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Title	DETENTION SERVICE ORDER 01/2011 COMMISSIONING OF INVESTIGATIONS		
Process	To set out Detention Services' policy on the commissioning of investigations and management reviews		
Implementation Date	16 FEB 2011	Review Date	16 FEB 2013

CONTAINS MANDATORY INSTRUCTIONS

For Action

Author and Unit

Home Office staff and contractors operating in Immigration Removal Centres, Short-Term Holding Facilities and on escort

Alan Kittle, Director, Detention Services

For Information

Owner

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Processes Affected

Commissioning of management reviews and investigations

Assumptions

All staff will have sufficient knowledge of Articles 2 and 3 of the ECHR

NOTES

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Detention Services Order 01/2011

COMMISSIONING OF INVESTIGATIONS AND MANAGEMENT REVIEWS INTO INCIDENTS OCCURRING IN UK VISAS AND IMMIGRATION'S DETENTION ESTATE

Introduction

1. This Detention Services' Order (DSO) sets out our policy relating to the commissioning of investigations and management reviews into incidents which occur in the Home Office detention estate⁴ and/or while detainees are under escort⁵.
2. It sets out the differences between a management review and an independent investigation, the circumstances under which each is appropriate and our obligation to commission an investigation into certain incidents where Articles 2 and/or 3 of the European Convention on Human Rights (ECHR) may have been breached.
3. Not all alleged breaches will require independent investigation. Guidance on when such an investigation will be required is set out from paragraph 22 below.
4. When an incident occurs at a juxtaposed control, consideration of the terms of the Treaties with the country in which that control exists will be necessary in order to determine whether there is an obligation under Articles 2 or 3 to commission an investigation. There will also be jurisdictional limitations to take into account, such as an ability to compel witnesses to give evidence. Advice should be sought from the Director of Detention Services in all such cases.
5. This DSO applies to all those who work in or in relation to Home Office's detention estate or are concerned with the escorting of detainees. However, in particular, it applies to those responsible for commissioning management reviews and investigations, namely:
 - ◆ Centre Managers, Contract Directors, Operations Directors, and Managing Directors of the estate and escorting services; and
 - ◆ The Director and Deputy Director (Head of Operations) for Detention Services or others given delegated authority by the Director to do so. All references to

⁴ *The Home Office's detention estate is comprised of residential and non-residential short-term holding facilities and Immigration Removal Centres which are operated purely on behalf of the Home Office to hold persons detained in accordance with immigration legislation. It does not include other places of detention (e.g. prisons or police cells) which may be commissioned by the Home Office to hold detainees.*

⁵ *Escorting services are those procured by the Home Office to move detainees both within the UK and at juxtaposed controls and overseas for the purposes of removal.*

“Director of Detention Services” shall also include Deputy Director (Head of Operations) for Detention Services or others given delegated authority by the Director to do so.

Articles 2 and 3 of European Convention on Human Rights (ECHR)

6. Article 2 of the ECHR states: *“Everyone’s right to life shall be protected by law.”* We therefore have an obligation both to ensure detainees’ lives are not taken whilst in our care, but also to take reasonable steps to ensure their lives are protected. Article 2 will usually be engaged where there has been a death in the detention estate or where there has been a ‘near death’ incident which has left the individual with serious long term injuries.
7. Article 3 of the ECHR states: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”*. As with Article 2, we must ensure detainees are not deliberately subjected to such treatment while in our care, but also take reasonable steps to ensure they are not inadvertently subjected to such treatment.
8. When considering whether or not Article 3 is engaged, the circumstances of each case must be considered carefully to decide whether the treatment in question has reached the level of severity required for there to be a breach of Article 3.
9. For example, the use of restraint may be justified to control a refractory detainee, but the same restraint may be considered degrading if used on a compliant detainee, and may therefore arguably engage Article 3.
10. The detainee’s personal circumstances (e.g. their personal medical condition) are also relevant and for that reason, staff should remain alert to the conditions of detention and the effects they are having on them, particularly where circumstances arise in which it is necessary to depart from the usual regime (e.g. during the management of an incident).
11. Both Articles 2 and 3, where engaged, impose an investigative obligation which requires the State to ensure that the incident is appropriately investigated. What constitutes an appropriate investigation will depend on all the circumstance of the case, but the investigative obligation may be met in a number of ways including judicial proceedings, or some combination of internal complaints procedures, independent investigation and/or a coroner’s inquest.

Management Reviews

12. When an incident occurs in the estate or during escort, it will be normal for us to consider the circumstances surrounding the incident in order to understand what occurred, whether there are any lessons to be learned and whether there is any evidence to suggest misconduct by individuals which requires further investigation under disciplinary proceedings.

13. For lower-level incidents, a management review is likely to be appropriate and may be commissioned by the Centre Manager, Contract Director, Operations Director or Managing Director for the estate or escorting service.
14. For more serious incidents, it will be appropriate for the Director of Detention Services, to commission the review.
15. It will be for the individual commissioning the review to determine who best should conduct it.
16. However, before a management review can be commissioned, consideration must be given as to whether the circumstances of the incident suggest that the investigative obligation under Article 2 and/or 3 has been triggered and if so, whether an independent investigation may be necessary. If one is deemed necessary this should be commissioned promptly after the need is realised and before a management review.
17. It is important to note that the Home Office's internal complaints or grievance procedures cannot be considered to be independent in order to discharge the investigative obligations under Articles 2 or 3. Neither can an internal management review, even if conducted by another Directorate (e.g. the Professional Standards Unit) be considered suitably independent for the purposes of satisfying the investigative obligations under Articles 2 or 3⁶.

Independent Investigations

Considering whether an independent investigation is necessary

18. Prompt action must be taken when it becomes known that the circumstances of an incident suggest that the investigative obligation under Article 2 and/or 3 may have been triggered. Centre Managers, Contract Directors or Managing Directors for the estate have a responsibility to discuss the particular facts of the case with the Director of Detention Services.
19. Where a Home Office commissioned independent investigation is required, responsibility will fall to the Director of Detention Services to commission one.
20. An independent investigation is not necessary every time a detainee (or his or her legal representative) alleges that their Articles 2 or 3 rights have been breached.
21. In deciding whether or not to commission an independent investigation, the Director of Detention Services shall have regard to the paragraphs 22 – 36 of this DSO.

⁶ PSU remains an appropriate investigative source in other case types and matters should be referred to them in the usual way unless the director of detention services has decided that an independent investigation is necessary in order to satisfy the requirements of Article 2 or 3.