



## **Detention Services Order 17/2012**

(Replaces DSO 3/2008)

### **Application of Detention Centre Rule 35**

#### **Introduction**

1. The purpose of Rule 35, as set out in the Enforcement Instructions and Guidance, is “to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case”<sup>1</sup>. The Enforcement Instructions and Guidance continues “The following are normally considered suitable for detention in only very exceptional circumstances, whether in immigration detention accommodation or prisons: ...those where there is independent evidence that they have been tortured”.<sup>2</sup>
2. Sub-paragraphs (1) - (4) of Rule 35 of the Detention Centre Rules are in place to ensure immigration removal centre (IRC) medical practitioners can report the likelihood a detainee’s health will be injuriously affected by continued detention, a suspicion a detained person has suicidal intentions, or concern that a detained person may have been a victim of torture, to Home Office responsible officers.
3. This Detention Services Order (DSO) covers all three circumstances in which a medical practitioner may submit a Rule 35 report; although it necessarily concentrates on those reports submitted regarding a concern a detained person may have been the victim of torture.
4. This DSO sets out Home Office policy regarding:
  - a. The preparation and submitting of Rule 35 reports by medical practitioners; and
  - b. The process to be followed by Home Office staff in response to a Rule 35 report.
5. Its purpose is also to ensure that all staff working in immigration removal centres understand the purpose of Detention Centre Rule 35 and are aware of the procedures for recording and dealing with such reports. Cedars pre-departure accommodation is not covered by the Detention Centre Rules but the spirit of this DSO and the processes to be followed should apply to those accommodated at Cedars.

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<sup>1</sup> Section 55.8A Rule 35 – Special illnesses and conditions, Enforcement Instructions and Guidance.

<sup>2</sup> Section 55.10 Persons considered unsuitable for detention, Enforcement Instructions and Guidance.

## Definitions

6. For the purpose of this DSO:

- A medical practitioner is a person who is vocationally trained as a general practitioner and fully registered within the meaning of the Medical Act 1983<sup>3</sup>.
- A responsible officer is an officer responsible for managing an individual's detention, even if they are not the officer undertaking every action on the case. In the rare circumstances that a detainee has not yet been allocated a responsible officer, the Rule 35 responsibilities assigned to the responsible officer should be completed by the person who authorised detention or the duty officer.
- A Home Office Immigration Enforcement Contact Management Team works at the IRC and is managed by the on-site Home Office Immigration Enforcement Contact Manager. Members of the team interact with the detainee face-to-face on behalf of the responsible officer.
- A Removal Centre Manager is the person appointed under section 148(1) of the Immigration and Asylum Act 1999 to be the manager of a removal centre.

## Detention Centre Rule 35

7. Rule 35 of the Detention Centre Rules (2001, No. 238), states that:

- 1) "The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.
- 2) "The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State.
- 3) "The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.
- 4) "The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay.

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<sup>3</sup> Detention Centre Rule 33(1)

- 5) “The medical practitioner shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.”
8. This DSO focuses on Home Office policy regarding:
  - a. The preparation and submitting of Rule 35 reports by medical practitioners (as required by 35(1), 35(2), 35(3), above); and
  - b. The process to be followed by Home Office staff in response to a Rule 35 report (as required by 35(4), above).

### **Requirements from medical practitioners and healthcare staff**

9. Rule 35 reports should be prepared and submitted by medical practitioners only.
10. It is important that nurses and other healthcare professionals are aware that they should report to an IRC medical practitioner any detainee who claims to have been a victim of torture. An appointment with an IRC medical practitioner should be made for detainees who answer ‘yes’ to the torture question during their healthcare screening induction. Appointments should be made as quickly as possible (with interpretation, for example, Language Line, where there are concerns that a person cannot adequately understand or communicate in English). The detainee has to see the medical practitioner in order for an assessment to be made as to whether or not the practitioner has concerns that the detainee may have been the victim of torture. The healthcare team should follow up on detainees who do not arrive for their scheduled appointment.

### **Preparing and submitting Rule 35 reports**

11. Where a medical practitioner working at an Immigration Removal Centre considers that one or more of the criteria in Rule 35 are met (as set out in paragraph 7, above) he/she must complete a clear and legible report using the template provided at Annex A of this DSO and submit it without delay to the on-site Home Office Immigration Enforcement Contact Manager, copied to the Removal Centre Manager. A copy must also be placed on the detainee’s medical record, and provided to the detainee free of charge.
12. When the medical practitioner considers that one or more of the criteria in Rule 35 are met, he/she should explain to the detainee that he/she needs to send this information to the Home Office, and why. Medical practitioners should ask detainees to give their consent to medical information being shared for this purpose (section 2 of Annex A).
13. The medical practitioner is not required to make the legal representatives aware of the issues raised, nor to establish whether the legal representatives are aware or not.

14. All reports must be legible and use clear and easily understood language so that Home Office responsible officers can understand the significance of any evidence provided and are able to make an informed decision when reviewing detention.

**Preparing and submitting a Rule 35 report where the medical practitioner concludes that a person's health is likely to be injuriously affected by continued detention (35(1))**

15. Where the Rule 35 report is completed in accordance with Rule 35(1), medical practitioners should note when they consider that an individual's health is likely to be injuriously affected by continued detention or any conditions of detention by briefly stating the basis, with evidence, for that concern and giving an estimate of the timescale for remedial action. This can relate to both mental and physical health and notes should include a description of the medical issues.

**Preparing and submitting a Rule 35 report due to concerns a detainee may have suicidal intentions (35(2))**

16. Rule 35(2) requires a medical practitioner to notify IRC management of suicide risks to ensure that IRC management know of and can manage the detainee's condition appropriately. A copy of any report to management should be copied to the Home Office Immigration Enforcement contact management team to pass to the detainee's responsible officer.
17. Where the Rule 35 report is completed in accordance with Rule 35(2), the medical practitioner must refer without delay to Detention Services Order 06/2008 and follow the procedures for managing the detainee in accordance with Assessment Care in Detention and Teamwork (ACDT) policies. However, given that an individual may be subject to ACDT for a number of reasons, being subject to an ACDT does not equal a need to raise a Rule 35(2).
18. A medical practitioner must however issue a Rule 35(2) report when they have concerns re: suicidal intent, whether those concerns are based on first hand examination, or if they are concerns based on what they know from current management of the ACDT process (i.e. the extent of the risk is not sufficiently recognised). If the concern is from first hand examination and there has been no ACDT process, it will be appropriate for the doctor to open the process.
19. The report needs to include details of any incidents of self-harm and attempted suicide, any known triggers/causes of the suicidal intentions, the likely effect of placing them on ACDT on their mental health and the likely effect of continued detention. If the medical practitioner believes a mental health assessment is required, this should be completed and the outcome of the mental health assessment included in the Rule 35 report.

## Preparing and submitting a Rule 35 report due to concerns a detainee may have been the victim of torture (35(3))

20. If the medical practitioner is concerned that a detainee may have been a victim of torture, he/she must always submit a Rule 35 (3) report. Rule 35 places medical practitioners at the centre of the process and fundamentally it is for the medical practitioner to decide if he/she has concerns in a professional capacity that a detainee may have been the victim of torture. The medical practitioner should **always** state clearly the reasons why he/she has concerns arising from the medical examination – specifically the medical evidence which causes these concerns, including **all** physical and mental indicators.
21. The medical practitioner has no obligation to report an allegation from a detainee if this allegation does not cause the medical practitioner him/herself to be concerned, in the context of the overall medical examination, that the person may be a victim of torture. However, if an allegation does cause the medical practitioner to be concerned, then he/she should report it. The medical practitioner should set out clearly if his/her concern derives from an allegation with no or limited medical evidence in support.
22. Where there is medical evidence in support of an allegation, the medical practitioner must set out clearly all physical and mental indicators in support of his/her professional concerns. He/she should record any mental or physical health problems that are relevant to the torture allegation.
23. Where possible, the medical practitioner should say why he/she considers that the person's account is consistent with the medical evidence. This means that the medical practitioner should ask to see any scars and record what he/she sees, including on a body map and, where possible, assess whether it is in his/her view medically consistent with the attribution claimed by the detainee. The medical practitioner should consider whether the injury, health problem or other indicator may have other possible explanations which do not relate to torture. The medical practitioner must identify any medical evidence which may be contrary to the account given by the detained person.
24. To help decide whether there is cause for concern, it may also be helpful to ask detainees about:
  - When the torture allegedly took place;
  - How the injuries/mental health issues arose;
  - How the torture is currently affecting them.
25. A Rule 35 report is a mechanism for a medical practitioner to refer on concerns, rather than an expert medico-legal report and so there is no need for medical practitioners to apply the terms or methodology set out in the Istanbul Protocol<sup>4</sup>. Medical practitioners are not required to apply the Istanbul

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<sup>4</sup> The 'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', in popular terms "the Istanbul Protocol", contains internationally recognised standards and procedures on how to recognise and document symptoms of torture.

Protocol or apply probability levels or assess relative likelihoods of different causes but if they have a view, they should express it.

**Actions by Home Office Immigration Enforcement Contact Management Team on receipt of response from the responsible officer**

26. A copy of the Home Office response must be sent to the medical practitioner, who should sign the report to confirm he/she has received the outcome. A copy should then be placed on the detainee's medical record.
27. If the medical practitioner feels that his/her concerns, as outlined in the Rule 35 report, have not been properly addressed in the responsible officer's response, he/she should escalate through the Home Office Immigration Enforcement Contact Management chain.

**Requirements from Home Office staff: actions by the on-site Home Office Immigration Enforcement Contact Management Team**

28. On receipt of a Rule 35 report, on-site Home Office Immigration Enforcement Contact Management Teams should:
  - a. Log receipt of all reports received from medical practitioners in accordance with Detention Centre Rule 35;
  - b. Ensure that the report is legible and signed by a named medical practitioner.
29. When forwarding a Rule 35 report, on-site Immigration Enforcement Contact Management Teams should:
  - a. Make contact with the Home Office responsible officer in advance of the report being dispatched and alert him/her that a Rule 35 report is about to be forwarded and to confirm ownership and contact details. [If the responsible officer cannot be established after reasonable attempts, the assistant director/deputy director in the unit most recently identified from the CID Case Ownership tab, CID Notes and Doc Gen documents should be contacted. The AD/DD must identify a responsible officer within an hour, or complete the due Rule 35 actions his/herself.]
  - b. Update the local detainee record with the name of the responsible officer, date and time.
  - c. Forward a copy of the Rule 35 report to the detainee's legal representative (where a legal representative is on the file).
  - d. Forward the Rule 35 report to the detainee's Home Office responsible officer within 24 hours of receipt. The report must be sent by fax/email together with the Rule 35 Header at Annex B of this DSO.
  - e. Follow up with a phone call to the responsible officer to confirm receipt of the report.
  - f. Attach to the local Home Office detainee file a transmission report/delivery confirmation receipt demonstrating the Rule 35 report has been received by the responsible officer.
  - g. Update CID to confirm the Rule 35 report has been sent and received by a named responsible officer.

- h. Update the Centre's Rule 35 log to show the date and time the report was submitted and the date and time by which a response is required.
30. If a full response is not received from the Home Office responsible officer by the deadline, the on-site Immigration Enforcement Contact Management Team should escalate the matter to the appropriate AD/DD to resolve without delay.
31. When a response has been received from the Home Office responsible officer, on-site Home Office Immigration Enforcement Contact Management Teams should:
- a. Send a copy of the response to the medical practitioner, who should sign the report to confirm he/she has received a response and is aware of the decision made by the responsible officer.
  - b. When the detainee understands English, provide a copy of the response to the detainee within 24 hours of receipt, and update CID; or
  - c. Use an interpreter or telephone-based interpreting service to explain the content of the response when the detainee does not speak English, and update CID; or
  - d. If the detainee has been transferred to another centre, forward without delay to that centre's on-site Home Office Immigration Enforcement contact management team for action, and update CID. [In such circumstances, responses should be provided to the detainee within 24 hours of receipt from the other removal centre.]
32. In rare cases, the Home Office responsible officer may respond that the Rule 35 report contains insufficient content to understand the medical concern and meaningful consideration of the report is not possible. In such circumstances:
- a. The responsible officer will immediately inform the on-site Home Office Immigration Enforcement Contact Management Team of this circumstance by phone.
  - b. Within 24 hours of receiving this phone call, the on-site Home Office Immigration Enforcement Contact Management Team should obtain sufficient information from the medical practitioner for meaningful consideration of the report to be possible.
  - c. The on-site Home Office Immigration Enforcement Contact Management Team must then forward this additional information to the responsible officer within 24 hours of receipt.
  - d. The response timescales and process as explained in paragraph 29 will apply once a report with meaningful content has been received.

**Requirements from Home Office staff: actions by Home responsible officers**

33. Home Office responsible officers should follow the guidance set out in the asylum instruction (accessible [here](#) or [here](#)) which sets out how to consider, manage, and respond to a Rule 35 report. The responsible officer will copy the response to the detainee's legal representative – where a legal representative is on the file – at the point of response.

34. Responsible officers have two working days after accepting receipt to provide a response to the Rule 35 report. The response must:
- a. Engage with the concerns raised by the medical practitioner in accordance with Chapter 55.10 of the Enforcement Instructions and Guidance;
  - b. Where detention is being maintained, set out clearly the reasons why;
  - c. Where detention is not being maintained, set out clearly the reasons why;
  - d. Clearly identify the responsible officer's name and team.

### **Requirements from Home Office staff: actions by Home Office Immigration Enforcement Contact Managers**

35. The on-site Home Office Immigration Enforcement Contact Manager must ensure details of any Rule 35 reports received in the week from medical practitioners together with responsible officers' responses are provided to Detention Operations' Point of Contact: ([DetentionServicesRule35@homeoffice.gsi.gov.uk](mailto:DetentionServicesRule35@homeoffice.gsi.gov.uk)) as required.
36. He/she should check the Centre's Rule 35 log every week to confirm that responses have been provided as required, and escalate to the relevant unit's AD/DD where they have not.
37. The on-site Home Office Immigration Enforcement Contact Manager must ensure that accurate records of Rule 35 report activity are maintained in respect of every Rule 35 case. These records must be compiled and submitted according to a centrally determined format, standard and timescale.

### **Reports from third parties**

38. Centres may occasionally receive reports from third parties about a detainee's health or allegations that he/she is the victim of torture. Such reports generated by persons who do not work in an immigration removal centre fall outside the terms of this DSO.
39. However, as a matter of best practice, reports about an individual's health and well-being, or reports alleging that a detainee may have been a victim of torture, where capable of engaging Rule 35, should be forwarded to the IRC medical practitioner and to the Home Office responsible officer for review. It is then for the medical practitioner to review the detainee's case and decide whether, or not, to raise a Rule 35 report.
40. Reports alleging a detainee is feeling suicidal should be brought to the attention of the on-site Home Office Immigration Enforcement Contact Manager and to IRC healthcare staff immediately.



**Annex A**

**DETENTION SERVICES ORDER 17/2012- DETENTION CENTRE RULE 35**

**Section 1: Detainee's details**

First Name:			
Surname:			
Date of Birth:		HO reference number:	
Length of time in detention:			

**Section 2: Consent to disclose medical information**

I ..... hereby give my consent to the medical practitioner and/or healthcare staff releasing medical information to the Home Office and to my legal representative with regard to my illness or condition. I understand that the Home Office will consider the information in relation to my continuing detention and asylum claim [if applicable in my case].

Signed:

Name of detainee:

Date:

**Section 3: Nature of report**

I hereby report in relation to the following section (please mark as appropriate) of Rule 35. Please tick all those that may be relevant, as some detainees may be affected by multiple issues.

- (1) This detainee's health is likely to be injuriously affected by continued detention or any conditions of detention.
- (2) I suspect this detainee may have suicidal intentions, and should be managed within the ACDT process.
- (3) I have concerns that this detainee may have been the victim of torture.

**Section 4: Legal representative aware**

As far as I know, the detainee's legal representative is aware of this issue:

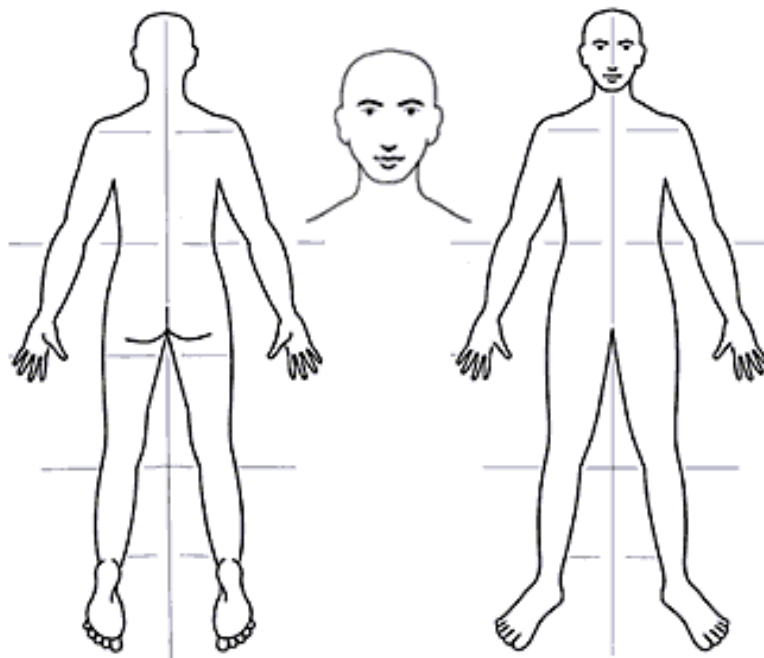
- Yes
- No
- Not known

**Section 5: Relevant clinical information**

1. Please set out the clinical reasons leading to your conclusion at (1), (2) and/or (3) above. This should include relevant medical and psychiatric history; current concerns; and findings from a mental state examination and physical examination. Where relevant, a risk assessment of suicidal ideation/intent should also be conducted.
2. Please ensure that a body map is completed and attached in cases involving scarring or other physical marks.

(Attach separate pages if necessary)

Body Map:



Signed:

Printed name:

Position and qualifications:

Date:

**This report must now be passed to the on-site Home Office Immigration Enforcement Contact Manager. A copy must also be placed on the detainee's medical record and provided to the detainee free of charge.**



Home Office

# Fax/Email cover sheet

<b>To:</b>	[Name of confirmed officer]		
<b>Cc:</b>			
<b>Fax number/ email address:</b>	[Confirmed fax number/email address]		
<b>From:</b>	[Name of contact management team member]		
<b>Centre:</b>			
<b>Tel number/ email address:</b>		<b>Date:</b>	
<b>Detainee's name:</b>			
<b>HO reference no:</b>			
<b>Pages:</b>			

## DETENTION CENTRE RULE 35 Report of Special Illness or Condition (including torture claims)

Dear [Name of confirmed officer]

Further to our conversation earlier today, you have been **confirmed and recorded** as the responsible officer handling the case of the above named detainee (or as the officer who has taken responsibility for the handling of this particular matter).

I am attaching a copy of a report which has been provided by the medical practitioner (GP) at this centre in accordance with Rule 35 of the Detention Centre Rules 2001.

In accordance with Detention Services Order 17/2012 would you please:

- Ensure that you have read and understood the relevant instructions for handling Rule 35 reports (see "[Detention Rule 35 Process](#)" on Horizon).
- Immediately review the decision to detain the individual in light of the content of the Rule 35 report;
- Fax/email back part 2 of this pro-forma within 2 working days providing the outcome of the detention review and how the information provided in medical practitioner's report has been considered.
- Ensure that a copy of part 2 of this pro-forma is additionally sent to the detainee's legal representative.

Yours sincerely,

[Name of contact management team member]



Home Office

**DETENTION CENTRE RULE 35**  
**Report of Special Illness or Condition (including torture claims)**

<b>To:</b>	Name of Detainee, Immigration Removal Centre
<b>Cc:</b>	
<b>Fax number/ email address:</b>	Confirmed fax number/email address
<b>From:</b>	Responsible officer
<b>Tel number:</b>	
<b>Date:</b>	
<b>Pages:</b>	

Dear [Name of detainee]

I am writing to you to acknowledge receipt of a report dated [DD/MM/YYYY] provided by the medical practitioner at X Removal Centre notifying us of a special illness or condition. Information contained within the report has been considered carefully and the decision to detain you has been reviewed.

[Delete as appropriate:

As a result, a decision has been taken to release you from detention. Arrangements are being made for your release which will be communicated to you separately.

As a result, a decision has been taken to maintain your detention. The reasons for this are.....]

A copy of this letter has been forwarded to your legal representative, where you have one.

Yours sincerely,

[Name of the responsible officer]

## Revision History

<b>Review date</b>	<b>Reviewed by</b>	<b>Review outcome</b>	<b>Next review</b>
01/04/14	Detention Policy	Outdated terms and contact details replaced.	30/04/15