

## **Rule 35**

# **Reports of Special Illnesses and Conditions (Including Claims of Torture) Received from Immigration Removal Centres, Regarding Detainees.**

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# 1 Introduction

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This instruction provides guidance to caseworkers/case owners on the actions to be taken on receipt of a report of a special illness or conditions (including torture claims), concerning a detained person from an Immigration Removal Centre, under [Rule 35 of the Detention Centre Rules 2001](#).

This instruction must be read alongside Chapter 38 of the Operational Enforcement Manual (OEM), the Asylum Instructions (AIs) on Detention Reviews, Temporary Admission/Temporary Release, Bail, Further Representations and Fresh Claims and the Immigration Directorate Instructions (IDIs) on Appeals - The One Stop Procedure.

## 1.1 Application of this Instruction in Respect of Children and those with Children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

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## 2 Rule 35 - Special Illnesses and Conditions (Including Torture Claims)

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[Rule 35 of the Detention Centre Rules 2001](#) states:

- (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.
- (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. See also: [1.1 Application of this instruction in respect of children and those with children](#)

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### 3 Background

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Under Rule 35 of the Detention Centre Rules 2001, healthcare teams at Immigration Removal Centres (IRCs) who have concerns that a detained person has a special illness or condition or may have been a victim of torture, are required to report such cases to the centre manager. These reports are then passed via the United Kingdom Border Agency teams at the IRCs, to the office responsible for managing and/or reviewing the individual's detention and to the casework unit/case owner dealing with the individual's substantive case. See [Detention Service Order 03/2008](#) (when published)

The principal purpose for generating such reports is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing that person's detention. The information contained in such reports will need to be considered in deciding whether continued detention is appropriate, and may also need to be considered in relation to its possible impact on the prospects for removal. It is also important that due consideration is given to these reports in connection with considering the substantive asylum and Human Rights Act application.

**For the purpose of this instruction an allegation or claim of torture is defined as any act of torture which occurred outside of the United Kingdom.**

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## 4 Receipts of Reports of Special Illnesses and Conditions (Including Torture Claims): Detention Review

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### 4.0.1 Action to be Taken by Healthcare Teams Based at Detention Centres

On receipt of a report from a detainee or where the terms of Rule 35 (1) to (3) are met the medical practitioner must:

- Make a report of the claim;
- Immediately inform the UK Border Agency Contact Management Teams based at the Immigration Removal Centre.

### 4.0.2 Action to be Taken by the UK Border Agency Contact Management Team

Within **24 hours** of having received the report, the UK Border Agency Contact Management Team must:

- Fax the UK Border Agency casework unit or case owner (whoever is responsible for conducting the detainee's detention review) a copy of the report along with the Rule 35 pro forma. It should be noted that the person responsible for conducting the detention review may not necessarily be the caseworker/case owner with overall responsibility for the subject's case (especially with Case Resolution Directorate (CRD) cases).

### 4.0.3 Action to be Taken by the Officer Conducting the Detention Review

The officer responsible for conducting the detention review will need to complete the following actions:

- Update CID notes with details of the reason for the review;
- Carry out the Detention Review as per the AI. When conducting the review it should be borne in mind that whilst independent evidence of a person having been the victim of torture weighs heavily against their detention, reports received from healthcare teams under Rule 35 will not necessarily constitute independent evidence that a person has in fact been the victim of torture. They should nevertheless be taken into full account, together with all the other facts of the detainee's case, in coming to a view whether an individual has been a victim of torture, and then deciding whether continued detention is appropriate;
- Complete part 2 of the Rule 35 pro forma and fax it back to the relevant IRC, to confirm that the review has taken place. This action **must take place, no later than 2 working days, starting from the following working day that the fax was received**. (The response will be reviewed by the UK Border Agency manager at the IRC before being forwarded on to the detainee.);
- Forward part 2 of the Rule 35 pro forma to the detainee's legal representatives;
- Forward the Rule 35 report, Rule 35 pro forma and detention record to the caseworker/case owner responsible for the detainee's substantive asylum case (if the detention review was not carried out by them). This applies even where the claim has been refused and appeals concluded.

## 5 Receipts of a Report of a Special Illness or Condition (Including Torture Claims): Asylum and Human Rights (HR) Considerations

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As has been detailed in the previous section, the case owner/case worker will receive a copy of the Rule 35 report and Rule 35 pro forma, even if they are not directly responsible for conducting the detention review themselves. This is so that the report can be considered as part of the substantive asylum claim.

If a report is received which discloses allegations which are already known and which have already been considered, repeat consideration will not be necessary.

### 5.0.1 Reports Received Before the Asylum Decision

Action:

- All medical evidence and reports submitted prior to the initial asylum decision must be considered when assessing an individual's asylum claim.

### 5.0.2 Reports Received After the Asylum Decision but Before the Substantive AIT Appeal

Action:

- If the Rule 35 report discloses evidence which, when taken in the round with the other evidence, warrants a grant of status, the caseworker/case owner must grant status as appropriate;
- If the allegation does not warrant status being granted, and if the report is of material substance and it is reasonably practicable to do so, a supplementary RFRL must be drafted to address the substance of the report (and any other material evidence arising since the decision).
- All points of material substance must be presented at appeal before the AIT.

### 5.0.3 Reports Received After the Substantive AIT Appeal but Before the Detainee is Appeal Rights Exhausted (ARE)

Action:

- If the Rule 35 report discloses evidence which, when taken in the round with the other evidence, warrants a grant of status, the caseworker/case owner must grant status as appropriate;
- If the allegation does not warrant status being granted, a supplementary RFRL must not be produced.

### 5.0.4 Reports Received After the Detainee is ARE

Action:

- If the subject is ARE, the report must be treated as further submissions and if refused, paragraph 353 of the Immigration Rules should be applied. Caseworkers/case owners must refer to the AIs on Further Representations and Fresh Claims and Submissions received after refusal of an asylum or human rights claim, to assess whether the report warrants a grant of status, and if not, whether the submissions amount to a fresh claim (which it may be appropriate to certify under s.96 of the 2002 Act - see IDI on Appeals - The One Stop Procedure).

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## 6 Other Considerations

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### 6.0.1 Reports Received from Third Parties

A Rule 35 report will only ever reach case owners/case workers and officers conducting detention reviews via the UK Border Agency Contact Management Teams. However, it is possible that third parties may allege ill-health or torture in respect of a detainee. IRCs have been instructed to inform third parties to refer any such reports directly to the casework unit/case owner dealing with the detainee's case. The source of the allegation will influence the weight to be placed upon it, and the action a caseworker/case owner will need to take.

### 6.0.2 Requests from Detainee/Legal Representatives for Release to Submit Medical Reports

It is possible that detainees or legal representatives may, either at the time of a Rule 35 report's production or later, request the detainee be released in order for a medical report to be obtained.

Action:

- The officer responsible for managing detention should consider the request in light of all the facts. Officers will not however be bound to TA/TR/bail the detainee on the basis of such a request. If detention is maintained and if further evidence is received, a further detention review must be carried out to review whether detention remains justified. See also: [1.1 Application of this instruction in respect of children and those with children.](#)

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## 7 Glossary

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<b>Term</b>	<b>Meaning</b>
<b>IRC</b>	Immigration Removal Centres are detention facilities used by UK Border Agency that are either directly managed or operated under contract with the Border Agency.
<b>UK Border Agency Contact Management Teams</b>	The UK Border Agency Contact Management Teams (CMTs) are based in IRCs. Their role is to take forward issues with case workers, case owners, contractors and others as necessary to ensure that detainees receive an effective and timely response to any issues or questions that arise whilst they are in detention. CMTs do not conduct detention reviews and play no part in giving substantive consideration to a detainee's case.
<b>Rule 35 Reports</b>	Reports made by healthcare teams, on receipt of allegations of special illnesses or conditions (including torture claims) received from detainees in IRCs.
<b>Rule 35 Pro Forma</b>	To accompany a Rule 35 report and to be completed by the officer conducting the detainee's detention review.
<b>Detention Review</b>	To be carried out by the officer responsible for maintaining and reviewing the detainees detention. The officer responsible for conducting the review may not necessarily be the officer overseeing the detainee's case.

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# Document Control

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## Change Record

Version	Authors	Date	Change Reference
1.0	CS, MK	06/02/08	First Edition
2.0	CS	29/10/08	Update branding only
3.0	GL	10/10/09	Add Children's Duty and numbering
4.0	GL	23/10/09	Further updates to Children's Duty