



Home Office

# **Detention Services Order 02/2017**

## **Removal from Association and Temporary Confinement**

March 2024



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# Document Details

**Process:** To provide guidance on the removal of a detained person from association under Rule 40 of the Detention Centre Rules (DCR) 2001 and Rule 35 of the Short Term Holding Facility Rules (STHFR) 2018, and the use of temporary confinement under Rule 42 of the DCR 2001, and Rule 37 of the STHFR 2018, balancing the need to maintain safety and security and the need to show due regard for the dignity and welfare of the individual.

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## Contains Mandatory Instructions

**For Action:** Home Office and contracted service provider staff in Immigration Removal Centres and Residential Short-Term Holding Facilities

**For Information:** Home Office caseworkers

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**Owner:** Head of Detention Operations

**Contact Point:** Detention Services Orders Team

**Processes Affected:** All processes relating to the removal of a detained individual from association or use of temporary confinement.

**Assumptions:** That all staff and service providers will have sufficient knowledge to follow these procedures and have access to related guidance.

**Notes:**

# Instruction

## Introduction

1. The purpose of this order is to provide instruction and guidance on the use of removal from association (Rule 40 / Rule 35) and temporary confinement (Rule 42 / Rule 37). The scope for application of Rule 40 and Rule 42 is set by the conditions within the 'Detention Centre Rules 2001' (DCR 2001) and the scope for application of Rule 35 and Rule 37 is set by the conditions within the Short-Term Holding Facility Rules 2018 (STHFR 2018). This guidance does not change the circumstances in which the Rules will be applicable.
2. Whilst the application of these Rules depends to some extent on staff judgement, or on operational matters such as safety and security needs, if the conditions specified within the respective Rules for removal from association and temporary confinement are not met then these Rules cannot be used. This guidance indicates the administrative procedures that must be followed when using these measures and provides a summary of the existing practice.
3. The following overarching considerations are reflected in Rule 40 DCR 2001 / Rule 35 STHFR 2018 and Rule 42 DCR 2001 / Rule 37 STHFR 2018. All detained individuals are to be treated fairly, openly and with respect at all times. It is important that the need to maintain the safety and security of the detention facility and all persons within it is balanced against the need to have due regard to the dignity and welfare of the individual, subject to the application of either Rule. Rule 40 / 35 or Rule 42 / 37 accommodation must be used only to manage detained individuals who cannot be located securely and safely in the main detention accommodation i.e. its use must be necessary and proportionate. It must be used as a measure of last resort, when all other options have been exhausted<sup>1</sup>, and/or when these other options have been assessed as likely to fail or to be insufficient as an effective response to the risk to safety or security presented by the detained individual.
4. Two different **Home Office teams** operate in IRCs:
  - Detention Services Compliance team (Compliance team)
  - Detention Engagement team (DET)
5. The DS **Compliance team** are responsible for all on-site commercial and contract monitoring work. The **DETs** interact with detained individuals face-to-face on behalf of responsible officers within the detention centres. They focus on communicating and

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<sup>1</sup> Other options to be considered may include transfer to another residential unit within the centre, transfer to another centre or closer supervision in normal accommodation.

engaging with detained individuals at IRCs, helping them to understand their cases and detention.

6. There are no DETs at RSTHFs. Where appropriate, functions which are the responsibility of the DET in IRCs, are carried out by the contracted service provider in RSTHFs and overseen by the IRS Escorting Contract Monitoring Team (ECMT). In the Gatwick PDA, the role of detained individual engagement is covered by the local Compliance Team.
7. This DSO focuses on the procedures to be followed under Rules 40 and 42 DCR 2001 and Rule 35 and 27 STHFR 2018. It identifies the roles and responsibilities of the contracted service provider and Home Office Immigration Enforcement (HOIE) staff, both DS managers (Compliance team) and DET staff - in applying the rules, including:
  - the circumstances in which it is appropriate to use each Rule and when it is not normally appropriate;
  - the level of authorisation required;
  - who should be notified when either Rule is applied, when and by whom;
  - the procedures for monitoring, recording and reporting on the use of each Rule;
  - the guidance on the minimum regime requirements for those in Rule 40/42 accommodation;
  - the need for daily checks on individuals in Rule 40/42 accommodation;
  - the visit guidelines; and
  - the certification of rooms for individuals subject to Rule 40 or 42.
8. Except where explicitly stated, all provisions in this DSO apply to both Rule 40 and 42 DCR 2001. Similarly, the requirements set out will apply to Rule 35 and Rule 37 of the STHFR 2018.

## **The scope of the Rules (DCR 40, 42 and STHFR 35, 37)**

9. Individuals can be removed from association (Rule 40) for reasons of safety (either their own or others) and/or security. Individuals can be removed from association in residential STHFs (Rule 35) for the same reasons. Temporary confinement (Rule 42) is to be used for refractory or violent detained individuals. Those in detention must not be placed in or managed under Rule 40 or Rule 42 accommodation unless they fall within the definition set out in each Rule and unless the Minimum Standards as set out in the [Detention Services Operating Standards Manual for Immigration Removal](#)

[Centres](#) are met. Temporary confinement (Rule 37) of those detained in a residential STHF may be used only where an individual is unmanageable or violent.

#### **Rule 40 DCR 2001 - Removal from Association**

10. Rule 40(1) DCR 2001 states as follows:

“40(1) Where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons, either generally or for particular purposes, the Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed detention centre) may arrange for the detained person’s removal from association accordingly.”

#### **Rule 35 STHFR 2018 - Removal from Association**

11. Rule 35(1) STHFR 2018 states as follows:

“35(1) The Secretary of State may make arrangements for a detained person to be removed from association with other detained persons, either generally or for particular purposes, where it appears necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons.”

#### **Rule 42 DCR 2001– Temporary Confinement**

12. Rule 42(1) DCR 2001 states as follows:

“42(1) The Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed detention centre) may order a refractory or violent detained person to be confined temporarily in special accommodation, but a detained person shall not be so confined as a punishment, or after he (she) has ceased to be refractory or violent.”

#### **Rule 37 STHFR 2018– Temporary Confinement**

13. Rule 37(1) STHFR 2018 states as follows:

“37(1) The Secretary of State may order an unmanageable or violent detained person to be confined temporarily in special accommodation until satisfied that the detained person is no longer unmanageable or violent.”

#### **Operating Standards**

14. The [Detention Services Operating Standards](#) for Rule 40 states:

“**Rule 40:** The use of removal from association must achieve the correct balance between the need to maintain safety and security and the need to show due regard for the dignity of the individual. Procedures must comply with the requirements of Rule 40.”

15. The Operating Standard for Rule 42 states:

**“Rule 42:** Temporary confinement of refractory or violent detainees must achieve the correct balance between the requirement to maintain order and discipline whilst having due regard for the individual and in particular the need to prevent self-harm.”

16. The interpretation of Rule 40 and 42 as set out in the Operating Standards should also be read as the interpretation of Rule 35 and 37 of the STHFR 2018. Unless explicitly stated otherwise, the guidance in this DSO regarding Rule 40 and 42 DCR 2001 should also be applied for the use of Rule 35 and Rule 37 STHFR 2018.

17. The conditions under Rule 40 or 42 accommodation (Rule 35 or 37 in STHFs) mean that any use of them must be justified and proportionate to the risk presented. The period for which Rule 40 or 42 measures are in place must be the minimum time necessary in all the circumstances. There are maximum periods of time that must not be exceeded when applying both rules (see paragraphs 70-79 for period of removal and temporary confinement). There can be no advanced designated blanket use of Rules 40 or 42 for specific types of cases or automatic use for specific individuals. Each use of Rule 40 and 42 measures must reflect an individual assessment of the circumstances on a case-by-case basis, as and when an incident occurs.

18. Centre service provider staff must engage with detained individuals to support them to move out of Rule 40 or 42 accommodation back into normal association as soon as possible. Planning for a return to normal association must begin as soon as the individual is moved into Rule 40 or 42 accommodation. The multi-disciplinary team (see paragraph 118) must discuss the steps necessary to support a return to normal association at its daily meetings, allowing for input from all attendees.

19. **Any concerns about the appropriate use of Rule 40 and Rule 42 must be escalated to the Head of Detention Operations for consideration. Similarly, any concerns about the appropriate use of Rule 35 or Rule 37 must be escalated to the Head of Escorting Operations.**

20. The forms which need to be completed are attached as annexes and should be printed locally. **They must not be changed or amended.**

- Annex A – covering form to be completed for every new Rule 40 or 42 case (Rule 35 or 37 in STHFs).
- Annex B – justification and authorisation for use of Rule 40 or 42 (Rule 35 or 37 in STHFs) [NB a new Annex B must be completed each time a detained individual moves between Rule 40 and 42, or Rule 35 and 37, without first returning to normal association].
- Annex C – daily activity record and monitoring form
- Annex D – daily visitors record



- Annex E – daily multidisciplinary review
  - Annex F – care/reintegration plan
  - Annex G – Delegation of powers and duties under Rule 40/42 (Rules 35/27 in STHFs) Request and Approval form
21. As a consequence of the Rules and Operating Standards, dedicated Rule 42 accommodation can be used only to hold a violent or refractory individual in order to prevent that individual from injuring themselves or others, damaging property or creating a disturbance that hinders the maintenance of good order. The DC Rules state explicitly that Rule 42 must **not** be used as a punishment or after the individual has ceased to be violent or refractory.
22. Each facility must have a published procedure for removal from association (Rule 40, Rule 35 in STHFs) and for temporary confinement (Rule 42, Rule 37 for STHFs). The procedure must be known to those in detention and followed by staff. It must take account of security and control requirements (including those that arise from the particular features of the IRC). The procedure must have due regard to the statutory entitlements and needs of detained individuals. The regime should cover all stages of the process and provide for a focus on returning the individual to normal association as soon as possible.

#### Accommodation certified for use for either Rule 40 or 42

23. Under Rule 15 of the Detention Centre Rules 2001 an individual removed from association or under temporary confinement must be accommodated only in a room designated and certified for this purpose. All accommodation used for either Rule 40 or Rule 42 must be certified in writing by the Head of Detention Operations as “adequate for health” in line with DC Rule 15 (3), as having size, lighting, heating, ventilation and fittings adequate for the maintenance of health and safety and there must be provision for the person to communicate at any time with an officer (see DSO 06/2018 “Accommodation, Lighting, Heating and Ventilation”).
24. The Head of Escorting Operations has oversight of the rooms used for removal from association and temporary confinement under Rule 35 and Rule 37 in RSTHF.
25. In line with Rule 16 of the DCR 2001, every person should have access to toilet articles necessary for health and cleanliness and access to washing facilities. Access to washing facilities should be provided for those held under Rule 40 and 42 (and Rule 35 and 37 in STHFs) wherever possible, in line with individual’s risk assessment.
26. Where an individual is managed under Rule 40, the centre manager or an individual holding a grade/job title which has been identified for the delegation of powers and duties under Rule 40 and 42 (Rule 35 and 37 in STHFs) and approved by the Detention Services Manager (refer to paragraphs 42 – 48) or ECMT Manager (refer

to paragraphs 49 – 55) will decide on the most appropriate **certified** (as per paragraph 23) accommodation at their disposal. In determining the most appropriate accommodation, due account must be taken of the requirement to meet the needs of the individual (including the management of any risk to them). In addition, due regard must be had to meeting the safety and security needs of the IRC and those within it. Any certified Rule 40 accommodation outside a dedicated Rule 40 unit must offer the same level of support, monitoring and regime as in a dedicated Rule 40 unit and staff must be trained appropriately to manage individuals held there (see paragraph 114).

27. Any room in a residential STHF that is used for the purposes of removal from association (under Rule 35 of the STHFR 2018) or temporary confinement (under Rule 37 of the STHFR 2018) must be similarly certified that its size, lighting, heating, ventilation and fittings are adequate for health and safety and it allows detained individuals to communicate with staff at any time. Where possible, and if deemed appropriate in line with the individual's risk assessment, access to sanitary facilities should be provided.
28. Rule 40 or 42 accommodation must be staffed on a 24 hours/7 days a week basis when in use. In line with the requirements of Rule 15(3) of the Detention Centre Rules 2001, all individuals housed in Rule 40 or 42 accommodation must be able to contact a Detainee Custody Officer (DCO) without difficulty at any time. For example, contact may be made by using a call bell and working call bells **must** be fitted in Rule 40 and 42 accommodation.
29. When individuals are held in accommodation under Rule 40 and Rule 42 the emphasis must be on maintaining the safety of those in detention and staff. It is expected that staff will focus on helping individuals manage their behaviour through positive interaction with the objective being to return the individual to normal association as soon as it is safe to do so.

### **Restrictions must not be used as punishment**

30. Any restriction of normal facilities within the Rule 40/42 (or Rule 35/37 for RSTHF) accommodation or reduction in the publicised regime must be justified by a risk assessment that clearly states why the restriction is being placed on the individual and how often the assessment will be reviewed; this must then be recorded on the Annex B. **The restrictions must be authorised by the centre manager of an IRC (the manager of a STHF) or an individual holding a grade/job title which has been identified for the delegation of powers and duties under Rule 40 and 42 (Rule 35 and 37 in STHFs) and approved by the Detention Services Manager** (refer to paragraphs 42 – 48) **or ECMT Manager** (refer to paragraphs 49 – 55). The person responsible (centre manager / manager or a person holding the delegated role/job title) must ensure that they go no further than necessary to protect the detained individual and staff, that they are within the period set out in Rules 40 and

42, or Rules 35 and 37 and that the DS Compliance team or ECMT manager is notified of the restrictions as soon as is operationally possible.

31. Should the **removal of any furniture/ bedding items** be deemed necessary, this decision should only be taken by the centre manager of an IRC /the manager of a STHF, or a person holding the delegated role/job title (refer to paragraphs 42 - 55).
32. Where it is deemed necessary to replace these items with specialist alternatives (such as the removal of normal bedding and its replacement with anti-ligature bedding, and/or the removal of a mattress if this is replaced with a suitable specialist alternative e.g. collapsible mattress), DEPMU, the local Compliance Teams, and DET must be notified of such decisions via the IS91 RA Part C form. DET will then forward the IS91RA Part C by email to the relevant dedicated casework generic inbox, and all such actions must be recorded in both the Annex C and Annex B (boxes 70 - 73) for monitoring and auditing purposes. The removal of these items is subject to continued review every 4 hours by the contracted service provider, and this review must be recorded in Annex C with each outcome noted.
33. The **removal of any items** that are not intended to be immediately replaced with an appropriate alternative **must only be carried out with the authority of the onsite DS manager** (G7 or above, or SEO in their absence); during out of hours periods, authorisation must be sought from the Home Office on-call manager (G7 or above), and in either case, the onsite DS Manager (G7) must be notified at the earliest opportunity.
34. Any restrictions must also be reviewed in line with the review of the use of the application of Rule 40 or Rule 42. Every effort must be made to keep the time for which a detained individual is subject to restrictions as short as possible.
35. A formal review of any decision to accommodate an individual in a room without bedding or furnishings must take place no later than 24 hours after the initial decision. This review should form part of, and be recorded in line with, the daily review of the application of Rule 40/42 and must involve as a minimum:
  - the service provider Duty Director,
  - a Healthcare representative
  - a DS Manager (Compliance team member)
  - a DCO working in the CSU

Any reasons for non-attendance (by the above stated staff) to this review, must be recorded and notified to the DS manager (G7 or above, or SEO in their absence); from the compliance team.

36. Considerations should also be made by the onsite Home Office teams as to whether detained individuals on DC Rule 40 or DC Rule 42 would benefit from additional ad-hoc visits. Any additional visits by staff must be clearly recorded on a new **Annex D**

**form (refer to paragraph 132-133).** Additional visits are not a requirement, but a consideration, and the minimum daily review remains as stated above.

37. Wherever possible, the detained individual should be included in the review and all details of the review must be recorded, including reasons for decisions and authority sign off. During each review, the Healthcare representative should consider whether a physical health examination is required or whether a mental health assessment should be initiated. In both cases the reasoning in each consideration should be recorded. If an examination assessment is recommended, this should be carried out as soon as possible.
38. Restrictions must be lifted, and conditions normalised, as soon as the reasons for applying the restrictions no longer exist and it is safe to do so for the detained individual and staff. It is not necessary to wait for a formal review to lift restrictions, they may be lifted at any time on the authority of the centre manager (manager in a STHF) or a person holding the delegated role/job title.
39. Under Rules 40 and 42, the use of restrictions must be used only as a last resort, when all other options have been exhausted.

## Procedures

40. Removal from association and temporary confinement must be used only as a last resort, when all other options have been exhausted<sup>2</sup> or are assessed as likely to fail or to be insufficient as an effective means to address the risk considered to be presented by the detained individual. The decision to use either Rule must have a clear and rational basis. For Rule 40, if the risk is assessed on the basis of intelligence or other indications of risk, they must be verifiable sources of information. Rule 42 must be used only when an individual is behaving in a refractory or violent manner.
41. **Rule 42 of the DC Rules and Rule 35 of the STHF Rules cannot be used as a punishment as stated expressly within the Rules** (see paragraph 30 above).

## Authorisation: Rule 65 DCR 2001 and Rule 54 STHFR 2018

### Rule 65 DCR 2001

42. Rule 65 of the DCR 2001 states:

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<sup>2</sup> Other options to be considered might include transfer to another residential unit or to another centre or closer supervision on normal location

“The manager of a detention centre may, with the leave of the Secretary of State, delegate any of the powers and duties under these Rules to another officer of that detention centre.”

43. This Rule supersedes the specific authorisations as set out in Rule 40 and 42 of the DCR 2001. The following actions should be taken by the centre manager of each IRC to ensure delegation is appropriately recorded [**recording point: Delegation of powers and duties should be recorded in line with the instructions set out at Annex G**].
44. The centre manager of each IRC (the person appointed under section 148(1) of the Immigration and Asylum Act 1999 with the responsibility of the overall management of the centre) must identify an appropriate grade/job title to whom his or her powers and duties under Rule 40 and 42 of the DCR 2001 can be delegated when they are unavailable. It is expected that the grade/job title identified will be those of the senior management team.
45. The centre manager may also identify the Detainee Custody Manager grade to whom responsibilities may be delegated, but only where these managers are acting as the duty manager as part of their role and when an individual holding a delegated grade/job title from the senior management team is unavailable.
46. The duty manager of each IRC should submit details of the grade/job title identified to whom their powers and duties may be delegated to the Home Office Detention Services manager, who must be Grade 7 or above, on a bi-annual basis, or in circumstances where the grades/job titles identified have changed. For example, where it is considered that the identified grade/job title is no longer appropriate for delegation of powers and duties under Rule 40 and 42 DCR 2001, or an identified existing grade/job title ceases to exist.
47. The Home Office Detention Services Manager will review and, if in agreement, provide authorisation for centre manager to delegate their powers and duties under Rule 40 and 42 to the grades/job titles identified.
48. Only individuals holding the grades/job titles identified by the centre manager and approved by the Detention Services Manager may undertake the authorisations required for Rule 40 and 42 as stipulated by the DCR 2001, [Operating Standards Manual for IRCs](#) and this DSO.

## **Rule 56 STHFR 2018**

49. Rule 56 of the STHFR 2018 states:

“The manager of a short-term holding facility may, with the authorisation of the Secretary of State, delegate any of the powers and duties under these Rules to a detainee custody officer or an immigration officer.”

50. This Rule supersedes the specific authorisations as set out in Rule 35 and 37 of the STHFR 2018. The following actions should be taken by the centre manager of each residential STHF to ensure this delegation is appropriately recorded. The manager of a residential STHF is defined in Rule 2 of the STHF Rules as;
- (a) In relation to a directly managed short-term holding facility, the official of the Secretary of State designated to complete the tasks that fall to a manager under these (STHF) Rules;
  - (b) In relation to a contracted out short-term holding facility, a member of the contractor's staff –
    - (i) Designated to complete the tasks that fall to a manager under these (STHF) Rules; and
    - (ii) Certified as a detainee custody officer.
51. The manager of each residential STHF (as defined in Rule 2 STHF Rules 2018) must identify an appropriate grade/job title to whom his or her powers and duties under Rule 35 and 37 of the STHF Rules 2018 can be delegated when they are unavailable. It is expected that the grade/job title identified will be those of the senior management team.
52. The manager may also identify the Detainee Custody Officer grade to whom responsibilities may be delegated, but only where those are acting as the duty manager as part of their role and when an individual holding a delegated grade/job title from the senior management team is unavailable.
53. The manager of each STHF should submit details the grade/job title identified to whom their powers and duties may be delegated to the Home Office International Returns Service ECMT manager, who must be Grade 7 or above, on a bi-annual basis, or in circumstances where the grades/job titles identified have changed. For example, where it is considered that the identified grade/job title is no longer appropriate for delegation of powers and duties under Rule 35 and 37 STHF Rules 2018, or an identified existing grade/job title ceases to exist.
54. The International Returns Service ECMT Manager will review and, if in agreement, provide authorisation for centre/duty manager to delegate their powers and duties under Rule 35 and 37 to the grades/job titles identified.
55. Only individuals holding the grades/job titles identified by the manager and approved by the International Returns Service ECMT Manager may undertake the authorisations required for under Rule 35 and 37 as stipulated by the STHF Rules 2018 and this DSO.



## Authorisation: Rule 40/42 and Rule 35/37

56. The DC Rules 2001 set out the requirements for due authorisation of each rule.

57. Rule 40 states:

- 40(1) “....the Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed centre) may arrange for the detained person’s removal from association accordingly.”
- 40(2) “In cases of urgency, the manager of a contracted out detention centre may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after making the necessary arrangements.”
- 40(3) “A detained person **shall not be removed under this rule for a period of more than 24 hours** without the authority of the Secretary of State”.
- 40 (4) “An authority under paragraph (3) **shall be for a period not exceeding 14 days**”.

58. Rule 42 states:

- 42(1) “.....the Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed centre) may order a refractory or violent detained person to be confined temporarily in special accommodation
- 42(2) “In cases of urgency the manager of a contracted out detention centre may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after giving the relevant order.”
- 42(3) “A detained person **shall not be confined in special accommodation for longer than 24 hours** without a direction in writing given by an officer of the Secretary of State (not being an officer of a detention centre)”.
- 42(4) “The direction shall state the grounds for the confinement and the time during which it may continue (**not exceeding 3 days**)”.

59. The STHFR 2018 set out the requirements for due authorisation of each rule.

60. Rule 35 states:

- 35(1) “The Secretary of State may make arrangements for a detained person to be removed from association with other detained persons, either generally or for particular purposes, where it appears necessary in the interests of the security of the short-term holding facility or the safety of the detained person or other persons.”

- 35(2) “In cases of urgency, the manager may assume the responsibility of the Secretary of State under paragraph (1) but must notify the Secretary of State without undue delay after making the necessary arrangements.”
- 35(3) “A detained person must not be removed under this rule as a punishment.”
- 35(4) “A detained person **must not be removed under this rule for a period of more than 24 hours** without written authorisation of the Secretary of State.”
- 35(5) “Authorisation under paragraph (4) **must not be for a period exceeding seven days** from the time of reception of the detained person into the short-term holding facility.”

61. Rule 37 states:

- 37(1) “The Secretary of State may order an unmanageable or violent detained person to be confined temporarily in special accommodation until satisfied that the detained person is no longer unmanageable or violent.”
- 37(2) “In cases of urgency, the manager may assume the responsibility of the Secretary of State under paragraph (1) but must notify the Secretary of State without undue delay after making the necessary arrangements.”
- 37(3) “A detained person must not be confined in special accommodation as a punishment.”
- 37(4) “A detained person **must not be confined in special accommodation for a period of more than 24 hours** without written authorisation of the Secretary of State.”
- 37(5) “Authorisation under paragraph (4) **must not be for a period exceeding 48 hours** but may be **renewed** from time to time **for a further period not exceeding seven days** from the from the time of reception of the detained person into the short-term holding facility.”

62. In addition to stating the grounds for the decision, it is necessary to record all alternative measures to Rules 40 and 42 (Rules 35 and 37 in STHFs) that have been considered, tried and were unsuccessful or that were ruled out. This information must be recorded at Annex B along with a clear explanation of action taken. **Recording point: Annex B, box 8.**

63. **In no circumstances must an initial authorisation for removing someone from association or placing them in temporary confinement be given for a period beyond 24 hours.** In normal circumstances, any use of Rule 40 or 42 (or Rule 35 or 27 in STHFs), for an initial period up to 24 hours must be authorised by a DS manager (Executive Officer (EO) or above) from the Home Office Compliance Team



(or Escort Contract Monitoring Team for STHFs). **Recording point: The person authorising the initial (24 hours) use of Rule 40/42 or Rule 35/37 must record their authorisation on the form at Annex B boxes 10 – 15.**

64. **In cases of urgency<sup>3</sup> every effort must still be made to seek authorisation from the DS manager (EO or above) or the DS on-call manager if out of hours.** Only if the circumstances are such that it is impracticable to seek the authority required in paragraph 63 in advance, the centre manager in IRCs, manager in STHFs, or a person holding a delegated role/job title (see paras 42 – 55) can make the emergency authorisation so that the authority is considered to begin at that point. In such circumstances, the DS or ECMT manager (EO or above or the DS on-call manager if out of hours) **must** be notified immediately. **Recording point: The person making the emergency authorisation must record their authorisation at Annex B boxes 16 - 22 and confirm that they have notified the Compliance team.**
65. Any period of removal from association or temporary confinement beyond 24 hours requires authorisation by the Secretary of State, in practice a DS or ECMT manager (Senior Executive Officer (SEO) or above) from the Compliance Team or relevant DS or ECMT manager (SEO or above) acting on their behalf (see paragraph 56 - 61).
66. The process in paragraph 64 must be followed if the authority is not provided in person (for example by telephone) to ensure that a full audit trail is available.
67. The person authorising the use of Rule 40 or Rule 42 for an initial period up to 24 hours must record their authorisation at Annex B. If the person authorising cannot complete the form, for example because authority has been given by phone, there must be a separate documented audit trail attached to Annex B. This audit trail must be provided immediately after authorisation has been provided by the person completing the form. It should make clear:
- who has provided the authority,
  - by what means (e.g. telephone),
  - at what time, and
  - must include any relevant notes made during the call or any relevant emails where authorisation was given via email.
68. If all other factors have been mitigated and options considered, authority must be obtained in advance for all uses of Rule 40 (other than in cases of urgency/necessity). Relocation to Rule 40 accommodation must take place only if the available information strongly indicates that relocation is deemed necessary in the

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<sup>3</sup> For example to protect life and/or the security of the centre, such as a fight or an assault on another detained individual or member of staff.

interests of security or safety. Authorisation processes and review periods set out in this DSO must be observed in all cases. The centre service provider should seek all relevant information from healthcare about any known risks; this information should then be considered and that consideration recorded. Where the centre service provider requests authorisation for pre-planned use of Rule 40/42, they must ensure they provide this information (and all other relevant information) to the onsite Compliance Team. All parties should have due regard to protecting sensitive information such as health related material, and where appropriate the copy list of emails containing sensitive material should be restricted so that only those staff who need to view it are copied in.

69. Planned use of Rule 40 might, for example, be considered appropriate in the case of a persistently disruptive individual, immediately in advance of their removal if this is deemed necessary given the risks presented (having balanced the interests of safety and security against any adverse effect on the individual's position). Any such assessments must be made on a case-by-case basis (see paragraph 3) in accordance with the general requirements set out above in relation to use for the minimum period appropriate and necessary. Such an individual must not be placed into Rule 40 accommodation unless all other steps have been taken to avoid or mitigate the risk posed - for example, if there has been consideration of transfer to another residential unit or to another centre or closer supervision on normal location. Steps taken to mitigate the risk prior to use of Rule 40 should be documented.
- Removal from association under Rule 40 (or Rule 35 in STHFs) should not be used for administrative convenience.**

## Periods of removal from association

70. **Every authority for removal from association under Rule 40 must be reviewed on a daily basis.** The review must be conducted by a DS manager (EO or above). Where practicable, this review should be part of a multidisciplinary meeting (see paragraph 118).
71. Under the terms of Rule 40 (3) and (4) authority to maintain removal from association for any period after 24 hours up to a maximum of 14 days must be given by a DS manager (SEO or above), acting on behalf of the Secretary of State. If that authority is given by a manager below SEO grade, it must be reviewed by a DS manager of at least SEO grade as soon as possible and certainly within 24 hours to a DS manager (grade SEO or above). Written justification must be provided for the removal from association and reviewed by the SEO who must assure themselves that removal was and remains appropriate. Whilst the centre service provider (Detainee Custody Manager (DCM) or above) might complete the relevant form, the authority itself must be provided by the appropriate DS manager (SEO or above).
72. In all cases, the period of authority must be stated and justified. The authority should not automatically be the maximum permitted. In any event, the authority cannot then

exceed 14 days maximum for Rule 40. **Recording point: Annex B boxes 36 - 42.**  
Any representation against relocation must be recorded at **Annex B box 47.**

73. The need for maintaining removal from association must be kept under continual review. As set out in the visit requirements in paragraph 131, daily visits are required from:

- DS (EO or above),
- DET (if and when requested for specific case related issues)
- Medical Practitioner
- Religious services/faith provision staff, and
- Centre contracted service provider

Non-attendance should be noted and brought to the attention of the Compliance manager.

For access to social and legal visits for those in rule 40 or 42 accommodation please see [DSO 04/2012 - Visitors and Visiting Procedures](#).

74. As stated above, under the terms of Rule 40 (4) authority for removal from association cannot exceed **the maximum 14-day period**. If the circumstances require the removal from association to continue after the 14-day period, a fresh authority (Annex B) will be required. "The document" (see paragraph 149) should remain open throughout the use of Rule 40 and/or 42 and does not need to be closed with the fresh authority (Annex B). No fresh authority can be given without a very clear justification for a further use of the Rule. It is especially important in this context that the decision-making sets out all other options that have been considered and why they are insufficient, as set out above.

75. The fresh authority must be given by an appropriate DS manager (Grade 7 or above). In the case of an out of hours authorisation by the senior on-call, that must be reported as soon as practicable, and certainly within 24 hours, to a DS manager (Grade 7 or above) to review.

76. If fresh authority is sought at day 14, any period of removal from association or temporary confinement beyond 24 hours of that fresh authorisation requires the process set out above (para 56), authorisation by the Secretary of State, in practice a DS manager (SEO or above) acting on their behalf. **Recording point: Complete a new Annex A.**

## Periods of temporary confinement

77. Any decision to confine an individual under Rule 42 for longer than 24 hours and up to the maximum permitted 3 days under Rule 43 (4) must be given in writing by “an officer of the Secretary of State (not being an officer of an IRC)”.
78. In practice, any use of Rule 42 for a period exceeding 24 hours and up to a maximum of 3 days requires written authorisation from the DS manager (SEO or above) in all cases. A fresh authorisation (Annex B) would be required if a person needs to be temporarily confined after the 3-day period and very clear justification for a further use of the rule will be needed. “The document” (see paragraph 149) should remain open throughout the use of Rule 40 and/or 42 and does not need to be closed with the fresh authority (Annex B). That further authority must be given by a DS manager (Grade 7 or above). In the case of an out of hours authorisation by the senior on-call, that must be reported immediately to a DS manager (Grade 7 or above) and brought to the particular attention of the multi-disciplinary team (see para 118).

### **Recording point: Complete a new Annex A.**

79. In both initial use (up to 24 hours) and continued use up to 14 days (Rule 40) or 3 days (Rule 42), the reasons for the decision must be clearly recorded at Annex B. Whilst the centre service provider might complete the form, the authority must be provided by the appropriate DS manager (EO or above for initial use and SEO or above use up to 14 days (Rule 40) or 3 days (Rule 42)) **Recording point: Annex B box 10 - 16 (initial 24 hours) or 37 - 43 (more than 24 hours).**

## Vulnerable individuals in detention

80. This guidance should be considered alongside guidance on the management of adults at risk within immigration detention (see DSO [08/2016 Management of Adults at Risk in Immigration Detention](#)). The analysis of risk factors is an ongoing process and regular reviews need to be carried out in order to pick up changes in a detained individual’s risk, behaviour, circumstances and health. The [Adults at Risk policy](#) sets out a process for determining whether an individual would be particularly vulnerable to harm in detention and, if so, whether they should be detained for the purpose of immigration removal. Where a decision is taken to detain an individual considered to be an adult at risk, their detention should be managed in line with DSO 8/2016.
81. The adults at risk policy includes conditions or experiences that a detained individual may inherently possess which are indicators they may be particularly vulnerable to harm in detention. These include those suffering from a mental health condition or impairment. The [DSO 04/2020](#) titled ‘Mental vulnerability and immigration detention’ sets out the process to be followed where there are concerns that an individual may lack mental capacity, have a mental health condition, or disability arising from mental impairment. The assessment and recommendations made as a result of that process

must be taken into account when determining whether use of Rule 40 or Rule 42 of the DCR 2001 (and likewise Rule 35 and 37 STHFR 2018) is appropriate and, if so, any adjustments to be made during use of those rules.

82. Neither Rules 40 and 42, nor Rules 35 and 37 should be used as a routine means to manage detained individuals with serious psychiatric illness or presenting with mental health problems. These Rules should be used in relation to detained individuals with mental health problems only where justified on the basis of the risk presented in accordance with the terms of the relevant Rules. However, special care and caution is needed in relation to decisions to use Rule 40 and 42, or Rules 35 and 37 for such vulnerable individuals. Specific account must be taken of any adverse effect that use of Rule 40 or 42, or Rule 35 or 37 may have on the individual in light of their circumstances and steps taken to mitigate any adverse effects. The circumstances of each individual must be considered on a case-by-case basis and it is expected that the Rules will only be implemented where strictly necessary according to the facts of the particular case. Particular care is needed to ensure that the general requirements that use of the Rules is for the shortest time necessary and only as a last resort are met in these cases.
83. Where a detained individual (being held under either Rule for 'removal from association' or 'temporary confinement') is presenting with mental health problems<sup>4</sup>, a mental health assessment should be arranged by healthcare as soon as practically possible. The steps outlined in DSO 04/2020 should be followed, including where there are any indications consistent with the possibility of a lack of mental capacity with regards to immigration-related decision making (such as not understanding the Rule 40 and 42, or Rule 35 and 37 processes).
84. Detained individuals identified as being at risk of suicide or self-harm should be managed under published Assessment Care in Detention and Teamwork (ACDT) processes set out in [DSO 01/2022 - Assessment care in detention and teamwork](#). Detained individuals at risk of suicide or self-harm should be kept in association wherever possible as segregation can have a negative impact on mental wellbeing.
85. Detained individuals at risk of suicide or self-harm and on an open ACDT plan may be managed and located in an Enhanced Care Unit or supported living facility (where considered appropriate for the individual and where such facilities are available). They must not be placed in Rule 42 (or STHFR 2018 Rule 37) accommodation unless they are violent or refractory and must not be placed in Rule 40 (or STHFR 2018 Rule 35) accommodation unless deemed necessary for their own protection (with their agreement) and/or in the interests of safety or security of the detention facility and all those within it. If an individual refuses to relocate for their own protection, contracted

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<sup>4</sup> This includes when there are concerns that the detained individual may lack mental capacity.

service provider staff must ensure, where appropriate, the relevant anti-bullying and/or safeguarding strategies are engaged to support the individual.

86. As a result of the overarching considerations set out above, a detained individual at risk of suicide or self-harm **must not** be placed under Rule 40 or 42 accommodation other than:
- in **circumstances where use of the rule is deemed necessary, having considered the potential adverse effect on the individual (as set out in paragraph 82-85)**; and
  - **for the shortest time necessary**; and
  - as a **last resort** where all other options for managing the behaviour have been considered and exhausted or considered to be inappropriate (as per [DSO 01/2022 - Assessment care in detention and teamwork](#)). All other options considered and dismissed should be clearly recorded.
87. All appropriate further precautionary measures - such as constant supervision and/or the use of staff specifically trained in ACDT processes - must be taken and should be applied also to any detained individual placed on an ACDT after their relocation to Rule 40 or 42, (Rule 35 or 37 for STHFs) accommodation. **Recording point: Annex B box 28.** If an ACDT is opened whilst a detained individual is in Rule 40/42 or Rule 35/37 **Annex B boxes 60 – 62** must be completed.
88. If detained individuals at risk of suicide or self-harm and on an open ACDT plan are transferred into Rule 40 or Rule 42 accommodation (Rule 35/37 for STHFs) reasons for doing so must be clearly justified in Annex E of the detained individual's ACDT plan. An ACDT case review must be undertaken in line with the procedures set out in paragraphs 51 - 65 within 24 hours of the individual being removed to temporary confinement. Where possible, ACDT observations of any detained individual located in R40/42 or STHF Rule 35/37 accommodation should be set at a minimum of five times per hour at irregular and unpredictable times.
89. When a move from R40/42 or STHF Rule 35/37 accommodation back to normal association is planned for a detained individual at risk of suicide or self-harm and on an open ACDT plan, a pre-discharge case review (Annex C - ACDT plan) must take place on the same day as this decision. The detained individual cannot return to a normal residential area until a full case review has been held. A case review should be expedited to ensure the individual's period away from the normal residential area is not extended (see [DSO 01/2022 – ACDT](#)).
90. If an individual in Rule 40/42 or STHF Rule 35/37 accommodation is assessed as requiring treatment/assessment in an appropriate or secure mental health service outside of the Immigration Removal Centre (IRC), all steps that can be taken to



facilitate this transfer should be taken as soon as possible (see [DSO 01/2022 – ACDT](#)).

## Dirty protest

91. Centres must have published guidance in place to assist staff with identifying the difference between individuals protesting and those suffering from ill health and the actions required in either case, i.e. referral to the Mental Health Team. Guidance must also ensure the health and safety of staff, visitors and the individual are met and must also cover available PPE equipment, when this should be used, and where this can be found. Detained individuals on dirty protest should be given the opportunity to shower upon every review and twice daily as a minimum, and the outcome of this offer must be recorded on Annex C i.e. declined to shower.

## Searching

92. To meet the requirements for safety and security, all those removed from association or located under temporary confinement must be searched in line with the guidelines set out in [DSO 09/2012 Searching policy](#).

## Transfers

93. If the decision has been made to transfer an individual, subject to Rule 40/42 or STHF Rule 35/37, to another centre a PER must be completed by centre and escort contracted service provider staff, whether the custody of the detained individual transfers to another contracted service provider or not (see [Detainee Escort Records DSO 01/2019](#)). This includes movement or transfer between centres in the immigration removal estate and other detention/custody accommodation (courts, tribunals, prisons and police stations) and also between centres and other temporary locations such as hospital appointments. The PER ensures that all staff escorting and receiving detained individuals are provided with all necessary information, including reasons for the Rule 40/42 or STHF Rule 35/37, any risks or vulnerabilities that the person may present, such as risk of absconding or harm to themselves or others.
94. Details of previous violence, self-harm and full medical details, when available, must be recorded on form IS91RA Part A by the responsible case-worker or detaining team. All risks that are known before transfer and that can potentially impact the safe transfer and allocation of an individual must be reflected on the risk section of the IS91. Where appropriate, following receipt of a IS91RA Part Cs, these risks must also be updated by DEPMU onto Person Alerts on ATLAS. This ensures all relevant risks are shared on the Movement Order, which is sent to the escort service provider and receiving centre when a transfer takes place.
95. Centre service provider staff must ensure a safer detention form is sent to the receiving centre prior to a transfer taking place for those with identified vulnerabilities, (see [DSO 08/2016 Management of Adults at Risk in Immigration Detention](#)). All known information and risks relevant to the vulnerability must be shared, and

accurate records must be kept on local systems. Medical records ([DSO 01/2016 Medical Information Sharing refers](#)), [Assessment Care in Detention and Teamwork \(ACDT\)](#) records, Vulnerable Adult Care Plan (VACP), prison files and any other records should accompany detained individuals at all times when transferred from one centre to another, in accordance with [DSO 01/2019 Detainee Escort Records](#), which sets out standards on the use, management and storage of those records.

96. Upon arrival to the receiving centre the detained individual will not automatically continue to be accommodated under Rule 40/42 or STHF Rule 35/37. Staff at the receiving centre should continue with the reception/ induction process as normal and the detained individual should be given the opportunity to remain in normal association with closer supervision, if required.
97. If deemed necessary and justified, the receiving centre can make the decision to remove this individual from association under Rule 40/42 or STHF Rule 35/37, though staff must make a fresh request for authorisation and follow the authorisation process for initial authorisation (56 -69) **recording point Annex B box 8.**

### Process of relocation under Rule 40/42 (or Rule 35/37 in RSTHFs)

98. An individual being relocated to Rule 40 or 42 accommodation must always be moved with DCOs. The detained individual should be asked to accompany staff to give the opportunity for voluntary compliance unless this is impracticable due to the particular circumstances. The number of DCOs appropriate will be dependent on case specific factors including whether the relocation is planned or being carried out in a case of urgency. Any use of force must be carried out in accordance with DC Rule 41 and [DSO 07/2016 'Use of Restraints for Escorted Moves'](#). Contracted service provider staff will undertake the escort, supported by healthcare staff (if available). If exceptionally, healthcare staff are unable to attend, they must be notified as soon as possible, immediately after the relocation (see paragraphs 135 - 137).
99. Any property belonging to the detained individual and which they had in their possession (including property in their room) prior to relocation must be bagged, sealed and stored during the period of relocation. Personal items and all other such property should be stored in the separation unit (where practically possible and where facilities allow for this).

### Notification of removal from association/temporary confinement

#### Initial relocation

100. Where an individual is managed under either Rule 40 or Rule 42, they must be provided with the reason(s) for this decision, in writing, within 2 hours of being located under either Rule. If there are any steps or adjustments required to be put in place to **ensure that an individual understands the decision** (see paragraphs 104 – 106) for examples of reasonable adjustments) and is not practically prevented from making



any representations (should they choose to), the centre service provider must, so far as practicable, put them in place prior to implementation of the Rule 40 or Rule 42 decision. Where that is not practicable, any such steps or adjustments must be made as soon as possible after the relocation of a detained individual under Rule 40 or Rule 42, and within the 2-hour period following the relocation.

**Recording point: Annex B box 24 and 28.**

101. The notification to the detained individual of the reason(s) for their being located in Rule 40 or Rule 42 accommodation must be provided in writing and explained orally (see paragraph 104). It is the responsibility of Home Office and centre service provider staff operating in these facilities to take all reasonable steps to ensure that all processes and communications between staff and the detained individual are fully understood. Interpretation services must continue to be used for all essential interactions (see [DSO 02/2022 Interpretation Services and use of Translation Devices](#)).
102. The individual must be provided **with sufficient information about the reason(s), and the evidence relied on, for seeking authority to remove them from normal association to enable them to understand the decisions (see paragraph 104)**. As noted, where the detained individual asks for the notification to be sent to their legal representative, this must be done as soon as possible including by email or fax (where the details are reasonably accessible). The person authorising the use of Rule 40 or Rule 42 will be responsible for responding to any points specifically related to the use of Rule 40/42.

**Recording point: Reason for relocation to be recorded Annex B boxes 10 – 23 and notified to the detained individual within 2 hours of being relocated. The detained individual must be given a copy of Annex B box 10. Annex B boxes 26 - 27 must be completed.**

103. If detailed information about the reasons for their relocation is withheld from the detained individual, the disclosure to the individual must include the reason for doing so (e.g. a statement explaining that information has been withheld for crime prevention purposes). If the essence of the information can be given without infringing the relevant reason for withholding it, then a summary of the information should be given to ensure that withholding is limited to what is necessary in all the circumstances. The withholding of information is exceptional so must be justified by appropriate reasons. These can include (but are not limited to) the need for crime prevention, on the advice of the responsible clinicians to safeguard the health and welfare of the detained individual, or for reasons of safety and security of others (including information that could be used to identify individuals that may be placed at risk by disclosure). However, written reasons for the relocation must still be given to the individual in compliance with Rule 40(6) where Rule 40 is applied.

104. The DCO providing the written notification should verbally explain the reasons to the detained individuals, in a language they can understand using interpretation services where necessary. The reasons for any delay in providing interpretation services must be fully documented on Annex B.
105. The DCO must confirm, in writing, that they believe that the detained individual has understood the reason why they have been located under either Rule and the evidence that has been relied on (see para 62). If the DCO is not satisfied that the individual has understood, that must be recorded. If the difficulty in comprehension is thought to arise from mental health impairment or a lack of capacity for some other reason (such as use of illicit substances) then this should be recorded at Annex B and the DCO should take all reasonable steps to support the individual to enable them to understand, communicate and make their own decisions. These may include paraphrasing, using simple language to explain documents, options and consequences of decisions, and using interpretation services if the person is not fluent in English.
106. Staff should consider the situation in which the engagement with the individual is taking place, for example whether there is background noise or other distractions and whether the individual has just taken medication or may be hungry and so unable to concentrate. The time of day may be relevant as some people are more alert or engaged at different times in the day.

**Recording point: Annex B boxes 24 - 25.**

107. The parties listed below must be notified, by the centre service provider, of any occasion on which an individual is managed under either Rule 40 or 42. DC Rules 40 (5) and 42 (6) require the Independent Monitoring Board (IMB), medical practitioner and manager of religious affairs to be notified without delay. For the parties listed below, this must happen as soon as is operationally practicable (but no later than 2 hours after an individual is relocated under Rule 40 or 42 accommodation):
- Detention Services Compliance team (Compliance team) Manager or Deputy Manager (or Compliance team senior on call officer if out of hours) must always be notified by phone or in person in the first instance.
  - Detention Engagement Team (DET). The centre service provider must complete an IS91RA Part C form to notify DET<sup>5</sup>.
  - Service provider Centre Manager/Duty Manager
  - Independent Monitoring Board (IMB) – without delay

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<sup>5</sup> Detention Engagement Team to notify the case manager - in working hours - after being notified themselves.

- Medical practitioner – without delay (in practice, this should be the healthcare practitioner within 30 minutes and the healthcare manager as soon as practicable)
- Manager of religious affairs/head of chaplaincy – without delay (in centres in which no out of hours/on call facility exists, this should be done by email without delay and followed up by telephone as early as possible the next working day)

108. The notifications at paragraph 107 must be made via the IS91 RA Part C form (this includes the Compliance Team, to accompany the phone call notification). The DET team will then forward the IS91 RA Part C by email to the relevant dedicated casework generic inbox. Completion of the notification to the above parties must be recorded, confirming the method, time and date of each notification. A copy of the completed Annex B must be sent to both the Compliance and DET teams by the officer responsible for notification.

**Recording point: Annex B boxes 30 - 36.**

109. Additionally, centre service providers must notify the Detainee Escorting Population Management Unit (DEPMU), via an IS91RA part C form, of any instance of an individual being managed under Rule 40 or 42. The centre service provider should detail the reason for the action and any associated risk information that may affect the future management of the detained individual on the IS91 RA Part C. If subsequently the removal from association or temporary confinement is found not to have been appropriate, then this should be notified to DEPMU, the local Compliance Teams, and DET via an IS91RA part C. In accordance with DSO 08/2016 – Management of adults at risk in immigration detention - all communications relating to individuals being managed under this policy must clearly identify the individual as an adult at risk. In all instances where an IS91 Part C has been completed, the DET team must forward the form by email to the relevant dedicated casework generic inbox. In all cases of use of Rule 40 or Rule 42, DEPMU will be responsible for updating Atlas.

### Extension of relocation

110. Where the use of Rule 40 or 42 is authorised to continue beyond the initial 24-hour period, the centre service provider must provide the detained individual with sufficient information, in writing, about the reasons, and the evidence relied on, for seeking authority to extend removal from association/confinement. All the general requirements in relation to notification and making representations detailed above continue to apply. In relation to Rule 42, if confinement needs to continue beyond 24 hours, a copy of the direction to continue the confinement beyond that point must be given to the detained person by the 27th hour (i.e. within 2 hours of the extended confinement).

**Recording point: Annex B boxes 37 - 43. The detained individual must be given a copy of Annex B box 37.**

## Representations and complaints

111. An individual maintains the right to make representations when managed under Rule 40 or 42. In circumstances in which mental impairment, mental disability or lack of mental capacity is confirmed, in line with [DSO 04/2020 'Mental vulnerability and immigration detention'](#), relevant support and adjustments should be put in place to ensure that the detained individual is able to understand their right to make representations. Any representations made to challenge the decision to invoke or to continue the use of Rule 40 or 42 must be taken into account when assessing the need to continue to use either rule. Any representations must be considered by the multidisciplinary team and recorded in writing. If representations are made by the detained individual and they wish for those to be sent to their legal representative, that must be done as soon as practicable. The multi-disciplinary meetings must have formal minutes which will be written and stored locally by contracted service provider staff. In the case of a detained individual in a RSTHF, any necessary multi-disciplinary meeting is likely to involve the contracted escort service provider, Healthcare, ECMT with the responsible caseworker. This should include consideration of any safeguarding issues that may arise.
112. In addition to the making of representations to the decision-makers, all individuals have access to the complaints process set out in [DSO 03/2015](#). As set out in [DSO 04/2020](#) any concerns of lack of mental capacity should be brought to the attention of healthcare where “there are indicators of disability arising from mental impairment or of a mental health condition. Contracted service providers operating the centre must put in place any steps or adjustments required to ensure that any individual managed under Rule 40 or Rule 42 understands the complaints process.” Complaint forms must be available to individuals being managed under Rule 40 or 42.

**Recording point : Annex B box 28 or 48 as appropriate.**

## Notification of return to association

113. When an individual is returned to normal association all parties listed at paragraph 107 should be notified by the centre service provider within the time periods set out at paragraphs 107 - 109. The completion of this action should be recorded, confirming the method, time and date of notification to each party. This must also be communicated via an IS91RA Part C confirming date/ time of return to association. DEPMU, the local Compliance Teams, and DET must be notified of such instances via the IS91 RA Part C form. DET will then forward the IS91RA Part C by email to the relevant dedicated casework generic inbox.

**Recording point: Annex B boxes 64 - 70.**

## Monitoring, engagement and review

114. Those in detention who are being managed under Rule 40 or 42 must be monitored routinely throughout the day and night, to assess their safety and wellbeing and to

inform consideration of whether the need for Rule 40 or 42 remains. As well as monitoring the detained individual, all efforts must be made to actively engage with them, **with the aim of reducing the length of time in Rule 40 or 42 accommodation to the minimum necessary**. Officers assigned responsibility for the care and management of those managed under Rule 40 or 42 must be trained to deal with difficult situations and to form constructive relationships with detained individuals encouraging changes in behaviour. An appropriately trained assigned officer must monitor an individual being managed under either Rule 40 or 42 at least four times every hour for the first two hours. Frequency of monitoring must then be reviewed with subsequent monitoring periods agreed between the Compliance team and the centre service provider. Individuals being managed under Rule 40 must continue to be observed at least once every hour at irregular intervals and an individual being managed under Rule 42 at least four times every hour at irregular intervals. It should be borne in mind when setting the frequency of monitoring that safety and security concerns must be balanced against the intrusiveness of monitoring.

115. A detained individual on an open ACDT should be managed under Rule 40 or Rule 42 only in **circumstances where use of the rule is deemed necessary, having considered the potential adverse effect on the individual**. Where an individual on an ACDT plan is located in Rule 40 or 42 accommodation, an ACDT review must be conducted within 24 hours of being located in Rule 40 or 42 accommodation; however, any statements of intent to self-harm or a credible belief the individual may self-harm should prompt an immediate ACDT review. The type and level of support required and the frequency of any conversations or observations must be maintained at least as originally detailed on the ACDT care map. Where possible, ACDT observations of any individual located in Rule 40 or Rule 42 accommodation should be set at a minimum of five times per hour at irregular and unpredictable times (so not, for example, always on the hour or at quarter past the hour). Whilst the maximum number of ACDT observations is four per hour, **five observations per hour** will need be conducted in these limited circumstances in line with Rule 40/ 42. Observations should be at least as frequent as they would be if the detained individual's ACDT were being monitored in normal association. Observations must be recorded on both the Daily Activity Record at Annex C and in the ACDT booklet (see [DSO 01/2022 – ACDT](#)).

116. All staff monitoring/visiting the detained individual must record their observations of the individual. Monitoring of those in Rule 40 or 42 accommodation must include as a minimum:

- Observation
- Interaction (if not visited in the last four hours)

- Recording completion of any activity agreed and set out in the regime assessment.

117. The outcome of all monitoring must be recorded.

**Recording point: Annex C.**

### Multidisciplinary team

118. For each individual managed under Rule 40 or Rule 42, a multidisciplinary team must be established by the contracted service provider. The team must include:

- the service provider Centre/Duty Manager,
- representatives from Healthcare,
- Detainee Custody Officer working in the unit within which the respective Rule 40/42 room is located (for example, the care and separation unit)
- the DS manager, and
- any other relevant party according to the individual circumstances of each case.

119. If no DS manager is available on-site, the DS on-call manager must review the paperwork and actions agreed. The IMB should be invited either to attend or to review paperwork and actions agreed. The team must meet daily, and the first review must be held within the first 24 hours of relocation to Rule 40 or 42 accommodation. Dates of meetings and the names of attendees must be recorded. **Recording point: Annex E (new form for each day a detained individual is subject to Rule 40 or 42).**

120. Where behaviour/compliance allows, the detained individual should be in attendance for all, or part, of the meeting. Detained individuals should be excluded only from discussions involving sensitive security information or out of due consideration of their wellbeing, safety or security or that of others. As directed in DSO 04/2020 'Mental vulnerability and immigration detention', in circumstances in which mental impairment, mental disability or lack of mental capacity is confirmed, appropriate adjustments should be made to ensure that the detained individual is able to understand and contribute as fully as possible to the review, and interpretation services should also be used for those who require it.

121. Detained individuals should be made aware of the standards of behaviour that are expected of them before they can move back to normal association, based on the personal circumstances of the individual, including the reasons for their relocation. This should be discussed at the multidisciplinary meeting as part of the dynamic assessment of the detained individual's behaviour and ongoing justification for use of Rule 40 and 42. Visitors attending Rule 40 or Rule 42 accommodation in their



capacity under the Detention Centre Rules (contracted service provider manager, contract monitor and medical practitioner) are required to have visual sight of any detained individual who declines to speak to them, to assist in identifying any overt welfare concerns. Any such concerns should be highlighted and discussed with the multi-disciplinary team present, including any agreed actions. A record of this discussion and any agreed actions must also be kept.

122. The purpose of the multi-disciplinary review is:

- to determine whether removal from association or temporary confinement remains necessary for the detained individual.
- to discuss the availability/suitability of any alternatives,
- to determine the appropriate level of access to regime, and
- to discuss and agree plans to return the detained individual to association.

123. Any differences of opinion should be recorded, and decisions should clearly indicate who has made or agreed those decisions.

**Recording point:** All decisions, actions and observations must be recorded at **Annex E**. A copy of the review's findings (subject to any redactions involving sensitive security information– see paragraph 120) must be shared with the detained individual and, if requested, sent to his/her legal representative.

124. The officer(s) responsible for managing an individual located in Rule 40 or Rule 42 accommodation must record all regime activity and make a note of any actions and/or behaviours that they have observed during the course of the day. This information must be recorded and actions taken to progress the plan agreed at the multidisciplinary review must also be recorded. **Recording point: Annex E.**

## Regime requirements

125. For those managed under Rule 40, only those activities that involve normal association with other detained individuals should be curtailed automatically. Subject to risk assessment and following discussion by the multi-disciplinary team, detained individuals held in Rule 40 accommodation may be permitted to associate with other individuals who are being held under Rule 40 and have limited access to activities where appropriate. The degree of association will be dependent on a case-specific assessment that takes account of all relevant factors including the practicability of a 'staged return' to wider association by degrees in appropriate cases.

126. In all cases, every effort should be made to provide the detained individuals with access to other elements of the centre regime, such as physical activities and prayers/ religious services. The appropriateness and practicability of access to the services should be considered for each detained individual on a case-by-case basis

taking account of all potential risks and benefits. The regime for the detained individuals should be reviewed daily by the multi-disciplinary team to check it remains appropriate. In all circumstances, the detained individual must be able to contact a legal representative, a minister of their chosen religion and the centre welfare officer/team as soon as is operationally possible following relocation. A record must be made of when these appointments were offered.

127. For detained individuals being managed under Rule 42, access to regime outside their room will be precluded as appropriate to the reasons for the decision to use Rule 42.

**Recording point: Annex E boxes 10 – 20.**

128. [DSO 8/2012 - “Mobile Phones and Cameras in Immigration Removal Centres”](#) - sets out the circumstances in which, following a risk assessment, detained individuals may be denied access to a mobile phone. Those circumstances include cases in which current disruptive or threatening behaviour provides evidence that the individual may misuse the mobile phone and/or there are reasonable grounds to believe that the individual may use the mobile phone to cause harm to him or herself or another person. That guidance applies equally to individuals being relocated to Rule 40 or 42 accommodation. Consistent with the existing guidance, individuals should not have their phones removed automatically on the basis of use of these measures. If access to a mobile phone is denied, individuals must continue to be able to contact their legal representative by telephone using Centre resources, such as landlines telephones.

**Recording point: Annex E box 10.**

129. If it is not possible or appropriate for a detained individual to attend a particular location within the centre to access facilities, then consideration should be given to bringing aspects of the service to the individual e.g. purchasing items from the shop on their behalf, bringing books from the library etc.

130. The regime available to those managed under Rule 40 or 42 should be accessible within the centre and managed by the contracted service provider. The authorising manager must make an initial assessment of the regime to be offered to the detained individual, within 2 hours of relocation to Rule 40 or 42 accommodation, and record this assessment at Annex E. The degree of access to regime must be reviewed daily by the multidisciplinary team (see paragraph 122). As a minimum, the regime must comply with contractual requirements for individuals managed under Rule 40 or 42.

## Visits

131. The following parties must visit and speak to an individual being managed under Rule 40 or 42 **every 24 hours**:

- Compliance team



- Medical Practitioner
- Contracted service provider Centre Manager (or Duty Manager)
- Member of the Religious Affairs Team
- An officer of the Secretary of State

132. Under the terms of rule 62 (1) of the DC Rules 2001 a member of the IMB will also visit individuals who are held under Rule 40 and 42 (see paragraph 133 below) within 24 hours of being removed from association or placed in temporary confinement. A representative from the Home Office DET and the Activities staff should also visit, as appropriate.

**Recording point: all visits must be recorded at Annex D (new form for each day a detained individual is managed under Rule 40 or 42).**

133. The purpose of the visits is to assess that detained individuals are being treated fairly, with dignity and decency, as well as safely. Also, visits are a means to ensure that individuals have the opportunity to raise any concerns that they may have. The wellbeing, behaviour and attitude of the detained individual should also be assessed to inform decision-making. Any new risk factors, as well as anything of note, that might address/de-escalate behaviour and any concerns about well-being, regime access etc. must be raised with the contracted service provider Duty Manager immediately and recorded on the relevant Daily Visitors Record.

**Recording point: Annex D.**

134. Whenever possible and where safe and appropriate to do so, the visits should be conducted in a manner that offers the detained individual a chance to speak confidentially. Unless inappropriate for reasons of safety or security, all visits should take place out of the hearing of DCOs. Wherever possible and appropriate, staff and visitors should speak directly to the detained individual and not simply record their observations. However, sensitivity should be shown to any preferences expressed by the individual in relation to communication.

135. Healthcare will be present for any planned relocation. In the event of an unplanned relocation, healthcare must attend without delay when called, including if an individual has been non-compliant, sustained an injury or been involved in a fight or an assault. Additionally, a medical practitioner should visit a detained individual to complete a risk/health screening within 2 hours of any relocation under Rule 40 or 42, unless this is not operationally possible - for example if there are no medical practitioners available or all practitioners are engaged on urgent work elsewhere. This screening should include considering any health causes for the individual's behaviour and making any appropriate referrals.

136. This visit **must** be undertaken within 24 hours and the reason for any such visit not happening within two hours must be documented. If force was used to relocate a detained individual under Rule 40 or 42, healthcare staff must examine the individual as soon as possible after the relocation and record any findings on the healthcare file. Visits should be every 24 hours thereafter, **as a minimum**.
137. In addition to the purpose set out in paragraph 133, a medical practitioner should also complete a medical assessment of the detained individual to assess his/her health. If healthcare assess continued detention in Rule 40 or 42 accommodation as being injurious to the health of the individual, they are obliged to bring this to the attention of the centre manager (see also paragraph 115 regarding detained individuals at risk of suicide or self-harm). The reasons for this decision must be detailed by healthcare in form IS91 RA Part C and emailed to both on-site Compliance and DET. Other than the initial visits or in an emergency, visits should take place during daytime hours where possible.
138. In addition to the purpose set out in paragraph 133, DET staff should seek to pursue/resolve any immigration issues that remain outstanding and that may be causing concern for the detained individual, during their visits.
139. As indicated above, and as required by Rule 62 (1) of the Detention Centre Rules 2001 a member of the IMB must visit a detained individual in Rule 40 or 42 accommodation within the initial 24-hour period, and thereafter, during their routine visits to the centre. However, the IMB does not need to visit the detained individual if they have been taken back out of Rule 40 or 42 within the first 24 hours and before the initial visit has taken place.
140. For individuals located under Rule 40 accommodation, social and legal visits using escorts should be facilitated so long as there is no threat of harm to either the detained individual or others (on the basis of an individual risk assessment by the service provider). Consideration should be given to the use of closed visits, where appropriate, in accordance with [DSO 04/2012 Visitors and Visiting Procedures](#).

## Returning to association

141. Planning for return to normal association must begin as soon as an individual is moved into Rule 40 or 42 accommodation. Individuals managed in Rule 40 should be returned to normal association as soon as the risk that resulted in them being separated has been sufficiently mitigated, and for those in Rule 42, once the refractory/violent behaviour has ceased. For individuals managed under Rule 42, de-escalation to Rule 40 accommodation may be appropriate in the first instance. This de-escalation into Rule 40 accommodation, needs to be part of a planned process and requires appropriate DS authority.
142. **Healthcare staff must assess the physical, emotional and mental wellbeing of the detained individuals and whether any apparent clinical reasons advise**

**against the continuation of separation.** DC Rule 40(7) provides that the contracted service provider can arrange for the detained individual to be returned to normal association at his discretion, and shall do so if the medical practitioner advises that it should be done on medical grounds. In accordance with DSO 08/2016 Management of Adults at Risk, where the medical practitioner recommends a detained individual to be returned to normal association on medical grounds, the reasons for this decision must be detailed by healthcare in form IS91 RA Part C and emailed to both on-site Compliance and DET and DEPMU.

**Recording point: Annex B boxes 49 - 53.**

143. The multi-disciplinary team must give full and careful consideration to any recommendation that a detained individual being held under Rule 42 resumes association on medical grounds made by a registered medical practitioner or registered nurse working with the centre.

**Recording point: Annex B boxes 49 - 53.**

144. In such cases, continued separation can only be justified if there is a clear, evidenced and documented reason for maintaining it. This decision will be considered and made by the multidisciplinary team.

**Recording point: Annex E box 24.**

145. If an individual refuses to leave Rule 40 or 42 accommodation, the multidisciplinary team must consider how best to respond. A note must be made of the individual's reasons for not wanting to return to association and that information taken into account in decision-making. All actions must be considered on a case-by-case basis and appropriate steps taken to mitigate any issues raised by a detained individual so far as possible. Alternative options, such as a detained individual's location, must be considered (see paragraphs 2-3), such as refusals to return to association for fear of their personal safety.

**Recording point:** Any decision to return the individual to normal association must be recorded by the service provider Centre Manager (or duty manager). **Annex B boxes 54 - 60.**

146. When an individual is to be returned to association, a care/reintegration plan must be completed by the multi-disciplinary team as soon as possible. This should be put in place and discussed with the detained individual prior to transferring back to normal association, although resumption must not be delayed unduly to facilitate this process (For those with an open ACDT, see para 115).

**Recording point: Annex F.**

147. Any property put in storage while an individual is in Rule 40 or 42 accommodation (paragraph 99) must be returned once they return to association after it has been risk assessed and only if deemed appropriate to do so.

## Maintenance of records

148. An accurate written record of decisions and observations **must** be created when the initial decision is made to place an individual under Rule 40 or 42 accommodation and updated appropriately for the entire duration of the individual's management under either Rule.

149. The file comprising of all Annexes A – E, "the document", holds information relating to an individual who is located on a continuous basis under either Rule 40 or 42. The Rule that the detained individual is located under may change during this continuous period of time. When the Rule under which a detained individual is located changes, a fresh authorisation is required with the reasons for any such changes recorded. The Annex B relating to the original DC Rule (either Rule 40 or 42) should be updated to indicate the change: **Recording point Annex B Boxes 54 & 55**. The fresh authorisation (**the new Annex B should reflect the recorded in Box 55 of the previous Annex**). This will be a fresh decision (Annex B) that requires its own dedicated audit trail. The document is not closed until such a time as the individual is returned to normal association.

150. The document must, at all times, be kept in the residential or care and separation area in which the individual is held at all times. It must be completed in full and all interactions/observations must be recorded immediately by each person who interacts with the detained person. All entries must be clear, concise, factual and expressed objectively. Where an individual is on an open ACDT, all relevant observations made during monitoring must also be recorded in the ACDT plan.

151. The centre service provider must retain and store all records relating to use of Rule 40 or 42 in accordance with the requirements of UK GDPR. Home office Immigration Enforcement staff should have access to these records at all times.

## Reporting on the use of Rule 40 and 42/ STHF Rule 35/37

152. Each centre must have in place arrangements for monitoring the use of Rules 40 and 42 accommodation in an IRC and Rules 35/37 accommodation in STHFs. Contracted Service providers must submit daily reports on the use of such accommodation to the DS compliance manager (HEO), DS area manager (SEO) and delivery manager (G7) or their equivalents for the IRC, or ECMT Compliance HEO, SEO and G7 for RSTHFs.

153. Centre service providers must compile monthly summary data on the number of individuals managed in Rule 40 and 42 or 35/37 accommodation, the number of occasions on which Rules 40 and 42 have been used and the length of time spent in Rule 40 and 42 accommodation. Centre service providers must ensure they follow

the supplementary guidance provided with the monthly summary data template. This report must be completed on a standard template provided by the Head of Detention Operations and, as a minimum, include a breakdown of the use of Rules 40 and 42 by:

- protected characteristics, where known;
- detained individuals being managed on an ACDT plan, and;
- detained individuals being managed under the Adults at Risk in Immigration Detention policy.

154. This monthly report must be sent to the relevant Compliance delivery manager by no later than the 7<sup>th</sup> day of the following month. There is an expectation that the Compliance delivery team reviews the monthly report for accuracy before forwarding it to (inbox: **email address removed as official - sensitive**) by no later than the 14<sup>th</sup> day of that same month.

## Training

155. All operational staff (contracted service provider and Home Office) must complete the most current Rule 40/42 awareness session that supports this instruction, annually, to ensure they are up to date and well informed with any changes to the policy and guidance.

156. Contracted service provider staff must cover this subject in their localised training both for established staff and new starters.

157. A record must be kept by both Home Office and contracted service provider staff of training attendance.

## Audit

158. An annual self-audit of this DSO is required by contracted service providers to ensure that the processes are being followed and recorded. This audit should be provided to the DS compliance manager (HEO), DS area manager (SEO) and delivery manager (G7) or their equivalents for the IRC, or ECMT Compliance HEO, SEO and G7 for RSTHFs after completion.

159. The DS Compliance Team must also conduct an annual audit against their responsibilities stated within this DSO for the same purpose.

# Revision History

Review date	Reviewed by	Review outcome	Next review
January 2020	S. Ali	Update to include guidance on restrictions and dirty protests	January 2022
August 2020	F. Hardy	Update on managing those with mental vulnerabilities and annual audit requirements for centre service providers and Home Office teams.	August 2022
March 2024	R. Lynch	<p>Updated Annex E to ensure detained individuals' participation and understanding is clearly recorded</p> <p>Updated Annex B (boxes 8, 71 – 74) to ensure appropriate monitoring and auditing of removed items</p> <p>Considerations for Home Office teams to visit detained individuals under DC Rule 40/42 more than once per day.</p> <p>Clarifying the individual responsible for obtaining relevant healthcare information and known risks.</p> <p>Guidance on the transfer of individuals under Rule 40/42</p> <p>Guidance on the removal of bedding and furniture items and the use of specialist alternatives and notification requirements.</p> <p>Updated guidance on dirty protests.</p> <p>Removed reference to HMPPS</p>	