Home Office

Returns Directorate

Title	**Detention services order 14/2012** **Care and management of age dispute cases**		
Process	To provide instructions and guidance for Home Office staff operating in the detention estate on the correct process for dealing with individuals claiming to be under 18.		
Implementation date:	28 September 2012	Review date:	March 2017

Contains mandatory instructions

For action

Immigration removal centres, pre-departure accommodation and short-term holding facilities

Author and unit

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Processes affected

This DSO sets out instructions on the care and management of individuals claiming to be under 18.

Assumptions

All staff will have the necessary knowledge to follow these procedures.

Notes

This DSO rebrands 14/2012

Issued March 2015

Version 1.0

Detention services order 14/2012

Care and management of age dispute cases in the detention estate

Introduction

1. This instruction sets out the policy and procedures to follow where an immigration detainee under escort or in an immigration removal centre (IRC) claims to be under 18 years old but there is a lack of physical or definitive documentary evidence to prove this is the case.

2. It is aligned with instructions provided in Chapter 55 of the Enforcement Instructions and Guidance entitled "Detention and temporary release" and is designed to ensure that all staff, both Home Office and suppliers, are aware of the procedures to be followed when a person in our care is identified to be age disputed.

Definitions

3. Documentary evidence is a genuine document such as passport, birth certificate or other official documentation which confirms a person's identity.

4. A Merton compliant age assessment is an age assessment conducted by the local authority according to the criteria established by the Merton judgement[1].

5. For the purposes of this instruction the Home Office defines a child as a person who has:

    a. Credible and clear documentary evidence to demonstrate that he or she is under 18 years of age; or
    b. Has been subject to a Merton compliant age assessment by a local authority and found to be under 18 years of age, irrespective of their physical appearance and demeanour.

6. For the purposes of this instruction the Home Office defines an adult as a person who has:

    a. Credible and clear documentary evidence that they are 18 or over; or
    b. Been subject to a Merton compliant age assessment by a local authority and been assessed to be 18 years of age or over (note that assessments completed by social services' emergency duty teams are not acceptable); or
    c. A physical appearance/demeanour which strongly suggests that they are **significantly** over 18 years of age and no other credible evidence exists to the contrary; or
    d. i. Prior to detention gave a date of birth that would make them an adult and/or stated they were an adult; and

[1] B v London Borough of Merton [2003] EWHC 1689 (Admin)

ii. Only claimed to be a child **after** a decision had been taken on their asylum claim, entry to the UK or immigration status; and
iii. Only claimed to be a child **after** they had been detained; and
iv. Has not provided credible and clear documentary evidence proving their claimed age; and
v. Does not have a Merton compliant age assessment stating they are a child; and
vi. Does not have an unchallenged court finding indicating that they are a child; and
vii. Physical appearance/demeanour very strongly suggests that they are 18 years of age or over.

If one of the categories above applies [within category (d) all seven criteria must apply] the individual will be treated as over 18 years of age.

7. For the purposes of this instruction the Home Office defines an age dispute case as one where an individual:

a. Claims to be a child; and
b. The categories at paragraph 6 a) to d) do not apply; but
c. The individual is unable to prove he/she is under 18 years old and is awaiting a Merton compliant age assessment to confirm their age.

Age dispute cases

8. Normally an individual will claim to be a child early in the immigration process. However, there may be occasions when IRC staff encounter an individual who has previously been considered to be an adult but under escort or in detention now claims to be a child.

9. Many individuals who claim to be children do not have any satisfactory documentary or other evidence to support their claimed age. This means that a decision needs to be made about their age so that we can ensure that children are safeguarded with special procedures and referrals to social services, and so that adults do not access systems designed to safeguard children. Many are clearly children whilst some are very clearly adults. In other cases the position is more doubtful and a careful assessment needs to be made of the individual's age.

10. Individuals previously sentenced by the criminal courts as an adult will be treated as over 18 years of age unless new documentary evidence has come to light. (See paragraphs 24-26.)

11. If an individual claims to be a child whilst in detention or under escort the decision on whether to maintain detention or release should be made as promptly as possible by the individual's case owner.

12. If an individual makes a claim to be a child whilst in detention, the centre operator must immediately inform the Home Office immigration team at the

centre (or Home Office on-call manager out of hours) who must immediately inform the case owner (or point of contact out of hours) to advise them of the possible age dispute. The Home Office IRC on-call manager should contact the on-call senior manager who will have a list of out of hours points of contact across the department. The Home Office immigration team must pass on any local information held which may help inform an age assessment decision, including any available documentation. CID should be noted clearly by the Home Office immigration team to show that the detainee is subject to the age dispute process.

13. If an individual makes a claim to be a child during escort, the escorting supplier should immediately notify DEPMU (or the DEPMU on-call manager out of hours) who will contact the case owner (or point of contact out of hours) to advise them of the possible age dispute case. CID should be noted clearly by DEPMU to show that the detainee is subject to the age dispute process. Depending on the circumstances of the individual case, the case owner will then make a decision on the action to be taken. The escorting supplier and centre operator should immediately put in place all reasonable measures to safeguard the person for the duration of the journey and, on arrival at the centre, the normal age dispute procedures should apply unless the case owner makes alternative arrangements.

14. An individual who is defined as an age dispute case (see paragraph 7) will **not** remain in detention pending a Merton compliant age assessment. He/she will be released and the Merton compliant age assessment will be conducted in the community. He/she must be released into the care of the local authority because of the possibility that he/she is under 18 years of age. The case owner is responsible for liaison with the local authority so they can assume their statutory responsibility and arrange a placement. The Home Office has a safeguarding responsibility and therefore should not release children into the community until a place of safety has been found by the local authority. It may take some local authorities longer than others to arrange a placement but it is important that referrals are made to the local authority as soon as possible so that the local authority can arrange a suitable placement as quickly as possible. In the event that the local authority placement is delayed by the local authority, the removal centre will make immediate arrangements to safeguard the individual within the centre whilst awaiting the local authority response.

Actions to be completed by case owners considering an individual's claim to be a child

15. If an individual does not meet paragraph 6 categories A, B or D, the case owner must check that the individual meets the criteria at paragraph 6 category C (i.e. that the individual's physical appearance/demeanour strongly suggests that he/she is **significantly** over 18 years of age and no other credible evidence exists to the contrary) before the decision is taken to detain. The assessing officer's countersigning officer (who must be at least CIO/HEO level) must be consulted. He/she must make his/her own assessment of the individual's age. If the countersigning officer agrees, the individual should be informed that their

claimed age is not accepted. If there is any doubt whether the individual is significantly over 18 they should be afforded the benefit of the doubt and treated as an age dispute case.

16. **In very exceptional circumstances**, in the event that the case owner has not considered the applicability of paragraph 6 category C on arrest/initial detention, the Home Office IRC immigration team can make the assessment under paragraph 6 category C at the case owner's request. If there is any doubt whether the individual is significantly over 18 they should be afforded the benefit of the doubt and treated as an age dispute case. If the case owner chooses to ask the Home Office immigration team to make the assessment, the case owner must accept the decision of the team. The assessing officer must be at least EO level. The assessing officer's countersigning officer (who must be at least HEO level) must be consulted. He/she must make his/her own assessment of the individual's age. Out of hours, the initial age assessment may be conducted on the following day. The assessment will be provided to the case owner to decide whether to maintain detention and to inform the individual of the outcome.

17. If one or more of the categories at paragraph 6 apply, this means that the case owner will have decided that the individual is an adult. The following actions, where appropriate, should be completed by case owners:

    a. All cases: Form IS.97M must be completed by the case owner, signed by the countersigning officer, served on the individual and a copy sent to DEPMU. Form BP7 (ASL.3597) must also be completed, signed and held on file.

All cases: The individual's date of birth within the 'Person's Details' screen on CID must be updated to reflect the Agency's assessed date of birth –

    a. **REPRESENTATIONS TO DEPMU** the individual's claimed date of birth. Failure to complete this action will result in DEPMU refusing to allocate detention space in adult accommodation. For further guidance, case owners should refer to section 3.3 'Updating the individual's case file and CID' of the Assessing Age Asylum Instruction.
    b. All cases: If officers receive relevant **new** evidence, they should promptly review any previous decision to treat an individual as an adult.

18. If none of the categories at paragraph 6 apply, this means that the individual must not be detained or, if already detained, must be released from detention into the care of a local authority and treated as a child. The case owner is responsible for arranging the placement into care. This should be done by the end of the next working day after the decision was made. If the case owner has not made arrangements to this timescale for the individual's release, the Home Office IRC immigration team must escalate the issue to the relevant single point of contact for the case owner's business area.

19. IRC immigration teams and case owners must note and retain on file all responses from the individual, local authorities or legal representatives, since these may have a bearing on future appeal hearings.

20. If centre staff or supplier staff disagree with the initial assessment by the case owner (i.e. they disagree that the detainee is **significantly** over 18 years of age) they must inform the case owner of this concern and request the case owner review their previous decision to treat an individual as an adult.

What to do if there are difficulties with the local authority arranging a placement

21. The case owner is responsible for liaising with the local authority to arrange for the detainee's release into their care. However, the Home Office IRC immigration team should assist wherever possible. Case owners should be proactive in chasing the local authority to arrange a placement for the detainee. Where a local authority refuses to take a detainee subject to the age dispute process this should be escalated through the case owner's Home Office line management chain. The case owner should consider alerting the Local Children's Safeguarding Board to any difficulties in making effective referrals.

Management of age dispute cases by centre operators

22. The case owner is responsible for referring age dispute cases to local authorities for placement and for follow up with the local authorities to ensure that a placement is made. This should be done by the end of the next working day after the decision was made.

23. In discussion with the centre, the local authority should determine the appropriate arrangements to facilitate the transfer of an age dispute case from the centre to local authority care.

24. In the meantime, the centre operator should make arrangements to safeguard and promote the welfare of that person as though they were a child. An individual risk assessment should be conducted on the individual concerned to ensure that they are safeguarded and their welfare promoted whilst they remain in the centre, and this should be shared with the local Home Office IRC immigration team.

25. The risk assessment should be shared with all staff who come into contact with the detainee including the welfare officer and healthcare staff who should have the opportunity to feed into the plan as appropriate.

26. It will not normally be appropriate for an age dispute case to be held separately unless there are other considerations which would justify this under normal Detention Centre Rules; rather staff should look to maintain as much association and activity as possible whilst ensuring that the person is safeguarded. **It is not appropriate for an age disputed detainee to room share with adults or with other age disputed detainees.**

27. All interaction with the detainee should be recorded on the care plan and it should be reviewed daily by the Home Office IRC immigration team who should also conduct a daily welfare check on the detainee and record their findings on CID. When notified of a possible age dispute case by either the case-owner, local authority or centre operator the Home Office IRC immigration team must ensure that all relevant parties deal with resolving the age dispute issue as a matter of high priority. The Home Office immigration team should check that a Merton complaint age assessment has been conducted, and if an assessment has not been completed a request should be made. In addition they should ensure that actions and decisions are expedited and act as a conduit between case-owner, IRC contractor and the local authority LA by exchanging relevant information and updates when appropriate.

Individuals previously sentenced by the criminal courts as an adult

28. Individuals previously sentenced by the criminal courts as an adult will be treated as over 18 years of age.

29. If an individual claims to be a child in detention but was previously sentenced by the criminal courts as an adult, there is no credible evidence to support their claim to be a child. However, if the individual would ordinarily fall within the definition of an "age dispute case" set out in paragraph 7, and detention is considered appropriate (having regard to the prospects of removal, the risk of absconding, and the risk posed to the public), a local authority should be requested to conduct a Merton compliant age assessment and submit the report to the Home Office as soon as possible. The individual's detention should be maintained until a final decision on their age has been made.

30. It is appropriate to treat these individuals differently to others because they have previously presented themselves as an adult during the criminal court procedure and any custodial sentence will have been served in an adult prison. Due to the imperative to protect the public from harm, and after careful consideration, it has been determined that they should not be released until it is clear that the Home Office's policy on detention of adults does not apply.

Revision History

Review date	Reviewed by	Review outcome	Next review
March 2015	Frances Hardy	Rebranded	March 2017