



Home Office

Detention Services Order 02/2017

Removal from Association (Detention
Centre Rule 40) and Temporary
Confinement (Detention Centre Rule 42)

July 2017



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Document Details

Process: To provide guidance on the removal of a detained person from association (DC Rule 40) and the use of temporary confinement (DC Rule 42), balancing the need to maintain safety and security and the need to show due regard for the dignity and welfare of the individual.

Implementation Date:

Version: 2.1

Contains Mandatory Instructions

For Action: Home Office and supplier (including HM Prison and Probation Service (HMPPS)) staff in Immigration Removal Centres

For Information: Home Office caseworkers

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Processes Affected: All processes relating to the removal of a detainee 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: This Detention Service Order (DSO) is new and relates specifically to the Detention Centre (DC) Rules 2001 for Removal from Association (Rule 40) and Temporary Confinement (Rule 42).

Instruction

Introduction

1. The purpose of this order is to provide instruction and guidance on the use of removal from association (DC Rule 40) and temporary confinement (DC Rule 42). The scope for application of Rule 40 and Rule 42 is set by the conditions within each Rule so this guidance does not change the circumstances in which the Rules will be applicable. Whilst the application of these Rules require judgments of operational matters such as safety and security needs, if the conditions within Rule 40 and 42 are not met, then they cannot be applied. This guidance indicates the administrative procedures that must be followed in use of these measures and provides a summary of the existing practice.
2. The following overarching considerations are reflected in Rule 40 and Rule 42. All detainees 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 for the dignity and welfare of the individual detainee. Rule 40 or Rule 42 accommodation must be used only to manage detainees who cannot be located securely and safely in normal accommodation i.e. its use must be necessary. It must be used as a measure of last resort, when all other options have been exhausted¹, or 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 individual detainee.
3. The conditions in Rules 40 or 42 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 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.
4. Centre supplier staff must engage with detainees 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 a detainee is moved into Rule 40 or 42 accommodation. The multi-disciplinary team (see paragraph 66) must discuss the steps necessary to support a return to normal association at its daily meetings, allowing for input from all attendees.

¹ Other options to be considered might include transfer to another residential unit within the centre, transfer to another centre or closer supervision in normal accommodation.

5. This DSO focuses on the procedures to be followed under Rules 40 and 42. It identifies the roles and responsibilities of centre supplier (private contractor or HM Prison and Probation Service (HMPPS) and Home Office Immigration Enforcement (HOIE) 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;
 - the need for daily checks for individuals;
 - the visit guidelines; and
 - the certification of rooms for individuals subject to Rule 40 or 42.

Any concerns about the appropriate use of Rule 40 and Rule 42 must be escalated to the Head of Detention Operations for consideration.

6. This DSO does not apply to Short Term Holding Facilities or Pre-Departure Accommodation. Except where explicitly stated, all provisions in this DSO apply to both Rule 40 and 42.
7. 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.
 - Annex B – justification and authorisation for use of Rule 40 or 42 [NB a new Annex B must be completed each time a detainee moves between Rule 40 and 42 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

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.

14. As a consequence of the Rules and Operating Standards, Rule 42 accommodation can be used only to hold, for the shortest time necessary, a violent or refractory detainee in order to prevent that detainee 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.
15. The Centre must have a published procedure for removal from association (Rule 40) and for temporary confinement (Rule 42). The procedure must be known to detainees and observed 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 detainees. The regime should cover all stages of the process and provide for a focus on returning the detainee to normal association.

Accommodation certified for use for either Rule 40 or 42

16. A detainee removed from association or under temporary confinement must be accommodated only in a room designated and certified (under DC Rules 40 and/or 42) 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” in line with the Operating Standard for accommodation and DSO 4/2003 “Accommodation, Lighting, Heating and Ventilation”.
17. Where a detainee is managed under Rule 40, the supplier centre manager or duty manager will decide on the most appropriate **certified** (as per paragraph 16) 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 detainee (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 detainees held there (see paragraph 62).
18. Rule 40 or 42 accommodation must be staffed on a 24 hours/7 days a week basis when in use. All detainees 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 42 accommodation.

Procedures

19. It follows from Rules 40 and 42 that they must be used only as a last resort, when all other options have been exhausted² 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 detainee. The decision to use Rule 40 must be based on a clear and rational basis. 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 a detainee poses an immediate risk such as when behaving in a refractory or violent manner.
20. **Neither measure under Rule 40 or Rule 42 can be used as a punishment as stated expressly within the Rules.**

Vulnerable detainees

21. This guidance should be considered alongside guidance on the management of adults at risk within immigration detention, DSO 8/2016. 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. The adults at risk policy includes conditions or experiences that are indicators that an individual may be particularly vulnerable and these include those suffering from a mental health condition or impairment.
22. Rule 40 and 42 should not be used as a normal means to manage detainees with serious psychiatric illness or presenting with mental health problems. These Rules should be used in relation to detainees 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 for such vulnerable detainees. Specific account must be taken of any adverse effect that use of Rule 40 or 42 may have on the individuals in light of their circumstances and steps taken to mitigate any adverse effects. In all the circumstances applicable to these cases the use of these Rules will be exceptional in practice. Particular care is needed to ensure that the general requirements that use of the Rules is for the shortest time possible and only as a last resort are met in these cases.

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

23. Where a detainee is presenting with mental health problems³, a mental health assessment should be arranged by healthcare as soon as practically possible. Any indications consistent with the possibility of a lack of mental capacity should be noted and reported to the IRC healthcare team, who are responsible for assessing mental capacity, as soon as possible. If staff are concerned about the ability of a detainee to understand the Rule 40 and 42 processes³, a request can be made to healthcare for an assessment of all the relevant aspects of mental capacity.
24. Detainees at risk of suicide or self harm and on an open Assessment Care in Detention and Teamwork (ACDT) plan should be managed and located in a care suite or supported living facility (where such facilities are available). Detainees identified as being at risk of suicide or self-harm should be managed under published ACDT processes. They must not be placed in Rule 42 accommodation unless they are violent or refractory and must not be placed in Rule 40 accommodation unless deemed necessary for their own protection and/or in the interests of safety or security of the detention facility and all those within it.
25. As a result of the overarching considerations set out above, it is expected that a detainee at risk of suicide or self-harm would only be placed under Rule 40 or 42 accommodation:
- in **exceptional circumstances**,
 - **for the shortest time possible**; 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 06/2008 – ACDT).

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 detainee placed on an ACDT after their relocation to Rule 40 or 42 accommodation. **Recording point: Annex B box 28.** If an ACDT is opened whilst a detainee is in Rule 40/42 **Annex B boxes 60 – 62** must be completed.

26. If a detainee 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 executed as soon as possible.

Authorisation

27. The DC Rules determine the requirements for due authorisation of each rule.

³ This includes when there are concerns that the detainee may lack mental capacity.

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.**

32. In cases of urgency⁴ and if the circumstances are such that it is impracticable to seek the authority required in paragraph 31 in advance, the centre/duty manager (in a contracted out or HMPPS run centre) can make the emergency authorisation so that the authority is considered to begin at that point. In such circumstances, the HOIE IRC manager (or the HOIE on-call manager if out of hours) **must** be notified immediately.
33. Any period of removal from association or temporary confinement beyond 24 hours in a contracted out centre requires authorisation by the HOIE IRC manager on behalf of the Secretary of State (see paragraph 36). In an HMPPS run centre, any authorisation beyond 24 hours must be provided by the HMPPS Deputy Director of Custody, who is external to the removal centre, or his/her appointed deputy (who must not be an officer of the IRC) (see paragraph 36). **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 HOIE IRC team.** The process in paragraph 34 must be followed if the authority is not provided in person (for example by telephone) to ensure that a full audit trail is available.
34. The person authorising the use of Rule 40 or Rule 42 for an initial 24 hour period 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.

⁴ For example to protect life and/or the security of the centre, for example a fight or an assault on another detainee or member of staff.

35. 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 interests of security or safety. Authorisation processes and review periods set out in this DSO must be observed in all cases. All relevant information from healthcare about any known risks should also be considered and that consideration recorded. Planned use of Rule 40 might, for example, be considered appropriate in the case of a persistently disruptive detainee with a 'no notice 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 a detainee must not be placed into Rule 40 accommodation unless all other steps have been taken to avoid or mitigate the risk posed. For example, there has been consideration of transfer to another residential unit or to another centre or closer supervision on normal location.

Periods of removal from association/temporary confinement

36. **Every authority for removal from association under Rule 40 must be reviewed on a daily basis.** In a contracted out centre, the review must be conducted by the HOIE manager (EO or above). In a HMPPS run centre the review must be conducted by the HMPPS duty manager (with Home Office presence and input). Where practicable, this review should be part of a multidisciplinary meeting (see paragraph 66).
37. In a contracted out centre, authority to maintain removal from association for any period after 24 hours (up to a maximum of 14 days) must be given by a HOIE manager. If that authority is given by a manager below Senior Executive Officer (SEO) grade, it must be reviewed by a HOIE manager of at least SEO grade as soon as possible. This must be within 24 hours or, if the removal is authorised at the weekend, no later than the following Monday (Tuesday if the Monday is a public holiday). Written justification must be provided for the removal and reviewed by the SEO who must assure him/herself that removal was and remains appropriate. Whilst the supplier might complete the relevant form, the authority itself must be provided by the appropriate HOIE manager.
38. In the case of an HMPPS run centre, authority to maintain removal from association for any period after 24 hours (up to a maximum of 14 days) must be made by a HMPPS Deputy Director of Custody who is external to the IRC, or his/her appointed deputy (who must not be an officer of the IRC).

39. 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 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.**
40. The need for maintaining removal must be kept under continual review. Daily visits are required from:
- HOIE (EO or above),
 - Healthcare,
 - Religious services/faith provision staff, and
 - Centre supplier/HMPPS (see paragraphs 66 below).

For access to social and legal visits, see paragraph 77 and DSO 04/2012 - Visitors and Visiting Procedures.

41. As stated above, the authority under Rule 40(3) cannot exceed **the maximum 14 day period**. In the exceptional circumstance that removal from association needs to continue after the 14 day period, a fresh authority will be required. No fresh authority can be given without a very clear justification for use of the rule. It is especially important in this context that the decision-making sets out all other options that have been considered, as set out above.
42. In a contracted out centre, that fresh authority must be given by an appropriate HOIE manager (this must be at Grade 7 level or, in the case of an out of hours authorisation, by the senior on-call manager (SEO or above)). In the case of an out of hours authorisation by the SEO senior on-call, that must be reported as soon as practicable, and certainly within 24 hours, to a HOIE senior manager (Grade 7 or above) to review.
43. In the case of a HMPPS run centre, that further authority must be given by the HMPPS Deputy Director of Custody, who is external to the removal centre, or his/her appointed deputy (who must not be an officer of the IRC). That further authorisation must be reported as soon as practicable, and certainly within 24 hours, to a HOIE senior manager (grade 7 or above) and be brought to the particular attention of the multi-disciplinary team.

Recording point: Complete a new Annex A.

44. Any decision to confine a detainee under Rule 42 for longer than 24 hours up to the maximum permitted 3 days must be given by “an officer of the Secretary of State (not being an officer of an IRC)”.

45. In practice, in contracted out centres any use of Rule 42 for a period exceeding 24 hours up to a maximum of 3 days requires written authorisation from the HOIE manager (SEO or above) in all cases. A fresh authorisation would be required if a person needs to be temporarily confined after the 3 day period and very clear justification will be needed. That further authority must be given by a Grade 7 delivery manager or, if out of hours, by the senior on-call (SEO or above). In the case of an out of hours authorisation by the SEO senior on-call, that must be reported immediately to a HOIE senior manager (Grade 7 or above) and brought to the particular attention of the multi-disciplinary team.
46. In the case of a HMPPS run centre, authority to maintain temporary confinement for any period after 24 hours up to a maximum of 3 days must be made by an HMPPS Deputy Director of Custody, who is external to the removal centre, or his/her appointed deputy (who must not be an officer of the IRC). In the exceptional circumstance that temporary confinement needs to continue after the 3 day period, a fresh authority will be required and very clear justification, setting out all other options that have been considered, will be required [authority levels as at paragraphs 42 and 43]

Recording point: Complete a new Annex A.

47. In both initial use and continuous 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 supplier in a contracted out centre or the centre/duty manager in a HMPPS run centre might complete the form, the authority must be provided by the appropriate HOIE manager (EO or above for initial use and SEO or above use up to 14 days (Rule 40) or 3 days (Rule 42)) or HMPPS manager (centre or duty manager for initial use and HMPPS Deputy Director of Custody for use up to 14 days (Rule 40) or 3 days (Rule 42)).

Recording point: Annex B box 9 - 15 (initial 24 hours) or 36 - 42 (more than 24 hours).

Searching

48. 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.

Removal process

49. A detainee being relocated to Rule 40 or 42 accommodation must always be moved with DCOs. The detainee should be asked to accompany staff to give the opportunity for voluntary compliance unless this is impracticable due to the particular circumstances. The numbers of DCOs appropriate will be dependent on a number of 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. Supplier 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 paragraph 81).
50. Any property belonging to the detainee 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

51. Where a detainee is managed under either Rule 40 or Rule 42, he/she 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 detainee understands the decision** and is not practically prevented from making any representations (should he/she choose to), the supplier 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 detainee into Rule 40 or Rule 42

Recording point: Annex B box 23 and 27.

52. The notification to the detainee of the reason(s) for being located in Rule 40 or Rule 42 accommodation must be provided in writing and explained orally (see paragraph 54). The detainee 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 51)**. As noted, where the detainee 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 9 – 22 and notified to the detainee within 2 hours of being relocated. The detainee

must be given a copy of Annex B box 9. Annex B boxes 25 - 26 must be completed.

53. If detailed information is withheld from the detainee the disclosure to the detainee must include the reason for withholding any information (e.g. a statement explaining that information has been withheld for crime prevention purposes). If the gist 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 detainee 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).
54. The DCO providing the written notification should verbally explain the reasons to the detainee, 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. The DCO must confirm, in writing, that they believe that the detainee has understood the reason why he/she has been located under either Rule and the evidence that has been relied on. If the DCO is not satisfied that there was understanding by the detainee, 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 concern regarding the detainee's ability to understand passed on to healthcare staff.

Recording point: Annex B boxes 23 - 24.

55. The parties listed below must be notified, by the centre supplier/HMPPS, of any occasion on which a detainee is managed under either Rule 40 or 42. DC Rules 40 and 42 require the Independent Monitoring Board (IMB), healthcare manager and manager of religious affairs to be notified without delay. For the parties listed below, this must happen as soon as operationally practicable (but no later than 2 hours after a detainee is located under Rule 40 or 42 accommodation):
- HOIE IRC Manager or Deputy Manager (or HOIE on call manager if out of hours)
 - Supplier Centre Manager/Duty Manager
 - Independent Monitoring Board (IMB) –without delay
 - 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]
- Home Office case worker (this will inform the detention review)⁵

56. The notifications at paragraph 55 can be done by phone, email or in person, as appropriate. The HOIE IRC Team (or senior on call officer if out of hours) must always be notified by phone or in person in the first instance. 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 the HOIE IRC Team by the officer responsible for notification.

Recording point: Annex B boxes 29 - 35.

57. Additionally, centre suppliers must notify the Detainee Escorting Population Management Unit (DEPMU), via an IS91RA part C, of any instance of a detainee being managed under Rule 40 or 42. This should detail the reason for the action and any associated risk information that may affect the future management of the detainee. If subsequently the removal from association or temporary confinement is found not to have been appropriate, then this should be notified to DEPMU via an IS91RA part C. In accordance with DSO 08/2016 – Management of adults at risk in immigration detention - all communications relating to detainees being managed under this policy must clearly identify the detainee as an adult at risk. In all cases of use of Rule 40 or Rule 42, DEPMU will be responsible for noting CID and notifying the case owner.

Extension of relocation

58. Where the use of Rule 40 or 42 is authorised to continue beyond the initial 24 hour period, the centre supplier/HMPPS must provide the detainee 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, the direction to continue the confinement beyond that point must be given by the 27th hour (i.e. within 2 hours of the extended confinement).

Recording point: Annex B boxes 36 - 42. The detainee must be given a copy of Annex B box 36.

⁵ HOIE to notify the case manager - in working hours - after being notified themselves.

Representations and complaints

59. A detainee maintains the right to make representations when managed under Rule 40 or 42. 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 (see paragraphs 66 - 67). If representations are made by the detainee and they wish for those to be sent to his/her legal representative, that must be done as soon as practicable.
60. In addition to the making of representations to the decision-makers, all detainees have access to the complaints process set out in DSO 3/2015. As set out above, any concerns about the mental capacity of a detainee and his/her ability to understand the complaints process must be reported to Healthcare. Suppliers must put in place any steps or adjustments required to ensure that any individual detainee managed under Rule 40 or Rule 42 understands the complaints process. Complaint forms must be available to detainees being managed under Rule 40 or 42.

Recording point : Annex B box 27 or 47 as appropriate.

Notification of return to association

61. When a detainee is returned to normal association all parties listed at paragraph 55 should be notified by the centre supplier/HMPPS within the time periods set out at paragraph 55. The completion of this action should be recorded, confirming the method, time and date of notification to each party.

Recording point: Annex B boxes 63 - 69.

Monitoring, engagement and review

62. Detainees 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 detainee, 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 detainees, encouraging changes in behaviour. An appropriately trained assigned officer must monitor a detainee 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 HOIE IRC team and the centre supplier/HMPPS manager. Detainees being managed under Rule 40 must continue to be observed at least once every hour and a detainee being managed under Rule 42 at least four times every hour. 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.

63. A detainee on an open ACDT should be managed under Rule 40 or Rule 42 only in exceptional circumstances (see paragraph 25). Where a detainee on an ACDT plan is located in Rule 40 or 42 accommodation, an ACDT review must be conducted as soon as operationally possible. 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 detainee 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). Observations should be at least as frequent as they would be if the detainee's ACDT was being monitored in normal association. Observations must be recorded on both the Daily Activity Record at Annex C and in the ACDT booklet.
64. All staff monitoring/visiting the detainee must record their observations of the detainee. Monitoring of detainees 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.
65. The outcome of all monitoring must be recorded.

Recording point: Annex C.

Multidisciplinary team

66. For each detainee managed under Rule 40 or Rule 42, a multidisciplinary team must be established by the supplier/HMPPS. The team must include:
- the supplier Centre/Duty Manager,
 - representatives from Healthcare,
 - the HOIE IRC manager, and
 - any other relevant party according to the individual circumstances of each case.
67. If no HOIE IRC manager is available on-site, a member of the HOIE IRC team must attend and the on-call manager must review the paperwork and actions agreed. The IMB should be invited to either 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 detainee is subject to Rule 40 or 42).**

68. Where behaviour/compliance allows, the detainee should be in attendance for all, or part, of the meeting. Detainees 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. Appropriate assistance should be provided to ensure that the detainee is able to understand and contribute fully to the review (for example through interpretation). Detainees should be made aware of what standards of behaviour are expected of them before a move back to normal association, based on the personal circumstances of the individual detainee, including the reasons for their relocation. This should be discussed at the multidisciplinary meeting as part of the dynamic assessment of the detainee's behaviour and ongoing justification for use of Rule 40 and 42.

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

- to determine whether removal from association or temporary confinement remains necessary for the detainee,
- 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 detainee to association.

70. 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 68) must be shared with the detainee and, if requested, sent to his/her legal representative.

71. The officer(s) responsible for managing a detainee 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

72. For detainees managed under Rule 40, only those activities that involve normal association with other detainees should be curtailed automatically. Subject to risk assessment and following discussion by the multi-disciplinary team, detainees held in Rule 40 accommodation may be permitted to associate with other detainees 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.

73. In all cases, every effort should be made to provide the detainee 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 detainee on a case by case basis taking account of all potential risks and benefits. The regime for the detainee should be reviewed daily by the multi-disciplinary team to check it remains appropriate. In all circumstances, the detainee must be able to contact a legal representative, a minister of their chosen religion and the centre welfare officer/team as soon as operationally possible following relocation. A record must be made of when these appointments were offered. For detainees 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.

74. DSO 8/2012 - "mobile phones and cameras in centres" - sets out the circumstances in which, following a risk assessment, detainees may be denied access to a mobile phone. Those circumstances include cases where current disruptive or threatening behaviour provides evidence that the detainee may misuse the mobile phone and/or there are reasonable grounds to believe that the detainee may use the mobile phone to cause harm to him or herself or another person. That guidance applies equally to detainees being relocated to Rule 40 or 42 accommodation. Consistent with the existing guidance, detainees should not have their phones removed automatically on the basis of use of these measures. If access to a mobile phone is denied, detainees must continue to be able to contact their legal representative by telephone through Centre resources.

Recording point: Annex E box 10.

75. If it is not possible or appropriate for a detainee to attend a particular location to access facilities, then consideration should be given to bringing aspects of the service to the detainee e.g. purchasing items from the shop on the detainee's behalf, bringing books from the library to the detainee, etc.
76. The regime available to those managed under Rule 40 or 42 should be publicly accessible within the centre and managed by the supplier. The authorising manager must make an initial assessment of the regime to be offered to the detainee, 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 69). As a minimum, the regime must comply with contractual requirements for detainees managed under Rule 40 or 42.

Visits

77. The following parties must visit and speak to a detainee being managed under Rule 40 or 42 **every 24 hours**:

- HOIE IRC Team
- Healthcare team
- Supplier Centre Manager (or Duty Manager)
- Religious Affairs

78. The IMB will also visit detainees who are held under Rule 40 and 42 (see paragraph 85 below). Activities staff should also visit, as appropriate.

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

79. The purpose of the visits set out in paragraph 77 is to assess that detainees are being treated fairly, with dignity and decency, as well as safely. Also, visits are a means to ensure that detainees have the opportunity to raise any concerns that they may have. The wellbeing, behaviour and attitude of the detainee 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 Supplier Centre Duty Manager immediately and recorded on the relevant Daily Visitors Record.

Recording point: Annex D.

80. Whenever possible and where safe and appropriate to do so, the visits should be conducted in a manner that offers the detainee 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 detainee and not simply record their observations. However, sensitivity should be shown to any preferences expressed by the detainee in relation to communication.

81. Healthcare will be present for any planned relocation. In the event of an unplanned relocation, healthcare must attend without delay when called, including if a detainee has been non-compliant, sustained an injury or been involved in a fight or an assault (see paragraph 49). Additionally, healthcare should visit a detainee 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 healthcare staff

available or all healthcare staff are engaged on urgent work elsewhere. This screening should include considering any health causes for the detainee's behaviour and making any appropriate referrals.

82. 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 detainee under Rule 40 or 42, healthcare staff must examine the detainee 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**.
83. In addition to the purpose set out in paragraph 79, healthcare should also complete a medical assessment of the detainee to assess his/her health. If healthcare assess continued detention in Rule 40 or 42 accommodation as being injurious to the health of the detainee, they are obliged to bring this to the attention of the centre manager (see also paragraph 24 regarding detainees at risk of suicide or self harm). Other than the initial visits or in an emergency, visits should take place during daytime hours where possible.
84. In addition to the purpose set out in paragraph 79, HOIE IRC staff should seek to pursue/resolve any immigration issues that remain outstanding and that may be causing concern for the detainee, during their daily visit.
85. A member of the IMB must visit the detainee within the initial 24 hours, and thereafter, during their routine visits to the centre. However, the IMB does not need to visit the detainee 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.
86. For detainees 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 detainee or others (on the basis of an individual risk assessment by the supplier). 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

87. Planning for return to normal association must begin as soon as a detainee is moved into Rule 40 or 42 accommodation. Detainees managed in Rule 40 should be returned to normal association as soon as the risk that resulted in them being separated has been mitigated, and for those in Rule 42, once the refractory/violent behaviour has ceased. For detainees managed under Rule 42, de-escalation to Rule 40 accommodation may be appropriate. This de-escalation into Rule 40 accommodation, needs to be part of a planned process and requires appropriate HOIE/HMPPS authority.

88. **Healthcare staff must assess the physical, emotional and mental wellbeing of the detainee and whether any apparent clinical reasons advise against the continuation of separation.** DC Rule 40(7) requires the supplier/HMPPS manager to arrange for resumption of association in any case where the medical practitioner so advises on medical grounds. In accordance with DSO 08/2016 Management of Adults at Risk, where healthcare recommends a detainee 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 passed to the local immigration team and DEPMU (who will inform the case owner).

Recording point: Annex B boxes 48 - 52.

89. The multi disciplinary team must give full and careful consideration to any recommendation that a detainee 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 48 - 52.

90. 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.

91. If a detainee refuses to leave Rule 40 or 42 accommodation, the multidisciplinary team must consider how best to respond. A note must be made of the detainee'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 detainee so far as possible. Alternative options, such as detainee allocation, must be considered (see paragraph 2)

Recording point: Any decision to return the detainee to normal association must be recorded by the supplier/NOMS Centre Manager (or duty manager). **Annex B boxes 53 - 59.**

92. When a detainee is to be returned to association, a care/reintegration plan must be completed by the multi-disciplinary team. This should be put in place and discussed with the detainee prior to transferring back to normal association, although resumption must not be delayed unduly to facilitate this process.

Recording point: Annex F.

93. Any property put in storage while a detainee is in Rule 40 or 42 accommodation (paragraph 50) must be returned to the detainee.

Maintenance of records

94. An accurate written record of decisions and observations **must** be maintained when the initial decision is made to place a detainee under Rule 40 or 42 accommodation and updated appropriately for the entire duration of the detainee's management under either Rule.
95. The file comprising of all Annexes A – E, “the document”, holds information relating to an individual detainee who is located on a continuous basis under either Rule 40 or 42. The Rule that the detainee is located under may change during this continuous period of time and the reasons for any such change must be recorded.

Recording point Annex B Box 54. This will be a fresh decision that requires its own dedicated audit trail. The document is not closed until such a time as the detainee is returned to normal association

96. The document must, at all times, be kept in the residential or care and separation area in which the detainee 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 detainee. All entries must be clear, concise, factual and expressed objectively. Where a detainee is on an open ACDT, all observations made during monitoring must also be recorded in the ACDT plan.
97. The centre supplier must retain and store all records relating to use of Rule 40 or 42 in accordance with the requirements of the Data Protection Act 1988. HOIE should have access to these records at all times.

Reporting on the use of Rule 40 and 42

98. Each IRC must have in place arrangements for monitoring the use of Rules 40 and 42 accommodation. Suppliers must submit daily reports on the use of such accommodation to the HOIE IRC manager, area manager and delivery manager for the IRC. The delivery manager for each IRC will escalate a summary of the use of Rules 40 and 42 to the Head of Detention Operations every week.

99. Suppliers must compile monthly summary data on the number of detainees managed in Rule 40 and 42 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. 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;
- detainees being managed on an ACDT plan, and;
- detainees under the Adults at Risk policy.

This monthly report must be sent to the relevant delivery manager and Head of Detention Operations by no later than the 7th day of the following month.