

# ILPA information sheet

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## Detention of Children 5

3<sup>rd</sup> August 2011

The March 2011 “UKBA Family Returns” information sheet set out the family returns process introduced by the Government as the way to meet its commitment to end the detention of children (see the June 2010 “Detention of Children 2” information sheet). When the UK Border Agency set out its plans for the family returns process, these included an option of detaining families in what it calls ‘pre-departure accommodation’.

This information sheet provides an update on the family returns process, and in particular on notice of removal and the use of detention in pre-departure accommodation.

### Notice of removal to families

On 2 August 2011, the UK Border Agency notified ILPA that it intends to make changes to the minimum period of notice given to families of their forced removal from the UK. The changes are intended to take effect on 1 September 2011. The changes do not alter any of the information given in the March 2011 “UKBA Family Returns” information sheet. The changes would only affect asylum-seeking families being removed to third countries or made subject to the non-suspensive appeal process (see below).

The changes would mean that the affected families will receive a minimum of 72 hours notice of removal. This is a change from the five days notice period that currently operates in cases of safe third country or non-suspensive appeal removal. Single persons, or families without children, should continue to receive a minimum of five days notice in these cases. From 1 September 2011, all families with children, whose returns are done through the family returns process, will be entitled to the same minimum notice of removal (72 hours) whatever the reason for their removal.

**Third country removals:** This refers to removals to a country, other than the country of an asylum-seeker’s nationality or origin, to which he or she is to be removed. This happens where the UK Border Agency decides that the asylum claim should be dealt with in that other country, and the person is removed without any decision on his or her asylum claim in the UK.

**Non-suspensive appeals process:** This refers to removals to an asylum-seeker’s country of nationality or origin with no right of appeal from within the UK. This happens where the UK Border Agency decides that the asylum claim is clearly not well-founded (i.e. it decides there is no chance that any immigration judge could allow any appeal). An appeal may be made against the refusal of asylum in these cases after the person has been removed from the UK.

Third country removals and the non-suspensive appeals process may be challenged by judicial review. More general information about removals (not just of families) is available from the

February and August 2010 “Removals and Judicial Review” information sheets (numbers 3 & 4).

### **Pre-departure accommodation**

On 2 August 2011, the UK Border Agency confirmed to ILPA that it intends to begin using its new centre in West Sussex this month. This is the centre, which it refers to as ‘pre-departure accommodation’. As explained in the March 2011 “UKBA Family Returns” information sheet:

*“...this involves moving the family to accommodation, where unlike ‘open accommodation’ [also see that same information sheet] the family’s movements will be restricted. This will be another form of detention – albeit not in an Immigration Removal Centre, families will be held under detention powers.”*

The UK Border Agency says that it will use this centre for “*some of the least compliant families*”. As yet, the UK Border Agency has not published guidance to its staff on the use of pre-departure accommodation. It is unclear on what basis the UK Border Agency will assess whether a particular family is one of ‘the least compliant’.

The centre in West Sussex is to be called Cedars. It will be run by G4S, who are one of the companies employed by the UK Border Agency to run detention centres and provide escorts for removals. Barnardo’s, a national children’s charity, will also be operating in the centre. In March 2011, Barnardo’s issued a press statement explaining why it had decided to operate in the centre:

[http://www.barnardos.org.uk/news\\_and\\_events/current\\_news.htm?ref=67322](http://www.barnardos.org.uk/news_and_events/current_news.htm?ref=67322)

In that statement, Barnardo’s said: “*Barnardo’s will be providing welfare and social care support within the new pre-departure accommodation...*”

More recently, on July 2011, Barnardo’s held a press event where it outlined a series of ‘red lines’. These red lines are standards, which if the UK Border Agency fails to meet, will cause Barnardo’s to end its participation at the centre. On 1 August 2011, the Independent reported these red lines as follows:

<http://www.independent.co.uk/news/uk/politics/barnardos-gives-ultimatum-to-coalition-over-asylumseeker-deal-2329701.html>

“[Barnardo’s] will abandon its support if:

- *any serious concerns about the behaviour of staff are not investigated and tackled...*
- *families are held in the centre more than once – or for longer than one week;*
- *families are transferred to Tinsley House, the immigration detention centre next to Gatwick Airport, because the new centre is full”*

### **Legal advice**

Both the UK Border Agency and Barnardo’s have emphasised that families detained at this new centre will continue to have access to legal advice and representation. However, ILPA is not yet aware of any specific arrangements for providing Legal Aid immigration advice in the centre.

The current Legal Aid arrangements make it very difficult for a legal representative to visit a client in detention because payment for travel and waiting time will not generally cover more than a three-hour round trip (including any wait). If implemented, the Legal Aid Bill will complicate the situation greatly because (except for asylum-seeking families) a detained family will have been excluded from Legal Aid for immigration advice until the point of their detention. For further information on the Legal Aid Bill, see the June 2011 “Legal Aid Bill” information sheet.