



BRIEFING

# Alternatives to Child Immigration Detention

What are the options for the Coalition government?

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## Summary

The Coalition Agreement, released in May 2010, stated that the Coalition government would ‘end the detention of children for immigration purposes’. As a result, the UK Border Agency (UKBA) recently led a review on the practice. The formal review period ended two months ago, on 9 July 2010. No date has yet been set for publishing the findings of the review, but announcements are expected in the coming weeks.

We believe the government deserves credit for confirming that they will end this inhumane and ineffective policy, and for establishing a review into alternatives to the practice. However, ending child detention clearly raises significant challenges for the government which are proving difficult to overcome.

This briefing provides some background to the developments in this area, and sets out how two important principles can and should be put into practice by the government:

First, ending the detention of children must mean ending the detention of families. We question the effectiveness of a ‘no-detention policy’ that is aimed only at children and not at families as a whole. Families should not be split up and any policy that requires this would be unworkable as well as inhumane. Asylum-seeking families should be allowed to live in the community and be supported by a trained family-worker right from the start of the asylum process.

Second, the government is entitled to remove families with children from the UK once they have exhausted their rights of appeal in their asylum cases, and any change in policy must facilitate rather than frustrate return in these circumstances. Those arguing against detention must be able to show that alternatives are not only more humane but will also assist in the removal process. Greatly improving the environment of respect, particularly between asylum-seeking families and UKBA but also between migrant-supporting NGOs and UKBA, is crucial if alternatives to detention are going to be successfully put into practice.

## Introduction

Immigration detention, and the detention of children in particular, is a sensitive and emotive issue. It is widely accepted that detaining children for immigration purposes contravenes international human rights principles and legal standards.<sup>1</sup> For the purpose of this briefing, it is taken as read that detention is harmful to a child’s physical and mental health.<sup>2</sup> A recent dossier of medical evidence issued by Medical Justice leaves this in no doubt.<sup>3</sup> We also recognise that splitting up families is harmful to children and should be avoided.<sup>4</sup>

However, the UK government has found it necessary to use detention in recent years to effect removal, to establish a person’s true identity or the basis of their claim, or where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.<sup>5</sup> Reliance on detention has resulted in a high number of children and families being detained, despite the strong evidence that it can be extremely harmful and the evidence that it achieves little in facilitating return.

The government is entitled to remove families with children from the UK once they have exhausted their rights of appeal in their asylum cases, and any change in policy must facilitate return in these circumstances. Those arguing against detention must be able to show that alternatives are not just more humane but will help to facilitate a more effective removal process.

Greatly improving mutual respect, particularly between asylum seeking families and UKBA but also between migrant-supporting NGOs and UKBA, is crucial if alternatives to detention are going

1 Article 37 of the UN Convention on the Rights of the Child states that detention of children should only be used as a last resort and only for the shortest period of time.

2 A growing body of medical evidence, including a report from the royal colleges of paediatricians, GPs and psychiatrists, has found that the detention of children in the asylum system is linked to serious physical and psychological harm and the policy has been criticised by the government’s own inspectorate and the children’s commissioner for England. See: [www.guardian.co.uk/uk/2010/may/14/immigration-asylum-children-detention-centres](http://www.guardian.co.uk/uk/2010/may/14/immigration-asylum-children-detention-centres)

3 See: [www.medicaljustice.org.uk/content/view/full/1420/89/](http://www.medicaljustice.org.uk/content/view/full/1420/89/)

4 To do so would likely be contrary to Article 8 of the European Convention on Human Rights (and the Human Rights Act) which requires respect for private and family life.

5 See: [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idichapter31detention/section1/section1detentionpolicyinport?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idichapter31detention/section1/section1detentionpolicyinport?view=Binary)

to be successfully put into practice. There is currently a lack of trust between UKBA and some of the NGOs supporting refugees and asylum-seekers, which means that the returns process is characterised by extreme divisiveness and a lack of cooperation. Incidents of families picked up in dawn raids and driven straight to the airport by UKBA staff cause widespread anger and upset among migrant-supporting groups;<sup>6</sup> but, on the other hand, UKBA feel that their efforts at legitimate enforcement and removal are too often unduly frustrated by agencies which should support UKBA efforts to maintain the integrity of the asylum process.

This briefing sets out realistic and rigorous ways of facilitating removals of families with children without resorting to detention. We consider that a fair, effective and humane returns programme can and should balance the need to maintain the integrity of the immigration system and the rights and needs of children. This should also be seen in the context of a wider discussion about how people who have been through the asylum processes can be humanely removed from the UK.

## The government position

In September 2008, the UK government removed its reservation to article 22 of the UN Convention on the Rights of the Child, in doing so giving asylum-seeking children the same rights as British children. There is a duty of care on statutory bodies to promote the welfare of children and to see that the best interests of the child are given paramount consideration.

The government announced plans to end the detention of children for immigration purposes as part of its Coalition Agreement published in May 2010.<sup>7</sup> This position is the result of a compromise between the Liberal Democrats, who had initially sought to end the detention of families, and the Conservatives, who insisted that the no-detention policy would apply only to children.

The Scottish government decided to end the detention of children for immigration purposes last year and the practice ceased at Scotland's Dungavel immigration removal centre in May 2010. Some families were transferred to a detention centre in England (highlighting the difficulty of addressing this problem, and the lack of alternatives) and some children were held at Dungavel, on a temporary basis. In England, children and their families have been held at Yarl's Wood detention centre in Bedfordshire. Children have also been held at Tinsley House in Sussex.

UKBA led a review on the practice, which ended in July, but no date has been set for publishing the findings from the review.<sup>8</sup> The immigration minister, Damian Green, declared that while the review was underway the existing policy of detaining children would remain in place. His recent comments indicating that the detention of children would be 'minimised'<sup>9</sup> suggested a possible back-track from the original policy proposal to end the detention of children entirely.

### How many children will need alternative accommodation and for how long?

According to government figures, around 1,000 children a year are detained in the UKBA's immigration detention centres.<sup>10</sup> However, a recent report from the UN Special Rapporteur on the human rights of migrants found that although the House of Commons stated in a report that 1,000 children in families are detained each year, stakeholders estimate that the figure is actually double that.<sup>11</sup>

On average, children spend more than a fortnight (15.58 days) in detention, but detention for up to 61 days is not uncommon. For example, Home Office figures released in late 2009 showed that 1,315 children were held in detention centres over the course of the preceding year – 889 of those were held in detention for longer than 28 days.<sup>12</sup>

6 See: [www.leftfootforward.org/2010/05/which-way-now-for-immigration-policy/](http://www.leftfootforward.org/2010/05/which-way-now-for-immigration-policy/)

7 See [www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

8 The terms of reference can be found here: [www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/terms-of-reference.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/terms-of-reference.pdf?view=Binary)

9 [www.guardian.co.uk/uk/2010/sep/09/detention-children-immigration-centres](http://www.guardian.co.uk/uk/2010/sep/09/detention-children-immigration-centres)

10 See: [www.qam.org.uk/homepage/2010/06/19/alternatives-to-child-detention/](http://www.qam.org.uk/homepage/2010/06/19/alternatives-to-child-detention/)

11 See: [www.qam.org.uk/homepage/2010/06/09/report-of-the-special-rapporteur-on-the-human-rights-of-migrants-addendum-mission-to-the-united-kingdom-of-great-britain-and-northern-ireland/](http://www.qam.org.uk/homepage/2010/06/09/report-of-the-special-rapporteur-on-the-human-rights-of-migrants-addendum-mission-to-the-united-kingdom-of-great-britain-and-northern-ireland/)

12 See: [www.aboutimmigration.co.uk/policies-children-uk-detention-centres.html](http://www.aboutimmigration.co.uk/policies-children-uk-detention-centres.html)

#### CONTINUED

On 30 June 2009, 10 of the 35 children in detention at that time had been held for between 29 and 61 days. The cost of keeping a person in detention at that time was £130 a day; therefore, keeping a family of four in detention for between four and eight weeks costs more than £20,000.<sup>13</sup>

Figures released by the Home Office in May 2010 show that 230 children entered detention between January and March 2010. Of these, 200 children left detention – and of these 200, only 90 were removed from the UK. (Therefore 110 – 55 per cent – were released back into their communities, so their detention did not ultimately result in their removal from the UK.)<sup>14</sup>

### What alternatives to putting children in detention already exist?

Some of the alternatives to detention that have already been put in place in the UK are set out here.

The Millbank pilot project (see case study box below), was criticized by the Children’s Society for intervening only at the final stages of the asylum process.

#### Case Study 1 – The Millbank Pilot

In June 2007, the immigration minister announced a pilot scheme to trial an alternative to detention for families with children. The scheme was to focus on families who had been refused asylum and were facing the prospect of return. Initially its objective was simply to explore alternatives to detention, but the focus was later on increasing the number of families returning to their country of origin.

The pilot scheme in Kent admitted its first family in January 2008. The supported accommodation for families was provided at Millbank, a centre formerly used to provide initial accommodation to asylum seekers who had recently arrived in the UK. The centre was managed jointly by UKBA and the charity Migrant Helpline.

The scheme ran for just 10 months, with families present in the centre for the last eight of those. The intention was that families would stay at the centre for 4–6 weeks, during which time they would be given information about voluntary return to their country of origin. They would be free to come and go, and their children would be educated in local schools.

Source:

[www.childrenssociety.org.uk/whats\\_happening/media\\_office/latest\\_news/17137\\_pr.html](http://www.childrenssociety.org.uk/whats_happening/media_office/latest_news/17137_pr.html)

UKBA reported that the pilot failed because families absconded. However, a critical evaluation by the Children’s Society indicated that the pilot was poorly run and failed to establish the trust of the families who were moved there. Either way, no removals took place as a result of the pilot. The Children’s Society’s evaluation recommended that: ‘a more effective alternative to the detention pilot would provide independent support to families from the first day of their asylum claim so that if they were refused asylum the trusting relationship that is needed would already exist.’<sup>15</sup>

A new pilot following on from the Millbank project was started in Glasgow in June 2009. It encourages families refused asylum to return voluntarily, by providing intensive support focused on helping families to make sense of their stay in Scotland, confronting issues delaying a return, and building up skills to prepare for a voluntary return.<sup>16</sup> The Glasgow pilot is continually monitored to assess its effectiveness and whether any changes or improvements could or should be made, although to date very few returns have taken place. It is currently being independently evaluated by

13 See: [www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100617/halltext/100617h0001.htm](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100617/halltext/100617h0001.htm)

14 See: <http://rds.homeoffice.gov.uk/rds/pdfs10/immiq110.pdf>

15 See: [www.childrenssociety.org.uk/resources/documents/media/17148\\_full.pdf](http://www.childrenssociety.org.uk/resources/documents/media/17148_full.pdf)

16 [www.medicaljustice.org.uk/content/view/full/1323/81/](http://www.medicaljustice.org.uk/content/view/full/1323/81/)

Organisational Development and Support (ODS) and Barnardo's, which are specifically evaluating the impact of the project on children.<sup>17</sup>

If a family has been through the asylum process and their application has been refused, in most cases the only option left to them is return.<sup>18</sup> For all concerned, it is better if return is on a voluntary basis, with the family cooperating with the authorities. Introducing and explaining the prospect of return at an earlier stage in the asylum process is important and this is already done to some extent through the Voluntary Assisted Return and Reintegration Programme.<sup>19</sup> This programme is run by the International Organization for Migration, which is independent of the government. The environment and context in which the discussion about repatriation takes place is crucial, as demonstrated by case study 2 below. In order for voluntary return to work, it is important for a family to be supported in establishing links with organisations in the country of origin that will support and work with them to aid reintegration.

### Case Study 2 – Refugee Action Voluntary Sector Keyworker Pilot, Liverpool

This European Return Fund-supported pilot project, being run by Refugee Action in Liverpool, aims to improve asylum-seeking families' trust and understanding of the asylum process, including options such as voluntary return. Sixteen families, with an average of between one and two children, were referred to the project in April 2010 at early stages of their asylum application, with each being assigned a Refugee Action keyworker. The keyworker assists the family in their current situation, life in the UK, health and wellbeing, as well as discussing the complex and emotional subject of return in a supportive and non-coercive environment. By introducing the option of voluntary return early on, preferably before the UKBA substantive interview takes place, the project hopes to increase take-up of voluntary return at the refused application stage, and thereby preventing destitution and detention for many at the end of the process. Keyworkers also aim to overcome the specific obstacles facing families, such as parents concerns about childcare, education, healthcare and housing on return.

Early indications from the Keyworker Pilot show the families have engaged well and show interest in considering options including voluntary return. For those whose appeal rights have been exhausted and who have been deemed to have no protection need, keyworkers focus on the benefit of voluntary return as a humane and dignified alternative to enforced return.

Source: [www.refugee-action.org.uk/liverpool/default.aspx](http://www.refugee-action.org.uk/liverpool/default.aspx)

### ippr's key principles for a new policy on detention:

We consider that there are two principles that should shape policy developments in this area:

- First, ending the detention of children must mean ending the detention of families. We question the effectiveness of a 'no-detention policy' that is aimed only at children and not at families as a whole. Families should not be split up and any policy that requires this would be inhumane and unworkable. Asylum-seeking families should be allowed to live in the community and be supported by a trained family-worker right from the start of the asylum process.
- Second, the government is entitled to remove families with children from the UK once they have exhausted their rights of appeal in their asylum cases, and any change in policy must facilitate return in these circumstances. Those arguing against detention must be able to show that alternatives are not only more humane but will also assist in the removal process.

Government announcements about the implementation of their commitment to end child detention in the immigration system should be judged, first and foremost, against these principles.

17 See: [www.medicaljustice.org.uk/content/view/full/1323/56/](http://www.medicaljustice.org.uk/content/view/full/1323/56/)

18 In some very limited cases people who apply for asylum but do not qualify for refugee status are given temporary permission to stay for humanitarian or other reasons.

19 See: [www.iomlondon.org/varrp.htm](http://www.iomlondon.org/varrp.htm)

## How these principles can be achieved by the government

### 1. The government should be involving the refugee and migrant-supporting organisations in the process of return.

There are large numbers of NGOs and community groups working to support asylum seekers and their families. We would propose that their involvement is formalised so as to acknowledge their role in supporting asylum seekers who have lost the right to remain in the UK. This happens to some extent with the 'One Stop Services' that are available at present, but it would be better if improved links could be established between UKBA and a greater number of organisations. Establishing a memorandum of understanding between NGOs and UKBA would regulate and formalise the responsibilities around care for families. It would also mean that UKBA could more easily consider the role of NGOs in acting as community guarantors and/or liaising with community organisations in countries of origin in order to facilitate return.

UKBA could also consider contracting out more services to NGO groups who have the necessary expertise to work with children and families and can liaise with local community members and immigration services. Some NGOs and community organisations already house and support families, and in some cases could act as guarantors if the family were to abscond. A supportive and constructive relationship with asylum-seeking families is more likely to result in compliance.

We would stress this relationship (and particularly any memorandum of understanding) would be a two-way process with obligations on both sides. UKBA would need to acknowledge that they would have less direct control over asylum-seeking families, but it would also be necessary for NGOs working with asylum seekers to recognise that they have a role to play in supporting and facilitating a fair and humane returns process, once all appeals have been exhausted.

### 2. From the outset of the asylum process, applicants need to be made aware that return may be an outcome.

It is important that UKBA caseworkers make it clear to families, right from the start, that return may be one of the outcomes at the end of the asylum process. Caseworkers should see the facilitation of safe and sustainable return when an asylum claim is refused as an essential part of their role. To help with this difficult process, we propose that caseworkers should broker 'return agreements' and/or administer reporting requirements to instil a sense of responsibility on the part of the family and their children.

Such agreements should allow some flexibility, to ensure that the returns process takes into account family circumstances and is carried out in the most dignified way possible (for example, by delaying return if a child needs to finish a school year). This would allow a family to negotiate with the authorities around the terms of their removal, such as the exact timing, but not over whether or not they can stay in the country, if their appeals have been exhausted. Return itself should, in such circumstances, be non-negotiable.

A number of pilot projects are underway in London and the north-west, but the focus appears to be on rapid removal following a two-week ultimatum to leave the country, according to a leaked document recently reported in the press.<sup>20</sup> Instead we would urge UKBA, and migrant-supporting organisations, to consider a longer term approach, introducing the possibility of removal at an earlier stage in the asylum process. Moving the emphasis away from rushed removals and on to a supportive and respectful returns process should be the present aim for UKBA.

### 3. Alternatives to detention, such as tagging and reporting, should be used

There is evidence to show that families with children are very unlikely to abscond while living in their own communities.<sup>21</sup> David Wood from UKBA admitted to the Home Affairs Select Committee last year that: 'whilst issues are raised about absconding, that is not our biggest issue. It does happen but it is not terribly easy for a family unit to abscond.'<sup>22</sup>

20 See: [www.guardian.co.uk/uk/2010/aug/05/children-immigration-centres-deportation-scheme](http://www.guardian.co.uk/uk/2010/aug/05/children-immigration-centres-deportation-scheme)

21 See research carried out by the Immigration Law Practitioner's Association: [www.ilpa.org.uk/publications/ilpa\\_child\\_first.pdf](http://www.ilpa.org.uk/publications/ilpa_child_first.pdf)

22 See: [www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/970/09091604.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/970/09091604.htm)

There may be some circumstances where electronic tagging and reporting requirements could be set for members of the child's family – although not for children – to ensure compliance. Reporting requirements operated through dedicated family caseworkers would be preferable to electronic tagging, particularly given the importance of establishing a respectful relationship between families and UKBA.

Providing end-to-end case management with a family-worker who can work closely with a family living within a community to facilitate their return (or integration, if their application is successful) is a more humane and effective policy than detention. A respectful and consistent approach to liaising with asylum-seeking families has been shown to be extremely important in meeting their needs and ensuring compliance.

#### **4. Measures should be put in place to facilitate the government to enforce return**

The 'return agreements' outlined above would establish a responsibility on asylum-seeking families to cooperate with the return process if their application for asylum was refused. Despite the agreements, it is of course the case that some families would, when it came to it, refuse to cooperate. Given how much families invest in coming to the UK, this is understandable. However, in the final resort, if a family has exhausted appeal rights the only option for them is to return to their country of origin, and if this cannot be achieved through cooperation then UKBA is entitled to enforce return.

It is important to add that in any discussion of return, there can be confusion and controversy around the term 'voluntary'. In many cases, those who take up return do not do so as an alternative to staying in the UK legally, as they have no right to remain in the country. So in these cases, it is the process of return, not return itself, which is voluntary.

It may be necessary in very exceptional circumstances for children to be detained for a limited time period (such as for no more than 24 hours) immediately prior to deportation. This would be in-keeping with the UK government's obligations under Article 37 of the UN Convention on the Rights of the Child which states that detention of children should only be used as a last resort and only for the shortest period of time. This approach is also used in Canada.<sup>23</sup> The government should define the 'exceptional circumstances' carefully and precisely in order to ensure transparency and to allow for scrutiny of the decision if a child is detained.

The government should also make clear its policy intentions regarding the detention of children whose age is in dispute by the Home Office. In such cases, as with other children, we consider that detention should be used only as a last resort.

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<sup>23</sup> Compared to the UK, Canada detains far fewer children and for a much shorter average duration. In 1999–2000, 338 children were detained in Canada. This represents 0.3 per cent of the asylum-seeking population; 75 per cent of these children were detained for one day or less (Caston Centre for Human Rights Law 2003).