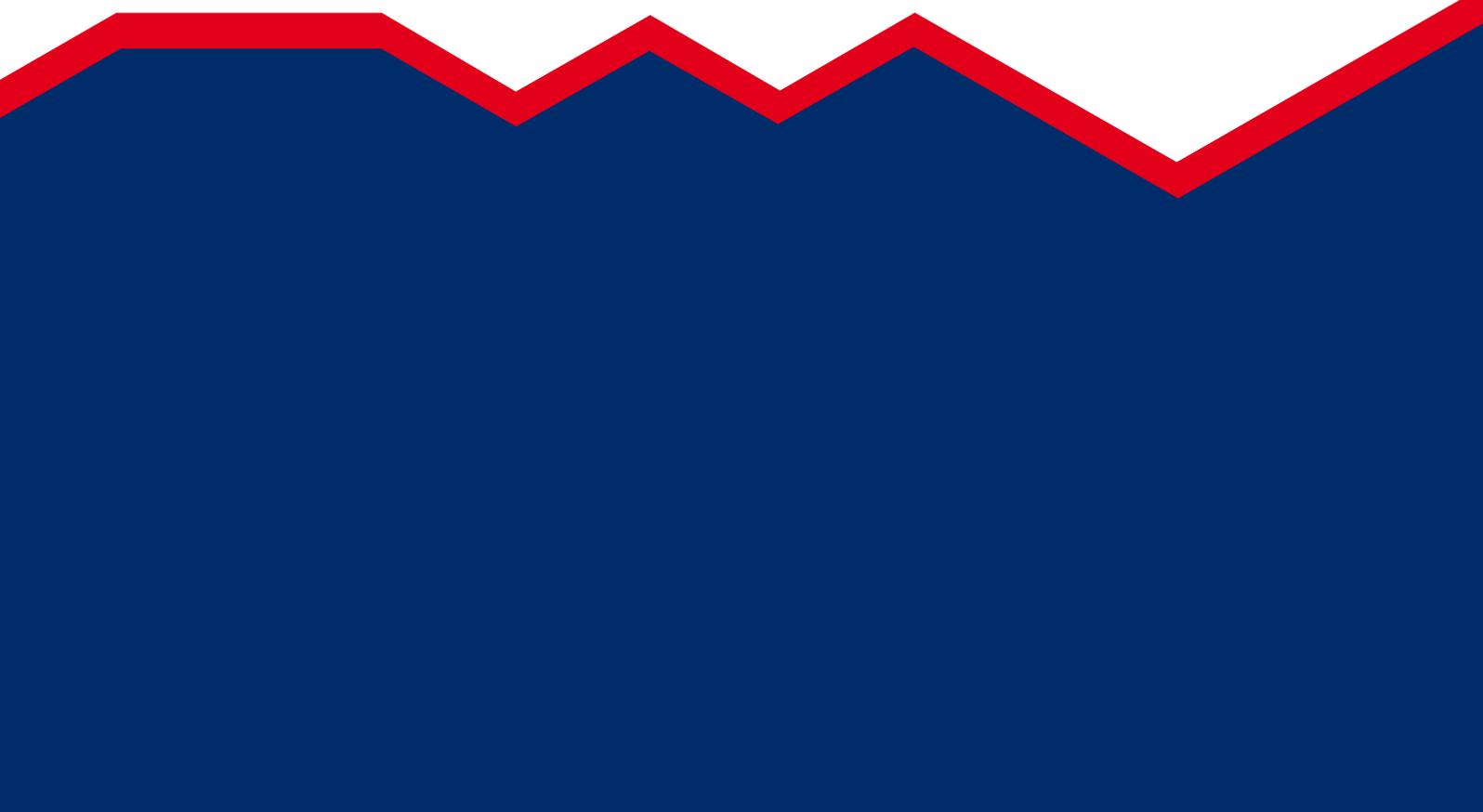




**SECURING
OUR BORDER
CONTROLLING
MIGRATION**

REVIEW INTO ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES

December 2010



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MINISTERIAL FOREWORD



The UK has a long tradition of welcoming people from across the globe and we can be especially proud of our record in granting refuge to those who have been persecuted. At the same time, we must enforce immigration controls in respect of those who are not in need of protection or who are otherwise here illegally. When those people include families with children, we have a particular responsibility to ensure that we approach the task with compassion and humanity.

That is why one of this Government's first acts was to commit to ending the detention of children for immigration purposes. How to return families with children has been an issue that authorities in this country and across the world have long struggled with. Previous governments, through the UK Border Agency and its predecessor bodies, have sought alternatives to detention before but these have neglected to recognise that a fresh approach is needed that looks at the whole end-to-end process of working with families. We will not repeat that mistake.

Over the past few months, we have been working closely with partners and testing out new approaches to find a new way of working with families and to build confidence in the system. I am very grateful to all those who have contributed to this review—all 342 people and organisations who responded to our consultation and in particular the Diana, Princess of

Wales Memorial Fund, the members of its working group and the Citizens UK reference group on ensured returns. I also acknowledge the contribution of the Children's Commissioner for England in ensuring that the voices of children have been heard throughout this process. I hope that we can build on this positive co-operation going forward.

This documents sets out the new approach we have developed for working with families. The new system will strengthen families' trust and confidence in the immigration system, maintain public confidence in the Government's ability to control the UK's borders and ensure that families with children are treated humanely and in a way that meets our international obligations and statutory duties in relation to children's safety and welfare.

For the few families who do not cooperate with their return, the new process ensures that safeguarding is to the fore when enforcement options are being considered. To help us in this, we are creating an independent expert panel to oversee the most appropriate method of return and any specific safeguards which should be in place.

We will be putting this new process into practice over the coming weeks and months. We will have to learn from experience as we move forward and improve our ways of working and will do so. Partners also have a major role and responsibility to help make the new approach work – in helping families to come to terms with their situation and the need to return and in helping them to consider all the options open to them before enforcement action is needed. I hope that we can work together constructively in the best interests of the families and children concerned.

A handwritten signature in black ink, which appears to read 'Theresa May'. The signature is fluid and cursive.

Theresa May
Home Secretary and Minister for Women and Equalities

SUMMARY

The Government is committed to ending the detention of children for immigration purposes. A review has taken place involving a wide range of interested parties and drawing on expertise and experience both in the UK and abroad.

This document sets out the conclusions of that review and how the Government aims, in conjunction with our partners, to fulfil this commitment in a way which protects the welfare of children and ensures the departure of families who have no right to be in the UK.

We have developed a fresh approach to managing family returns. It consists of a new four-stage process which is designed to strengthen confidence in the process of taking immigration and asylum decisions and maintain public confidence in our ability to control our borders, while ensuring that families with children are treated humanely and in a way that is consistent with our international obligations and statutory duty in relation to children. This approach places a far greater emphasis on engagement with families and seeks to maximise the opportunities for parents to take responsibility for, and exercise some control over, what happens to them and their children.

The key elements of the new process are as follows:

- **Decision-making** – we will strengthen decision-making by continuing to work with the Office of the United Nations High Commissioner for Refugees (UNHCR) to test and improve our decisions and create a specialist group of family case-owners. The UK Border Agency has already launched pilots of new arrangements to provide early access to legal advice and practical support and guidance to families through the asylum application process and will build on these approaches by refining and evaluating these pilots further.
- **Assisted return** – we will ensure that families have a dedicated family conference to discuss future options and the specific option of assisted return. We will examine how best to bring strong family engagement skills to bear at these conferences and when engaging with families throughout the process.
- **Required return** – we will give families who do not choose to take up the offer of assisted return at least two weeks’ notice of the need to leave the country and the opportunity to leave under their own steam. This extended notification period – up from 72 hours - will ensure that the family can prepare properly for their return and give them time to raise any further issues or pursue further legal options.
- **Ensured return** – only once a family has exhausted their rights to appeal and after the new and additional assisted and required stages have been exhausted, will we consider enforcement action: our aim is for families to depart before reaching this stage of the process. An independent Family Returns Panel will be created to help to ensure that individual return plans take full account of the welfare of the children involved. Wherever possible, the Panel will seek to manage return direct from the family home to the port of departure while respecting the need, for both welfare and legal reasons, to give notice of the departure.

The Panel will have a range of options at their disposal, including new ones developed specifically as alternatives to detention. As a last resort measure for those few families who resolutely fail to co-operate with other ensured return options, the Panel will have the option to refer them to a new form of pre-departure accommodation. Families sent there on the Panel’s recommendation would already have had the option of other ensured returns, including ‘open’ accommodation and thus,

whilst the pre-departure accommodation is secure, it is only for those families who have refused to comply with the process and who the Panel judge need that level of oversight.

This pre-departure accommodation will be family-friendly, with an entirely different look and feel from immigration removal centres. The site will be secure but respect family privacy and independence. Stays will be for up to 72 hours, except in exceptional circumstances where stays will be strictly limited to a maximum of one week, and linked to a specific return date; the short time in the accommodation will be used to prepare the family for return, with third sector providers playing a key role. We will allow children to have opportunity to leave the premises subject to a risk and safeguarding assessment and suitable supervision arrangements. We will also give third sector organisations the opportunity to participate in running this new accommodation.

When families arrive at the border, we sometimes need to hold them while enquiries are made to ascertain whether they can be admitted to the country and/or pending their immediate return. We will retain the right to hold such families, as well as families with individuals who may pose a risk to the public. This will be subject to appropriate Ministerial authorisation. This will be short detention, for a few dozen families each year, usually for less than 24 hours and only where logistics or safety makes pre-departure accommodation unworkable.

With immediate effect, the family unit at Yarl's Wood will close for the detention of families with children.

The greater part of the wider package including the new Family Returns Panel, will go live on a national basis in March 2011. Full implementation of all the elements, including the new pre-departure accommodation option, may take longer. Significant further testing and evaluation of new approaches for family engagement will also be ongoing as we seek to improve and strengthen our approach.

COMMITMENTS

Decision Making:

- We will test whether early access to legal advice supports better decision-making and increases trust in the system.
- We will test out the “key worker” pilot principles with family cases.
- We will work with others to develop new models of community engagement and support.
- We will establish specialist family case-owners within the UK Border Agency.
- We will introduce a compact between the asylum-seeking family and the UK Border Agency.
- We will review decision-making in family asylum cases in partnership with UNHCR.

Assisted Return:

- We will introduce an independent element into the assessment of future AVR schemes when the existing AVR contracts are re-tendered.
- We will provide an incentive for earlier acceptance of voluntary return by modifying the re-entry ban.
- We will conduct a family return conference in every family case as a first step towards return.
- We will ensure that every family is aware of the assisted return packages available.
- We will seek to work with partners in helping families to engage with the option of AVR.

- We will provide every family with adequate time to consider their options before we take firmer action.
- We will seek to ensure that we are aware of all relevant compassionate factors as early as possible in the family returns process.

Required Return:

- We will no longer detain families before serving removal directions.
- We will increase the minimum notice period in family cases from 72 hours to 2 weeks for a required return.
- We will give families the opportunity to leave under their own steam via a self check-in and without the need for enforcement action.

Ensured Return:

- We will set up an independent Family Returns Panel to oversee the return of difficult cases.
- We will implement new return options of:
 - Limited notice removal
 - Open accommodation
 - Pre-departure accommodation
- We will hold families only in very limited circumstances for border and other high risk cases.
- We will close the family unit at Yarl’s Wood for the detention of families with children.

INTRODUCTION

The review process

- 1.1 The Coalition Programme for Government made a commitment to end the detention of children (i.e. persons aged under 18) for immigration purposes. A review began on 1 June to consider how this could be done in a way which protects the welfare of children while ensuring the return of families who have no right to be in the UK. We have defined “detention” for these purposes as the holding of children with families in immigration removal centres such as Yarl’s Wood¹.
- 1.2 The UK Border Agency has sought the input of a range of interested parties, both directly and through a working group which was co-chaired by the UK Border Agency and the Diana, Princess of Wales Memorial Fund. A total of 342 written submissions were received in July². In addition, Citizens UK established a group to consider specific alternatives to detention. The review also considered how other countries approach these matters. The UK Border Agency has also worked closely with the Department for Education as the lead department for children and safeguarding in England.
- 1.3 Since July we have continued our dialogue with interested parties. The UK Border Agency have also begun to test out a number of new approaches to working with families, details of which are set out in the rest of this document. We have already significantly reduced both the number of children being detained and the length of time they are there. Last year

more than 1,000 children were detained in immigration removal centres. Between the beginning of this review on 1 June and 30 November 2010, 78 children were detained as part of family groups for immigration purposes. Over the same period last year the number was 594. The average length of detention this year was around 4 days – compared to 15 last year³.

The challenges

- 1.4 Any new system has to ensure that families with no right to be in the UK continue to leave. Failure to deliver this would damage not only the credibility of the immigration and asylum system but also create real risks for children: if migrants believe that families with children will not be removed from the UK, the risk of children being trafficked or otherwise exploited for immigration purposes is heightened.
- 1.5 Any new system also needs to be better for children than the one it replaces. In taking forward this review, we have been mindful of section 55 of the Borders, Citizenship and Immigration Act 2009, which places a legal responsibility on the Secretary of State to make arrangements to ensure that immigration, asylum, nationality and customs functions are exercised having regard to the need to safeguard and promote the welfare of children in the UK⁴. This has led to many improvements in the way children are treated by the Agency and we are continually looking at how we can improve further.

1 Unaccompanied children are therefore not considered in this review.

2 A list of the individuals and organisations who provided these is available at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/>

3 Management information for the periods 1 June – 30 November in 2009 and 2010.

4 Section 55 is supported by statutory guidance issued jointly by the Home Office and Department for Education:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/>

The way forward: changing the way in which we manage family returns

- 1.6 Our new processes are designed to ensure that welfare considerations are taken into account by the UK Border Agency throughout, including at the decision-making stage and, if the decision is that the family must leave the UK, in subsequent considerations of how this should occur. We think that it is better for children for departures to take place in a managed and planned way, with the parents taking control over the arrangements and without the need for the UK Border Agency to enforce a particular method and timing of return upon them.
- 1.7 The responses to the consultation in the review stressed the need to develop a holistic approach to the way in which the UK Border Agency engages with families: one that focuses on initial interactions and decision-making as much as what happens when a family has no legal right to remain in the UK. This is an element that is reflected in some of the more successful alternatives to detention in other countries.
- 1.8 We have therefore designed a new, and fundamentally different, process underpinned by some key principles:
- The new process must take full account of the need to safeguard and promote the welfare of children in the UK in accordance with our statutory and international obligations.
 - The new process must treat families with children humanely and with compassion.
 - Independent expertise should be brought to bear at the most difficult stages of the process.
 - Parents should have the opportunity to make choices about the manner and timing of their departure.
 - Families with no legal right to be in the country need to leave.
 - The new process must be affordable.
- 1.9 The rest of this document outlines a new four-stage process which reflects these principles and which we believe will enable us to fulfil the aims of the review.
- 1.10 The review is a first step. There are details still to be worked through and we will no doubt need to refine our approach in the light of experience. We will seek to build on the working relationships established up to now to help us to do this and continue to consult as appropriate. We will keep the system under constant review and aim to have a first stock-take of where we have reached by September, i.e. 6 months after these proposals are rolled out nationally.

DECISION-MAKING

- 2.1 Families encountered by the UK Border Agency generally comprise those who are seeking asylum, those seeking to enter the UK at the border or those otherwise encountered as overstayers or illegal entrants.
- 2.2 The UNHCR has praised our asylum decision process and, with European Commission and UNHCR support, we are engaged in a UNHCR-led project (with Germany and Austria) to export these assurance mechanisms to 14 EU states. But we also want families to have confidence in our decisions. We will therefore test whether early access to legal advice supports better decision-making and increases trust in the asylum system. Building on an earlier project in Solihull in 2007-08, the Early Legal Advice Project began on 15 November 2010. The process allows for early provision of a legal-aid-funded legal representative to eligible individuals who claim asylum and are routed to live in the Midlands and East Region. The legal representative works with the applicant and case owner to ensure that all the evidence in support of the case is presented to the case owner before the decision is made to avoid additional information being raised at the appeal. The UK Border Agency is providing funding to the Ministry of Justice in support of this project.
- 2.3 The final evaluation of the project should be available in November 2012 but its impact will also be assessed on a quarterly basis. If early results are promising in terms of the outcomes for families and value for money, we will consider early roll-out to family cases nationally.

Early Legal Advice Project

Legal help is currently available to all eligible asylum seekers from the outset of their claim. Normally, asylum seekers are entitled to around 8 hours' legal help before an asylum interview but are then entitled to full legal support (including representation) at appeal.

The UK Border Agency and Legal Services Commission (LSC) are working with key asylum partners and plan to test the 2007 "Solihull pilot" principles of an enhanced legal service across an entire region of the Agency. This project provides more legal advice around the asylum decision (including representation at interview) with the aim of driving up the quality of asylum decisions. The process of robustly testing the benefits and assessing the viability of a national roll-out of early legal advice has the aim of improving the quality of initial asylum decision-making by frontloading the system and achieving cultural change in the asylum determination process on the part of the decision-maker and the adviser.

The early legal advice model is:

- The contracting by the LSC of legal representatives to provide advice to asylum seekers as part of their asylum application.
- In line with contracts issued, the funding of legal representatives to work with asylum applicants and case-owners to establish the facts of the case and prepare a witness statement and offer other pertinent advice.

- Legal representatives working jointly with the UK Border Agency case-owners to plan initial decision interviews towards establishing – before a decision on a case is made – the merits of an application and supporting evidence. Legal representatives to participate in interviews.
- Not a replacement for an applicant’s right to appeal: part of the reason for testing the Solihull approach again is to evidence whether the involvement of legal representatives leads to a reduced number of cases overturned in the applicant’s favour at appeal.

- 2.4 Since April 2010 another pilot in the North West has been testing the benefits of assigning a key worker to asylum claimants to help them with welfare needs, guide them through the asylum process and encourage assisted return where appropriate. The Key Worker Pilot is a joint venture between the UK Border Agency and Refugee Action. The aim is to improve claimants understanding of the asylum process and to increase the number who return voluntarily if they are not granted protection. The pilot consists of 200 clients, including 16 families, 13 of whom are also part of the North West family alternative to detention pilot (see below).
- 2.5 Further funding has now been agreed to support a family-specific key worker pilot, run with Refugee Action, which will start in the North West from December and run for 10-11 months. The overall purpose is to ensure that clients’ support needs are effectively identified and met, and that families fully understand the status of their asylum application, the processes involved, the implications of different outcomes and the choices available to them.
- 2.6 Beyond formal and funded alternative ways of working with families, there is also a role for wider partners to play in engaging with families on their options and helping to guide families through the asylum and decision making process once they become appeal rights exhausted. We are working with Citizens UK on a non-financial basis to develop a pilot to test the concept of community sponsors, who are accredited individuals from an asylum seeker’s own community. The aim is to see whether people who have a pre-existing relationship of trust with an asylum seeker may be better placed to provide support and guidance than other voluntary sector organisations, or officials from the UK Border Agency.
- 2.7 The UK Border Agency also recognises the need to strengthen the level of engagement and communication between families and our case-owners. This is a feature of successful systems in several other countries. To that end, we think that families should, where possible, deal with the same case-owner throughout the process.
- 2.8 Working with families also raises additional complexities – for example, in considering an application for asylum we need to consider the needs of the whole family and take account of the need to safeguard and promote the welfare of children. We will therefore establish specialist family case-owners and will look to include our staff in training by and with other organisations with experience of the system and/or of working with children.
- 2.9 To reinforce this new approach we will also introduce a “compact” to be signed by the asylum-seeking family and the UK Border Agency early in the process setting out the responsibilities of both parties, including the possibility of return.
- 2.10 The time between claim, decision and departure also needs to be shorter. Following the Coalition Government’s announcement that it will explore new ways to improve and speed up the asylum system, the UK Border Agency is carrying out a project which will report in March 2011. This will consider further options for strengthening our approach for families. We will also work with UNHCR to extend our current Quality Integration Project and conduct a specific review of decision-making in family cases. This will explore the decisions made on protection and human rights issues, as well as wider decision-making in relation to the children’s duty under section 55 of the 2009 Act and the new returns process. We envisage this taking place in 2011 as the new approaches set out in this review bed down.

Commitments:

- We will test whether early access to legal advice supports better decision-making and increases trust in the system.
- We will test out the “key worker” pilot principles with family cases.
- We will work with others to develop new models of community engagement and support.
- We will establish specialist family case-owners within the UK Border Agency.
- We will introduce a compact between the asylum-seeking family and the UK Border Agency.
- We will commission a review of decision-making in family asylum cases in partnership with UNHCR.

ASSISTED RETURN⁵

Assisted Voluntary Return

- 3.1 Working with the International Organization for Migration, the UK Border Agency offers assisted voluntary return (AVR) programmes to help those without status in this country to leave in a supported and dignified manner and to build a new life in the country to which they return. There was wide support for AVR from respondents to the review.
- 3.2 We recognise that families and children have particular needs and a new AVR package has been developed to cater for them. Assisted Voluntary Return for Families and Children (AVRFC) was launched on 1 April and is available to both unaccompanied children and family groups with children who have sought asylum or are in the UK illegally. AVRFC includes help with acquiring travel documents, flights to the country of return, assistance at departure and arrival airports and onward transport on arrival in the country of return. Reintegration assistance is also available for each family member, including a £500 cash grant on departure for immediate resettlement needs, an additional luggage allowance and, once home, a range of reintegration options delivered in kind.
- 3.3 Concerns were raised in the review about the outcomes for families who have returned in the past under AVR schemes. We will therefore introduce an independent element into the assessment of future AVR schemes when the existing AVR contracts are re-tendered.
- 3.4 While children and a few other categories are exempt⁶, most people who have previously entered the UK illegally or overstayed for more than 30 days are subject to a re-entry ban. This ban currently lasts for:
- 12 months if people pay for their own departure;
 - five years if they leave as part of an AVR package; and
 - ten years if their departure has to be enforced.
- 3.5 We continue to see a role for the re-entry ban as a means of deterring people from overstaying in the first place and in preventing the return of those who have demonstrated an unwillingness to comply with our immigration laws. However, we also understand the argument which was put to us during the review that the re-entry ban discourages families from leaving voluntarily if they have ambitions to return to the UK for family reasons, work or study. In order to encourage earlier take-up of voluntary return, we therefore propose to reduce the re-entry ban to two years for those who leave the UK promptly. The five-year ban will continue to apply to those who take up AVR at a later stage.
- 3.6 Many of the responses to the consultation also highlighted inconsistencies in the way in which the option of AVR is communicated to families. The Children's Commissioner for England has previously expressed concern about the timing and method of delivery of information about AVR and reported that some families detained in Yarl's Wood claimed not to remember having been offered AVR or to have expected to be detained⁷.

⁵ A more detailed account of the assisted return process can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/>

⁶ See paragraph 320(7C) of the Immigration Rules

⁷ The Children's Commissioner for England, Follow up report to "The arrest and detention of children subject to immigration control", (February 2010), page 20

3.7 The Independent Chief Inspector, John Vine, made a clear recommendation to the UK Border Agency to clarify the way in which voluntary returns are offered. We have been improving the way in which we communicate AVR to families and children through closer engagement with the voluntary sector and community groups, as well as the families themselves. We are working to roll out Best Practice Guidance on communicating the AVR (families and children) package to staff building on local and central initiatives and experience.

Family conference

- 3.8 A key element of this new approach is the “family conference”. We have been testing out this new approach (and other aspects of assisted, required and ensured return) in pilots which have been running in the North West and London since June and which have informed the thinking in this review⁸.
- 3.9 We will set up a family conference to enable us to advise the family in person of the assisted return options available to them. Where possible, the family will be given the option of bringing to the conference someone they can trust, such as a key worker, someone from a community group or a legal adviser. The conference will also be an opportunity to discuss with the family the steps they need to take to prepare for return, including obtaining any necessary medication or vaccinations.
- 3.10 Following the conference, the family will be given a fixed period of time in which to make a formal application for assisted return or to make arrangements for their own voluntary departure. Only if they do not meet that deadline will the UK Border Agency start to make their own arrangements for the family’s return. The minimum time period given to consider assisted return will be two weeks.
- 3.11 There has been considerable debate around whether two weeks is long enough to enable families to make up their minds about assisted return. It is important to be clear that this will not be the first time that families have heard about the option of assisted return and it is a minimum time period which can be extended

as appropriate on a case-by-case basis. The aim is to give the family enough time to consider their options while ensuring that momentum is not lost and that families remain focused on the need to depart. It is not in children’s interests for this process to drag on.

- 3.12 Our thinking here has been informed by the experience of the Family Return Project which has been running in Glasgow since June 2009 and where indications are that two weeks is a reasonable period.

Family Return Project, Glasgow

Since June 2009 a Family Return Project has been running in Glasgow as a partnership between Glasgow City Council, the UK Border Agency and the Scottish Government. This pilot aims to reduce the need for enforced removal and detention of families in Scotland by encouraging families whose asylum claims have been unsuccessful to return voluntarily. Social workers work intensively with families to help them to understand their options and prepare for return. There is a particular emphasis on supporting children through the process.

Families have to meet set eligibility criteria in order to take part in the project and are then accommodated in designated flats. These can take 4-5 families at any time for around 12 weeks each.

The pilot is providing an insight into barriers to return, and is helping to promote the welfare of families by minimising the distress and uncertainty of children at the end of the asylum process. There is also better communication and partnership working between agencies, such as health, education, social work and the UK Border Agency.

As yet, none of the families taking part in the pilot has chosen to return voluntarily.

- 3.13 If the family think that there are reasons why they should remain in the UK, the family conference is an opportunity to raise them or to prompt their submission in subsequent

⁸ More detail on the pilots can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/>

days. We will ensure that consideration is given to any new issues raised in this way and, where they have merit, previous decisions will be reviewed before any enforcement action is taken. This should help to reduce the problem of last-minute representations – which under the previous system were often submitted only once the family was taken into detention.

- 3.14 We will continue to work with third sector organisations with relevant expertise to help us to refine our approach to the family return conference. We will examine how best to bring strong family engagement skills to bear, including who is best placed to run the conferences and the skills needed.
- 3.15 We will also consider how children’s needs can best be met during this process. We believe that children have a right to be told, in an age-appropriate way, what is happening to them so that they can ask questions, express their views and make their own preparations for departure. The primary responsibility for this rests with parents but we understand that this can be difficult for them and will consider how we can support them to do this.

Commitments:

- We will introduce an independent element into the assessment of future AVR schemes when the existing AVR contracts are re-tendered.
- We will provide an incentive for earlier acceptance of voluntary return by modifying the re-entry ban.
- We will conduct a family return conference in every family case as a first step towards return.
- We will ensure that every family is aware of the assisted return packages available.
- We will seek to work with partners in helping families to engage with the option of AVR.
- We will provide every family with adequate time to consider their options before we take firmer action.
- We will seek to ensure that we are aware of all relevant compassionate factors as early as possible in the family returns process.

REQUIRED RETURN⁹

4.1 If the family choose not to take up the opportunity of assisted return, the UK Border Agency will make arrangements for the family to leave the UK and give them notice of the time and manner of their departure. The key difference between the new process and the old one is that in future the family will be given this notice while they are still in the community so that they have the opportunity to comply with the arrangements made for them and to make their own preparations for departure. A planned departure of this sort, over which the family is able to exercise some control, is better for children than an enforced one. The responses to the review supported this. Notice will therefore be given to the family without taking enforcement action and, on the actual day of removal, they will go to the port of departure without being taken to an immigration removal centre.

4.2 We will normally give families at least 14 days' notice of departure - considerably more than the 72 hours which has previously been provided. This provides an opportunity to seek judicial review or make further representations should they wish to do so. It also gives the family the chance to close down their affairs in the UK, say their farewells and prepare to leave.

4.3 Families will normally be given the option of checking themselves in at the port of departure. We will also offer support for the transfer to the airport and consider other requests from the family to smooth their journey.

Commitments:

- We will no longer detain families before serving removal directions.
- We will increase the minimum notice period in family cases from 72 hours to 2 weeks for a required return.
- We will give families the opportunity to leave under their own steam via a self check-in and without the need for enforcement action.

4.4 If a required return fails because a family fails to present for self check-in, or if exceptionally the risk to public safety of their failing to do so is considered unacceptably high, the case will be moved on to the ensured return stage and be referred to the Family Returns Panel for consideration.

⁹ A more detailed account of the required return process can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/>

ENSURED RETURN¹⁰

- 5.1 The new processes have been designed following wide consultation throughout the review on the perceived deficiencies of the present system. We believe that they provide every possible opportunity and encouragement for families to leave the country without the need for enforcement action. The emerging results from the pilots demonstrate the challenges involved in this work but we hope that, as we refine our approach in the light of experience and develop a more integrated end-to-end process, more families will leave the country voluntarily or via a required return when they have no legal right to be here. We will ensure that they are given every opportunity and encouragement to do so.
- 5.2 However, a small number of families are likely to refuse to co-operate with these processes. Indeed, without a means of ensuring return as a last resort, it is likely to be harder to persuade families to accept the assisted return options available earlier in the process.¹¹ This is reflected in the approaches taken in many other countries to this issue, where a strong emphasis on promoting voluntary return is nevertheless underpinned by options for enforcement if necessary.
- 5.3 When the UK Border Agency makes a decision that an applicant faces removal and a Human Rights claim has been made, there is a right of appeal to an independent Immigration Judge. The Immigration Judge will scrutinise all relevant rules and Human Rights considerations and determine whether the decision to proceed to removal is a lawful one taking into account all relevant factors. There is also a right to apply for a further appeal to the Upper Tribunal if the Immigration Judge's decision contains an error in law and it is only when the appeals process is finished that the UK Border Agency would seek to enforce a removal. Applicants also have the right to seek Judicial Review of a decision to remove them. In other words, by the time the family reaches this stage of the process, they will already have had numerous opportunities to have their case independently considered by the courts. They will have been able to explain their position and been given notice of removal – with which they have chosen not to co-operate.
- 5.4 Deciding on what route to pursue in these cases will always be difficult. A number of submissions to the review advocated greater independence in the decision-making process and a greater focus on the welfare of the child. To this end we intend to establish an independent Family Returns Panel. This Panel will consider the best way of ensuring a safe and humane departure in an individual case, taking into account the need to safeguard and promote the welfare of the child (section 55 of the Borders, Citizenship and Immigration Act 2009) and the family's rights under the European Convention of Human Rights. The Panel will be independently chaired and will include representatives of the UK Border Agency, Department for Education and independent experts.
- 5.5 The Panel will also make the entire family returns process more publicly accountable. The Panel itself will on a day-to-day basis ensure that the UK Border Agency is following

¹⁰ A more detailed account of the ensured return process can be found at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/>

¹¹ International Centre for Migration Policy Development and European Refugee Fund, Study on Different Forms of Return Incentives to Promote the Return of Former Asylum Seekers and Other Temporarily Protected Persons (2003): "...there are evidences that voluntary returns achieve greater results if removals can be effectively enforced."

the assisted and required returns process. It will publish an annual report setting out the number of cases referred to it, an indication of their advice and the eventual case outcome. Its first report will be accompanied by an independent evaluation of its operation. The annual report will also be a mechanism to provide information on the number of cases where the method of ensured return differed from that recommended by the Panel.

- 5.6 The Panel will consider the family's individual circumstances and the welfare of the children and will recommend how the removal should take place. The UK Border Agency will then implement the Panel's recommendation. If, very exceptionally, the Panel is unable to agree on the course of action the case will escalate to the Immigration Minister to decide. The Immigration Minister will write to the Panel chair setting out their reasons for any decision. The Panel will produce an annual report, which will include any cases which have been escalated to the Immigration Minister.
- 5.7 The Panel will be able to recommend a return plan using any existing approach available to the Secretary of State with the exception of detention in an immigration removal centre. We are also developing an additional range of options to provide sufficient flexibility for a tailored approach for each family. These options will include:

a) Limited notice removal

All families at this stage of the process know that steps are being taken to secure their departure but have not co-operated with plans for them to leave on a pre-notified date. Limited notice removal involves letting a family know that they will be returned sometime between 72 hours and 21 days of notice being given but without giving them the exact date¹². This should increase the chances of the family being found on the day of departure but it ensures that they have the opportunity to make preparations for departure and are not taken by complete surprise.

b) Open accommodation

Open accommodation is a type of hostel accommodation into which a family could

be moved prior to their removal. While we might expect a family to sign out when leaving, we will not restrict families' movements. There will be access to healthcare, and age-appropriate activity materials for children.

Shortly after arriving in the accommodation, the family will be served with removal directions, giving 72 hours' notice. We will thus return the family approximately 72 hours after they enter the accommodation – using arrest powers if necessary. We are beginning to test out this type of accommodation, and limited notice removal, for families who are part of the pilots in the North West and London.

c) Pre-departure accommodation

This would be used as a 'backstop' option when other ensured return options had failed. Families will be housed in special family accommodation which will consist of a secure and supervised building, exclusively used for housing a small number of families. Stays will be limited to 72 hours and linked to a specific removal date but exceptionally could be extended up to a week with ministerial authorisation where a removal fails, for example due to disruption by the family. The short time in the accommodation will be used to prepare the family for return, with third sector providers playing a key role. This accommodation will have an entirely different look and feel to an immigration removal centre and be far smaller, with less obtrusive security. The accommodation will provide a higher degree of privacy and not have an institutional atmosphere. Once in pre-departure accommodation, families will be allowed to leave the premises with permission on a risk-assessed basis. We will allow children to have opportunity to leave the premises subject to a risk and safeguarding assessment and suitable supervision arrangements.

We will invite third sector organisations to assist us in the running of this accommodation. Our aim is to have this operational in May – within a year of the Coalition Government's commitment having been made.

- 5.8 We have considered the option of separating families and placing the adults in detention

¹² Limited notice of removal is not same day removal: a same day removal is where notice of removal occurs on the same day as the removal itself.

while leaving the children in the community, perhaps in local authority care. We have received strong submissions from both local authorities and the voluntary sector advising against this course of action and highlighting the detrimental impact on children's welfare of this kind of separation from their parents. We agree, especially in the context of our section 55 duty. We will not separate children from both parents, or from one in the case of a single-parent family, for immigration purposes if the consequence of that decision is that children are taken into care.

- 5.9 However, there may be occasions when it may be necessary to separate a parent from the children to manage more extreme examples of disruption and to safeguard the welfare of the children (e.g. by shielding them from violent and upsetting scenes). Splitting families in this way will be tightly controlled and for the shortest possible time and, as with all the options at the ensured return stage, any proposal to split a family as part of a family returns plan could take place only with the approval of the independent Panel.
- 5.10 Other options may emerge in the light of experience and we will continue to maintain a dialogue with the Panel and others to ensure that these are identified and acted upon where appropriate.

Border and criminal cases

- 5.11 On their arrival in the UK, families with children may currently be held while checks are made to determine whether they should be admitted to the country and, if not, until a return flight can be arranged for them. These checks are necessary to secure the UK border at points of entry, as well as to meet our obligation to safeguard the welfare of children, especially if trafficking or other forms of abuse are suspected.
- 5.12 In those circumstances, the family may be held for a short period (up to a maximum of 24 hours) at the port. Where it is necessary to hold them for longer, the family may be transferred to an immigration removal centre, where there are more comfortable facilities and support services.
- 5.13 On 16 August 2010 we introduced a new process, whereby a Director must authorise

the decision to hold a family with children in the immigration removal estate overnight and/or over 24 hours. We have also changed the system for dealing with asylum-seeking families who arrive at port late in the day. Previously such families would have been held overnight until they could be screened the following day. To avoid this, such families can now be routed straight into the asylum system without being screened, provided that biometrics are taken. The combined effect of these changes has been significantly to reduce the numbers held in this way.

- 5.14. We will continue to seek to return those refused entry by the next available flight and preferably on the same day. Where this is not possible, we may hold families at Tinsley House Immigration Removal Centre. This will be subject to certain safeguards:
- We will not hold border cases for longer than 24 hours without authorisation at Director level.
 - Ministers will be required to authorise any stays beyond 72 hours.
 - The new Family Returns Panel would monitor and report on the management of border cases.
- 5.15 Very occasionally, an offender approaching the age of 18 who has completed a custodial sentence may continue to be detained in the juvenile secure estate (i.e. not in an immigration removal centre) pending removal after he turns 18. This is authorised only in very exceptional circumstances (typically less than once a year) after careful consideration of the individual case where it can be shown that the individual poses a serious risk to the public and a decision to deport or remove has been taken. Ministerial authority is required for this. In practice, detention of this sort lasts only for a very short period when an individual is just short of their 18th birthday on completion of sentence. This option will continue to be necessary for these exceptional cases but in future each case will be considered by the independent family returns panel and be subject to Ministerial authorisation.
- 5.16 In very rare cases, Ministers may also authorise holding families where individuals within the family pose significant public protection risks.

5.17 We will cease to hold families with children at Yarl's Wood.

Commitments:

- We will set up an independent Family Return Panel to oversee the return of difficult cases.
- We will implement new return options of:
 - Limited notice removal
 - Open accommodation
 - Pre-departure accommodation
- We will hold families only in very limited circumstances for border and other high risk cases.
- We will close the family unit at Yarl's Wood for the detention of families with children.

NEXT STEPS

- 6.1 These proposals represent a substantial programme of work for the UK Border Agency and some elements of it will take longer to deliver than others. We intend that most elements will go live on a national basis on 1 March 2011. Full implementation of all the elements may take longer and significant further testing and evaluation of new approaches for family engagement will also be ongoing as we seek to improve and strengthen our approach.
- 6.2 The key elements of the timetable are as follows:
- With immediate effect we will cease to detain families with children at Yarl's Wood and begin to extend the family conference and other approaches beyond the pilot areas, with a view to national roll-out by March 2011, including the setting up of the new Family Returns Panel.
 - We already have in place an interim family return panel for cases in the pilot areas of London and the North West. We will continue to develop, and possibly extend the scope of, this interim panel until the independent panel is established
 - On 6 April 2011, we will make amendments to the Immigration Rules to provide a reduced re-entry ban to incentivise early take-up of assisted return.
 - Pre-departure accommodation will obviously take longer to establish as we will need to identify and develop a site as well as let a contract to a provider to run it. Until it is operational we will use the small number of family spaces at Tinsley House as the final ensured return option when needed.

However, we will minimise the use of Tinsley House during this interim period. We will ensure that there are suitable adults on site in Tinsley House from January to allow children to have the opportunity to leave the centre following a risk and safeguarding assessment by UK Border Agency. This is an interim process that will be developed further in consultation with civic society for when the pre-departure accommodation comes on line in May 2011.

- With the help of our partners, we aim to have the new pre-departure accommodation up and running within a year of the Coalition Agreement being made – in May 2011. Tinsley will not be used for these families after May. The Family Returns Panel will also have the same involvement in the use of Tinsley House as they would for pre-departure accommodation.

Evaluation

- 6.3 It is important that the implementation of this new approach is monitored and evaluated carefully. The new approach represents a significant change to current operations and we need to be able to assess how implementation is going and respond where it is not working sufficiently well. We need to ensure that implementation is consistent across the UK Border Agency regions and that good practice is identified, properly captured and rolled out across the Agency. It will also be important to capture the experiences of families going under the new approach, and of children in particular so we can revise our approach and revisit ensured return options in light of experience.

- 6.4 We also remain open to new, alternative approaches to working with families in partnership with other civil society organisations. Where we run pilots or try new initiatives we need to ensure learning is captured properly.
- 6.5 Looking forward, we are proposing to create an evaluation working group, involving the UK Border Agency, Department for Education and a small number of partners to establish the evaluation methodology and approach to be used. We will also involve the independent Family Returns Panel members as we will want to track outcomes for families going through the ensured return stage.