
a child seeking leave to enter or remain, and there is no evidence that the Local Authority in which it is to take place has inspected the arrangements, the UK Border Agency will notify that Local Authority. If it becomes obvious at the port of entry that a private fostering arrangement is intended, then notification of the Local Authority should take place by the port of entry. If the child still qualifies for entry as a visitor or as a dependant and there are no indicators of harm that would justify the immediate attention of the Children's Services, then the child need not be kept there until the Local Authority has responded.

In carrying out these enquiries about eligibility for further residence, UK Border Agency staff members must be vigilant for any indications that a child is under-achieving in any area of physical, mental or emotional development. If this is the case, then a referral should be made to the local Children's Services department.

- 2.13. There are times when the application process will reveal that a child has entered the United Kingdom as a visitor and an arrangement has been made for them to stay on with relatives or another carer after the return of those with whom the journey was originally made. In exercising vigilance on behalf of children, the UK Border Agency needs to be aware that these arrangements are likely to amount to 'private fostering' arrangements and make a referral to a Local Authority.

APPLICATIONS MADE BY OR INCLUDING CHILDREN WHO HAVE BEEN IN THE UK FOR A WHILE

- 2.14. It is not unusual for applications to remain in the United Kingdom to be made by or on behalf of children who have been here for some time. The normal practice is for children to be granted leave to remain in the United Kingdom in line with the parents or adults looking after them. Staff must be vigilant when considering applications that are made by or on behalf of children who are not with their natural parents.
- 2.15. In many cases, the application itself will require it to be established beyond doubt which adult is responsible for the child in the United Kingdom and the nature of the relationship between the child and those with whom he or she is living.

3. ENFORCEMENT ACTION MUST TAKE ACCOUNT OF CHILDREN'S NEEDS

- 3.1. The Government would always prefer voluntary compliance and co-operation with the immigration laws, including any requirement to leave the United Kingdom. There are occasions, though when the UK Border Agency has to enforce removal because the family will not leave voluntarily.
- 3.2. There must always be a presumption in favour of not detaining a family and each family's case must be considered on its individual merits⁴. The factors that have led to the decision to detain should be set out in every case as well as the basis upon which the decision was made⁵.
- 3.3. In addition, there must be a realistic prospect of removing the family from the United Kingdom within a reasonable period of time.
- 3.4. Before detaining a family, UK Border Agency staff must endeavour to confirm that the children and parents are related as claimed. The staff members doing this work must have been instructed⁶ on how to respond if children prove not to be related in this way, or if any previously unknown or undocumented children are with the family. This will include knowing the importance of how to make a timely referral to the right agency. In the majority of cases this referral will be to Children's Services professionals.
- 3.5. If detention takes place, then throughout the detention process, including the point at which it takes place, the UK Border Agency will endeavour to ensure a continuation of the pattern of care that exists between the parents and their children.
- 3.6. **In particular, it is the UK Border Agency's policy that nursing mothers and their children will not be separated at any stage unless there is a compelling reason that involves the safety of the child involved (for instance, an accompanying parent has threatened to harm the child).**
- 3.7. **Other than in the most urgent circumstances involving the safety of the child, such a decision must be made and supervised by a Local Authority Children's Services Department.**
- 3.8. For all children, it is vitally important that they are allowed to be close to their parents throughout each stage of any immigration law enforcement actions that involve them as a family; and also that reasonable personal belongings should be with them if they are to be detained.
- 3.9. The UK Border Agency must make appropriate arrangements when detention extends beyond 2 – 3 days. Steps must be taken to ensure that children are not in the position of putting their lives on hold for this time. They should be allowed to maintain voluntary personal links with their school or education provider if they wish. The UK Border Agency must take reasonable steps to ensure that their education record and their medical record are available in any place where they are detained. They should be able to maintain contact with friends they have made in their schools and local communities, whether by e-mail or other means; and they should be able to worship according to their religion and custom.
- 3.10. The UK Border Agency will seek to ensure a high degree of co-operation between itself and parents during any detention procedures, and will contribute to this as follows: It will provide

⁴ This presumption will not apply in the case of foreign nationals convicted of a criminal offence where the criteria for deportation are met.

⁵ Factors likely to contribute to a decision to detain include: having previously absconded, having previously failed to comply with conditions attached to staying in the UK, having previously used deception, having previously failed to leave the UK when required to do so, having failed to produce satisfactory evidence of identity, nationality or of lawful entry / residence in the UK. As a list of factors that may be taken into account this is not exhaustive and may be added to or amended.

⁶ Chapter 26.5 of the Enforcement Instructions and Guidance sets out the relevant guidance and instructions.

explanations of the reasons for any detention and what it entails that are appropriate to that family. It will recognise the role of the parents as the main providers of communication, care and reassurance to children. It will allow ample opportunity for parents to communicate with and provide explanations to their children.

- 3.11. If a parent's inability or unwillingness to provide an explanation to the child in this way is causing anxiety to a child, then the UK Border Agency staff or the staff of the Immigration Removal Centre must ensure that a qualified social worker is aware of this so that professional consideration is given to the question of how to reduce this anxiety.
- 3.12. If adult family members have not observed the time limit on their stay in the United Kingdom by departing voluntarily when that time limit expired and a decision is made to detain the adults, then the children will normally be taken into detention with the adults in order to avoid separating them from their parents.
- 3.13. On these occasions, every effort should be made to ensure that the parents' rights and wishes in relation to what happens to their children are respected. In particular, the children should be seen as being there purely as an alternative to separating the family and every effort should be made to maintain the family routines and interaction that they are used to. Wherever possible, there should be opportunities to participate in a daily timetable that includes contact with peers, continuation of education and times of play.
- 3.14. Although the primary carers for a child at this point are the parents, this should not rule out an ongoing concern for a child by those in charge of the detention facility. In particular, detention staff and professional advisers need to be vigilant for any deterioration in the capacity or willingness of the parents to care for their children. If a parent is unwell, physically or mentally, then staff must be extra vigilant in

looking out for any health problems in a child, both physical and mental.

- 3.15. There must be a health assessment for children if detention is expected to last more than 2-3 days. The effects of detention on children must be closely monitored by way of a social work assessment in the first 21 days and at periodic intervals following that. Any information sought or any assessments made, including the regular welfare assessments, should be carried out sensitively, and in particular should be done in such a way as to avoid implying that the parents are not looking after their children's health properly.
- 3.16. The detention of children beyond 28 days must be reviewed and personally authorised by a Home Office Minister. Care should be taken to ensure at review stage that the continuing detention of the child remains justified and reasonable, no appropriate alternatives are available, and that any continued detention will not lead to harm being caused unnecessarily to the child.

ESCORTED TRAVEL FROM ONE VENUE TO ANOTHER

- 3.17. There are also going to be times when families need to be transferred from one detention facility to another. The safety and comfort of everyone involved in such a journey must be paramount and it is likely to be a time when extra care is required to ensure that children's needs are looked after.
- 3.18. Before any escorting activity begins, those responsible for the escorting (whether the UK Border Agency staff or contractors or both) must make all reasonable enquiries to identify any issues relevant to safeguarding the welfare of children⁷.

⁷ Good practice on this is set out in chapter 45 of the Enforcement Instructions and Guidance and in particular in the sections on Contact Management and on the completion of a Family Welfare Form.

- 3.19. When children are in the care of a Local Authority, and are going to be removed from the United Kingdom to another country, then the UK Border Agency will liaise with and endeavour to plan with the Local Authority for that to take place.
- 3.20. When travelling, some refreshment must be provided when the child needs it as well as breaks for comfort, for nappy-changing etc., when needed. Refreshment provided should be culturally appropriate where required.
- 3.21. Suitable and correctly positioned child seats and / or restraints must be available for all babies and children in line with current legislation (S.I. 1993/ 31; S. I. 2006/ 1892 and S. I. 2006/ 2213)⁸.
- 3.22. A new health assessment on children should be carried out on arrival at any new facility where detention is expected to last more than 2-3 days.

EXCEPTIONAL CASES OF UNACCOMPANIED OR SEPARATED CHILDREN

- 3.23. When unaccompanied or separated children are being escorted from their normal place of residence to a port where removal will take place, then they must be subject to detention procedures in the sense of being served with formal notice whilst the supervised escort is taking place. The introduction of formal detention arrangements at this point means that there is full accountability for the child during that period as well as proper provision for the child’s welfare.
- 3.24. Other than in these situations, unaccompanied or separated children must only ever be detained in the most exceptional circumstances and then **only normally overnight if**

absolutely necessary, with appropriate care, whilst alternative arrangements for their care and safety are made⁹. This exceptional measure is intended to deal with unexpected situations where it is necessary to detain unaccompanied children very briefly for their care and safety. In circumstances where responsible family or friends in the community cannot care for children, they should be placed in the care of the Local Authority as soon as practicable. **The UK Border Agency must not detain an unaccompanied child for any other reason**, including for the purpose of a pending removal.

- 3.25. If a child is detained because of the need to safeguard him or her, then the specific circumstances or reasons for the detention must be recorded, including the details of the efforts made to place him or her in non-immigration care facilities such as may be provided by a Local Authority before deciding to detain, and the responses received.

⁸ The references are to Statutory Instruments followed by year and then reference number, available on the Office of Public Sector Information (OPSI) web-site www.opsi.gov.uk/stat.htm .

⁹ This presumption does not apply in the case of foreign nationals under the age of 18 who have been convicted of a criminal offence and who meet the criteria for deportation where it can be shown that they pose a serious risk to the public.

4. VIGILANCE HELPS CHILDREN AS MUCH AS THE FORMAL PROCEDURES

- 4.1. The UK Border Agency's powers are exercised in order to regulate entry into and residence in the United Kingdom. In carrying out their work, the staff of the Agency will be alert constantly to any signs or indicators that the children whom it encounters might be at risk of harm. **Where children appear to be at risk, the staff of the UK Border Agency will refer to outside statutory and professional agencies where appropriate.**
- 4.2. The UK Border Agency will take such actions as are necessary to keep children safe but without unwarranted intrusion or intervention in families' lives. The UK Border Agency will also seek to avoid the undermining or weakening of family relationships that can occur, for instance, by undue or inappropriate questioning of parents in front of their children. UK Border Agency staff must ensure that arrangements are in place so that parents are not required to give an account of personal victimisation or humiliation (in an asylum claim, for instance) if their children are present. Such arrangements might be provision of child-care and supervision through the use of volunteers who have been CRB checked for that purpose, the occasional use of paid and qualified personnel for such purposes, or making arrangements to conduct interviews near to applicants' homes so that they can make their own arrangements.
- 4.3. In dealing with parents and children, the staff of the Agency must therefore see the family as a unit, but also as individuals. **In particular, it is important not to lose sight of the child as an individual, as well as part of a family, and to be vigilant and responsive to the child's needs.**
- 4.4. The UK Border Agency will apply the wider aims and arrangements for safeguarding children as expressed in "Every Child Matters: Change for Children" A programme for change" published in 2004.

5. THE UK BORDER AGENCY MUST MAKE TIMELY REFERRALS OF CHILDREN AND WORK POSITIVELY WITH OTHERS

MAKING REFERRALS

5.1. A referral will be made to a relevant agency in the following circumstances:

- When any of the visible features at the end of this section has been identified;
- When a child appears to have no adult to care for them and the Local Authority has not been notified;
- When a private fostering arrangement has been identified;
- When a child is a potential victim of trafficking;
- When a child is identified as having gone missing;

5.2. All UK Border Agency operational workplaces must have the contact details of the local statutory Children's Services departments, Police Child Protection Units, Local Safeguarding Children's Boards, and local health services readily available. The corresponding contacts for Wales, Scotland and Northern Ireland must be provided in the relevant regional offices. Thus, in Scotland, contact details for Child Protection Committee lead officers must be provided.

5.3. Most referrals will be to the Local Authority. The referral must be made immediately by phone, followed up with a fax using an officially agreed form.

5.4. There must be a formal instruction in place setting out procedures to be followed when a child is identified as potentially missing.

5.5. When a referral is made, a written record must be completed by the member of staff making the referral as soon as is practicable. This record must include:-

- A retained copy of the referral form and confirmation of its receipt;
- Decisions taken (clearly timed, dated and signed);
- The names of the people with whom contact has been made.

5.6. If a referral takes place over the telephone then a written record with details of the authority to which it was made must be made immediately afterwards. This should be recorded on the formal casework system in operation so that the information is available to any UK Border Agency staff members subsequently working on the case.

5.7. If a child has been referred to the Local Authority Children's Services because of concerns about the carer, the UK Border Agency must check with the Local Authority and make a written record of the phone call and of what action is being taken before taking any action of its own on the immigration application.

5.8. When a referral is being made because it is believed the child may have been trafficked, the receiving Children's Services department must be made fully aware of risks specific to the case, such as any particular degree of influence that the trafficker might have over the child and any imminent risk there is of that influence triggering the child's return to the trafficker.

REFERRAL ARRANGEMENTS FOR EACH OF THE FOUR UK ADMINISTRATIONS

5.9. Statutory children's services have been devolved to each of the devolved administrations of Scotland, Wales, and Northern Ireland. Referrals to children's services may still be made to the relevant public authority by the UK Border Agency when members of staff have identified children as being in need or at risk. Differences in legislation and local

arrangements for making referrals will be respected and where necessary, the relevant UK Border Agency regional director will ensure that these differences are taken into account and suitable arrangements developed in Northern Ireland, Scotland, Wales and the English regional government offices.

WORKING WITH OTHERS

5.10. Making appropriate referrals to other agencies is a key part of how the UK Border Agency discharges its responsibility to keep children safe. It will therefore produce and keep up to date guidance on how to make such referrals¹⁰. The UK Border Agency acknowledges that Local Authorities will often have different policies and priorities depending on the overall demand placed on their resources. The UK Border Agency will therefore work with Local Authorities to identify and implement arrangements that are appropriate to that Local Authority.

5.11. Decisions taken by the UK Border Agency relating to a child's immigration status will take account of work done by any other agency with statutory responsibility for safeguarding and promoting the welfare of a child. However, there is no absolute bar on removal if arrangements in the country of destination do not mirror the arrangements that would have been provided in the United Kingdom.

5.12. The UK Border Agency will assist other appropriate agencies such as Local Authorities or the police who have contact with children if they are seeking to establish the identity of a particular child.

¹⁰ This is currently the 'Children in Need' Guidance issued to UK Border Agency staff members on 15 March 2007, which also contains a referral form.

LOCAL SAFEGUARDING CHILDREN BOARDS OR AREA CHILD PROTECTION COMMITTEES

5.13. The UK Border Agency staff must as a matter of practice participate in these where relevant, and will take a full part in any local committees or sub-groups on the same basis. The UK Border Agency will co-operate fully with any serious case reviews or other formal inquiries instigated by a Local Safeguarding Board¹¹.

The following is a brief list of features that can be used as signs in identifying cases where a referral is appropriate:

- Bruising
- Scarring;
- Burns;
- Very poor hygiene including untreated infections and infestations;
- An unusual level of withdrawal or lack of communication and engagement with adults;
- Fearful attitude to carers;
- Inappropriate approaches to strangers;
- Inebriation of adult carers;
- Signs of domestic violence between adults and carers;
- Rough handling or contemptuous attitude to the child by carers;
- Evidence that adults in the household have convictions for sexual or drug offences.

¹¹ When abuse or neglect is known or suspected to be a factor in the death of a child, the Local Safeguarding Children Board, has a responsibility to convene a case review (also commonly known as a Part 8 review or serious case review) into the involvement of all agencies and practitioners with the child and family. It will also consider holding a review if a child suffers injury and abuse or neglect is known or suspected. These reviews are not enquiries into who is culpable (which are matters for the coroner, police and courts); the purpose of the case review is to establish whether there are any lessons to be learned about the way in which agencies work together to safeguard children and to implement any necessary changes

6. THE UK BORDER AGENCY MUST HAVE MANDATORY TRAINING FOR WORK INVOLVING CHILDREN

- 6.1. The UK Border Agency must ensure that members of staff are appropriately trained to keep children safe, and have the means of expressing sensitive concerns outside their management line.
- 6.2. All staff appointments within the UK Border Agency must be subject to the satisfactory completion of comprehensive pre-appointment checks. These checks are carried out by Human Resources, the Security and Anti-Corruption Unit and the Departmental Security Unit. Formal job offers must not be made until these checks have been completed. The UK Border Agency must not employ anyone found to have a serious conviction, including a spent conviction, particularly if this included an offence against children.
- 6.3. Additionally, the UK Border Agency must require all staff whose job regularly involves them being in charge of a situation involving a child or children to undergo an enhanced check against information held by the Criminal Records Bureau. The UK Border Agency must also refresh the clearance for post holders on a regular basis.

The training must include some or all of the following elements:

- the law concerning children;
- the role of responsible adults, private fosterers, interpreters and children's legal representatives;
- trafficking, smuggling and exploitation;
- missing/abandoned children;
- interpreting children's behaviour;
- arrangements for working together with other agencies; and
- values and principles underpinning the treatment of detained families.

STAFF TRAINING

- 6.4. **All staff whose work involves children either directly or indirectly, must complete an e-learning package on child safeguarding awareness developed in partnership with organisations that have a formal role in protecting children.**
- 6.5. **All staff who conduct substantive interviews with children or who have regular contact with children in their work must be required to complete specific training, also developed in partnership with organisations that have a formal role in protecting children, on how to keep children safe from harm whilst carrying out immigration functions.**

7. THE UK BORDER AGENCY MUST HAVE A SYSTEM OF ACCOUNTABILITY FOR CHILDREN'S CASES

- 7.1. This Code of Practice sets out how the UK Border Agency expects its staff to deal with children when they come into contact with the immigration system in the United Kingdom. It is not exhaustive and cannot deal with every circumstance although it should help staff to understand that there are implications for policy, procedures and practice wherever children are involved.
- 7.2. Where the Code describes a procedure to be followed and staff members depart from this, they must have a clear reason or reasons for doing so. Departures from the Code and the supporting instructions should be reported by the relevant member of staff to his or her immediate line manager.
- 7.3. The Agency's line managers have immediate responsibility for ensuring that this Code is implemented locally and that staff are following it. Staff who do not follow this Code can expect to be subject to disciplinary action.
- 7.4. Complaints about handling of children may also be made through the UK Border Agency's complaints system. Complaints can be lodged by adults on behalf of children if they have a formal role in that child's life and have witnessed an event about which they wish to complain¹².
- 7.5. Provision¹³ has been made in the UK Borders Act 2007 to appoint a Chief Inspector of the UK Border Agency. The role of the Chief Inspector includes "monitoring and reporting on the efficiency and effectiveness" of the UK Border Agency".
- 7.6. The Chief Inspector will also be able to look at the UK Border Agency's performance in relation to children as part of his overall assessment of the treatment of applicants and claimants.
- 7.7. A Children's Code of Practice Programme Board or equivalent within the Agency will ensure on behalf of the Agency Board that the provisions of the Code are implemented.
- 7.8. The Agency will issue specific instructions and guidance to staff wherever these are needed because of variations in operational or practical procedure in the different parts of the Agency.
- 7.9. In carrying out their duties in the United Kingdom, staff of the UK Border Agency may become aware of issues or situations which could run counter to the arrangements to keep children safe from harm. These may be general concerns about the effectiveness of these arrangements; or they may relate to the way in which a particular child was dealt with; or, notwithstanding the safer recruitment arrangements and training for staff working in contact with children, they may relate to the attitude and behaviour of staff towards children.
- 7.10. Where staff members have any concern of this sort, they should first consider raising the matter with their line manager or with a line manager above that level (e.g. their countersigning officer). However, there may be occasions when because of the nature of their concerns, staff feel unable to report their concerns in this way. In such cases, staff should seek to express their concerns to the UK Border Agency's Children's Champion or other senior official with lead responsibility for children's issues. The Children's Champion should treat the matter as a confidential referral.

REPORTING ISSUES OF CONCERN OUTSIDE THE MANAGEMENT LINE

¹² The complaints registration form and information on who to contact with a complaint are available on www.ukba.homeoffice.gov.uk/contact/makingacomplaint

¹³ This appears in section 48 of the UK Borders Act 2007.

