

Detention Rule 35 Process

Table of Contents

1 Introduction

1.1 Audience

1.2 Purpose

1.3 Background

2 Rule 35 Reports – Responses

3 Rule 35(3) Responses – Handling

4 Asylum and Human Rights Claims – Further Information

4.1 Asylum and HR Applicants

4.2 No History of Asylum or HR Claim

Annex A – FAQs

Annex B – Response Examples

Rule 35(3) Response Examples

Glossary

1 Introduction

1.1 Audience

This instruction is intended for the sight of all officers with direct or indirect responsibility for handling and managing detained cases.

The terms “responsible officer” and “case responsibility” are used throughout, to describe the person and responsibility concerned with managing individuals’ detention.

[Back to contents](#)

1.2 Purpose

This instruction details **mandatory actions and considerations** to be taken where a report is issued under [Rule 35 of the Detention Centre Rules 2001](#). There are no exceptions to the mandatory character of the actions and considerations stipulated.

[Back to contents](#)

1.3 Background

[Rule 35 of the Detention Centre Rules 2001](#) lays out certain requirements for medical practitioners (defined in [Rule 33](#) as a registered general practitioner):

- 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.

Section 55.8A of the Enforcement Instructions and Guidance states the Rule’s purpose:

“The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. **The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.**”

[Detention Services Order \(DSO\) 17/2012](#) directs the detailed actions required of contractors and Detention Services staff and officers in IRCs.

Section 55.10 of the Enforcement Instructions and Guidance lists groups of people who are considered suitable for detention only in very exceptional circumstances. This list includes those with independent evidence of torture and those with a medical condition which cannot be satisfactorily treated in detention. Rule 35 reports may therefore be central to the considerations due under this section.

[EO & Ors. \[2013\] EWHC 1236 \(Admin\)](#) addressed issues around Rule 35. At the present time, and until further notice, torture in the context of Rule 35 and the application of detention policy must be regarded as that defined by Burnett J in EO:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind.”

Until and unless a formal change to the definition applicable to decisions under detention policy is notified, officers must not apply a narrower or alternative definition of torture.

[Back to contents](#)

2 Rule 35 Reports – Responses

Rule 35 reports will be issued by IRC medical practitioners and allocated by Home Office contact management teams in the IRCs, according to [DSO 17/2012](#). Responsible officers must then receive and respond to reports.

The Rule 35 report must be considered and responded to as soon as possible, but no later than the end of the second working day after the day of receipt. (See table, below, which assumes a normal working week - no public holidays etc.)

The actions and considerations to ensure timely, accurate response are mandatory:

Receiving Reports

- Ensure CID Case Ownership reflects the responsible officer's details accurately, where ownership is applicable;
- Receive telephone calls from IRC to confirm case responsibility and contact details (this means that a named recipient takes responsibility for receiving the report and for either taking onward action or for allocating to another appropriate officer);
- Receive faxes/emails from IRC, taking steps with any team administration officers to ensure that faxes are brought to immediate attention;
- Receive telephone calls from IRC to confirm fax/email receipt;
- Review the report on receipt:
 - If the medical practitioner clearly states that the report reflects a repeated claim or assertion rather than a reasoned medical concern (the practitioner is entitled to do this), the report must be considered, although it will likely carry less weight as a consequence);
 - If the report states that it raises a medical concern, but contains insufficient content to understand the medical concern, meaningful consideration of the report will not be possible (such a view must not be reached lightly). In such cases, telephone the Home Office contact management team in the IRC immediately and ask them to obtain sufficient information from the IRC medical practitioner for meaningful consideration, and to repeat the issuing process. The response timescales will resume once a report with meaningful content has been received. [DSO 17/2012](#) stipulates the timescales applicable to the IRC actions in obtaining a more detailed report (although upon receipt, every attempt must be made to respond as promptly as possible). Record on CID Notes the fact of the report's lack of content, the outcome of the telephone call, and the name of the person in the Home Office contact management team and agreed action.

CID and Diary Actions

- When a report capable of response has been received, open a CID Case Type reflecting the appropriate rule (e.g., Rule 35(3) – Torture Allegation);
- Update CID Calendar Events or local diary, to record the deadline, and to help ensure the Rule 35 response is returned on time (see table, below, which doesn't include bank holidays, etc.).

Report Received	Response Due
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday
Friday	Tuesday
Saturday	Tuesday
Sunday	Tuesday

Consideration, Detention Review, Release/Maintain Detention

- Carefully consider the report (for 35(3) reports, see [3 Rule 35\(3\) Responses - Handling](#));
- Note that Rule 35 reports are not medico-legal reports, and they must not be considered defective for not containing the detail of such a report or being written according to the Istanbul Protocol or other standards. (IRC medical practitioners are not expected to have specialist forensic training and are not trained in standards relating to documentation of torture such as the [Istanbul Protocol](#).)
- Consider the issues raised, and **conduct a detention review** in line with published detention policy;
- Take prompt action to release the detainee if appropriate (which will include if the report amounts to independent evidence of torture and if no very exceptional circumstances apply);
- Where there are additional unit or directorate specific requirements as regards obtaining management approval for releases, or for notifying releases, these must be followed.

Response

- Every Rule 35 report must receive a written response, even if the detainee has been or will be released. A response in released cases may be very brief;
- Holding responses are not acceptable. Responses must always be returned on time, regardless of other events close to the deadline (e.g., a forthcoming asylum interview or action under the Dublin Regulation);
- Draft the response using CID Doc Gen form IS.335 (this is the pro forma shown in the annex of [DSO 17/2012](#)). It is vital that the response is saved to CID Doc Gen, to allow for review and audit;
- Obtain SEO/HMI clearance for the response, naming the officer in CID Notes;
- Send the response and R35 report by fax to the legal representative (if represented);
- Send the response by fax/email to the IRC (this must always be the IRC that issued the report, and also to the current IRC if different), and collect transmission/sent receipt and attach to file and minute the file accordingly.

Closure

- Telephone the IRC to confirm they have received the response;
- Close the case on the CID Case Outcome screen, according to the applicable outcome:
 - Rule 35 Review – Detention Maintained;
 - Rule 35 Review – Detainee Released.

(Note that if the applicant is due to be released for reasons unconnected to the Rule 35 report, it will be necessary to close the Rule 35 case type as “Detention Maintained”, before effecting release, noting CID Notes accordingly, clearly explaining the reasons for release. This ensures that the release will not be wrongly attributed to Rule 35 reasons.)

- Update CID Notes and file minutes to record the time and name of the Home Office contact management team member who has confirmed receipt, and that the CID Case has been closed;
- If the Rule 35 report discloses information relevant to the consideration of any asylum and/or human rights case, ensure appropriate action is taken - see [4. Further Information in Asylum and Human Rights Claims](#).

[Back to contents](#)

3 Rule 35(3) Responses – Handling

Rule 35(3) reports are the most commonly issued report type, and so will receive further focus here.

All Rule 35(3) reports require careful handling, particularly because they are generally not written by medical practitioners with expertise in assessing whether an individual has been tortured. Caseworkers will need to consider the issues raised below, and the implications arising under published detention policy.

Consideration of a Rule 35(3) report must take the following approach, which will inform the detention review due. The consideration is different from that due in an asylum decision. The written response must address each element clearly:

i. Consider whether the Rule 35 report constitutes independent evidence of torture

Ch. 55.10 of the EIG stipulates that where independent evidence of torture exists, detention will be appropriate only in very exceptional circumstances (see below). Rule 35 reports may fall to be accepted as independent evidence of torture, although not every report will necessarily constitute such evidence.

Because each case will be different, it is not possible to provide definitive guidance on when a Rule 35 report will constitute independent evidence of torture. However, it must have some corroborative potential (it must “tend to show”) that a detainee has been tortured, but it need not definitively prove the alleged torture. The following pointers may assist:

- A report which simply repeats an allegation of torture will not be independent evidence of torture;
- A report which raises a concern of torture with little reasoning or support or which mentions nothing more than common injuries or scarring for which there are other obvious causes is unlikely to constitute independent evidence of torture;
- A report which details clear physical or mental evidence of injuries which would normally only arise as a result of torture (e.g., numerous scars with the appearance of cigarette burns to legs; marks with the appearance of whipping scars), and which records a credible account of torture, is likely to constitute independent evidence of torture.

ii. If the report constitutes independent evidence of torture, consider whether there are very exceptional circumstances such that detention is appropriate

Very exceptional circumstances could arise where, for example, release would create an unacceptably high risk of absconding, of reoffending or of harm to the public. There will not be very exceptional circumstances in the case of a routine detention absent other reasons, e.g., a removal without a high absconding risk or harm issue - see Ch. 55 of the EIG. The full circumstances applicable to the detainee and their reasons for detention must be considered, in order to establish whether there are very exceptional circumstances that mean detention is appropriate notwithstanding the rule 35 report.

In some cases where the rule 35 report is accepted as independent evidence of torture, there may nevertheless be further information which renders the overall account of torture wholly incredible. Such information may form the basis of an assessment that there are very exceptional circumstances making detention appropriate.

For instance, it may be right to detain in very exceptional circumstances if, despite there existing independent evidence of torture, there is a court determination which was made with sight of a full medico-legal report and which dismisses the account of torture, or there is evidence such as visa match evidence which very clearly shows that at the time the detainee claims to have been tortured in one location, he was in fact enrolling biometrics and applying for a visa in another location. Because genuine confusion may be an issue, caution must be exercised in such a consideration;

iii. If the report is not independent evidence of torture, consider whether, on the full facts of the case (including the report), ongoing detention remains appropriate

This will require a full detention review (required in all circumstances) and an assessment of the appropriateness of ongoing detention, according to detention policy.

Particularly sensitive handling will be required in considering issues in cases where a history of violent injury is documented but which does not meet the broad definition of torture in the EO case (see [1.3 Background](#)), and so which does not engage Rule 35(3) (for example, injuries obtained through common brawling, or accidental injury during a public disturbance).

It must be remembered that even if alleged ill-treatment does not constitute torture, a Rule 35 report may additionally report concerns about health or suicide, which must be fully considered.

[Back to contents](#)

4 Asylum and Human Rights Claims – Further Information

Rule 35 decision-making is about determining fitness for detention. The considerations due in this determination are quite distinct from those required as part of a substantive asylum or human rights decision.

However, Rule 35 reports may nonetheless disclose information that might be relevant to such applications (most likely where torture concerns are expressed), and so must not be ignored in this regard.

4.1 Asylum and HR Applicants

The timescales applicable for responding to a Rule 35 report must be met in all circumstances. It is not appropriate to vary the timescales or to issue holding responses to allow a substantive interview or decision to take place, or because third country removal action is being considered/implemented.

In the context of considering an asylum or human rights claim, Rule 35 evidence must be treated in the same way as any other piece of evidence.

If Rule 35 evidence is received before the first decision, the interviewing officer must question the applicant about the issues raised in the report in their asylum interview and where relevant, address it in the substantive decision consideration (see Considering the Protection Claim and Assessing Credibility).

If a Rule 35 report is notified before an appeal in the case of a refusal, decision-makers must reconsider whether the totality of evidence warrants a grant of status. If it does, the decision-maker must grant appropriate status, and notify the courts. If refusal remains the correct decision and the report is of material substance and it is practicable to do so, the decision-maker must draft a supplementary RFRL to address the substance of the report (and any other material evidence arising since the decision), ensuring that the supplementary letter is notified to the applicant, representatives and court.

If a Rule 35 report is notified after the detainee has been refused asylum and exhausted their appeal rights, the report evidence must be treated as Further Submissions.

[Back to contents](#)

4.2 No History of Asylum or HR Claim

In rare circumstances, a Rule 35 report may be received in respect of a detainee who has not previously or at that time lodged an application for asylum. In such cases, the responsible officer must seek clarification of the detainee's intentions (usually with the assistance of the Home Office contact management team at the IRC).

If the detainee wishes to claim asylum, the decision-maker must make arrangements for them to be promptly screened, and then consider the appropriateness of their ongoing detention and onward routing.

If the detainee does not wish to claim asylum, the responsible officer must seek a brief explanation, and the detainee must be invited to complete form IS.101 (available via CID Doc Gen). The responsible officer must ensure that the detainee's response to this invitation is recorded on CID Notes and reflected on case file minutes.

[Back to contents](#)

Annex A – FAQs

Q. Are Rule 35 responses just about whether or not to maintain detention?

The purpose of Rule 35 reports is to provide information about people who may be vulnerable, to assist decisions regarding whether their continued detention is appropriate under detention policy, and to inform other risk management processes taken in IRCs, where appropriate. However, the information in Rule 35 reports may also be important to substantive asylum issues and Human Rights Act applications.

Each report must therefore be carefully considered alongside detention policy, and where relevant, as a separate consideration as part of any asylum claim.

Q. Are all Rule 35 reports about torture?

Because many Rule 35 reports relate to torture concerns (Rule 35(3)), there is a focus on such cases in this instruction. However Rule 35 reports can also relate to the health or suicidal intentions of detainees. All reports must be properly and promptly considered.

The important point is that Rule 35 reports bring to the attention of the IRC and the Home Office information relating to important vulnerabilities that a detainee may have, which will then require the appropriateness of ongoing detention to be given careful consideration.

Apart from torture, the other two possible Rule 35 report types are:

- Rule 35(1) – Health Concerns;
- Rule 35(2) – Suicide Risk Concerns.

Q. What if I receive a Rule 35 report for a case for which I am not responsible?

Responsible officers should only receive a Rule 35 report after a telephone conversation with the Home Office contact management team in the IRC, in which they confirm ownership or take responsibility for allocating to an appropriate officer. However, if for any reason a report is issued and received incorrectly, it will be necessary to immediately inform the IRC that sent the report, for them to arrange for it to be properly allocated, updating CID notes as to the action taken.

Q. What if I don't have the case file?

It is incumbent on the Home Office to provide the detainee with a response within the timescales set out in [DSO 17/2012](#) (which stand at two working days after receipt). Responsible officers must make every effort to meet the time and quality requirements. If the case file is in another location, it may be appropriate to call it for examination. However, it must be noted that the file's arrival may post-date the report response deadline. As such, before requesting it may be appropriate to ask for a read-over of the file to identify information relevant to considerations, and possibly for key documents to be scanned and emailed or faxed.

Q. What do I do about Rule 35 reports that contain too little information to allow for a considered response?

Whenever greater clarity from a report is necessary to allow a substantive response to be made, the relevant IRC must be contacted without undue delay, and a request made for the necessary information (which should in turn be obtained and provided to the responsible officer without undue delay). This is strictly a means by which responsible officers may obtain information to enable the Rule 35 concern to be understood where it is not clear. Such circumstances should be rare. It is not a means by which the concerns of the doctor should be questioned in the case of disagreement.

CID notes must be updated to record the fact of the insufficient report, the name of the Home Office contact management team member in the IRC contacted, and the agreed

onward actions. The timescales for a response to the detainee will continue to apply, unless the contact management team agrees to them being paused. In such a case, the response timescales will resume upon receipt of any updated report. (The timescales applicable for the contact management team and medical practitioner actions are laid out in [DSO 17/2012](#).)

Q. Do I have to respond if several reports raising the same issues are made for a detainee in a short space of time?

Yes, every report must receive a response. This situation may occur when, for instance, a detainee is being moved between centres and raises concerns with two or more medical practitioners at different locations.

Acceptable responses to multiple Rule 35 reports will address the substantive issues and contain sufficient detail such that the response can stand alone as addressing the report issues. It will not be enough to simply state that the issues raised were considered in full in previous correspondence. It may however be sufficient, where the allegation is exactly the same as one responded to earlier, to briefly précis key points with reference to the previous response, and to forward that previous response with the new response.

Q. What if the Rule 35 report discloses information relevant to an asylum claim?

The normal Rule 35 consideration and response requirements apply in all cases. As an additional action, any substantive report evidence that may be relevant to an asylum claim must be carefully considered, in the same way that any information would. This may mean that it is taken into account when making an asylum decision; that the information is treated as further representations (where a decision has been made); that the information is treated as further submissions (in ARE cases); or that a detainee who has not previously claimed asylum is questioned as to whether he wishes to claim.

Q. What if I am due to interview the detainee about their asylum claim after the Rule 35 response is due?

The Rule 35 response must not be delayed simply because an asylum interview or similar event is imminent. Such matters are not related to the key issues raised by the Rule 35 report (fitness for detention). The response timescales must be met.

Q. What if I get a Rule 35 report after the detainee has been released, or if I intend to release the detainee?

A response must always be provided. This is important because it documents the basis of release and the materiality (if any) of the Rule 35 report to the release decision; because administratively, it allows the case to be closed on all systems, ensuring performance is correctly recorded; and, it ensures that the responsible officer is aware of and has demonstrated awareness of the issues raised, and can consider the consequences of those issues to onward case handling (e.g., being alert to concerns of suicide risk; being mindful of issues relevant to any future detention decisions; taking substantive information into account in decisions – see [4 Asylum and Human Rights Claims – Further Information](#)).

However, particularly in the case where a detainee has been released prior to the responsible officer's notification of the Rule 35 report, a basic, summary response will usually be sufficient, noting the report, and – as a minimum – undertaking to consider the issues as appropriate in onward case handling. The report must be secured on file, with CID Notes and file being clearly minuted.

Q. The detainee has withdrawn his Rule 35 claim – do I need to take any action?

A Rule 35 report represents the concern of a medical practitioner, and so it cannot be withdrawn by a detainee. Without exception, every properly issued Rule 35 report must receive a response.

In the case of a Rule 35(3) report, if a detainee states that he/she has withdrawn a Rule 35(3) report, he/she must be questioned as to what they mean. If they make an unambiguous statement that they have not been tortured, contrary to what they may have previously stated, and contrary to the medical practitioner's concerns, it may weigh against the report constituting independent evidence of torture. Nonetheless, particularly careful consideration must be given to the matter, as a genuine victim of torture may in extreme cases exhibit serious confusion such as to give rise to contradictory statements.

As is always the case, the report and any "withdrawal" must be carefully considered alongside the rest of the evidence in the case.

Q. Where do I send the response if the detainee changes IRC?

Responses must always be returned to the IRC that sent the original report, to enable their records to be closed, and for service on the detainee. If the detainee has moved to another centre, an additional copy must also be sent to that IRC for service.

If the decision is to release the detainee, the responsible officer must act with diligence to ensure that release arrangements are made with the IRC of current detention.

Q. Who is responsible for the Rule 35 response on a Third Country Unit (TCU) case?

Where the case is managed in TCU, and the detention is in a TCU ring-fenced detention bed, TCU will be responsible for the Rule 35 response.

If however, the substantive TCU actions have ended (with the exception of any challenges to the third country action), and if an enforcement office is managing the removal and has taken the decision to detain the individual in support of that action, the detention and therefore the Rule 35 response is the responsibility of an enforcement office. It is likely to be necessary for the LIT and TCU to communicate on the issues raised, and to share information.

Q. My unit/directorate requires director clearance for some of the actions laid out here – does this instruction change that?

No. Insofar as seniority is required to authorise particular actions, this instruction lays out only the minimum level of authority. Different work areas may choose to implement greater management oversight than this minimum level requires, as long as there is no deviation from the core policy and actions.

Q. Where can I get more information about detention and Rule 35?

Written information about Rule 35 is available on Horizon. Key documents which must be read by all officers are:

- [Detention Centre Rules 2001](#) sets out the Rule itself, and other related rules;
- [Detention Services Order 17/2012](#) sets out the policy and actions requires of contractors and Detention Services staff and officers in IRCs; and
- Chapter 55 of the Enforcement Instructions and Guidance, sets out the detention policy considerations relevant to the decisions around Rule 35 reports.

Suicide risk is managed within a detained context by a published Detention Services Order:

- DSO 6-2008 Assessment Care In Detention Teams (ACDT)

If in doubt about Rule 35, medical evidence, or other aspects of detention, senior case workers may provide clarification. In cases where questions remain, the appropriate policy unit may be approached.

[Back to contents](#)

Annex B – Response Examples

Below are some examples to illustrate the possible composition of common Rule 35 responses. Reports will likely be received in all Rule 35 types, but the most common and the most difficult to address are likely to be those relevant to torture concerns. As such, the examples focus on reports issued under Rule 35(3).

Rule 35(3) Response Examples

The examples below are just a summarised, suggested approach for responding to common report types, but must not be regarded as “stock responses”. The actual consideration of a report and the response therefore due will need to address in detail the particular circumstances of the case and the findings of the Rule 35 report. These examples must not be read in isolation from the rest of this instruction.

Example #1

I am writing in response to a Rule 35 report, issued on DD/MM/YY by a medical practitioner at IRC XXXXX. The report, issued under Rule 35(3), states: “The patient disclosed the following to me. Claims to have been tortured. Claims this took place two years ago, when hit across legs with sticks.”

It is not accepted that this Rule 35 report constitutes independent evidence of torture, as it is simply a record of what you said to the medical practitioner. Your statement has not led the practitioner to express her own reasoned concern that you may be a victim of torture, and she has not identified other evidence leading her to have such concerns.

Your continued detention pending your removal on DD/MM/YY is still considered to be appropriate, and so you will remain detained.

The appropriateness of your detention will be regularly reviewed.

Example #2

I am writing in response to a Rule 35 report, issued on DD/MM/YY by a medical practitioner at IRC XXXXX. The report, issued under Rule 35(3), provides a detailed account of the medical practitioner’s concerns.

The medical practitioner has recorded your subjective claim, and has drawn a connection between this and his physical and mental medical examination of you, in which specific mention is given to your withdrawn behaviour and the particular scarring you have. On the basis of this evidence, the medical practitioner has expressed concerns that you may have been tortured.

It is accepted that the medical practitioner’s Rule 35 report constitutes independent evidence of torture in your case.

As there are no very exceptional circumstances to justify your continued detention, you will be released.

The Rule 35 evidence is not determinative evidence of torture. Further consideration will therefore need to be given as to the impact of this evidence on your asylum claim, and on your liability for removal. We will write to you separately about this.

Example #3

I am writing in response to a Rule 35 report, issued on DD/MM/YY by a medical practitioner at IRC XXXXXX. The report, issued under Rule 35(3), expresses concerns that you may have been tortured.

The medical practitioner has documented the mental and physical examination he gave you, and recorded the experience you claim to have suffered. In his detailed report, he has linked your particular claimed treatment of being hung by your wrists and beaten across your feet to injuries in those areas. He also gave specific mention to your withdrawn behaviour. On the basis of this evidence, the medical practitioner has expressed concerns that you may have been tortured.

It is accepted as a matter of fact that you have been tortured. This was previously accepted in your asylum decision and subsequent appeal, both of which found that notwithstanding your past experience, you would not be at risk of return in your country of origin. The Rule 35 report is in line with the previous finding of fact. There is no evidence to justify disputing this conclusion now.

The fact of your having been tortured in the past was considered as part of the decision to detain you. Under published detention policy, detention of a torture victim is appropriate only in very exceptional circumstances. It is considered that such circumstances apply in your case, and were considered at the time of your original detention. The Rule 35 report does not change the conclusions that led to this decision.

You were notified that your asylum claim was finally rejected on DD/MM/YY, when you were told that your appeal rights were exhausted. You were asked to consider assisted voluntary assisted return, or to make other arrangements to return to your country of origin at that time. You submitted further submissions, which were rejected because they repeated a claim to be at risk on return that had already been rejected at appeal. You were asked again to make arrangements to return to your country of origin, but failed to do so. You were served self check-in removal directions on DD/MM/YY, but failed to report to the airport for removal. You then absconded from your registered address, and came to notice only when apprehended working illegally in a fast food restaurant.

You have no outstanding applications or any other compelling reasons that might be regarded as providing a strong incentive for you to adhere to any restrictions that might be imposed if released, particularly given your previous record of absconding. Indeed, had you not been encountered by an enforcement operation, there is no reason to believe that you would ever have re-established contact with the Home Office, or have returned voluntarily to your own country. It is therefore considered that you present a high risk of absconding. This represents a very exceptional circumstance to maintain your detention, despite independent evidence of torture existing.

To be clear, the very exceptional circumstances that apply are the risk you pose of repeat absconding, in view of your previous record of absconding.

In light of an imminent removal date of DD/MM/YY, and in the absence of any other information to the contrary, it is considered that ongoing detention remains appropriate, in these very exceptional circumstances.

Example #4

I am writing in response to a Rule 35 report, issued on DD/MM/YY by a medical practitioner at IRC XXXXXX. The report, issued under Rule 35(3), expresses concerns that you may have been tortured.

The report states that you told the doctor that you were tortured between MM/YY and MM/YY, by XX person in ZZ method, which is the same as you have laid out in the statement you have submitted as part of your further submissions, which are also under consideration (this will be addressed in a separate letter to you).

The doctor gives a description of three scars on your lower left leg, around the shin, of between 4cm and 6cm in length, and he records mobility problems extending your left arm fully from the shoulder. The doctor has provided a report, in sufficient detail to show that in his opinion your injuries might be attributable to the torture you claimed to have experienced.

It is accepted that in the context of considering the appropriateness of your detention under detention policy, this constitutes independent evidence of torture.

You have clearly stated that you have sustained injuries on the basis of having tortured by the authorities in your country during a period of detention in your country between MM/YY and MM/YY. However, evidence has been obtained from the authorities of the United States of America under the Five Country Conference biometric data-sharing process, which strongly and clearly refutes this claim. It shows that at the time you claim to have been tortured and detained in your country, in a country other than your own, attending the US embassy. On that occasion, you presented your national passport, which evidenced regular travel in and out of your country, and you applied for a visa to the United States, which was refused.

This evidence substantially contradicts the statement you have given to the medical practitioner and the Home Office about the circumstances in which you sustained injuries relating to claimed torture. As a consequence of this, whilst it is accepted that the injuries identified in the Rule 35 report are independent evidence of torture, it is not accepted that you are in fact a victim of torture, and in these circumstances, it is considered that very exceptional circumstances exist such that continued detention remains appropriate.

In the absence of any other information to show detention to be inappropriate, you will remain detained pending your removal on DD/MM/YY.

[Back to contents](#)

Glossary

Term	Meaning
Responsible Officer	The officer responsible and accountable for case handling.
IRC	Immigration Removal Centres are detention facilities used by the Home Office that are either operated under contract by NOMS or by private suppliers.
Detention Review	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 substantive case.
IS.101 Disclaimer in the Case of Voluntary Departure	Pro-forma letter, used to record intentions of voluntary departure.
Rule 35 Pro Forma	To be completed by the officer responsible for considering and responding to the report.
Rule 35 Reports	Reports made by IRC medical practitioners, on receipt of allegations of special illnesses or conditions (including torture claims) received from detainees in IRCs.
Torture	<p>EO & Ors. [2013] EWHC 1236 (Admin) considered the definition of torture employed by the Home Office as regards detention policy to be:</p> <p>Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind.</p> <p>Until and unless a formal change to the definition applicable to decisions under detention policy is notified, officers must not apply a narrower or alternative definition of torture.</p>
Home Office Contact Management Teams	Home Office Contact Management Teams (CMTs) are based in IRCs. Their role is to take forward issues with case workers, responsible officers, 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.

Document Control

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	04/10/10	Update to links and children's duty
5.0	MK	28/02/11	Substantially revised process following audit
6.0	MK	13/04/11	Slight revision to address blank reports
7.0	MK	03/06/11	Slight revision to address released detainees, and to clarify ownership issues
8.0	MK	15/06/11	Timescale clarification
9.0	MK	21/01/13	Revision to reflect new DSO
10.0	MK	07/08/13	Revision of torture definition