



# asylum is a human right

Kristian Armstrong,  
Children's Champion,  
Office of the UK Border Agency Children's  
Champion,  
UK Border Agency,  
7<sup>th</sup> Floor, West,  
Whitgift Centre,  
Wellesley Road,  
Croydon. CR9 1AT

**Jane Dykins**  
**Children's Section**  
**The Refugee Council**  
240–250 Ferndale Road  
London SW9 8BB  
Direct line: 020 7346 1133  
F: 020 7346 6701  
E: [jane.dykins@refugeecouncil.org.uk](mailto:jane.dykins@refugeecouncil.org.uk)  
[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

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Dear Mr. Armstrong,

## **Re: Short-term holding facilities and child protection**

I am writing to you on behalf of the Refugee Children's Consortium, concerning the change in the definition of 'short-term holding facility', and its potential impact upon children, whether held in these facilities as separated children or in families.

### **The new definition**

Section 25 of the Borders, Citizenship and Immigration Act 2009 amends the definition of 'short-term holding facility' in section 147 of the Immigration and Asylum Act 1999. The previous definition read:

*"a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed"*

The definition (as now amended) reads:

*"a place used –*  
*(a) solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed, or*  
*(b) for the detention of –*  
*(i) detained persons for a period of not more than seven days or for such other period as may be prescribed, and*  
*(ii) persons other than detained persons for any period."*

Section 147 of the 1999 Act also defines 'detained person' to mean those who are held under administrative immigration powers.

## Reasons given for changing the definition

Section 25 was subject to revision as the Bill progressed. However, the policy intention remained the same. The Lord West of Spithead, Parliamentary Under-Secretary of State for the Home Office, explained the purpose as follows:

*"The amendments will provide the [UK Border] agency and Her Majesty's Revenue and Customs with the flexibility in the future to use short-term holding facilities to detain persons other than those detained under the administrative provisions of the immigration legislation." (Hansard, HL Committee 25 Feb 2009 : Column 287)*

The Minister gave the assurance that:

*"...these amendments do not impact in any way on the treatment of administrative immigration detainees..." (Hansard, HL Committee 25 Feb 2009 : Column 287)*

Statements by Phil Woolas MP, Minister of State for Borders and Immigration, were to similar effect, e.g.:

*"Short-term holding facilities fall into two categories—the residential facilities at Dover, Manchester, Harwich and Colnbrook near Heathrow, and the holding rooms at most ports and certain UK Border Agency offices. All are subject to a statutory maximum stay of seven days. At present, short-term holding facilities may be used to hold only individuals who have been detained for immigration purposes under UKBA's administrative powers of detention, and those who have been detained under section 2 of the UK Borders Act 2007, pending the arrival of a police officer. By modifying the definition of short-term holding facilities, we are removing that constraint so as to allow other categories of persons to be held in those facilities. As a consequence, short-term holding facilities will be able to hold a range of individuals, subject to the prescribed periods of detention and protections relevant in each case. That could include individuals arrested in connection with immigration or customs offences, individuals detained under section 2 of the UK Borders Act 2007 as liable to arrest and pending the arrival of a police officer or, as now, individuals detained in detention under the Immigration and Asylum Act 1999." (Hansard, HC Report 14 Jul 2009 : Column 179)*

The Explanatory Notes published with the Bill as it left the House of Lords, stated:

*"These modifications will mean that a short-term holding facility does not cease to be a short-term holding facility when it is used to detain a person who is not an immigration detainee." (paragraph 110)*

Impact Assessments on the Bill were completed in January. These pre-date the inclusion of the clause, which was only inserted into the Bill by way of Government amendment at Committee stage. As regards the Explanatory Notes, the human rights impact assessment gives no consideration to this clause.

### **Impact upon children**

I note that short-term holding facilities include facilities, referred to in draft Short-Term Holding Facility Rules (which have recently been subject of consultation) as "holding rooms". Holding rooms are, under the terms of the draft Rules, places where persons may be held for up to 18 hours (or 24 hours if authorised by the Secretary of State).

The prospect is that any child or family held in a short-term holding facility, including a holding room, may be held with other persons held under administrative immigration powers (as now) and/or under customs or immigration crime powers (as stated by the Minister) or under other powers including policing or national security powers.

The Minister has given assurance that the treatment of persons held in short-term holding facilities under immigration powers will be as now. However, this assurance is inadequate. The critical issue, which arises from the change in definition, is as to the welfare and safety of persons, including in particular children and families, held in facilities originally designed with the intention of holding a certain category of person (those held under administrative immigration powers) for certain periods of time alongside persons held under powers for which the facility was not designed, and in respect of which different regimes of treatment could be expected to apply. It should be noted that the nature and size of short-term holding facilities does not provide flexibility to operate different regimes for different categories of detainee in isolation from each other.

### **Information provided since Royal Assent**

Since the Borders, Citizenship and Immigration Act 2009 received Royal Assent, thus introducing the new definition, the UK Border Agency has provided some further information at the National Asylum Stakeholders' Forum meeting on 22 July 2009 and Detention Users' Group meeting on 27 July 2009, from which RCC members have reported back.

I, therefore, understand that there is to be an impact assessment, including as to child protection, undertaken before any steps are taken to use these facilities in any way such that a child or family would be detained with another person, where that other person is held under powers other than administrative immigration powers.

### **Requests for information**

I now write with the following requests:

- (i) It appears that there has, as yet, been no child protection impact assessment in relation to the change of definition of short-term holding facility. If I am wrong about that, please provide me with a copy of any assessment that has been done.

- (ii) Please provide a copy of the child protection impact assessment that is to be done when it is done. Please note that I anticipate that the assessment will need to give discrete consideration to holding rooms. If my understanding is not correct that there is to be an assessment before any child or family are held in a short-term holding facility alongside any person held under powers other than administrative immigration powers, please would you explain why no assessment has as yet been undertaken (if that is so) and the reasons you have concluded in the interim that it is safe to hold a child or family in such a facility in such circumstances.
- (iii) What child protection measures currently apply in relation to short-term holding facilities; and what new or revised measures are intended to be implemented in view of the change in definition (including as to how the adequacy of any such measures is or is to be monitored)?
- (iv) In relation to the former, what child protection measures will be included in the Short-Term Holding Facility Rules? Given that there has only recently been further consultation on these Rules (first drafted for consultation in 2005 and never implemented), will there nonetheless be an opportunity for consultation on any revised draft having regard to the points raised in this letter?

I look forward to hearing from your response to the issues raised in this letter

Yours sincerely

Jane Dykins  
Chair of the Detention Sub-Group, Refugee Children's Consortium

CC: Alan Kittle, Head of Detention Services  
Anne Owers, HMIP