

Detention of children and families in the UK

This fact sheet provides an overview of the law relating to the detention of families and children, including the reasons for detention, being released from detention and what constitutes unlawful detention.

If you have any questions about detention relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

What is immigration detention?

An individual who is subject to immigration control can be detained by UK Visas and Immigration in different circumstances and for the following purposes:

- To examine immigration status
- To enable removal
- To enable deportation [1]

Most people held in immigration detention are detained at an immigration removal centre (sometimes referred to as a detention centre).

The power to detain has been developed in guidance, including the Home Office's Enforcement Instructions and Guidance. [2] For detention to be lawful it must be proportionate and alternatives to detention must be properly considered. The decision to detain is made by an immigration officer and this decision is not subject to any automatic review.

Depriving a person of their liberty can have a serious and lasting effect on his or her mental health, particularly for long or indefinite periods of detention. This is particularly true in the case of children and young people, including age disputed children. Detention is also likely to have an impact on a person's ability to prepare an application and to obtain effective advice and support.

Should you work with a child or young person who is in detention, it is important that they have legal advice and representation in this regard. If they do not have this, it is important that they are helped to obtain legal advice as soon as possible.

Reasons for detention

There can be a number of reasons that someone may be detained by the immigration authorities. The following is a brief summary of some of the circumstances in which detention can occur.

Arrival

Normally someone who is subject to immigration control must have permission to enter the UK before arriving in the UK. If someone arrives in the UK without permission they will likely be detained

- until a decision is made to grant permission to enter;
- if they are believed to have entered the country illegally; or
- while waiting on a decision to be granted permission to enter following an asylum or human rights claim.

Someone may also be detained even if they have been granted permission to enter the UK, if, for example, there has been a change in circumstances or false information was used.

Pending removal

Someone is liable to detention, pending a decision on removal, if they fit into a number of categories, including:

- They have been refused permission to enter the UK;
- They have entered the UK illegally;
- They have failed to meet all the conditions of their leave (i.e. accessed public funds when

not allowed to or failed to report);

- They have overstayed on their visa; or
- They have lied or used deception in their application or claim to enter or remain in the UK.

Pending deportation

Someone may be liable to detention if there is an intention to deport them. For example, if a court has recommended deportation, or if they commit a criminal offence which means they would be automatically deported, they will likely be detained.

Individuals unsuitable for detention

Home Office's Enforcement Instructions and Guidance includes specific instructions on the unsuitability of detention for some categories of individuals, including:

- Unaccompanied children under the age of 18;
- Pregnant women in most circumstances;
- Those suffering from serious medical or mental health issues which cannot be managed within detention;
- Those who have been tortured and have independent evidence of this; and
- Persons identified as victims of trafficking.

Bail

There is no time limit placed on how long someone can be held in immigration detention for in the UK. Those detained have the right to apply to the court for bail if they have been in the UK for more than seven days.

Someone who is detained can apply for bail to the Chief Immigration Officer or to the Tribunal. Recent changes to the law have restricted the rights to apply for bail, particularly where there are directions for removal. There are now also provisions which require repeat bail applications to be automatically dismissed

without a hearing if made within 28 days of the last decision, unless there is a material change in circumstances. [3]

The charity Bail for Immigration Detainees (BID) provides advice, information and support to those in immigration detention. For further information please visit www.biduk.org/information-detainees

Continued and unlawful detention

When a decision is made to continue detention, the Home Office must consider certain principles when making a decision. These include:

- That the detention is for a legal purpose (for example – removal);
- The person should only be detained for a period that is reasonable in all the circumstances;
- If the Home Office cannot remove the person within a reasonable period, detention should not be continued; and
- The Home Office should act quickly and effectively when planning removal. [4]

When someone is detained beyond a 'reasonable period' then that person's detention will be unlawful. This means that they will be entitled to release and compensation.

It can be difficult to work out when exactly detention becomes unlawful. You often need to go to court to argue that detention is unlawful. Should you work with a young person who you think has been unlawfully detained, you should obtain further legal advice about this.

Detention of unaccompanied children

The Immigration Act 2014 banned the detention of unaccompanied children for more than a 24-hour period at any one time. Restrictions were also set on where an unaccompanied child could be detained – such as where their presence is required for immigration purposes and at short-term holding

facilities. [5] Therefore children who have entered the UK can still be detained when they first arrive, but they may also be detained for criminal cases and escorting during returns.

There are detailed instructions and guidance on when the Home Office deem detention appropriate for children and children and families. [6]

Detention of children can also occur in 'age dispute' cases, where a child has stated that they are under 18 and the Home Office decides that their physical appearance/demeanour 'very strongly suggests that they are significantly over 18 years of age' or the local authority assesses them to be over 18. The Home Office guidance and instructions on detention include a section on age dispute cases. The Refugee Council noted in 2013 that it had secured the release of 36 children held as adults, a number of whom were under the age of 16. There may be many more individuals who have not been assisted and remain in detention. [6]

Detention of children and families

In 2010 the coalition government made a commitment to ending child detention and the Government began to develop a new policy to deal specifically with the removal of families with children less than 18 years and who no longer have a right to remain in the UK. The aim was to minimise the circumstances in which children could be detained for immigration purposes.

Previously, families with children were held in detention as a last resort in a 'pre-departure accommodation' facility called Cedars. However, the UK Government announced that they were closing Cedars in July 2016. Families are now to be held at a unit within Tinsley House immigration removal centre. Detention in these circumstances is usually limited to a normal maximum of 72 hours but may, in exceptional circumstances and subject to Ministerial authority, be extended up to a total of seven days. [7]

Where a family presents risks which make the use of pre-departure accommodation inappropriate, they may be held in another detention facility. The same

time limits as for pre-departure accommodation apply.

Family Returns Process

The primary aim of the family returns process is to implement the need to safeguard and promote the welfare of children as required under section 55 of the Borders, Citizenship and Immigration Act 2009. The family returns process consists of three stages:

Voluntary return

Families will be offered a family return conference with Home Office staff to discuss the option to make a voluntary return to their country of origin and will be given information on the assistance. They will also discuss any barriers to removal, such as medical or family welfare issues. A family departure meeting is arranged two weeks later to discuss the family's thoughts on their options.

Required return

Families who do not take up assisted return voluntarily will be subject to this process which is arranged by the Home Office. Families will be given at least two weeks' notice to check in to and board a flight, without enforcement action by the Home Office such as detention.

Ensured return

As a last resort, families who do not depart from the UK through assisted or required return will be subject to this process, which can involve different options - escorted check-in, removal via open accommodation, or removal via pre-departure accommodation.

The Home Office develops a plan to enforce their ensured return and it is referred to the Independent Family Returns Panel for consideration.

Family Returns Panel

The role of the Family Returns Panel as specified under section 3 of the Immigration Act 2014 is to 'safeguard and promote the welfare of children of the family'. It must be consulted by the Home Office in

this regard in every family returns case and in each case when the Home Office proposes to detain a family in pre-departure accommodation.

The Home Office is under a duty to consult, rather than follow any recommendations made by, the Panel. However, there would be strong arguments that the Home Office was not meeting its duties to safeguard and promote the welfare of the child if it did not follow any of the recommendations made.

The panel advises on return plans and on which option for ensured return is most appropriate, taking into account the need to safeguard the welfare of children. It will use information provided on a family welfare form when considering cases.

Legal Advice

If you are supporting a child or young person who is held in detention, it is important that they receive legal advice about their detention and their immigration status.

When an individual is arrested or detained by police for immigration purposes, they will be given the right to an initial legal advice from a legal adviser through the police station immigration telephone advice service. This is a one-off call but is confidential.

The detention duty advice scheme is free advice provided by law firms under legal aid. Each removal centre has lawyers available at the centre a few days each week. The lawyers will come to the removal centres to give advice and the advice they give is free of charge.

If you have a solicitor who has carried out at least five hours of work on your case before you are detained, the solicitor can continue to work with you if you are detained.

NOTES

- [1] Schedule 2, Immigration Act 1971 (as amended)
<http://www.legislation.gov.uk/ukpga/1971/77/schedule/2>
- [2] Home Office, Enforcement Instructions & Guidance, Chapter 55 - Detention & Temporary Release
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470593/2015-10-23_Ch55_v19.pdf
- [3] Section 7, Immigration Act 2014
<http://www.legislation.gov.uk/ukpga/2014/22/section/7>
- [4] R v. Governor of Durham Prison, Ex parte Singh [1984] 1 All ER 983
<http://www.refworld.org/docid/3ae6b6ce1c.html>
- [5] Home Office, Enforcement Instructions & Guidance, Chapter 55 - Detention & Temporary Release
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470593/2015-10-23_Ch55_v19.pdf
- [6] Refugee Council, 'Unlawful Child Detention Must End'
http://www.refugeecouncil.org.uk/latest/news/3905_unlawful_child_detention_must_end
- [7] Home Office, Enforcement Instructions & Guidance, Chapter 55 - Detention & Temporary Release
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470593/2015-10-23_Ch55_v19.pdf

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.