

# information sheet

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## Immigration Act: Detention of Children

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The Immigration Act contains provisions which seek to place limits on the detention of children. These represent some positive (if incremental) change in this area while still falling far short of the Government's commitment to end detention of children. The provisions are in large part a placing on a statutory footing policies and practices which have been introduced over the past few years and have been in operation for some time. Nonetheless the enshrining of these policies in primary legislation means that they have now been put on a more permanent footing and this has been welcomed by groups representing migrant children and their families.

### Background

The Government made a commitment to end the detention of children in the Coalition Agreement in 2010. In early 2011 new policies were implemented with the aim of encouraging families with children under the age of 18 to leave voluntarily and avoid an enforced removal (and thus likely detention). A new process for children being removed with one or more family members was put in place, as follows:

- A family with children who the government wishes to remove will go through a series of meetings with immigration officials to discuss their options;
- If the family refuses to depart voluntarily, UK Visas and Immigration staff must consult with the Independent Family Returns Panel to discuss their plans for enforcing removal;
- The Panel may give advice, and there is a presumption (although not a requirement) that that advice will be followed by UK Visas and Immigration;
- Detention of the family is permissible as a last resort for up to seven days;
- The detention must be at special family 'pre-departure accommodation', specifically at the facility known as 'Cedars' at which staff from Barnardos have access to the detainees.

## Changes made by the Act

The Act provides for:

- A 28-day 'reflection period' during which a child and one parent (if living with the child) are protected from removal from the UK. The period commences once all appeal rights for either child or the relevant parent have been exhausted, i.e. any appeals have concluded or the time for appealing has run out. The protection only extends to one parent – where the child has two parents in the UK who are subject to immigration control one could still be removed;
- Families can only be held in special detention facilities (i.e. Cedars), given a new name of "pre-departure accommodation" by the Act;
- A limit of seven days is placed on the detention of families with children;
- The Independent Family Returns Panel is made a statutory body and UK Visas and Immigration is given a statutory duty to consult it before an enforced removal;
- A ban on the detention of unaccompanied children for more than a 24-hour period at any one time;
- Restrictions on where unaccompanied children can be detained. They can only be detained at short-term holding facilities<sup>1</sup> or a place where their presence is required for immigration purposes, e.g. an Embassy.

## Duty to protect welfare of children

The Act also (unusually) provides that nothing within it detracts from the important duty contained in section 55 of the Borders, Citizenship and Immigration Act 2009, which is a duty to promote and safeguard the welfare of children. Thus if a provision of the Act appears to conflict with this duty, the obligations imposed by the duty are to prevail.

## Analysis

Overall, while the detention of children has certainly not been ended, the Act and the policy changes which underpin some of its provisions represent a move towards reduction of the use of detention of children and some improvements in how it is used. One issue which the Act fails to address is that of children being wrongly 'age assessed' to be adults and detained as a result; this is an ongoing problem. It is to be hoped that the provisions contained within this Act are built upon in future by Government so as eventually to make good on its 2010 commitment to end immigration detention of children.

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<sup>1</sup> Rules for the operation of these facilities have been promised by Government for some time, but have yet to be published.