



Law Centre (NI)

Home Office consultation: Draft Short Term Holding Facility Rules

Law Centre (NI) response

April 2016

About Law Centre (NI)

1. Law Centre (NI) works to promote social justice and provides specialist legal services to advise organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to our member organisations in different areas of law. We provide specialist legal assistance to children and young people who have been trafficked and also assist adult victims of labour exploitation and Forced Labour. Law Centre (NI) chairs the Racial Equality Forum's Immigration Sub Group and is a member of the NI Strategic Migration Partnership, the Refugee and Asylum Forum and the Home Office Asylum Stakeholders Forum.
2. Law Centre (NI) has provided training on trafficking indicators to Tascor staff at Larne House Short-term Holding Facility (STHF) and Dover STHF.

Introduction

3. We welcome the opportunity to respond to this consultation on the draft Short Term Holding Facility Rules. Since the opening of Larne House STHF in 2011, we have consistently voiced our concerns that the Detention Centre Rules (2001) do not apply to the Short Term Holding Facility. This has left a gap in regulation of procedures and practices.¹ It is 10 years since the Home Office first issued draft Rules application to STHFs and the excessive delay in bringing forward these draft Rules is extremely regrettable. We welcome that efforts are now underway to close this gap.
4. Law Centre (NI) has also consistently voiced our concerns about the risk of victims of human trafficking inadvertently being held in places of detention including at Larne House STHF. For example, in our response to the Council of Europe's Expert Group on Trafficking in Human Beings (GRETA), we raised concerns about processes for identification of potential victims of trafficking and training for staff in trafficking indicators.

Extract from Law Centre's response to the Second Evaluation Round and NI Perspective (2015)

We repeat the same concern that we highlighted to GRETA in 2011 about compliance with Article 10 of the Convention: there is a real risk that potential victims of trafficking are not being identified at Larne House Short-Term-Holding Facility. This facility was opened in 2011 and can accommodate up to 19 male/female adult detainees for a period of up to 5 days (or 7 in certain circumstances). We understand that there were 2,035 'detainee movements' in 2014. This is a significant number given the relatively small size of the jurisdiction.²

We have a concern that the detainees may not be accessing specialist immigration advice. Until 1 April 2015, the Law Centre operated a daily immigration advice line, however, we received only a very small number of calls from detainees

¹ For example see: LCNI response to *Parliamentary Inquiry into Immigration Detention* (October 2014)

² Independent Monitoring Board, 'Glasgow, Edinburgh and Larne STHF'
<http://www.imb.org.uk/reports/2014-annual-reports/page/2/> pg 19

Earlier in 2015, the Law Centre received information through our advice line from an immigration solicitor who unintentionally encountered a victim of trafficking in Larne House. He advocated that the detainee was a victim of trafficking and should be referred into the National Referral Mechanism. A referral was made and the detainee was released from detention. Without the solicitor's intervention, it is very likely that the detainee would continue to be detained before being deported.

The Law Centre has recently provided training THB on to staff at Larne House. We highlighted the need for clarity about procedures for staff who identify indicators of trafficking.

- We recommend that GRETA seeks the following clarification from the Home Office:
 - what training the Home Office has provided to detention facility staff on THB;
 - what procedures are in place where potential victims are identified by detention staff?;
 - how many potential victims of trafficking have been identified in Larne House?

5. The draft STHF Rules provide an opportunity for some of these concerns to be addressed, in particular in relation to ensuring that procedures are in place to assist with the identification of persons who should not be detained. Our experience of working with Tascor staff is that there is a genuine interest in ensuring that victims of trafficking obtain the support they need. We believe that these Rules should assist with this process.

Summary of key points

6. The STHF Rules should ensure that detainees are systematically informed of their rights and entitlements in detention as well as information about bail procedures, etc.
7. The STHF Rules should also outline categories of persons who should not be detained and should also ensure that there are systems in place to ensure that such persons are promptly identified and released from detention.

Rule 6

8. Rule 6 permits holding rooms to be used for detention for up to 48 hours. This period can be extended by the Secretary of State in exceptional circumstances. 48 hours is an excessive period of detention in such a setting. Further, the majority of the safeguards contained in these Rules – e.g. relating to the sufficiency of sleeping accommodation, medical screening, access to visitors - do not apply to holding rooms.
 - We recommend that holding rooms should be used for a maximum of 6 hours. If detention is deemed to remain necessary after that period, the detainee can then be transferred to Larne House STHF.

- In the event that the Home Office does not accept our recommendation of reducing the maximum period to 6 hours, then all the safeguards listed at 6(4)(a-o) should apply to holding rooms.
- Further, the Rules should define 'exceptional circumstances'.

Rule 8

9. Paragraph 8(1) of Rule 8 creates a duty to make information 'readily available'. In cases involving detained children and detainees who appear to have difficulties with comprehension, there is a duty on the manager to explain the information.
10. Our experience is that detainees usually have very little idea why they are in detention and what the procedures are within the STHF.
 - We recommend that the 'duty to explain' should extend to all detainees.
 - We recommend that detainees should be provided with written information about the Rules, including procedures for securing bail. This information should be provided in a language that the detainee understands and should be communicated to detainees who are illiterate or disabled. The information should include an easy read version of the Rules, a list of legal representatives and also information about welfare e.g. access to Lifeline and contact details of detainee visitor groups.
 - Accordingly, we recommend the following amendments to the draft Rules:
 - Subsection 8(1) is extended to include an easy read version of the Rules, a list of legal representatives and welfare information;
 - The words 'in the following cases' are deleted from 8(2);
 - Subsection 8(2)(a-b) is removed;
 - Subsection 8(1)(d) is amended to refer to translation of all types of information listed at 8(1).

Rule 10

11. Our experience is that the loss of belongings can cause a lot of distress for detainees.
 - We therefore recommend that Rule 10 is amended to place a duty on detention staff to:
 - Take reasonable steps to assist a detainee to access / be reunited with their belongings (for example, the detention staff might notify the legal representatives who could then make arrangements for belongings left behind in accommodation to be packed and delivered/stored);
 - Make reasonable enquiries must be made before disposing of a detainee's property, e.g. by checking with legal representative / family members.

Rule 11

12. Rule 11 provides that a full search may not be carried out within the presence of the opposite sex – 11(3)(b).
13. A number of detainees may have experienced abuse in the past e.g. at the hands of 'agents', traffickers, enforcement officers in their home countries. This may have included gender-based violence.
 - We recommend that this Rule is amended to give all detainees the right to request that the searching officer is of the same gender.

Rule 12

14. Rule 12 provides that a person being taken in or from STHF 'must be exposed as little as practicable to public observation' so as to 'protect that person from curiosity and insult'.
15. This is welcome. Immigration detainees have not been charged with or convicted of a criminal offence. The routine use of handcuffs, for example, is not justifiable.
 - We recommend that Rule 12 is amended to specifically provide that handcuffs should not be routinely used in transported a person to a SHFT.

Rule 13

16. This Rule requires the Secretary of State to provide a detained person with written reasons for their detention.
17. This is welcome. Detainees may not always know what documents they have signed as they enter detention. This can make it difficult for legal representatives to access copies of relevant documents (e.g. a request to make a voluntary return).
 - We recommend that the statement of reasons for detention should be provided in the detainees 'first' language and/or in an accessible format.
 - We also recommend that an additional subsection is added to Rule 13 that provides that all detainees are given a copy of any paperwork they have signed.

Rule 15

18. This Rule requires that detainees are provided with separate sleeping accommodation from detained person of the opposite sex. This is welcome. It is essential that women feel safe while they sleep.
 - We recommend that this protection is expanded to ensure that sleeping accommodation for females is not accessible to male detainees.

Rule 16

19. This Rule refers to family life of detained families. We seek an assurance that Larne House will not be used to detain children (whether with their parents or not).

20. The whereabouts of partners is often a key cause of worry for detainees.

- We recommend that this Rule should prohibit the detention of children at Larne House.
- We recommend that this Rule is amended to give detainees the right to obtain information about the whereabouts of a family member who may have been detained and/or released.

Rule 18

21. Detainees should enjoy some autonomy about when they choose to eat and drink and fresh fruit and water should always be on offer.

- We recommend that this Rule is amended to ensure that food and drink is 'accessible to' detainees as opposed to 'provided to'.

Rule 21

22. This Rule gives detainees an opportunity of spending at least one hour in every 24 in the open hours. We believe that detainees should always have access to open air.

Rule 24

23. This Rule provides that detainees have access to outside contacts as long as this does not 'prejudice the interests of the security of STHF. We understand that detainees' internet access is limited. Our understanding is that some websites – including email packages, news sites and social media – are inaccessible. This is likely to cause of much frustration and also considerably interferes with the detainee's ability to maintain contact with friends, family members, NGOs and support organisations.

- We recommend that this Rule is amended to ensure that STHFs generally adopt a permissive approach to internet use.

Rule 25

24. This Rule relates to correspondence and provides that detainees may (at their own expense) send and receive as many letters as desired and are generally permitted to send and receive faxes 25(1). This is welcome. The Rule is, however, somewhat antiquated given greater reliance on other forms of communication. The Rule requires updating given that the primary means of communication for many people today is email and social media. As a discrete point, Rule 25(2)(b) permits detainees to write to their MPs for free: this should also apply to MLAs.

Rule 27

25. This Rule relates to official interviews conducted in the STHF premises including interviews with (foreign) consular officials. This interview may be of significance to a detainee's legal representative.
- We recommend that this Rule should be amended to place a clear duty on detention staff to inform the detainee's legal representative within a reasonable time period before any such interview takes place.
 - In addition, where the legal representative is not present during these interviews we recommend that the Rules should make provision for all Rule 27 interviews to be taped and for copies to be made available to legal representatives as requested.

Rule 28

26. This Rule provides that detained person may meet with their legal adviser. We acknowledge that Larne House publicises the contact details of legal representatives, including through the display of posters, it is our understanding that few detainees actually avail of their right to seek free advice. This is of concern because of the risk that vulnerable persons e.g. potential victims of trafficking, may be detained. Early involvement of a legal representative will help all parties be satisfied that detention is lawful.
- We therefore recommend that this Rule is amended to place a clear duty on detention staff to inform detainees of their right to seek free legal immigration advice and to assist detainees in accessing legal advice where necessary.

Rule 31

27. This Rule relates to medical care. It gives detainees the right to request an independent healthcare professional and requires detainees to pay any expenses. We object to this. We note that there is a potential conflict of interests where the healthcare professional is a STHF staff member (as they are in Larne House). Therefore, it is essential that there is no obstacle that prevents a detainee access an independent (NHS) healthcare professional where they wish.
- We recommend that 31(9)(a) is removed.

Rule 32

28. This Rule places a duty on healthcare professionals to report any cases of detainees who may have had experience of torture. This Rule seeks to provide assurance that potential victims of torture are appropriately identified. In such circumstances, it is important that the duty should apply to all detention staff who may also identify particular vulnerabilities in the course of their daily interaction with detainees. Further, this Rule should require the STHF to have procedures and policies in place to assist with the identification and reporting of these specific categories.

- We recommend that this Rules is amended to extend the duty to all staff in the STHF and not just to healthcare professionals and that appropriate policies and training are in place to ensure that staff are fully appraised of their obligations in this regard.

29. Moreover, the duty to report should apply to all the categories of people who should not be detained and not just to victims of torture. These categories are currently found in Home Office Policy (Enforcement Instruction Guidance section 55.10).³ These categories should be reflected in these Detention Rules so that it is clear that the following people are considered not suitable for detention except in very exceptional circumstances (55.10).

- Unaccompanied children and young persons under the age of 18
- 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.
- 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
- 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 (see note below)

30. Particular duties should apply to persons who may be potential victims of trafficking. This is in line with the following obligations:

- (i) The Competent Guidance states that a potential victim of trafficking or modern slavery should be released on Temporary Admission/Release unless their detention can be justified on groups of public order⁴ (i.e. limited circumstances').⁵
- (ii) The Home Office's Operational Guidance reiterates that potential victims should be handled in a 'consistent and sensitive' manner. It also notes that consideration as to whether the person is a victim of trafficking should take precedence over enquiries into their immigration status.⁶
- (iii) The Home Office's Frontline Staff Guidance recalls that, while any member of staff may identify a potential victim of modern slavery, frontline staff including detention centre staff must be 'particularly alert to the signs of modern slavery'.⁷ Further, this Guidance requires such staff to complete the relevant e-learning training package on modern slavery.

³ <https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>

⁴ Home Office *Victims of Modern Slavery Competent Authorities Version 3.0* (March 2016) p 57, 115

⁵ Home Office *Victims of Modern Slavery Competent Authorities Version 3.0* (March 2016) p 118

⁶ Home Office *Operational Guidance: Chapter 9: Identifying victims of trafficking* (2009)

⁷ Home Office *Victims of Modern Slavery – Frontline Staff Guidance Version 3.0* (March 2016) p 55

(iv) Article 4 ECHR places a positive duty on State Parties to identify victims of trafficking put into place effective process to do so. Clear administrative procedures are thus essential for compliance.

- We recommend that the Rule should place a duty to ensure that all detention staff receive regular training on identifying these categories (e.g. training on the indicators of human trafficking).

Rule 33

31. This Rule relates to notification of severe illness, injury or death.

- We recommend that this Rule should be amended to ensure that legal representatives are also notified of any severe illness, injury or death.

Rule 34

32. This Rule relates to making requests and complaints.

- We recommend that this Rules is amended to ensure that there is a corresponding duty to ensure that all complaints are investigated and in a fair and timely manner.

Rule 39

33. This Rule places a general duty on every member of staff to comply with the Rules. To promote full compliance with the Rules, training is essential for staff. This would be consistent with the Home Office's requirement that detention staff are trained on modern slavery identification (see above).

- We recommend that this Rule is expanded to ensure that it is a requirement that staff are trained on these Rules and specifically on the identification of those who should not be detained.

ADDITIONAL POINTS

34. At a recent Home Office Asylum Stakeholders Forum meeting, an attendee raised a concern about destitute detainees occasionally being released from Larne House with a travel warrant to Belfast only to find that themselves unable to secure accommodation because the organisation that can provide s.4 bail accommodation is closed. As a result, they risk street homelessness.

35. We believe that the Detention Rules should create a duty on the detention staff to make provision for ensuring that detainees are not at risk of street homelessness prior to release. This may be through staff working in conjunction with accommodation providers prior to detainees leaving STHF where necessary. The opening hours of the accommodation organisation should not result in a detainee being held in detention for longer than is necessary. Prolonging detention for administrative convenience would be unlawful as it would not comply with Home Office guidance requiring staff to ensure that detention is for the shortest possible period of time (Home Office Guidance 55.1.1).

36. Finally, we ask the Home Office to clarify how these rules will be monitored and reviewed. What oversight role is there for Northern Ireland institutions?

For further information about this consultation response contact:

Policy Unit
Law Centre (NI)
124 Donegall Street
BELFAST
BT1 2GY

Tel: 028 90 24 44 01
Fax: 028 90 23 63 40
Text phone: 028 90 23 99 38

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