

ACTION PLAN: HMCIP REPORT

People in Prison: Immigration Detainees

TIMETABLE	DATE	STATUS OF THIS RETURN
Report published	November 2015	
Action Plan Submitted	July 2017	Attached

Guidance Notes on completion of action plan

1. Rec. No.	2. Recommendation	3. Accepted/Rejected	4. Response Action Taken/Planned	5. Function Responsible/ Policy Lead	6. Target Date
1.	Immigration detainees should only be held in prison in very exceptional circumstances following risk assessment and with the authority of an immigration judge.	Partially accepted	<p>It is accepted that Immigration detainees should be held in prison only in very exceptional circumstances.</p> <p>Immigration Detainees are held in prison only when they present specific risk factors that indicate they pose serious current risk of harm to the public or to the good order of an Immigration Removal Centre (IRC), including the safety of staff and other detainees, which cannot be managed within the regime applied in IRCs.</p> <p>It is standard Home Office practice that each FNO is risk assessed towards the end of their custodial sentence and will</p>	Home Office Immigration Enforcement, Criminal Casework	Completed and ongoing

			<p>be released or transferred into an IRC unless risk factors override it.</p> <p>The power to detain for immigration purposes is vested in immigration officers and the Secretary of State. Under paragraph 18(1) of Schedule 2 to the Immigration Act 1971, such persons may be detained in such places as the Secretary of State may direct. Under the Immigration (Places of Detention) Direction 2014 (No.2), a prison is one of the designated places for holding immigration detainees.</p> <p>There is no statutory requirement for the place of detention to be authorised by an immigration judge. Nonetheless, detainees (including detainees held in prison custody) may apply to an Immigration Judge for release on bail.</p>		
2.	<p>NOMS and the Home Office should negotiate with the Legal Aid Agency to provide a telephone advice service to immigration detainees in prisons. The service should provide advice and representation</p>	Accepted	<p>HMPPS will work with the Home Office and the Legal Aid Agency to explore options for the provision of legal advice to detainees held in prison.</p>	<p>HMPPS Equalities, Interventions Operational Practice Group and Home Office Immigration Enforcement (HOIE)</p>	December 2017

	comparable to that offered in IRC detention advice surgeries.				
3.	There should be a strict time limit on the length of detention and caseworkers should act with diligence and expedition.	Partially Accepted	<p>There is no fixed time limit on immigration detention in the UK although no one is detained indefinitely. Once a person is detained, their continued detention remains under review by the Home Office at least at 28 day intervals, and earlier in response to any change of circumstances that might have a material effect, to ensure that it remains lawful and appropriate. If at any time that ceases to be the case the individual will be released from detention. Caseworkers are required to work with diligence and expedition to ensure individuals are detained for no longer than is reasonable to achieve return.</p> <p>In response to a number of recommendations made by Stephen Shaw in his report “Review into the Welfare in Detention of Vulnerable Persons” (January 2016), relating to detention reviews, the Home Office commissioned the creation of Case Progression Panels where all those detained in immigration detention would be reviewed together on a regular</p>	Home Office Immigration Enforcement, Criminal Casework	Completed and ongoing

			<p>basis, quality assuring detention decisions and suggesting actions to ensure cases are progressed at pace. Case Progression Panels which reviewed cases on a minimum of a three monthly basis, beginning with the week following the third 28 day detention review, were implemented as business as usual on 1 February 2017.</p>		
4.	<p>The Home Office should review the risks of transferring a detainee from prison to an IRC each month. The risk assessments should be clearly documented and communicated to the detainee in writing.</p>	Accepted	<p>Home Office Immigration Enforcement will continue to work with HMPPS to ensure only those who need to be in prison are held there and that they are not detained for any longer than necessary.</p> <p>It is standard Home Office practice that each FNO is risk assessed towards the end of their custodial sentence and will be released or transferred into an IRC unless risk factors override it.</p> <p>The Home Office has a statutory duty to review detention at least every 28 days to ensure that the detained person continues to meet the published detention criteria and that detention is still the most appropriate course.</p> <p>The outcome and reasons for continued detention are documented and communicated to the detainee in</p>	Home Office Immigration Enforcement, Criminal Casework	Completed and ongoing

			writing.		
5.	The memorandum of understanding between NOMS and the Home Office should be amended to make clear only high-risk detainees should be held in prisons. Low-risk immigration detainees should be released or transferred swiftly to an IRC.	Accepted	<p>There is already a SLA in place which reflects this recommendation, the Agreement states that:</p> <p><i>“Immigration Detainees should generally only be held in a prison when they present specific risk factors that indicate they pose serious current risk of harm to the public or to the good order of an Immigration Removal Centre, including the safety of staff and other detainees, which cannot be managed within the regime applied in IRCs....</i></p> <p><i>HOIE is expected to conduct weekly assessments of all immigration detainees in the prison estate for suitability for an IRC”</i></p>	HMPPS Equalities, Interventions Operational Practice Group and Home Office Immigration Enforcement	Completed and ongoing
6.	Immigration detainees in prisons should be held in a relaxed environment and afforded as much freedom as possible. They should be able to access services and facilities comparable to those available in an IRC. Subject to public protection	Partially Accepted	<p>Prison remain lawful places of detention, where detention under immigration powers is necessary (Immigration (Places of Detention) direction 2014 (No2).</p> <p>It is accepted that detainees have the right to remand conditions with the same status and privileges as unconvicted prisoners. Those wishing to take up this option are transferred to a prison holding remand prisoners.</p>	HMPPS	Completed and ongoing

	<p>requirements, detainees in prisons should have access to incoming and outgoing telephone calls and to the internet. Detainees should not have to transfer to another prison to acquire these benefits.</p>		<p>Detainees who want to remain in convicted conditions, where they may have built up relationships and support networks are able to do so subject to operational needs.</p> <p>Fewer than 400 immigration detainees are currently held in prisons, many of them will be held in prison only for a limited period pending their transfer to an IRC. Given this relatively small number, it would not be possible to reconfigure the estate or regime of an individual prison to provide for the more relaxed regime and increased privileges recommended in the report. Nor would it be appropriate to provide an individual detainee with significant privileges not otherwise available in a particular prison.</p> <p>All establishments operated by HMPPS will be digitised. This will include the provision of in cell telephony. Work will take place over the next few years as funding becomes available and on priority of need across the whole estate.</p> <p>For safety and security reasons, there are currently no plans to allow internet use in prison.</p>		
7.	The Prison Rules	Partially accepted	Although there are no plans to introduce	HMPPS, NHS	Completed and

	<p>should be amended to afford immigration detainees the same protections of Rule 35 of the Detention Centre Rules.</p>		<p>an equivalent of Rule 35 into Prison Rules, HMPPS will consult NHS England commissioners (who have responsibility for both prison health services and IRC health services) on the practicalities of applying the principle of Rule 35 of the Detention Centre Rules to detainees in prison and whether, in their view, such application is feasible.</p> <p>HMPPS will also work with NHS England on how to identify and assess risks often associated with FNOs on reception to the prison estate and throughout the period of the sentence.</p>	<p>England</p>	<p>ongoing</p>
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Recommendations	
Accepted	3
Accepted Subject to Resources /Partially Accepted	4
Rejected	-
Total	7