



information sheet

Children's Welfare

3rd December 2008

For several years the UK has excluded one class of children from the full range of child protection and welfare legal standards that apply in the UK. This class is children who are subject to immigration control.

This information sheet provides information about the legal standards from which these children have been excluded, and some of the current developments in law and policy that apply to these children.

The 1989 UN Convention on the Rights of the Child

When the UK ratified this Convention (i.e. formally agreed to abide by the Convention), it entered reservations. A reservation can only be entered (or made) at the time a State ratifies the Convention. By entering a reservation, a State limits its commitment to abide by the Convention. Essentially, the State says that it will abide by the Convention except in the way or in the circumstances described in its reservation.

One reservation entered by the UK included the following matters:

- that the UK reserves the right to apply its immigration laws for those who are not permitted to enter or remain in the UK as it wishes
- that the UK reserves the right to apply its citizenship laws as it wishes

Full details of the UK reservations are available at:

<http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations>

In September 2008, the Government announced that it would be withdrawing some, though not all, of the UK reservations. In November 2008, it implemented this decision. This is now formally recorded as having been done at:

<http://www2.ohchr.org/english/bodies/ratification/docs/UK2008-Eng.pdf>

The Government's statement announcing its decision to withdraw some of the UK reservations is available at:

http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0209

Children Act 2004 – section 11 duty

In 2004, this Act introduced a duty on specified public bodies to ensure that they carried out their public duties in ways that would safeguard and promote the welfare of children. This is a duty under section 11 of the Act. It applies to public bodies including local authorities, the police and the prison service. Section 11 requires there to be published guidance on how the duty to safeguard and promote the welfare of children is to be met.

Section 11 only applies in England. The other nations of the UK have similar duties in other legislation.

Immigration officers and others carrying out immigration duties at the Home Office have not been included among the specified public bodies required to comply with this duty. Both opposition parties have sought to amend the law so that these immigration officials are included. The Government has repeatedly resisted that.

ILPA information service

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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Code of practice on safeguarding children – section 21 duty

In 2007, the Government introduced a legal duty to make a code of practice to safeguard children for immigration officials and private contractors carrying out immigration functions. This is a duty under section 21 of the UK Borders Act 2007.

When this Act was being debated, the Government was again pressed to include immigration officials within the scope of the section 11 duty (see above). The Government offered a compromise. The compromise became the section 21 duty to make a code of practice.

Although the Act was enacted on 30 October 2007, section 21 is not yet in force and the code of practice has not yet been introduced. However, the UK Borders Act 2007 (Commencement No. 5) Order 2008 will bring section 21 into force on 6 January 2009.

Immigration and Citizenship Bill – clause 189 duty

In 2008, during the debates on the Children and Young Persons Act 2008, the Government was again pressed to include immigration officials within the scope of the section 11 duty (see above). The Government lost a vote in the House of Lords, and for a short time an amendment to give effect to section 11 for immigration officials was included within the Children and Young Persons Bill.

In response, the Government offered another compromise. In exchange for Parliament agreeing to remove the amendment to the Children and Young Persons Bill, the Government promised to include a specific duty upon immigration officials to safeguard and promote the welfare of children in new legislation.

The draft (partial) Immigration and Citizenship Bill includes this duty at clause 189. For more information on this Bill, see the “Draft (partial) Immigration and Citizenship Bill” information sheet. The Borders, Immigration and Citizenship Bill which is to be introduced to Parliament in the current session is to include this duty.

The Government has stated that it intends that this duty should effectively impose the same responsibilities on the UK Border Agency that section 11 imposes upon other agencies. However, clause 189 as currently drafted differs from section 11 in important respects:

- the detailed and important guidance that has been developed under section 11 applies to section 11 – not to clause 189
- clause 189 is expressly limited to children in the UK – however, the UK Border Agency deals with children overseas, e.g. at juxtaposed controls where immigration officials and private contractors carry out UK immigration control in other countries