be detained in any place of detention named in the Immigration (Places of Detention) Direction 2011. This includes police cells, immigration removal centres, prisons or hospitals.

Some facilities, such as police cells (but see also below) are only suitable for detention for up to 5 nights continuously (7 if removal directions are set for within 48 hours of the 5th night). The Immigration (Places of Detention) Direction 2011 does not prevent a person already detained for the specific period in time-limited accommodation from being re-detained, but this must never be used as a device to circumvent the time limits on the use of these short-term holding facilities.

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22.1. Present accommodation

The immigration detention estate currently comprises residential places at the following locations:

Removal Centres

Brook House	males only
Campsfield House	males only
Colnbrook	males only
Dover	males only
Dungavel	males/females
Harmondsworth	males only
Haslar	males only
Morton Hall	males only
Tinsley House	males/ families
Yarl's Wood	females/families/males

Residential short-term holding facilities:

Colnbrook
Larne House, Larne, Northern Ireland
Pennine House, Manchester

Northern Ireland

Adults who are detained in Northern Ireland are normally moved immediately to Larne House STHF or, when a PACE arrest and detention in a police cell has been necessary, as soon as practicable after the detainee is released from police custody. Individuals may be held in police cells until transfer to Larne House can be effected.

Detainees may be held at Larne House for up to 7 days when removal directions

have been set to take place within that period and, whenever possible, will be removed directly via Northern Ireland airports within this period. Where removal will not take place within 7 days of a person being detained at Larne House, the maximum stay at Larne House will be up to 5 days, during which time the detainee will be moved to an IRC in Great Britain if their detention is to continue.

FNOs who have been released from sentence in Northern Ireland will normally be moved to a Home Office detention facility or NOMS accommodation, as appropriate, within 24 hours of their release, or as soon as practicable thereafter.

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22.2 Detention in police cells

Detainees should preferably only spend one night in police cells, with a normal maximum of two nights. In exceptional cases, a detainee may spend up to 5 nights continuously in a police cell (7 nights if removal directions have been set for within 48 hours of the 5th night) if, for instance, he is awaiting transfer to more suitable immigration or Prison Service accommodation **and** the police are content to maintain detention. Such detention must be authorised by an Inspector/SEO, who must take into account the Home Office duty of care for detainees and the likelihood that police cells do not provide adequate facilities for this purpose in the long term.

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23. Temporary admission

When a person is liable to detention, such a person may, as an alternative to detention, be granted temporary admission (TA). The policy is that there is a presumption in favour of granting TA and that detention is used sparingly. Where an individual is detained it is open to them to apply for bail. The fundamental difference between temporary admission and bail is that the former can be granted without the person concerned having to be detained

(although liable to detention), while the latter can only be granted once an individual has been detained and has applied for bail.

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