



THE GOVERNMENT REPLY TO
THE FIRST REPORT FROM
THE HOME AFFAIRS COMMITTEE
SESSION 2009-10 HC 73

The Detention of Children in the Immigration System

**Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty**

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**THE DETENTION OF CHILDREN IN THE IMMIGRATION
SYSTEM**

Introduction: The Rationale for Detention

1. The UK Border Agency takes seriously the need to respond to the needs and vulnerability of children. That is why earlier this year the Government included in the Borders, Citizenship and Immigration Act a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are carried out with regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. This duty came into force on 2 November and mirrors that in section 11 of the Children Act 2004 which applies the same duty to a range of other public bodies.

2. The Government would always prefer voluntary compliance and co-operation with the immigration laws, including any requirement to leave the United Kingdom. There are occasions, though, when the UK Border Agency has to enforce removal because the family will not leave voluntarily, despite being offered practical and financial assistance to do so, once they have exhausted their appeal rights and the Asylum and Immigration Tribunal have upheld our decision.

3. We only detain families to enforce removal when families are appeal rights exhausted, there are no other barriers to removal and a flight has been booked. Detention is not used punitively. Any decision to detain is made on a case-by-case basis, after considering all the circumstances of each family, including the potential impact of detention on the children.

4. Our aim is always to restrict detention to the shortest possible time. In many cases families are removed or released within a matter of days¹. Once a family has been detained, the detention is reviewed on a regular basis and also at any point when there may be an indication that detention is having an adverse impact on the welfare of a child.

5. Detention may be extended for a number of weeks, particularly where families actively resist removal attempts, raise last minute representations or apply for judicial review. The vast majority of such claims are spurious and are raised to thwart removal – as indicated by the National Audit Office in their study². We note that 85% of applications lodged for judicial review of immigration decisions do not progress further. We have agreed an expedited judicial review process with the Courts to allow applications to be heard as quickly as possible, although the combined process may still take a number of weeks.

6. The decision whether to maintain detention and request an expedited judicial review or whether to release the family while the case is considered, is taken on a case by case basis – any decision will involve a consideration of the welfare of the family first and foremost, the risk of absconding, and the perceived merits of the case. We note that there is a careful balance to be struck between the risks/benefits of maintaining detention for a short period while a case is concluded, versus release and re-detention of families. We are mindful of the impact of continuing uncertainty on the children of asylum seeking families. Our aim throughout the asylum process in particular is to deliver good decisions quickly, allowing durable solutions to be achieved quickly for the children concerned.

¹ In the nine months from 4 April to 31 December 2009 the proportion of detained children removed or released within 7 days was 48%.

² NAO report, *Management of Asylum Applications by the UK Border Agency*, HC 124, Session 2008-2009, 23 January 2009

Assisted Voluntary Returns

7. It is best for all concerned if families choose to leave voluntarily. The Assisted Voluntary Return Scheme (AVR) is intended as an orderly and dignified means to return to the country of origin, for those who no longer have a legal basis to remain in the UK. Those who return home under AVR are able to travel on normal commercial flights, as ordinary passengers, without being escorted by UK Border Agency staff or contractors.

8. There are two main AVR programmes; the Voluntary Assisted Return and Reintegration Programme (VARRP) is for those who have sought asylum and those with certain related forms of temporary status in the UK; and the Assisted Voluntary Return for Irregular Migrants (AVRIM) is for those migrants who have not sought asylum, but who are in the UK illegally and wish to return home. The programmes are administered on a confidential basis by the International Organization for Migration. Families returning under VARRP receive support with return passage, £500 cash per member of the family on departure and up to several thousand pounds per person of reintegration assistance post arrival home. VARRP reintegration for children must be used for their education.

9. Reintegration assistance is not normally available under AVRIM. However there is discretionary reintegration assistance of up to £1,000 available for vulnerable cases such as victims of trafficking and unaccompanied minors. This has on occasion also been provided to particularly vulnerable single parents returning with small children.

10. Families are told about the VARRP throughout the time when their asylum applications and subsequent appeals are being considered. Information about both programmes is available in the Immigration Removal Centres so both Asylum families and Irregular Migrant families can find out about this option.

The Committee's Recommendations

11. The HAC's conclusions and recommendations are addressed in turn. The Committee's recommendations are shown in bold below with the paragraph in the Committee's report.

In future, Government statistics should be more informative and state how many separate individuals have been detained, not merely how many people have passed through detention. (paragraph 4)

12. In August 2009, the UK Border Agency expanded the published statistics on detention to include persons entering detention. This information is available at:
[http://uk.sitestat.com/homeoffice/rds/s?rds.immiq309pdf&ns_type=pdf&ns_url=\[http://www.homeoffice.gov.uk/rds/pdfs09/immiq309.pdf\]](http://uk.sitestat.com/homeoffice/rds/s?rds.immiq309pdf&ns_type=pdf&ns_url=[http://www.homeoffice.gov.uk/rds/pdfs09/immiq309.pdf])

13. As the Committee has noted, these figures include some detainees who will have left and re-entered detention and so will have been recorded more than once. The UK Border Agency has a programme of work for 2010 that will continue to extend the published statistics and this will include information on the number of separate persons detained. The programme will also broaden the published statistics on those leaving detention to include the reason for leaving and the full length of detention. The resulting statistics will be published regularly once the Head of Profession for statistics for the Home Office is satisfied the quality meets the required standards for Official Statistics.

We recommend that when children are detained for any period of time, the local authority in which they are held is informed and then notified once the period of detention is complete. Not only will this improve the collection of statistical information, but it should also encourage local authorities to undertake their statutory responsibilities with regards to child welfare and encourage greater council and social services oversight of the wellbeing of the detained children. (paragraph 5)

14. We fully accept the principle of working with local authorities and other providers of services to children. In practice, families with children are nearly always detained at Yarl's Wood which is located within the Borough of Bedford. The UK Border Agency already has strong links with Bedford Borough Children's Services (the local authority in which Yarl's Wood is situated) and already has a policy of referral on a needs-led basis whenever a child is considered to be at risk of significant harm. A contractual arrangement exists with the local authority whereby two independent social workers are based within Yarl's Wood. They carry out welfare assessments of children at specified points which contribute to reviews of detention and also at any time that there might be concerns about the welfare of children in detention. A routine notification to another part of the local authority that a child has arrived is therefore regarded as unnecessary.

15. The UK Border Agency is also a member of the Local Safeguarding Children Board (LSCB). The UK Border Agency is also forging stronger links with local authorities in areas that cover other Removal Centres where families may be detained. In these areas it is seeking to mirror the links created with Bedfordshire and to develop positive working relationships with local Children's Services and the LSCBs. We fully accept that the safeguarding of children involves a multi-agency approach. Before we detain a family with children, the case worker will seek to establish whether the children are receiving particular support or services. If this is established, the UK Border Agency will liaise with the relevant local authority and other agencies to record information concerning any known risks, additional needs, or disabilities of any family members (if applicable) and to liaise with the family doctor with the consent of the family to record medical issues and current medication. Any outstanding welfare issues will then be factored into the decision to detain and can be managed during the enforcement visit, detention and removal process. Case owners are required to maintain a welfare form for each individual/family and these are made available to our enforcement teams and to all staff in our detention centres (including health staff and independent social workers).

16. When releasing a family from detention we will also alert the relevant local authority if we have identified any specific welfare issues. This is in-line with best practice in *Working Together*³. Chapter 45.2.10 of the Enforcement Immigration Guidance (EIG) Manual provides caseworkers with guidance on Information Sharing with Local Child Welfare Agencies throughout the United Kingdom. This can be seen at <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter45?view=Binary>

³ *Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Protect Children* sets out how individuals and organisations should work together to safeguard and protect children. Published by DCSF 2006 and available at <http://www.dcsf.gov.uk/everychildmatters/download/?id=1313>. There is also a revised version open for consultation on the DCSF website at <http://www.dcsf.gov.uk/consultations/index.cfm?action=conDocument&consultationId=1667&menu=1>

We do not understand why, if detention is the final step in the asylum process, and there is no evidence of families systematically “disappearing” or absconding, families are detained pending judicial reviews and other legal appeals. The detention of children for indeterminate periods of time (possibly for 6-8 weeks), pending legal appeals must be avoided. We recommend that after a child has spent an initial fortnight in detention and every seven days thereafter, UKBA notifies the Home Office, and the Children’s Commissioner as to why detention for this amount of time is justified and why continued detention of this child is necessary. (paragraph 7)

17. The Family Detention Unit reviews the detention of each family with children on day 7, 10, 14 and every 7 days after that. The case of each family who is detained for 28 days or over is referred to Ministers for authority to detain further. The referral is undertaken by means of a detailed written submission which gives a full account of the length of detention, case history, current status of case, welfare, health, compliance with our duty and recommendations. Prior to each such referral, the detention is reviewed by a conference call, held each Monday, and attended by the Office of the Children’s Champion, detention centre health and welfare staff, UK Border Agency staff as well as independent onsite social workers at Yar’s Wood who provide an independent voice and comment directly on the impact that detention is having, and may in future have, on the child. The case of any family detained beyond 28 days must be reviewed and authorised by Ministers every 7 days.

18. The aim is to keep any period of detention to a minimum so a key factor in all the review stages is the likely timescale for resolving any ongoing legal proceedings and being able to proceed to removal. The risk of an individual family absconding will be considered on a case-by-case basis but there will be a presumption in favour of releasing a family if removal is expected to be delayed for some time; this can be difficult to predict though, with removals sometimes failing unexpectedly at the last minute.

19. The Government’s view is that these arrangements are sufficient and that providing the same information to the Children’s Commissioner would not add anything further in terms of monitoring or reducing the time spent in detention.

We further recommend that UKBA consider the use of electronic tags, reporting requirements and residence restrictions while reserving the right to detain as an alternative to indeterminate detention pending final legal decisions. (paragraph 8)

20. Where legal decisions are awaited on the immigration status of a family, consideration is given to alternatives to detention such as regular reporting to a UK Border Agency reporting centre, electronic tagging or voice recognition. Whilst each monitoring and reporting system has advantages there are specific considerations that apply to each regime. The current domestic circumstances of the family and their ability to comply with earlier restrictions will be considered when deciding which type of contact management system is employed following release.

21. Electronic tagging involves the installation of a box receiver in the home address with an adult member of the family wearing a tag on their ankle. They are required to be at home at a particular time of day, and the box picks up the signal from the tag and sends a report to a control centre to confirm whether or not they are there. It is therefore an effective means of encouraging compliance with keeping in contact with the UK Border Agency but it cannot make someone take the necessary steps to leave the UK when required to do so. Some period of detention at the end of the process may well continue to be necessary to ensure that the family departs.

The Government must look to reform of the legal system to ensure that the entire process is quicker, with much less scope for numerous, often spurious, appeals. (paragraph 15)

22. We are pleased that the committee has recognised the problem of spurious appeals. Some immigration decisions have serious consequences for those concerned and it is right that these decisions come with a right of appeal. It is equally important, however, that the appeals system is fast and that its decisions are final – it should not be used simply as a means of delaying and frustrating removal. The government is addressing this issue by transferring the Asylum and Immigration Tribunal into the unified tribunals system in February 2010. This will remove the High Court from the statutory appeals process and will help ensure that spurious onward appeals are dealt with quickly, while also ensuring that where an appeal has merit, access to justice is preserved. The Government has also introduced a number of policies which also allow the UK Border Agency to proceed with removal where a spurious judicial review has been lodged.

The legal processes must also become fairer, quicker and more transparent to reduce the need to detain small children and possibly reduce the demand for multiple appeals in the first place. (paragraph 16)

23. The UK Border Agency has made significant improvements in the quality of its first-instance decision making. A Quality Audit Team has been in existence since 2007 and aims to assess 10% of first instance asylum decisions. This ensures that the quality of initial decisions is not undermined by the drive to meet case completion targets. This has been the subject of favourable comment from the UNHCR which carries out separate audits of the decision-making process from which it produces annual reports. The UK Border Agency works closely with UNHCR to act on the recommendations emerging from these reports.

24. In addition, the UK Border Agency continues to make progress on its case conclusion targets for asylum. In December 2008, 61% of asylum applications were concluded in 6 months, which was 15% higher than in December 2007. The UK Border Agency is continuing to work to improve its performance on concluding asylum applications within 6 months in line with our PSA commitment

UKBA should continue to work hard to quicken the process from the “demand” side; if the backlog of asylum cases were cleared quicker we suspect that there would be fewer legal appeals and a consequent reduction in longer-term detentions. (paragraph 17)

25. The UK Border Agency has ramped up performance in dealing with the asylum legacy cases and has now concluded over 220,000 cases. It is now well on track to complete all cases by 2011. The previous Home Secretary advised that consideration would be given to clearing the backlog earlier than that. The Permanent Secretary has since confirmed in his session with the Public Accounts Committee that steps are being taken to try and achieve this. An additional 250 temporary staff have been recruited to perform the administrative functions involved and the operating model has been further streamlined to allow experienced staff to focus on making decisions on live cases.

26. We are therefore optimistic about being able to clear the backlog early. As a consequence there should be a reduction in appeals, as there will be fewer cases overall to trigger these processes, and the speedier resolution of those that remain should lead to a reduction in detention periods. As yet, it is still too early for a distinct pattern of this nature to have emerged.

We recommend that, longer-term, UKBA concentrates its efforts at sites such as Brook House and Colnbrook which are next to Gatwick and Heathrow airports respectively. This will help to underline to both parties that detention is intended to be the final stage in the process. (paragraph 18)

27. Brook House and Colnbrook Immigration Removal Centres are designed to provide category B prison-style accommodation for those who pose the greatest risk of harm to the public. They are not therefore suitable for holding families with children. The Government has invested significant funding into Yarl's Wood to make it an appropriate and safe environment for those detained, especially families. The Centre is located less than 1 1/2 hours from Heathrow Airport from where the majority of families depart the UK, and is therefore considered to be in a suitable location.

We have made three main recommendations on improvements which can be made to the legal process, the processing of asylum claims and the treatment of detainees pending legal decisions. Any and all of these recommendations will reduce the number of children held in longer-term detention, and UKBA should make every effort to reduce the need to detain small children for sustained periods of time. We fully accept the principles behind detention – we cannot envisage UKBA fulfilling the tasks set for it in any other way – but we insist that this power be used only sparingly, as a last resort and for the shortest possible time. (paragraph 19)

While it may be argued that adopting these courses of action may lead to a slight increase in the risk of absconding, we believe that this risk is very low and in both moral and financial terms it is a price worth paying to prevent the long-term, indeterminate detention of small children. (paragraph 20)

28. We welcome the Committee's support for the principles behind detention.



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