

# ILPA information sheet

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## Removals and Separated Children

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This information sheet provides information about the notice that should be given to a separated child (unaccompanied child) before he or she is removed from the UK.

### The current position

The current UK Border Agency policy is that a person who is to be removed from the UK must be given a minimum of three days notice of that removal. Those three days must include at least two working days, and the last 24 hours of the three days period must include a full working day. The current position is set out in the UK Border Agency policy document, chapter 60 of the enforcement instructions and guidance. That document is available at:

[http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60\\_11012010.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60_11012010.pdf?view=Binary)

More information about this is given in the “Removals and Judicial Review 4” information sheet.

### Previous policies

For several years, the UK Border Agency policy has been that, in some cases, separated children could be removed from the UK with less than three days notice or with no notice at all.

In March 2007, the Immigration and Nationality Directorate (a predecessor of the UK Border Agency) introduced the three days minimum notice for removals. At that time, it included an exception to this minimum period for separated children being removed to another European Union (EU) country under the Dublin arrangements. The Dublin arrangements set out agreement between EU countries as to which country shall be responsible for an asylum claim. They allow, in many cases, an EU country to remove an asylum-seeker to another EU country where the asylum-seeker had previously claimed or had an opportunity to claim asylum. The exception allowed a separated child to be removed under these arrangements with less than three days notice or with no notice at all.

In January 2010, the UK Border Agency extended this exception. From that time, the policy allowed a separated child to be removed to another country with less than three days notice or with no notice at all.

The UK Border Agency sought to justify these exceptions as being in the child’s best interests. It said that by not telling the child what was about to happen, this protected the child against the harm he or she might face if he or she absconded. ILPA has long criticised the UK Border Agency over this exception and justification. The exception denies children access to justice because if no notice

is given of the removal, the child cannot get advice or assistance from a lawyer and cannot bring any challenge against the removal before the courts. The justification is flawed because it may be just as likely that a child who is worried about what may happen to him or her absconds. This risk may be made worse if the child knows that he or she will not have any warning and not have any opportunity to take advice or get help before removal. Since the exception was first introduced, the UK Border Agency has become subject to the duty to safeguard and promote the welfare of children (see the August 2009 “Children – New Statutory Duty” information sheet). Denying children the chance to seek advice and support from legal advisers, social workers and others does not promote their welfare, but may increase the risk that children take uninformed and unsafe decisions.

### **UK Border Agency practice**

Over the last three years, it has been the normal practice for the UK Border Agency to conduct same day removals when removing separated children. This means that the child has not been given any notice of the removal before he or she is picked up by immigration officers to be taken to the airport to be removed. In many of these cases, the child and his or her lawyer receives no notice of the removal; and those with responsibility for the child’s welfare, e.g. his or her social worker or any foster carer, may also have no advance warning of the removal.

This practice is currently not permitted.

### **Important High Court judgments**

The practice just described was severely criticised by Mr Justice Collins in *R (T & M) v Secretary of State for the Home Department* [2010] EWHC 435 (Admin) in February 2010. The judge there said:

*“I have no doubt whatever that the manner of removal, done as it was on the same day without any opportunity for the minor to contact any lawyer or indeed any social worker or anyone else who may be able to assist, was unlawful. Indeed, it seems to me at the moment that the contrary is simply not capable of any sensible argument.”*

In July 2010, Mr Justice Silber considered the exception applying to separated children (and other exceptions) in *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1925 (Admin). More information about this judgment is given in the “Removals and Judicial Review 4” information sheet. The judge ruled that the exception applying to separated children was unlawful.

These two judgments are available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/435.html>

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/1925.html>

### **What happens next?**

Mr Justice Silber gave the UK Border Agency permission to appeal in the Medical Justice case. If that appeal is brought, and is successful, it is possible that the UK Border Agency reintroduces the exception to allow for the removal of a separated child with less than three days notice or no notice at all.

Alternatively, it may be that the UK Border Agency reconsiders its policy and practice altogether.

However, for the time being, any separated child whom the UK Border Agency intends to remove from the UK should be given at least three days notice, in accordance with what is set out above as “the current position”, before that happens.