

## **Immigration Bill**

### **Factsheet: Ending the detention of children for immigration purposes**

Home Secretary Theresa May said:

“We propose to reinforce the commitment to end the detention of children for immigration purposes by putting key elements of the family returns process into primary legislation.

That will involve:

- providing a statutory prohibition on the detention of children within immigration removals centres, subject to the exceptions agreed in 2010, which continue to be Government policy;
- providing families with children a minimum of a 28-day reflection period following the exhaustion of appeal rights against a removal before their enforced removal;
- placing a statutory duty on the Secretary of State to appoint an independent family returns panel to advise on the best interests of the child in every case in which enforced return is proposed; and
- providing a separate legal basis for pre-departure accommodation independent of other immigration detention facilities.”

### **Background**

The new family returns process – established in response to the Government’s commitment to end the detention of children for immigration purposes - has been in place for over two years and has proven effective at managing family cases. This new process places greater emphasis on engagement with families and aims to encourage them to leave without the need for enforcement action. On the advice of the Independent Family Returns Panel, families who refuse to leave the UK may be held for a short period at the Cedars pre-departure accommodation, a specialist facility which is wholly different to the family removal centres of old: far lower volume of caseload, far shorter length of stay, far higher quality of support and greater independent oversight.

Cedars pre-departure accommodation is used only for families who have been living in the UK and who must now leave. Separate facilities are used for families who are encountered at the border on arrival in the UK. It continues to be necessary, on occasion, to hold families with children for a short period at the border while enquiries are made to decide whether they can be admitted to the country, or until the next available return flight if they are refused entry. The great majority of families with children stopped at the border are held for a few hours in holding rooms at the

port itself. Where it is necessary to hold a family overnight, they may be moved to the dedicated family unit at Tinsley House Immigration Removal Centre which is more appropriate to the needs of families.

There are a small number of other exceptional scenarios where we may use detention powers in respect of unaccompanied children. These include: where, very occasionally, detaining the child is in the public interest because of a risk of reoffending or a risk to national security; and where a child is detained on arrival in the UK pending a decision on whether to grant entry. In border cases, we will only hold an unaccompanied child at port on entry for a very short period pending collection by social services.

### **What we are going to do**

Give legislative effect to current government policy on detaining children for immigration purposes and provide a statutory underpinning to key parts of the new family returns process.

### **How we are going to do it**

- 1) We will prohibit the detention in an Immigration Removal Centre of unaccompanied children. Children being returned may need to be legally detained while they are being transferred to a port of departure or while being held at port for short periods awaiting departure. The facilities for holding children at ports are legally “Short Term Holding Facilities” and the new clauses make it clear that in these limited circumstances children may not be held there for more than 24 hours.
- 2) For families with children aged under 18, we will:
  - Provide a minimum 28 day reflection period after any appeal against a refusal of leave has been completed before any return can be enforced.
  - Place a statutory duty on the Secretary of State to appoint and consult an independent and expert Family Returns Panel for advice on how best to safeguard and promote the welfare of children in each family returns case where return is being enforced.
  - Provide a separate legal basis for pre-departure accommodation, independent of Immigration Removal Centres and Short Term Holding Facilities. We will also put into statute the current limit of 72 hours (extended to a maximum of a week by ministerial authorisation) on holding families in pre-departure accommodation.

## **Benefits**

- Restricting the detention of unaccompanied children for immigration purposes will give legislative effect to current policy.
- Providing a minimum 28 day reflection period will ensure that families placed into the family returns process will always have an opportunity to consider their options and avoid enforced return.
- Placing a statutory duty on the Secretary of State to appoint and consult an independent and expert Family Returns Panel will ensure that the safeguarding of children is properly considered in the planning for any enforced family return.
- Providing a separate legal basis for pre-departure accommodation making it the primary facility for holding families who are being returned. It will ensure a fully transparent regime, and provide statutory limits on how long families can be held there.
- Provide further underpinning to the existing statutory duty to safeguard and protect the welfare of children.

## **Next steps**

Subject to completion of parliamentary process, the statutory changes will come into force from summer 2014.

## **Q&A**

### **Have you really ended the detention of children for immigration purposes?**

We have met the commitment we made in December 2010. We closed the family unit at Yarl's Wood immediately, as we said we would, and we now hold children only in the new pre-departure accommodation, designed exclusively for families, as part of the new returns process or in very limited circumstances – such as border and public protection cases.

### **How is Cedars different to the previous regime?**

Cedars could not be further in look or feel from an immigration removal centre such as Yarl's Wood. Families are held there only as a last resort, for only a short period prior to their return, and only after safeguarding advice has been sought from the Independent Family Returns Panel. Since Cedars was established, Barnardo's has provided dedicated social work, welfare services and family support to children and their families at Cedars.

### **Why provide statutory undepinning if the policy is already being put into practice?**

The transformations we've made in our approach to returning families work well, however, they could, in theory, be reversed without parliamentary oversight. These amendments help guard against this by providing four statutory locks, which guarantee that the fundamental elements of our current approach cannot be changed without parliamentary oversight and debate.

### **How is this different from the old system?**

Far fewer children are subject to any deprivation of liberty under the new system. The published statistics show that 1,119 children entered detention centres such as Yarl's Wood in 2009 and 436 entered detention in 2010 under the old system. By contrast, the latest statistics show that in the first three quarters of 2013 seven children were detained in immigration removal centres and subsequently released following an age assessment; 64 children have been held briefly at the Tinsley House family unit after being stopped at the border; and 68 children have been held at the Cedars pre-departure accommodation for very short periods prior to leaving the UK.

### **Why do you continue to hold children at the border?**

Where children arrive as part of a family, we may need to hold them for a short period while enquiries are made to decide whether they can be admitted to the country, or until the next available return flight if they are refused entry. The great majority of families with children stopped at the border are held for only a few hours.

Where a child is travelling alone and/or is identified as a potential victim of trafficking, we may need to hold them for a very short period while we arrange for them to be taken into the care of local children's services. Without our detention powers, we would be unable to prevent potentially vulnerable children leaving and going straight back to their traffickers.

### **Why does the 28 day reflection period apply only to children with families?**

The return of an unaccompanied child is enforced only where there are safe and adequate reception arrangements in the country of return, but delaying return simply increases the separation from their existing families as well as the risk that they may fall prey to traffickers or abscond.

**Home Office  
February 2014**