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Detention of Children 4

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This information sheet gives information about recent developments concerning the detention of children. Previous information sheets on this subject remain relevant – see the August 2010, June 2010 and August 2009 ‘Detention of Children’ information sheets. This information sheet includes information about the High Court judgment in *R (Suppiah & Ors) v Secretary of State for the Home Department* [2011] EWHC 2 (Admin).

Most recent Government announcement

On 16 December 2010, the Government announced the immediate closure of the family detention facilities at Yarl’s Wood. When announcing that, the Deputy Prime Minister, Nick Clegg MP, said:

“Today marks an enormous culture shift within our immigration system. The coalition government has always been clear that the detention of children for immigration purposes is unacceptable.”

The Government also then announced a “*new compassionate approach to family returns*”. Much of this announcement was concerned with what is set out in the November 2010 “UKBA Family Returns Pilots” information sheet. The information there remains valid. In addition, the Government announced that there would be specially trained family caseworkers dealing with asylum-seeking families.

Further information about the Government announcement is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/dec/48-family-returns>

On the same day, Damian Green MP, Minister for Immigration, made a written statement to the House of Commons. This statement is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/wms-review-end-of-detention.pdf>

Government review into ending child detention

Last year, the UK Border Agency conducted a review into ending child detention. In May 2010, it invited organisations and individuals to provide views on how to meet its commitment to end child detention. On 16 December 2010, the UK Border Agency published its conclusions on the review. It also published the responses it had received from organisations and individuals. The documents are available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/>

Current policy and practice

While the family detention facilities at Yarl's Wood have been closed, the UK Border Agency is developing its facilities at Tinsley House for detaining families. It continues to be the case, as stated in the "UKBA Family Returns Pilots" information sheet, that families with children may be detained. The UK Border Agency has now published guidance related to these pilots (under the heading 'Instructions used in the family returns pilots') at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsection/

High Court judgment

On 11 January 2011, the High Court gave judgment in *R (Suppiah & Ors)*. The judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2.html>

The case concerned two families (a mother and two children; and a mother and one child) detained in February 2010. They challenged the lawfulness of their detention. In its judgment, the High Court emphasised the importance of the duty, under section 55 of the Borders, Citizenship and Immigration Act 2009, to have regard to the need to safeguard and promote the welfare of children. It considered this in the context of the 1989 UN Convention on the Rights of the Child, and in particular the requirement that the best interests of the child are made a primary consideration. This requirement has since been emphasised by the Supreme Court – see this month's "ZH (Tanzania) Supreme Court Judgment" information sheet.

The High Court found that the families had been unlawfully detained. This was because the UK Border Agency had failed to consider whether there was any alternative to the decision to detain these families; and, while it had officially recorded that the welfare of the children had been considered, in fact it had not considered their welfare. The High Court said:

"...The policy ensures that every decision-maker should know that the [Secretary of State for the Home Department's] policy demands that detaining children should take place in exceptional circumstances only and is a matter of last resort; inevitably, therefore, the decision-maker will know that it is incumbent on him to undergo a rigorous analysis of all relevant factors before authorising [detention]."

"It is clear that from time to time the employees of UKBA fail to apply the [Secretary of State's] policy when making decisions relating to the detention of families with children. That emerges with clarity from the observations of HM Inspector of Prisons, the Children's Commissioner, Members of Parliament, the Independent Inspector of UKBA and the detailed evidence of [the Assistant Director of Bail for Immigration Detainees]..."

The High Court drew particular attention to the July 2010 report of the Chief Inspector of the UK Border Agency on Family Removals. He had found little evidence of specific actions to take account of families' welfare needs in the removal process, no consistent standards or processes whereby the family removals process was supervised or managed and an absence of proper audit trails or analysis of what the UK Border Agency was doing. The report is available at:

<http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Family-Removals-A-Thematic-Inspection.pdf>

Ongoing concerns

Despite the commitment made in May 2010, and the announcement in December 2010, the detention of children for immigration purposes has not ended. The measures identified by the Government so far largely focus on asylum-seeking families. However, many families, who face removal, do not pass through the asylum system. More generally, the judgment in *R (Suppiah & Ors)* and the July 2010 report of the Chief Inspector indicate that the UK Border Agency has a long way to go before it properly understands and applies its duties in respect of the best interests and welfare of children. The culture change that successive Ministers have called for (see e.g. Nick Clegg's statement set out above) is yet to take place.