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Age Disputes and Detention

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On 12 May 2010, the Government published its initial coalition agreement, which first set out its commitment to “*end the detention of children for immigration purposes*”. Previous information sheets set out steps taken by the Government and the UK Border Agency to meet this commitment – see the June 2010, August 2010 and February 2011 information sheets on “Detention of Children” and the November 2010 and March 2011 information sheet on “UKBA Family Returns”. The first of these information sheets (“Detention of Children 2”, June 2010) highlighted that:

“It is important to note that the detention of children by the UK Border Agency is not restricted to the detention of children in families. Unaccompanied children are sometimes detained by the UK Border Agency. This can happen if the UK Border Agency disputes a child’s age, or if the UK Border Agency has failed to give a child a proper opportunity to state his or her age before detaining the child.”

This information sheet provides information about separated children (often referred to as unaccompanied children) and detention. To date, the steps taken to meet the Government’s commitment to end the detention of children have not addressed the detention of these children.

Ages Disputes and separated children

An age dispute can arise where the UK Border Agency does not accept the age of a separated child seeking asylum or where social services do not accept the age of a separated child. This information sheet is concerned with situations where the UK Border Agency does not accept the child’s age (whether or not social services dispute the child’s age). In this information sheet, cases where the UK Border Agency does not accept someone’s age are referred to as age disputed cases.

The UK Border Agency asylum process guidance on “Assessing Age” states that an asylum claim by someone who claims to be a child, but whose age is disputed, is to be passed to a UK Border Agency caseowner who is trained to deal with children’s cases (unless ‘the physical appearance/demeanour test’ is applied, see below) . This is consistent with the previous asylum process guidance on “Age Disputed Cases”, which generally indicated that in such cases the UK Border Agency was to follow similar procedures to those applicable in cases where it accepted the person to be a child. Chapter 55 of the enforcement instructions and guidance indicates that separated children are generally not to be detained, and in an age disputed case the person is also usually not to be detained.

More information about age disputes is available from the October 2007, February 2010 and April 2011 information sheets on “Age Disputes and Age Assessment”. The first of these provides information about ILPA’s research and report on age disputes – *When is a child not a child?*

Age disputes and detention

Despite what is said above, UK Border Agency policies leave open the possibility of using detention in age disputed cases. A separated child, whose age is disputed, may therefore find himself or herself in detention. Some of the ways this may happen are described in the following paragraphs.

The asylum process guidance on “Assessing Age” states that the UK Border Agency will usually treat someone as an adult if his or her “*physical appearance/demeanour very strongly suggests that they are significantly over the age of 18 years*” (‘the physical appearance/demeanour test’). This means that a separated child may be treated as an adult, and may be detained, if an immigration officer decides that he or she looks like or behaves like an adult.

A separated child may also be detained because an immigration officer treats him or her as an adult without considering or asking whether he or she is, or claims to be, a child. A separated child may travel on false documentation. Smugglers may provide the child with false documentation stating that he or she is an adult. This is because immigration authorities, aircrew and airport staff are more likely to be suspicious or intervene if they think there is a child travelling alone or with someone who is not his or her parent. A child who arrives in the UK with a false document (e.g. a false passport) stating that he or she is over 18 years of age may be detained before anyone has asked about his or her age. Alternatively, the child may say he or she is the age indicated by the false document because that is what he or she has been told to say.

Where a separated child is both treated as an adult and detained, the UK Border Agency practice appears to be to continue that detention unless and until it is satisfied that he or she is indeed a child. The asylum support policy bulletin on “Age Disputes” (number 33) states that, unless there is additional evidence, if a separated child has claimed to be an adult but later claims to be a child, he or she will continue to be treated as an adult. This relates to asylum support, not detention. However, it appears to be the approach taken in detained cases; and a separated child may continue to be detained for several days or weeks – e.g. waiting for an age assessment to be conducted by social services. In 2009, the Independent Monitoring Board (IMB) for Harmondsworth Immigration Removal Centre raised concerns about the length of time that social services at Hillingdon were taking before coming to the centre to undertake an age assessment. They also raised concerns that the UK Border Agency were doing nothing or too little to address this problem with Hillingdon. The IMB, and others, continue to have these concerns.

The Government’s commitment to end the detention of children

None of the measures, introduced to meet the Government’s May 2010 commitment to end the detention of children, addresses the situation of separated children who are detained because their age is disputed. This is one reason why the Government is wrong to now claim to have met the commitment to end the detention of children first set out in May 2010.

For several years, the UK Border Agency has responded to concerns about age disputes (including the detention of children whose age is disputed) by saying it is concerned to avoid risks to children which may arise if an adult, claiming to be a child, is wrongly treated as a child and housed with other children. However, the risks to a child are significantly more immediate and serious if he or she is wrongly treated as an adult and housed with other adults, or indeed detained as an adult. The child in this situation will be isolated, both from other children and from authorities (such as social services) who have responsibilities to protect him or her; and he or she will be in contact with many more adults in an unsupervised environment. These concerns are among the reasons why ILPA has long urged that the UK Border Agency and social services should be more careful to give the benefit of any doubt about age to the child – see e.g. the October 2007 “Age Disputes and Age Assessment” information sheet and the research and report referred to in that information sheet.