



**HOME OFFICE
FULL EQUALITY IMPACT ASSESSMENT**

Directorate	Policy and Strategy Group
Unit	Central Policy Unit
Date	February 2011

Name of Policy
Ending the detention of children for immigration purposes in a way which takes account of the need to safeguard and promote the welfare of children while ensuring the return of families who have no right to be in the UK.

What are the aims, objectives & projected outcomes?
<p>In May/June 2010, the Government commissioned a review into ending the detention of children for immigration purposes while ensuring the return of families who have no right to be in the UK. The full terms of reference for the review are set out at Annex A to the review document.</p> <p>The aims of the child detention review are to improve the rate of voluntary returns of families who have no legal right to remain in the UK and to establish a new family returns model which ends detention and focuses instead on working with families in the community in a more structured way, and with greater involvement of voluntary and community groups.</p> <p>The review has established a new four-stage process for managing returns:</p> <p>Stage 1 – <u>Decision Making</u> - 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 will also create specialist 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.</p> <p>Stage 2 – <u>Assisted Return</u> - We will ensure that families have a dedicated family return conference to discuss all available return options, with particular emphasis on 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 returns process.</p> <p>Stage 3 - <u>Required Return</u> - We will give families who choose not to take up the offer of assisted return at least two weeks notice of the need to leave the</p>

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.

Stage 4 - Ensured returns - Only once a family has exhausted their appeal rights and after the assisted and required stages have been exhausted, will we consider enforcement action. Our aim, however, is for families to depart before reaching this stage of the process. An independent Family Returns Panel will be created to help ensure that individual return plans take full account of the welfare of the children involved.

A range of options is available for inclusion in return plans submitted to the independent Family Returns Panel for advice. These will provide sufficient flexibility for a tailored approach to each family. As a backstop, we are also developing a new option of pre-departure accommodation for use when other options for ensuring return fail. Pre-departure accommodation is a supervised building which will be exclusively used for housing a small number of families. Family members, including children, will be able to leave the premises with permission after a suitable risk assessment. It will have an entirely different look and feel to an immigration removal centre with more privacy, strictly time-limited stays, and the voluntary sector playing a key role.

The group of people most affected by this proposal will be those families and children who are removed from the UK each year using immigration powers. Before the new family returns process was developed, most of these families would have been liable to be detained at the family unit of the Yarl's Wood Immigration Removal Centre, which is now closed. Under the new family returns process, a number of these families will now leave at stages 2 and 3 of the new process without the need for enforcement action.

Re-entry bans

There will also be an amendment to the Immigration Rules so that those who voluntarily leave the UK promptly will have a reduced 2 year re-entry ban.

Currently, overstayers, illegal entrants, and those who breached a condition attached to their leave, but then leave the UK at public expense will have subsequent applications for entry clearance or leave to enter refused for five years (unless the exceptions outlined in paragraph 320(7C) apply). Individuals who wish to benefit from a reduced two year ban must depart the UK voluntarily no more than six months from the date on which they were given a notice informing them of their removal decision, or no more than six months from the date when they no longer have a pending appeal against that decision, whichever is later.

The new 2 year ban will help build compliance and bring cases to a conclusion earlier by providing a clear incentive to depart sooner. This change may increase voluntary departures and encourage early participation in Assisted Voluntary Return (AVR) programmes.

1 SCOPE OF THE EIA

1.1 Scope of the EIA work

These policy and operational changes take place within an overarching government policy of ensuring that all family returns are conducted in a humane way which safeguards and promotes the welfare of any children involved

In considering equality implications, the critical question is whether the new family returns process reduces the potential for adverse impact on children; and whether it is in keeping with the need to make arrangements to safeguard and promote the welfare of children contained in Section 55 of the Borders, Citizenship and Immigration Act 2009.

In considering how to change re-entry bans, the impact of the various options, including recommendations put forward by third parties, was assessed taking into account the need to strike the appropriate balance between the responsibility of the UK Border Agency to maintain the integrity of the immigration system and the need to encourage more people to leave the UK voluntarily rather than rely on forcible return. This change will apply to, and benefit, all those who have no lawful basis to remain in the UK who wish to voluntarily leave promptly at public expense, not just families with children. It will have no adverse impact on particular groups.

In conducting this EIA we have taken account of existing research by third parties commissioned by the UK Border Agency, the UK Border Agency's own internal research and pilots, wider research and the views provided by the working group established in response to conduct the review, co-chaired by UK Border Agency and the Diana, Princess of Wales Memorial Fund as well as responses to the review. Specific reference has been made to:

Reference Material

- Child Detention Working Group commissioned research;
- The Early Legal Advice Project (ELAP), UK Border Agency pilot;
- Family Return Project, Kinning Park, Glasgow, joint UK Border Agency, Glasgow City Council, and Scottish Government pilot;
- Home Affairs Select Committee report: 'The Detention of Children in the Immigration System' (published 29 November 2009);
- Independent report commissioned by the Home Office following the 'Alternative to detention pilot' (A2D), Milbank, Ashford Kent;
- Management Information held by the UK Border Agency and Group4;

External groups consulted:-

- Association of Directors of Children's Services
- Asylum Rights Campaign Detention Sub Group
- Asylum Support Partnership

- Bail for Immigration Detainees
- Barnardo's
- Bedford Borough Council Children's Services
- Centre for Social Justice
- Children's Society
- Citizens for Sanctuary
- Detention Forum
- Diana, Princess of Wales Memorial Fund
- Group 4
- Immigration Advisory Services
- Immigration Law Practitioners Association
- Independent Monitoring Board
- International Organization for Migration
- Liberty
- Local Authority Association
- London Detainee Visitor Support Group/AVID
- Migrant Helpline
- Office of the Children's Commissioner
- Ofsted
- Other Government departments (Cabinet Office, Dept for Communities & Local Government, Dept for Education, Dept of Health, HM Treasury, Ministry of Justice)
- Refugee Action
- Royal College of Paediatrics & Health Care
- Serco
- Serco Health
- UNICEF
- Yarl's Wood Befrienders

The EIA has been conducted by policy staff within the Central Policy Unit, part of UK Border Agency's Policy and Strategy Group.

1.2 Will there be a procurement exercise?

There will be early work to establish pre-departure accommodation. No other procurement is currently planned though there may be further down the line as the proposals are developed.

2 COLLECTING DATA

2.1 What relevant quantitative and qualitative data do you have?

Statistical data provided through UK Border Agency detention management system indicates that 1,063 children who no longer have leave to be in the UK entered detention with their families solely under Immigration Act powers in 2009 consisting of 595 families with 697 children held for 0-14 days and 366 children held for more than 14 days (figures based on management information and are not subject to the detailed checks that apply for National Statistics).

The Alternative to Detention pilot (A2D), a UK Border Agency managed pilot, in conjunction with Migrant Helpline, a registered charity with extensive experience of dealing with asylum seekers, ran for 11 months from November 2007. The pilot looked at alternative ways of returning (without the need to detain) failed asylum seeker children and families with no right to remain in the UK. The scheme was specifically designed to afford families breathing space in order to consider how they might best return to their country of origin without resorting to detention. Families were asked to consider staying at the Milbank, a non-detention facility, while they worked through the options for assisted voluntary return with the on-site contractors, Migrant Helpline.

The project did not result in the anticipated increase in assisted voluntary returns with only one family choosing to take that option. The primary reasons for this were the very low number of families referred to the project and further legal representations made by those families that were selected. The conclusion drawn was that better, more systematic engagement with families from the outset was called for.

The Family Return Project, Kinning Park, which began in June 2009 and will run for 3 years, is run in Glasgow by UK Border Agency in partnership with Glasgow City Council and the Scottish Government. The project objective is to increase the number of failed asylum seeker families with children, with no right to remain in the UK, who return to their home country voluntarily. The project has built on the lessons learnt from the A2D project by securing corporate buy-in, focus being placed on those families which are removable and, therefore, eligible for assisted volunteering return. The pilot encourages them by providing intensive support, which is focused on helping families to confront issues that delay a return and building up skills to prepare for a voluntary return. By 25 February 2011, 48 families were referred to the Glasgow pilot and 14 were accommodated there. None of these 48 families has yet elected to return voluntarily to their home countries, and enforced departure of six families has been necessary. The project has spread awareness of the assisted voluntary scheme which has led to an increase in applications for a voluntary return. The conclusion drawn is that the more we make families aware of the existence of assisted voluntary return, the more they seem to be interested in it.

The Early Legal Advice Project (ELAP), (resulting from recommendations by the NAO and UNHCR) is a pilot in the Midlands and East Region, running from April 2010 to April 2011. It facilitates the provision of legal advice to asylum applicants early on in their claim, giving applicants and their solicitors the opportunity to thoroughly present their case prior to the initial decision. The solicitor can request that the case owner delays their decision until all of the evidence is collated and presented.

Re-entry bans

Statistical data provided through published Home Office statistics on the number of people who have left the UK via AVR programmes since re-entry bans came into effect in October 2008. The statistics reveal that 4,295 departed via AVR in 2008, 4,945 in 2009, and 4,540 in 2010.

There is data on the number of people who have left the UK voluntarily since the re-entry ban provisions came into effect. 14,233 were identified as leaving voluntarily in 2008, which rose by around 25% to 17,750 in 2009, and to 21,540 in 2010. This data reflects the developing capability of the data matching systems used and the introduction of other policies and practices as much as it does the impact of re-entry bans. The figures are based on internal management information on the number of voluntary departures identified through data matching exercises, the number of embarks, and the number of voluntary departures via Local Immigration Teams. The figures are, therefore, not subject to the detailed checks that apply for National Statistics.

The number of visa applications submitted by failed asylum seekers who had left the UK voluntarily has fallen since re-entry bans were introduced - 920 in 2007/8, 720 in 2008/9, and 450 in 2009/10. Again, these figures are based on internal management information and are not subject to the detailed checks that apply for National Statistics.

The Child Detention Review public consultation ran from 10 June to 1 July. We received 342 responses to the consultation. 68 were from organisations with a representative remit built into their work and 85 were from individuals with experience of working with asylum seeking families and / or families involved in the removal process. A further 182 were submitted using a pre-prepared letter available to supporters of BID and the Children's Society.

Most responses took the form of calls to end the immigration detention of children who no longer have leave to be in the UK, and many felt it should cease immediately and not be linked to the development of viable alternatives. A few responses saw a possible need for detention as an unfortunate but sometimes necessary option of last resort. Overall responses preferred to discuss the pros and cons of the present system which makes it difficult to draw from them quantifiable support for different options. The proposals above are designed to overcome the specific drawbacks to the current system that were identified by respondents and to provide a coherent process in

which the UK Border Agency can deliver its aims.

Some specific features of the proposed new system that were identified by respondents were: the need for earlier engagement with families in order to build trust in every aspect of the process and at every stage; setting removal directions whilst the family is in the community with a period of support for voluntary departure combined with opportunities for legal advice; better decision making and better contact management throughout the process (especially at the initial stage and in the stages after an application was refused).

Local authorities expressed the view that the new arrangements should not be less effective than the current ones. Without this there was the risk that local authority children's service departments would be left, through failure of other solutions, to take on responsibility for an additional number of families.

<p>Race</p>	<p>UK Border Agency enforcement action leading to detention of foreign nationals is a reactive process driven by the failure of any person of any racial background to comply with a requirement to leave the UK. The proportions of black and minority ethnic communities represented within this process are therefore strongly linked to the proportions refused further permission to remain.</p> <p>Published statistics show the numbers of those people held in detention under Immigration Act powers, broken down by nationality - from the data for those aged over 18 that some nationalities are represented more than others in detention but there is also a strong link with the proportions of nationalities that are refused permission to stay.</p> <p>Under the proposed changes, the enforcement action taken will be linked to the person's own actions as expressed by compliance with the preceding stage, although the presence of many other factors must also be considered.</p> <p>Re-entry bans penalise those of any racial background who have previously broken immigration laws. The proportions of black and minority ethnic communities represented are determined by the proportions that fall into these categories. Adding an intermediate level 2 year re-entry ban for those who voluntarily leave promptly at public expense will benefit those of any racial background who would otherwise be subject to a 5 year re-entry ban.</p>
<p>Religion/ belief & non belief</p>	<p>The impact on some religious groups compared to others may vary, but will be a consequence of external economic, demographic and political influences at work and leading to nationality and / or ethnic group being more heavily represented.</p> <p>Adding an intermediate level 2 year re-entry ban for those</p>

	<p>who voluntarily leave promptly at public expense will benefit those of any religious group or belief who would otherwise be subject to a 5 year re-entry ban.</p>
Disability	<p>The use of independent child and health experts in the independent family returns panel together with the extended range of options available for them is likely to provide a positive effect on those with a disability. Mental health impairment must be particularly considered if an existing mental health condition could be exacerbated by the returns process.</p> <p>There is no evidence that this amendment to the rules on re-entry bans will have a disproportionate impact on people with mental or physical disabilities.</p>
Gender	<p>Management Information indicates that for Q1 2010, 120 male and 105 female children who no longer had leave to be in the UK were placed in immigration detention accommodation. Anecdotal evidence suggests that significant proportions of detained families consist of a mother and child/children. These figures are not subject to the detailed checks that apply for National Statistics.</p> <p>Adding an intermediate level 2 year re-entry ban for those who voluntarily leave promptly at public expense will benefit all those who would otherwise be subject to a 5 year re-entry ban regardless of gender.</p>
Gender Identity	<p>No impacts on grounds of gender identity have been identified.</p>
Sexual Orientation	<p>No impacts on grounds of sexual orientation have been identified.</p>
Age	<p>The explicit aim of the policy is to develop a specific response to families with children, in recognition of children's particular vulnerabilities and our particular legal responsibilities towards children.</p> <p>In Q1 2010, 90 children who no longer had leave to be in the UK aged under 5 were detained who were unlikely to notice the effect of the detention, 85 children aged 5-11 were detained who were less likely to understand the reason for the detention or to cope with it and 55 children aged 12-17 were detained who were able to understand the reason for the detention and who could be affected by their loss of liberty. These figures are based on internal management</p>

	<p>information, so they are not subject to the detailed checks that apply for National Statistics.</p> <p>Re-entry bans do not apply to those who breached the immigration laws when they were under the age of 18. Adding an intermediate level 2 year re-entry ban for those who voluntarily leave promptly at public expense will benefit all those who were over the age of 18 when they breached immigration laws and who would otherwise be subject to a 5 year ban.</p>
<p>Welfare of Children</p>	<p>230 people under 18 entered detention in the first quarter of 2010. On 31 March 2010, there were 30 people detained solely under Immigration Act powers recorded as being less than 18 years of age (out of a total of 2,800 persons). Of these, 25 had been in detention for less than 29 days, and 5 for between 29 days and two months. The aim of the proposal is that the number of children detained and the average length of time for which they are detained should reduce to zero. Some children may continue to be held at the border as part of family groups, but in future this will normally be for just 24 hours and subject to further safeguards for detention over 24 hours as well as being subject to a 7 day maximum period. In rare cases, a criminal or other very high risk family may need to be held.</p> <p>The changes also support the requirement in Section 55 of the Borders, Citizenship and Immigration Act 2009 for the UK Border Agency to make arrangements to safeguard and promote the welfare of children with whom it deals and who are in the UK. In particular, the proposal will:</p> <ul style="list-style-type: none"> • Create opportunities for parents of families to be more involved in the timing and associated arrangements for leaving the UK. Whilst the overall decision may be unwelcome its impact can be mitigated by active co-operation; • This will be done primarily through the family return conference. The policy requires systematic presentation of assisted returns options to the family and support for the family to depart in a more dignified, and personally planned way; • The required returns stage will still allow the family to plan for their departure; and • The ensured return process provides for a more structured decision making process in which the independent family returns panel will advise on the best way to manage the welfare of children during their return.

Socio-economic	Immigration functions are exempt from this duty.
Human Rights	<p>The change in policy will promote the human rights of children, particularly their right to respect for private and family life.</p> <p>The change to the rules on re-entry bans will not impact on the human rights of those who have no lawful basis to remain in the UK and who voluntarily leave the UK at our expense. Paragraph 320(7C) of the Immigration Rules will continue to apply to those who present human rights related and/or other compassionate grounds for re-entering the UK before their mandatory ban expires.</p>

2.2 What are the overall trends/patterns in this data?

Detention is a final step in an immigration process – it is meant to be a short term measure taken for the purpose of removal.

Management Information for 2008/9 indicates that of families in detention, 339 (48.57%) were removed and 359 (51.43%) were released back in to the community (although they may have been subsequently detained and removed). Reasons for release are often because of representations against removal, judicial review applications, and welfare concerns.

The changes remove the option of detention for family cases, though some families may have short stays in pre-departure accommodation.

The available data on the impact of the existing levels of re-entry bans is inconclusive. As such, we are not able to accurately predict the impact making this further amendment will have, but we expect to see increased participation in AVR programmes.

2.3 Please list the specific equality issues and data gaps that may need to be addressed through consultation and/or further research?

Further research is needed on how the quality of immigration decision-making for families affects the way objections to return (including the number of) are raised later.

Further consideration will be given, with the Ministry of Justice, to how legal services are provided for those seeking asylum in the UK and/or who are required to leave the country.

Further consideration should be given to assessing the impact of the assisted return programmes for families that use them to return to their country of

origin.

Further research and consultation with third parties is needed on the impact of re-entry bans both in terms of the affect they have on the mind-set of those unlawfully here who are liable for return and on the level of participation in AVR programmes. We must also continue to develop AVR programmes to make them more systematic, transparent, and attractive to those liable for return.

Particular nationalities and groups appear to be represented in immigration detention to a greater degree than others. It may be that ensured returns will affect some nationalities more than others for reasons that are not intrinsic (e.g. presence in the refusal group, or asylum intake group) and that need to be addressed.

3 INVOLVING AND CONSULTING STAKEHOLDERS

3.1 Internal consultation and involvement: e.g. with Other Government Departments, Staff (including support groups), Agencies & NDPBs

The review team consulted internal UK Border Agency staff on options for ending the detention of children through internal workshops, discussions and electronic consultations. Options have also been worked through via workshops with staff and the development of early pilots in two UK Border Agency regions.

This provided the opportunity for staff to consider the impact of changes in approach on families with children as well as their possible impact on the ability of the UK Border Agency to conduct its operations. It was thought that increasing the level of engagement with families, and providing opportunities for families to engage constructively with the returns process would reduce the adverse impacts of the returns process for families and children.

We have also consulted internal UK Border Agency staff specifically on the issue of re-entry bans. Those consulted have identified the new 2 year ban as a positive step to addressing one of the key concerns of diaspora groups.

There has also been close consultation with officials in the Department for Education.

3.2 External consultation and involvement: strand specific organisations e.g. charities, local community groups, third sector

The review team, which had the responsibility to take account of equality obligations and the UK Border Agency's statutory duty to have regard to the need to safeguard and promote the welfare of children, established a working group co-chaired by the agency and the Diana, Princess of Wales Memorial Fund and which comprised the agency and partners in the voluntary and statutory sectors. This group met approximately 10 times over a 4 week period. The UK Border Agency review team also met interested groups from Wales, Scotland and Northern Ireland.

A targeted consultation asked those with knowledge of the issue to consider how the UK Border Agency could improve its engagement with families in dealing with asylum applications; how it could promote and improve the assisted voluntary return processes to increase the take up from families; and, if a family chooses not to leave, what might an alternative family returns model look like? The participants were:

- UK Border Agency's National Asylum Stakeholder Forum – children's sub-group;
- National Asylum Stakeholder Forum – main NASF members, not duplicating attendees from the children's sub-group;
- UK Border Agency's National Migration Group; and
- UK Border Agency's Detention User Group.

Positive impacts from the proposals were identified in relation to minimising the use of enforcement action, and through working more closely with families from the outset creating the opportunity for families to put across their case in the best way to enable stronger decision-making by the UK Border Agency.

The feedback from external and internal stakeholders has been used to inform the development of the new proposals for working with families. Further engagement is planned on the detailed delivery and continuing operation of the new approach proposed for families in the review.

Responding to the findings of the initial consultation, the proposal to amend re-entry bans was further consulted upon informally with a number of third parties including The Diana, Princess of Wales Memorial Fund; UNHCR; Bail for Immigration Detainees; the Refugee Council; Refugee-action; Medical Justice; and the Children's Society.

4 ASSESSING IMPACT (see Module 8)

In this section please record your assessment and analysis of the evidence. This is a key element of the EIA process as it explains how you reached your conclusions, decided on priorities, identified actions and any necessary mitigation.

4.1 Assessment of the impact

In a number of respects, the new approach offers families with children opportunities which would not be available to families without children or single people. This is in recognition of the fact that children have particular needs and vulnerabilities and thus require tailored responses. Treating children differently in this way is a well established principle in law and policy across a range of areas. It is the explicit aim of this policy and is consistent with the UK Border Agency's responsibilities under Section 55 of the Border, Citizenship and Immigration Act 2009.

The four stage process has been developed to ensure that, where possible, family returns take place whilst they are in the community, that there is appropriate attention given to the need for families to plan their own departure, and to have the needs and welfare of their children taken into account. Overall, the new process seeks to ensure that all family returns are conducted in a humane way which safeguards and promotes the welfare of any children involved.

Stage 1: Reforming the decision process.

Improving the decision making process and the applicant's acceptance of the decision will have a positive impact on various vulnerable groups including children, and single parent families. Case owners dealing with families will be better able to consider the needs of the whole family, and to take account of the need to safeguard and promote the welfare of children whilst fulfilling the UK Border Agency obligation to enforce the immigration rules. Where possible, the same case owner will deal with the family throughout the immigration process, building rapport and trust with the family. Through this holistic approach, the case owner is likely to become aware of any relevant family factors, e.g. child care or medical needs or other relevant issues which might impact particular nationalities or ethnic groups. This will support the aim of delivering better decisions, clearly reflecting consideration of all the factors that need to be included, and reducing as much as possible the current potential for long, drawn out post-decision argument. Early resolution of their application is in the best interest of the children concerned and reflects the UK Border Agency's Section 55 duty.

Through better dialogue with the UK Border Agency, families will become more involved in the decision making process and become aware of what will ensue should their claim fail. Families will be made aware of all voluntary return options, including the assisted voluntary return (AVR) programmes, before their

claim has been decided. This impact will be positive and justified. It will promote equality of opportunity by preventing families from being disadvantaged through poor advice or not understanding what is happening.

These measures form part of 'reasonable adjustments' or specific arrangements to take account of the UK Border Agency's duty to safeguard and promote the interest of children.

Stage 2: Increasing assisted returns.

If the application is refused, a family return conference will be conducted in every family case marking the first step towards their return. At this conference, the family will be formally offered an AVR package.

The purpose of the conference is to make certain the family is aware of the available options to return home with reintegration assistance tailored to their own needs (corporate partners have reported there have been cases where applicants were offered AVR but were not aware of what had been put forward to them). Returning in such a way would enable the family to leave with dignity, and avoid, particularly for the children, any stresses that an ensured return might raise. Single migrants have no access to such a formalised process but they will have access to AVR. The process is designed to accommodate specific family dynamics and to give children the opportunity to participate, issues which do not arise with single adults.

Families will have the option to bring someone they trust to the conference e.g. a social service key worker or someone from a voluntary organisation or community group to help support and represent them as well as a legal advisor. This should promote equality of opportunity through allaying any language concerns or nervousness when presented with authority. At the conference, any reasons to defer the return will be discussed e.g. issues affecting disabled family members. This should minimise the risk of disadvantage on the grounds of disability. The consequences of remaining in the UK will also be clearly explained. This will enable the family to make a more considered choice. The AVR offer will be confirmed in writing and a copy provided to the family and their legal representatives.

These formal steps are not currently available to other migrants. This reflects the different range of considerations that a family must take into account when making its cases and the variables that their circumstances may be subject to as against other groups of migrants; throughout the policy intention we are seeking to consider and guard the particular vulnerabilities associated with children.

AVR is open to all nationalities, although the take-up is higher for some than others, and to all with some caveats on eligibility. The proposal is that the AVR programme will be tailored to the individual needs of the family. Subject to a risk assessment, the family will be given a fixed period of time, no shorter than two weeks, in which to make a formal AVR application or make arrangements for their own voluntary departure. During this period, the family will not be

subject to enforcement action.

Generally the advantage to families will be in the method by which they are offered the package and the support given for consideration of their application. This appropriately reflects our respect for the needs of families and the UK Border Agency's Section 55 duty. It is open to all applicants for AVR to seek legal advice or advice from other sources prior to or during the AVR process.

A family departure meeting will also be arranged for the family at which the family will formally notify the UK Border Agency whether or not they will accept the AVR package.

Stage 3: Required return.

Those families reaching this stage of the process will have exhausted all appeal rights and will not have applied for AVR. The intention behind this stage is to secure the departure of this class of families by putting in place procedures for serving removal directions in the community.

At present, notice of removal is served either by post or in person, depending on the case circumstances. Where the notice is served in person, a full risk assessment is carried out to determine the most appropriate place for the service of papers e.g. at the migrant's home or at the next reporting event (as children do not attend reporting events, service at a reporting event would prevent anxiety to children caused by the service of papers).

The risk assessment will include consideration by an immigration officer suitably trained in dealing with children, to assess the effect on the children of the service of papers. Where notice is served in the presence of children, the officer in charge will allocate appropriately trained officer/s. The parents will be advised first of the reasons for the visit and what is to happen. The parents will then be asked to explain the situation to the children and officers dealing with the children will then assess if it is appropriate to explain the process to them further.

Families will be given at least 14 days notice of the date of their self check-in return. This provides families with an opportunity to prepare for their departure and for parents to provide care and reassurance to their children where necessary. This extended notice period allows time to pack items and make arrangements for the storage and/or transportation of personal belongings, leave school and say goodbyes to family and friends. All this aids the child's health, development, and emotional well-being. Children may often not be aware of their immigration status until very late in the process if parents have sought to shelter them from this so more time to prepare is appropriate.

We consider that this proposal, which provides special arrangements for families, is proportionate given the domestic circumstances and close ties within their local communities which families are more likely to develop during their time in the UK, as well as our Section 55 duty.

Key to the required return is that the family will be given the opportunity to comply with the return and empowered to make their own preparations for departure from the community, thereby minimising distress to children. This will provide the family with an increased opportunity to check in for departure without arrest and control the means of their departure. On the actual day of departure, they will go to the port of departure without the upset of being arrested and taken there. This will provide a more dignified experience.

We consider that this approach balances the needs of families, minimising the distress to the children in leaving the UK.

Stage 4: Ensured returns.

An Independent Family Returns Panel will be established to advise on UK Border Agency plans for how to return families, in cases where an AVR offer and required return have failed. 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 include representatives of the UK Border Agency, Department for Education and independent experts; it will have an independent chair.

The Panel will not target specific nationalities or types of migrant (save that they are all families where an enforced removal has failed) and will consider numerous factors including the welfare of the children, the credibility of the adult family members, the family situation and the background as a whole. Among the enforcement options to be considered by the Panel are:-

- **More regular contact with immigration authorities.** The purpose of this is to ensure better case liaison and family interaction from the outset, and later in the case, increased opportunities for progressing to return. Each reporting event is tailored to an action progressing the case - it should be clear to all participants that it is a means of moving the case forward. Increasing reporting requirements when the family's return is imminent may increase the risk that they abscond, so variation of reporting conditions as well as electronic monitoring could be used to support return plans.

Reporting usually takes place at a reporting centre by appointment or at the migrant's place of residence. Single parents may be prejudiced by having to attend a reporting centre or if they are unable to find a babysitter and are required to take children to the reporting event. Pregnant and handicapped migrants might also be prejudiced when s/he is head of household or single migrant. Children may also be prejudiced by having attending a reporting centre which has no facilities for them. However, these factors would be included in an assessment of the best options for returning the family and weighed against other options. Any restrictions would be tailored to individual circumstances.

- **Limited notice removals.** By serving future removal notices in another way e.g. by not indicating the specific day of the removal, limited notice removals

become possible. These will be considered on a case-by-case basis, balancing the possible impact in child welfare terms of limited notice removal against the UK Border Agency function of effecting the removal.

- **Open accommodation.** This is residential accommodation where families will be housed on a full board basis without cash support. Families will not be detained or compelled to travel, and may come and go from the accommodation as they please. The purpose of moving a family to open accommodation is to encourage compliance by moving them out of their existing accommodation and away from community links and ties that they have established. This will make it clear to families that they have reached the end of the process and that departure from the UK will happen.

- **Pre-departure Accommodation.** This remains the option of last resort, employed when all other appropriate options fail. Families will normally be in pre-departure accommodation for 72 hours though for exceptional cases with Ministerial authorisation, a stay can be extended up to 7 days. The purpose is to ensure that a return is achieved as humanely as possible bearing in mind the child's safety and welfare needs.

Pre-departure accommodation is only available to families and is also within the new time limits on holding families. These reflect requirements under Section 55.

Re-entry bans

Adding a new intermediate level of re-entry ban of two years for timely voluntary departure at public expense will have the positive impact of encouraging those unlawfully here to leave earlier and increasing the number of those participating in AVR programmes.

Introducing a reduced 2 year ban for those who would otherwise be subject to a five year ban will benefit all those who have no lawful basis to remain in the UK who wish to leave at public expense. This will promote equality of opportunity rather than discriminate against any groups.

5 REPORT, ACTION PLANNING AND SIGN OFF (see Module 9)

5.1 EIA Report

The EIA Report is a concise summary of the results of the full EIA. It appears at Annex A.

5.2 Sign-off

Date of completion of EIA	February 2011
Compiled by	Michael Gallagher
SCS sign-off	Kristian Armstrong
<i>I have read the Equality Impact Assessment and I am satisfied that all available evidence has been accurately assessed for its impact on equality strands. Mitigations, where appropriate, have been identified and actioned accordingly.</i>	
Date of publication of EIA Report	31 March 2011
Review date	31 March 2012

Annex A - Equality Impact Assessment Report

TITLE Not detaining children for immigration purposes who no longer have leave to be in the UK.

BACKGROUND

To consider proposed options for a new process to return families who have exhausted all appeal rights, which would eliminate the need for detention. This has followed concerns that have been expressed on the detrimental effect that detention has on children who no longer have leave to be in the UK. The new process will be implemented through moving families through a number of stages which give families the opportunity to engage with the UK Border Agency more constructively and given them greater control over how they leave the country. Enforcement options will become progressively more restrictive in the event of non-compliance.

During the review, third parties commissioned by the UK Border Agency identified the re-entry ban as a disincentive to voluntary departure. To change the mind-set of people unlawfully here who are liable for return and to increase participation in AVR programmes, consideration was given to all options for introducing an intermediate level of re-entry ban for those who leave the UK at public expense in a timely manner.

SCOPING THE EIA

The EIA looks at the implications of replacing the current policy of detention with a new family relations model, designed to minimise the potential for distress and shock experienced by children who no longer have leave to be in the UK when removed from their homes.

It considers the impact of the various stages of the proposed new system, because enforcement becomes more prominent in the later stages, where there has been non-compliance by the family, and so there are more likely to be concerns in the later stages.

It does this by considering the likely impacts of the proposed new process, and how effective they are likely to be in ameliorating the detrimental effects of the current policy.

Those who have direct contact with asylum seeking families have been consulted. These include, though are not confined to, the members of UK Border Agency's National Asylum Stakeholders Forum, particularly of its children's sub-group; UK Border Agency's National Migration Group; and its Detention Users Group.

The EIA also looks at the equality implications of introducing a two year re-entry ban for those who voluntarily leave the UK at public expense within a specified six month period who would otherwise be subject to a five year ban.

COLLECTING DATA

Pilots have been undertaken into some of the new processes, but the results from these are limited, although some preliminary conclusions can be drawn.

The available statistical data on the impact of re-entry bans is inconclusive. As such, we are not able to accurately predict the impact this amendment will have, but we expect to see increased participation in AVR programmes

INVOLVING AND CONSULTING STAKEHOLDERS

A targeted consultation of those stakeholders who have contact with asylum seeking families was made for the review of the policy of child detention. In addition, the review involved workshops with frontline teams and a number of engagement events took place to establish a direct dialogue with partners.

ASSESSING IMPACT

The new process is designed to minimise any detrimental impacts of the current policies of placing children who no longer have leave to be in the UK in detention. This process will take place in a number of stages.

Stage 1 is to reform the consideration process by which UK Border Agency and voluntary sector interventions would explain the outcomes of the asylum claim and discuss options with the family. At this stage the main equality implications would be to ensure families are not disadvantaged through not having understood the various options e.g. through language barriers and to create a more positive environment in which families are able to put across the details of their claim in a way which will ensure that any protection issues are properly raised and considered.

Stage 2 is a post-appeal family return conference, at which the family are made a final offer for assisted voluntary removal. At this stage the main equality implications are, again, to ensure the family fully understand the options, but also to ascertain that they are not disadvantaged through not having disclosed any reasons for deferring removal, e.g. medical issues.

Stage 3 is a self check-in return. Families who have exhausted appeal rights but have chosen not to return home voluntarily will be returned. To minimise distress for children who no longer have leave to be in the UK 14 days notice will be given, instead of 72 hours, to give time to prepare, and the opportunity will be given for applicants to check themselves into ports to allow removal with dignity. This approach will give families the opportunity to control their return and to make further representations or seek further legal redress in a timely, controlled way while still in the community and without being subject to enforcement action.

Stage 4 will ensure the return of those who have not complied with the request to leave. An independent Family Returns Panel will be used to advise on ensured returns of families who have not co-operated through the preceding stages. A wide range of ensured return options will be available. Further work on alternatives to detention will also continue and the whole process four stage process will be strengthened and optimised in order to reduce the number of families who need be subject to stage 4 – ensured return.

Re-entry bans - The new 2 year ban will help build compliance and bring cases to a conclusion earlier by providing a clear incentive to depart sooner. This change may increase voluntary departures and encourage early participation in Assisted Voluntary Return (AVR) programmes.

Introducing this reduced level of ban for all those who would otherwise be subject to a five year ban will have a positive impact which will promote equality of opportunity rather than discriminate against any groups.