

The scope of Rule 40 and 42

8. Detainees can be removed from association (Rule 40) or located in temporary confinement (Rule 42) for reasons of safety (either their own or others) and/or security. Detainees must not be managed under Rule 40 or Rule 42 accommodation unless they fall within the definition set out in each rule and the Minimum Standards as set out in the Detention Services Operating Standards Manual for Immigration Removal Centres are met:

Rule 40 - Removal from Association

9. Rule 40 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 42 – Temporary Confinement

10. Rule 42 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.”

11. The Minimum Standards for Rules 40 and 42 are set out in the Operating Standards 2002:

12. The Operating Standard 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.

13. 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.

28. 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".*

29. 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....."*
- 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)".*

30. In addition to stating the grounds for the decision, it is necessary to record all alternative measures to Rule 40 and 42 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.**

31. **In no circumstances must an initial authorisation be given for a period beyond 24 hours.** In normal circumstances, any use of Rule 40 or 42, for an initial 24 hour period must be authorised by a manager (Executive Officer or above) from the HOIE IRC Team in a contracted out centre. In the case of an HM Prison and Probation Service (HMPPS) run centre, this initial authorisation can be provided by the centre manager or duty manager, who must then notify the HOIE IRC team as soon as operationally possible. **Recording point: The person authorising the initial (24 hours) use of Rule 40/42 must record their authorisation on the form at Annex B boxes 10 – 15 and confirm that they have notified the HOIE IRC team.**