

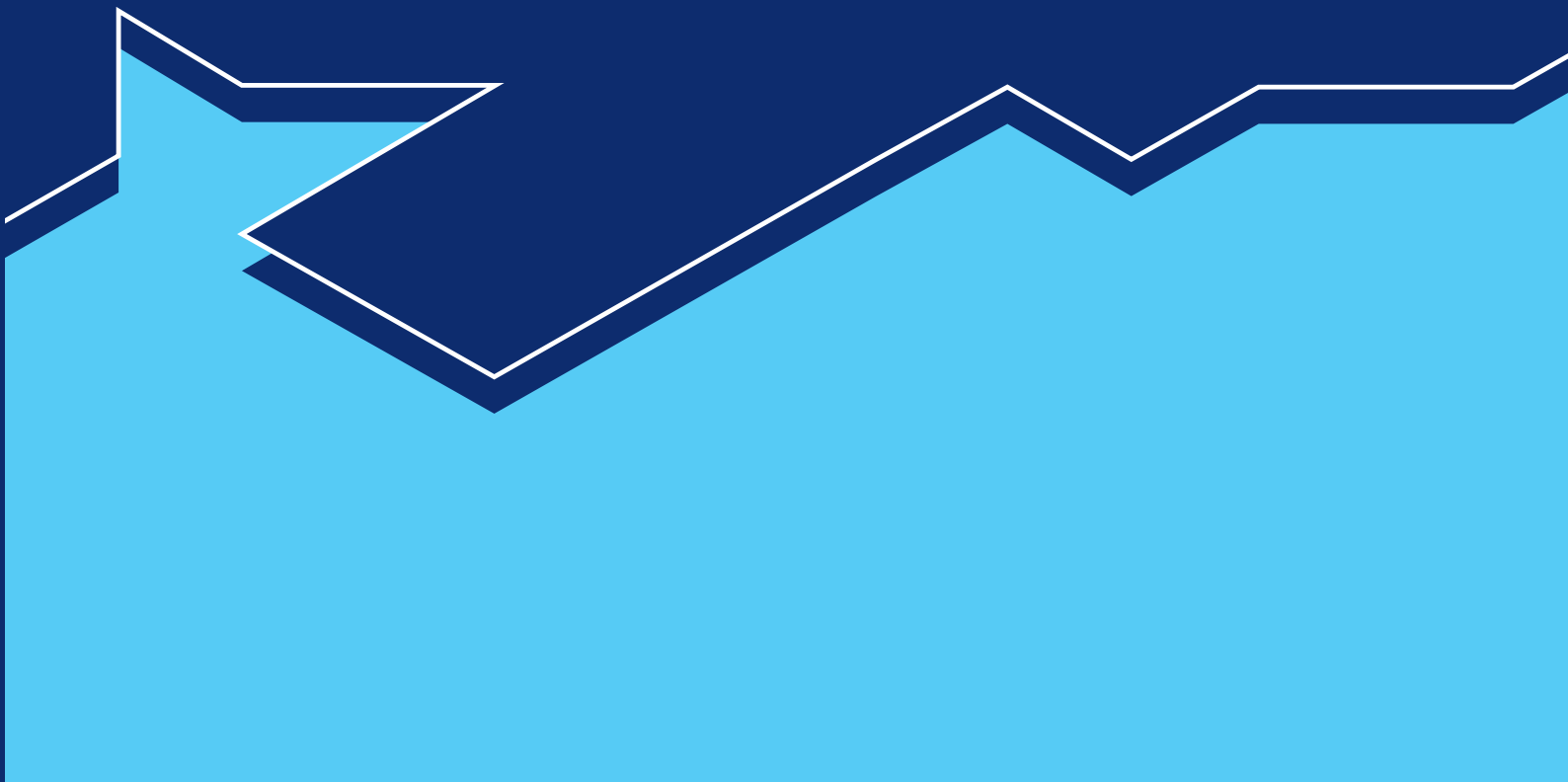


Home Office

**Border &  
Immigration Agency**

**THE BORDER AND IMMIGRATION AGENCY  
CODE OF PRACTICE  
FOR KEEPING CHILDREN SAFE FROM HARM  
CONSULTATION**

31 January 2008



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# FOREWORD



This Code of Practice is extremely important: it represents a change in the way the Border and Immigration Agency carries out its responsibilities towards children; and it represents change for those children themselves. The test of its importance will lie in the extent to which it helps shift the Agency's culture – its attitude and its behaviour towards children. Too often the children who are subject to immigration control are dealt with either as the adjuncts of those adults with whom they arrive in this country or by procedures designed principally for adults.

The Code forms part of the wider work this Government has undertaken to improve the welfare of children in the UK. Every child does matter – as much if they are subject to immigration control as if they are British citizens. Protecting our border may mean that migrant children who come to this country may not remain here – but it does not mean that in enforcing immigration laws we treat children without proper regard to keeping them safe.

I am committed to listening carefully to what all interested parties have to say about the proposals in this Code. I am very grateful to the various stakeholders who have already informed the development of it; and I look forward to your constructive responses. The consultation process will involve more than the consideration of written responses – it signals the start of an engagement with our stakeholders, with our staff and, of course, with children themselves.

I very much look forward to receiving your views.

A handwritten signature in black ink that reads "Liam Byrne". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**Liam Byrne MP**  
Minister of State for Nationality, Citizenship and Immigration

## SECTION 1

# HOW TO RESPOND

- 1.1 The aim of this consultation paper is to seek a range of views on how to improve the way that children are handled within and by the immigration system.
- 1.2 Given this is an extended consultation, we would be most grateful if your organisation could consider and provide feedback by close on **Friday 25 April 2008**.
- 1.3 The consultation period for responding to this document ends on 25 April 2008. We will publish the result of the consultation within three months of the deadline for responses.
- 1.4 We intend to provide a range of other opportunities for comment and discussion throughout the consultation period.
- 1.5 Regulatory impact and race equality assessments will be prepared to support the consultation process.
- 1.6 A proforma is available in electronic format on the Border and Immigration Agency website: <http://www.bia.homeoffice.gov.uk/policyandlaw/>
- 1.7 Responses should be sent electronically to [codeofpractice@homeoffice.gsi.gov.uk](mailto:codeofpractice@homeoffice.gsi.gov.uk)
- 1.8 Responses can also be sent by post to:  
Children's Champion Office  
7th Floor West Wing  
Block B  
Whitgift Centre  
15 Wellesley Road  
Croydon CR9 1AT
- 1.9 You should contact the address above if you require a copy of this consultation paper in any other format, e.g. Braille, large font or audio.
- 1.10 Individual responses will not be acknowledged unless specifically requested.

### RESPONSES: CONFIDENTIALITY & DISCLAIMER

- 1.11 The information you send us may be passed to colleagues with the Home Office, the Government and related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA there is a Statutory Code of Practice with which public authorities must comply and which deals, among other things with the obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not by itself be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## SECTION 2

### CONTEXT

2.1 Following the Home Secretary's review of the immigration system in 2006 ('Fair, effective, transparent and trusted: rebuilding confidence in our immigration system', Home Office July 2006, available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/Reports/indreview/> a major programme of work was undertaken to focus the business around its four strategic objectives:

- Strengthen our border; use tougher checks abroad so that only those with permission can travel to the UK; and ensure that we know who leaves so that we can take action against those who break the rules.
- Fast track asylum decisions, remove those whose claims fail and integrate those who need our protection.
- Ensure and enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of Britain to those here illegally.
- Boost Britain's economy by bringing the right skills here from around the world, and ensuring that this country is easy to visit legally.

And to transform delivery against those objectives, restoring public confidence in the system.

2.2 The Code of Practice for Keeping Children Safe will contribute to this. It will demonstrate that we take seriously the place of a well-managed border control function in keeping the United Kingdom safe for everyone, especially children.

## **SECTION 3**

# **(A) THE PROPOSED CODE OF PRACTICE FOR KEEPING CHILDREN SAFE; AND (B) QUESTIONS FOR CONSULTATION**

### **(A) THE PROPOSED CODE OF PRACTICE FOR KEEPING CHILDREN SAFE**

- 3.1 Introduction
- 3.2 The Framework for Keeping Children Safe
- 3.3 Making Immigration Procedures and Situations responsive to the needs of children
- 3.4 Children and Detention
- 3.5 Identifying children at risk of harm
- 3.6 Referring children and working with others
- 3.7 Information sharing
- 3.8 Governance: accountability and inspection arrangements
- 3.9 Staff recruitment and training

## Border and Immigration Agency – Code of Practice to Keep Children Safe from Harm Whilst in the United Kingdom

### 3.1 INTRODUCTION

- 3.1.1 This Code of Practice is issued under s.21 (1) of the UK Borders Act 2007 which provides that the Secretary of State shall issue a Code of Practice designed to ensure that in exercising functions in the United Kingdom the Border and Immigration Agency<sup>1</sup> takes appropriate steps to ensure that while children<sup>2</sup> are in the United Kingdom they are safe from harm. Section 21(2) imposes a duty on the Agency to have regard to the Code in the exercise of its functions.
- 3.1.2 The Code was laid before Parliament on xx and comes into force on xx.
- 3.1.3 The Code of Practice is a clear statement of the requirement to be responsive to the needs of children whilst they are being dealt with in the immigration system. It sets out the procedures which the Border and Immigration Agency expects staff to follow when dealing with children and provides those carrying out immigration functions involving children with a robust framework in which to operate. It is not exhaustive and cannot deal with every circumstance although it should help staff to understand that there are implications for policy, procedures and practice wherever children are involved.
- 3.1.4 Where the Code describes a procedure to be followed and staff members depart from this, they must have a clear reason or reasons for doing so. Departures from the Code and the supporting instructions should be reported to a senior official with responsibility for children's issues within the Agency.
- 3.1.5 The purpose of this Code is to set out how, in carrying out its functions in the UK, the Border and Immigration Agency will keep the children with whom it has contact in the UK safe from harm. Where private or voluntary organisations are commissioned to provide services on behalf of the Border and Immigration Agency in the United Kingdom, the agreement under which the arrangements are made will require (or will be revised to require) that the organisation have regard to the Code in the provision of those services.
- 3.1.6 The Code reflects the view that the best people to care for a child and communicate decisions about the future are the child's parents, and that the child can be helped most effectively if the Border and Immigration Agency can work with those parents to provide support and explanations appropriate to the child about the immigration process. Wherever possible, the parents and the child need to be given the opportunity to make their wishes and feelings known and to participate in decision making. In order to give family support and partnership with parents a new prominence in the immigration process it may at times be necessary for the Border and Immigration Agency to adopt a new approach to many situations involving children and to consider whether some re-organisation of resources and accountability is necessary too.
- 3.1.7 This Code does not create any new duties which will override the Border and Immigration Agency's existing functions which are to apply immigration legislation, the immigration rules and the relevant policies of the Secretary of State for the Home Department.
- 3.1.8 One of the key principles underpinning the Code is that the Border and Immigration Agency must act to protect children from harm arising from the actions of others but without unwarranted intervention in families' lives or unnecessary weakening of family relationships. To that extent **the staff of the Agency must act in accordance with the following key requirement: that due consideration be given to the wishes and feelings of the child, parents, or any**

<sup>1</sup> Section 21(5)(a) defines the Border and Immigration Agency as immigration officers, and other officials of the Secretary of State, and the Secretary of State, in respect of functions relating to immigration, asylum or nationality.

<sup>2</sup> Section 21(5) (b) defines a child as an individual who is less than 18 years old.

person with parental responsibility for the child, or whose views in caring for the child would normally be considered relevant. Partnership with the parents and consultation with the child should be the norm whenever a family are being required to comply with the immigration laws.

3.1.9 Protecting children from harm has to be defined widely but sensibly. ‘Harm’ means the ill-treatment of a child or the impairment of a child’s health or development. ‘Development’ means a child’s physical, intellectual, emotional, social or behavioural development; ‘health’ means a child’s physical or mental health; and ‘ill-treatment’ includes sexual abuse and forms of ill-treatment which are not physical. These meanings are consistent with those used in the Children Act 1989 and are to be taken as applying in the context of immigration control. The definitions are wide to reinforce the emphasis on preventing an identifiable state of affairs continuing where this is plainly having an adverse effect on a child.

3.1.10 By having regard to this Code the Border and Immigration Agency contributes to the UK Government’s wider aims and arrangements for safeguarding children as expressed in “Every Child Matters: A programme for change” published in 2004 and will want it to reflect future similar publications of the Department for Children, Schools and Families following appropriate discussions.

3.1.11 The Border and Immigration Agency is a Government agency with distinct functions. Its contact with children is often limited as most immigration work takes place at a single point in time, e.g. when checking a visa or passport, but there are occasions when its contact with a particular child or children will extend over a period of time. For instance, those occasions when a child arrives in the UK without appropriate documentation, or is unaccompanied and makes a claim for asylum, or when working with the adults in a family to arrange departure.

3.1.12 **Thus the Code recognises that the**

**Border and Immigration Agency will keep children safe from harm by acting on our concerns about the safety of any child which, in the course of our dealings, appears to be at risk and referring to outside statutory and professional agencies where appropriate. This referral to outside agencies where aspects of protection are involved is an important part of the Border and Immigration Agency’s approach.**

3.1.13 The Code itself is supported by a set of operational instructions which will be managed and monitored. These are aimed at increasing the awareness amongst staff of when and how children come into contact with the diverse functions of the Border and Immigration Agency. The aim is to enable staff to be aware of how they can be more responsive to the needs of children in the work that they carry out, and for them to realise that this need not change the purpose of that work. It also identifies arrangements to keep particular groups of children safe from harm.

## **3.2 THE FRAMEWORK FOR KEEPING CHILDREN SAFE FROM HARM**

3.2.1 Consistent with its main functions the Border and Immigration Agency will take positive steps to keep children safe from harm by incorporating the following key principles into its work:

- (i) Ensuring that immigration procedures and situations are responsive to the needs of children and that time is made available for appropriate communication with children and families about immigration procedures;
- (ii) Identifying children whose circumstances mean they may be at risk of harm when they come into contact with the immigration system; and
- (iii) Referring such children to the appropriate agency or agencies and working together effectively with that agency or agencies.

3.2.2 Staff must approach their dealings with a child

or a case involving a child with a view to being as responsive as possible to the needs of the children involved without over-riding the purpose of their work.

3.2.3 The Code applies to the Border and Immigration Agency both when it is dealing directly with children, and when it is dealing with cases on paper involving children who are in the United Kingdom.

### **3.3 MAKING SPECIFIC IMMIGRATION PROCEDURES AND SITUATIONS RESPONSIVE TO THE NEEDS OF CHILDREN:**

3.3.1 The kinds of immigration procedures undertaken by staff and to which this refers include:

- checking the documents of a child and the accompanying adult(s); recording biometric information (fingerprints and photographs);
- interviewing a child and/or the accompanying adult(s) to establish or confirm the relationship of the child to the accompanying adult;
- checking whether there is any information known about the child or the accompanying adults, or the address to which they are proceeding, which might question their identity or circumstances;
- appropriate sharing of key data about the child's presence in the UK with welfare, education and health agencies.

3.3.2 Where any of these procedures bring into question the apparent identity of the child or the accompanying adult(s), staff will consider that the child is at risk of harm. If it appears to a member of staff that the private arrangements in place to care for a child are inadequate, he or she must consider the child to be at risk of harm and apply referral criteria (see paragraph 19).

3.3.3 In addition, there are specific immigration situations that the Border and Immigration Agency must make as responsive to the needs

of children as possible. These include:

- interviewing of children to substantiate their application and circumstances;
- children during enforcement activities;
- children during detention activities;
- children during escorting activities;
- children and contractor – led services; and
- special groups such as children who are possibly missing, and trafficked children.

3.3.4 Each of these receives specific mention in the instructions to Border and Immigration staff that support this Code. Two situations in particular are so important that they merit inclusion at this point in the Code. These are interviewing children and children and detention. Each operational area must have a set of instructions that has been prepared with the needs of children in mind. As a minimum these must reflect the operational activities set out above.

#### **Conducting Interviews**

3.3.5 Every interview of a child should be conducted by a member of staff who has received the appropriate training. These interviews must take place in the presence of the child's parent or guardian, or, if the parent or guardian is unavailable, another responsible adult. Neither an immigration officer, an official of the Secretary of State, nor a police officer, can be used to fulfil this role. Wherever possible the interview room and surroundings must be welcoming and conducive to a child's participation in the interview.

3.3.6 Interviewers must also ensure that children are interviewed with sensitivity, and with a vocabulary that is appropriate to their age, cognitive and linguistic abilities and to the child's personal situation. They will check at the beginning and at intervals throughout the interview that the child feels comfortable, and that any specific health and emotional needs are acknowledged and addressed. They will

## SECTION 3

### (A) THE PROPOSED CODE OF PRACTICE FOR KEEPING CHILDREN SAFE (CONTINUED)

ensure that the child is not hungry, thirsty or in any other physical discomfort or distress during the interview, and wherever possible should use interview rooms that are formally recognised as child-friendly. They will ensure that there are regular breaks in the process.

**Interviewers should be aware that a successful interview will involve setting up and maintaining a useful flow of conversation with the child and include periods of real listening.**

- 3.3.7 More detailed guidance on interviewing in particular situations is in the instructions to staff that support this Code.

#### **3.4 CHILDREN AND DETENTION**

- 3.4.1 The Border and Immigration Agency will only detain children as a last resort.

- 3.4.2 Unaccompanied children will only be detained in exceptional circumstances and for their safety whilst alternative care arrangements are being made, and even then normally just overnight. The specific circumstances surrounding the detention must be recorded, including the details of the efforts made to place the child in non-immigration care facilities and the responses received.

- 3.4.3 The detention of children with their families for the purpose of removal will always be as a last resort. **Throughout the detention process, including the point at which it takes place, the Border and Immigration Agency will endeavour to ensure a continuation of the pattern of care that exists between the parents and their children. In particular, this means that nursing mothers and their children will not be separated by the Border and Immigration Agency.**

- 3.4.4 The Border and Immigration Agency will assume a high degree of co-operation between itself and parents during any detention procedures, and will contribute to this as follows: It will provide explanations of the reasons for any detention and what it entails that are

appropriate to that family. It will recognise the role of the parents as the main providers of communication, care and reassurance to children. It will allow ample opportunity for parents to communicate with and provide explanations to their children. It will allow parents to express their wishes and make realistic choices about the speed at which these proceedings take place.

- 3.4.5 Where parents omit to give such an explanation they should be encouraged to do so and given all possible assistance. If a parent's omission to communicate and explain to children is causing anxiety to a child then the Border and Immigration Agency staff must ensure that a qualified social worker is aware of this so that professional consideration is given about how to reduce this anxiety.

- 3.4.6 Families with children will only be detained after a period in which other possibilities have been explored including voluntary departure, with or without publicly funded assistance.

- 3.4.7 On the occasions that children are detained with their parents every effort should be made to ensure that the parents own rights and wishes over what happens to their children are respected. **In particular, if it is the parents who are being detained for failure to comply with immigration laws then the children should be seen as being there purely as an alternative to separating the family and every effort should be made to maintain the family routines and interaction that they are used to.** Wherever possible there should be opportunities to participate in a daily timetable that includes contact with peers, continuation of education and times of play.

- 3.4.8 Parents should have plenty of time to communicate with their children but there should also be the structured opportunity for them to spend some periods of time together without their children should they so wish. Time should be taken to explain to the parents in a non-threatening way the details of the

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### (A) THE PROPOSED CODE OF PRACTICE FOR KEEPING CHILDREN SAFE (CONTINUED)

particular outcome that is likely. All possible assistance should be given to the parents so that the children experience an informed participation in the outcome, appropriate to their own needs and abilities. If a parent is unwell then staff must be extra vigilant in looking out for any health problems in the child.

- 3.4.9 The effects of detention on children must be closely monitored; preferably by way of a health assessment on arrival (or as soon thereafter as is practical) and at periodic intervals following that. Although the primary carers for the child at this point are the parents, this should not rule out an ongoing concern for the child by those in charge of the detention facility. Any information sought or any assessments made, including the regular welfare assessments, should be done in such a way as to avoid undermining the parents' confidence and their ability to look after their children.
- 3.4.10 The detention of children beyond 28 days must be justified and must be reviewed and personally authorised by a Home Office minister. Care should be taken to ensure at review stage that the continuing detention of the child remains justified and reasonable, no alternatives are available, and that any continued detention will not lead to harm being caused unnecessarily to the child.
- 3.4.11 Transfer from one detention facility to another can be a time when extra care is needed to ensure that children's needs are looked after. During transport from one venue to another suitable seating must be available and there must be rest and refreshment breaks. A new health assessment should be carried out on arrival at any new facility where detention is going to be maintained.

## 3.5 IDENTIFYING CHILDREN WHO MAY BE AT RISK OF HARM

### Forms of harm

- 3.5.1 There are various ways in which a child may be suffering harm or be at risk of harm. Border and Immigration Agency staff should be alert to the indicators of this (for example the way that a child relates to or reacts to an accompanying adult). Further guidance on identifying the indicators of harm or potential harm is provided in the instructions supporting this Code. **The main role of the Border and Immigration Agency is to ensure that an identifiable state of affairs does not continue if it is having an adverse effect on a child. In doing so, the Border and Immigration Agency will see itself as working with the parents of the child and with other organisations that have a proper role in that set of circumstances.**

### Care arrangements

- 3.5.2 When children come to the UK it should be clear who is responsible for their care. In most cases this will be parents who are accompanying the children or who are already in the UK; in other cases it might be a school or college where the child has been formally enrolled. In a small number of cases there may be less clear-cut arrangements such as an accompanying adult who is not a parent, or a relative to whose address the child is to travel. In these cases the Border and Immigration Agency will endeavour to seek further reassurances that a named adult is caring for the child with the parent's consent.

### Children with no adult to care for them

- 3.5.3 When staff members encounter a child who does not appear to have a parent or legal guardian to care for them, they will refer the child to the Local Authority<sup>3</sup> (or in Northern

<sup>3</sup> All references to Local Authority should be taken as a reference to Local Authority Children's Services

Ireland the health and social care trusts). Signs that a child has no suitable carer include:

- a child who is unaccompanied by any adult or has no adult to care for them where they are living;
- a child being the principal applicant in any application made to the Border and Immigration Agency;
- a child who has arrived with an adult in the UK, but has since submitted an application in their own right;
- a child who is accompanied by an adult but who gives a different account from the adult about their circumstances.

#### **Children being looked after in a private fostering arrangement**

3.5.4 **Where it appears that a private fostering arrangement has been made, and there is no evidence that the Local Authority in which it is to take place has inspected the arrangements, the Border and Immigration Agency will notify that Local Authority.**

This is because these arrangements do not create intrinsic certainty as to where a child's legal care and protection and their future lie. These arrangements can easily break down leaving the child with uncertainty as to who to look to for support and often with an uncertain immigration status. This notification of the Local Authority should not mean that the child is kept at the port of entry until the Local Authority has responded since the inspection may well take some time anyway.

3.5.5 It is quite common for a child to enter as a visitor and to stay with relatives when those who arrived with it have returned. The child then over-stays and is in what the local authorities call a 'private fostering' situation – although few of these are actually registered as such with the local authority. It is the failure to regularise the stay of the child that concerns us. We believe that for the child to remain 'invisible' this way increases their risk of

coming to harm through an inadequate care arrangement.

### **3.6 REFERRING CHILDREN AND WORKING WITH OTHER AGENCIES,**

#### **3.6.1 Making referrals**

A referral will be made to a relevant agency in the following circumstances:

- **When any of the visible indicators at the end of this section have been identified;**
- **When a private fostering arrangement has been identified;**
- **When a child appears to have no adult to care for them and the Local Authority has not been notified;**
- **When the child has a disability and parents wish the Local Authority to be notified;**
- **When the child is a potential victim of trafficking;**
- **When the child is identified as missing;**
- **When a child meets any known referral criteria of a particular agency;**
- **When there are any other indications that the child is in need of an assessment or support from an agency with a statutory responsibility for safeguarding children, such as health authorities, police or the Local Authority (including health and social care trusts in Northern Ireland).**

3.6.2 All Border and Immigration Agency operational workplaces must have the contact details of the local statutory Children's Services departments, Police Child Protection Units, Local Safeguarding Children's Boards, and local health services readily available. The corresponding contacts for Wales, Scotland and Northern Ireland will be provided in the relevant regional offices. Thus, in Scotland contact details of Child Protection Committee lead officers must be provided.

## SECTION 3

### (A) THE PROPOSED CODE OF PRACTICE FOR KEEPING CHILDREN SAFE (CONTINUED)

3.6.3 Most referrals to be made will be to the Local Authority. The referral must be made immediately by phone, followed up with a fax referral using an officially agreed form.

3.6.4 There must be a formal instruction in place setting out procedures to be followed when a child is identified as potentially missing.

3.6.5 When a referral is made, a written record must be completed by the member of staff making the referral as soon as is practicable and include details of:

- Discussions with the child;
- Discussions with the parents/sponsors;
- Discussions with Senior Caseworkers;
- Discussions with Local Authority Children's Services staff;
- Information provided to Children's Services including a retained copy of the referral form and confirmation of its receipt;
- Decisions taken (clearly timed, dated and signed);
- The names of the people with whom contact has been made.

3.6.6 If a child has been referred to the Local Authority Children's Services because of concerns about the carer, the Border and Immigration Agency will check with the Local Authority as to what action is being taken, and agree a time scale for the Local Authority to give an update on the action they are taking.

3.6.7 If, following such a referral, the Local Authority is satisfied with the child's living arrangements a letter should be submitted to the Border and Immigration Agency. If they are not satisfied, the Border and Immigration Agency should be informed of the alternative arrangements made for the child.

3.6.8 When a referral is being made because it is believed the child may have been trafficked, the receiving Children's Services department must be made fully aware of risks specific to

the case such as any particular degree of influence that the trafficker might have over the child and any imminent risk of the child absconding back to the trafficker.

#### **Referral arrangements for each of the four UK administrations**

3.6.9 Statutory children's services in each administration rest with the Local Authorities. They will accept referrals from the Border and Immigration Agency in relation to children identified as being in need. This is not meant to override differences in legislation and local conditions. Where necessary, the relevant Border and Immigration Agency regional director will ensure that these differences are taken into account and suitable arrangements developed in Northern Ireland, Scotland, Wales and the English regional government offices.

#### **Working with others**

3.6.10 Making appropriate referrals to other agencies is a key part of how the Border and Immigration Agency discharges its responsibility to keep children safe. **The Border and Immigration Agency acknowledges that local authorities will often have different policies and priorities depending on the overall demand placed on their resources. It will therefore work with them at a local level to identify and implement arrangements that are appropriate to that local authority and that it will keep the children with whom it comes into contact safe from harm.**

3.6.11 Decisions taken by the Border and Immigration Agency relating to the child's immigration status will take account of work done by any other agency with statutory responsibility for safeguarding and promoting the welfare of a child. However, there is no absolute bar on removal if arrangements in the country of destination do not mirror the arrangements that would have been provided in the UK.

3.6.12 The Border and Immigration Agency will assist other agencies in trying to establish the

identity of any child who is considered likely to be subject to immigration control.

#### **Local Safeguarding Children Boards or Area Child Protection Committees**

3.6.13 **The Border and Immigration Agency staff will participate in these, and, if the local circumstances warrant it, will take a full part in any local committees or sub-groups.<sup>4</sup>**

#### **Children involved in family court proceedings**

3.6.14 On occasions, officials will encounter children whose needs are being considered by the family courts. Proceedings will be under private law as a result of disputes within families or public law in circumstances where statutory agencies are intervening to prevent or redress significant harm to the child. **This is an area where the Border and Immigration Agency can seek to assist the court by considering and clarifying as many of the immigration issues as possible in advance of the court making a final decision about the future of the child.**

3.6.15 Prompt, relevant reports from all the numerous agencies in contact with the child are vital to the work of the courts. There is an existing protocol with the Royal Courts of Justice which operates in England and Wales. Copies of the protocol can be downloaded from the Family Law Bar Association Website. [http://www.flba.co.uk/67/text.nc?form\\_65.userid=5&form\\_65.replyids=24](http://www.flba.co.uk/67/text.nc?form_65.userid=5&form_65.replyids=24) Work is underway to establish similar protocols with Family Courts and Children's Panels in Scotland and Northern Ireland.

3.6.16 Special independent court advisors sometimes known as Guardians ad Litem, Reporting Officers or Safeguarders may be appointed and will ensure that any necessary reports from other agencies are provided to the courts. The Border and Immigration Agency will work jointly with the court advisors, through protocols agreed with their parent bodies.

3.6.17 A protocol has already been developed with the Children and Family Court Advisory and Support Service (CAFCASS), which will operate in parallel with the Royal Courts of Justice Protocol mentioned above. CAFCASS operates in England and in Wales (as CAFCASS Cymru). Work is underway to develop similar protocols in Scotland and Northern Ireland.

3.6.18 Border and Immigration Agency staff will reply to requests for information made through the protocols, briefly and promptly. Requests for information about children in family court cases received through other routes will be referred to the protocols.

The following is a brief list of features that can be used as “triggers or identifiers” in identifying cases where a referral is appropriate:

- Bruising;
- Scarring;
- Burns;
- Very poor hygiene including untreated infections and infestations;
- Lack of communication/engagement with adults;
- Fearful attitude to carers;
- Inappropriate approaches to strangers;
- Inebriation of adult carers;
- Signs of domestic violence between adults and carers;
- Rough handling of contemptuous attitude to the child by carers;
- Evidence that adults in the household have convictions for sexual or drug offences.

<sup>4</sup> The Border and Immigration Agency is not part of the statutory membership of these Boards but is committed to participation where children from overseas are involved.

### 3.7 INFORMATION SHARING

3.7.1 Border and Immigration Agency staff will ensure that they have good local systems for making referrals to agencies, and for working together with them. Border and Immigration Agency staff will follow the principles on this set out in ‘Every Child Matters’<sup>5</sup> as far as possible, particularly where they do not interfere with any other investigation. These are :

- **To explain to children, young people and families at the outset, openly and honestly, what and how information will, or could be shared and why, and seek their agreement;**
- **To consider the safety of a child or young person when making decisions on whether to share information about them;**
- **Where possible, to respect the wishes of children who do not consent to share confidential information; although this must not compromise the safety of a child or the ability of the Agency or others to carry out immigration functions;**
- **To seek advice when in doubt, especially where the doubt relates to a concern about possible harm to a child ;**
- **To ensure that shared or communicated information is accurate and up-to-date, necessary for the purpose for which it is shared, shared only with those people who need to see it, and shared securely;**
- **Always to record the reasons for the decision – whether it is to share information or not.**

3.7.2 Border and Immigration Agency staff must make arrangements to contribute appropriately to the work of the agencies with statutory responsibilities for children and their needs; and must be willing to seek advice about the handling of a particular case or about common issues arising out of several cases or operational circumstances.

## 8 GOVERNANCE: ACCOUNTABILITY AND INSPECTION ARRANGEMENTS

### Accountability and Transparency

- 3.8.1 The responsibility for ensuring that staff members have regard to this Code of Practice lies primarily with the Agency’s line management. Staff members who do not follow this Code can expect to be subject to disciplinary action. Complaints about handling of children may also be made through the Border and Immigration Agency’s complaints system.
- 3.8.2 The Border and Immigration Agency will establish a record of children detained solely under Immigration Act powers.

### Inspection and Monitoring

- 3.8.3 Provision<sup>6</sup> has been made in the UK Borders Act 2007 to appoint a Chief Inspector of the Border and Immigration Agency. The role of the Chief Inspector includes “monitoring and reporting on the efficiency and effectiveness of the Border and Immigration Agency”.
- 3.8.4 **Under this Code the Chief Inspector will look at the Border and Immigration Agency’s performance in relation to children. As part of such an inspection the following may be looked at: the reasons given for detaining families with children; the way in which this contributes to the outcome of the immigration process; and the nature and quality of the recorded information about detention.**

<sup>5</sup> See *Information Sharing: Practitioners Guide (April 2006)* provided by DCSF under the “Every Child Matters” strategy. The principles of “Every Child Matters” are similar to those under “Getting it right for Every Child” which is the comparable programme in Scotland; and similar to those under “Children and Young People – Rights to Action” the comparable programme in Wales.

<sup>6</sup> This appears in section 48 of the UK Borders Act.

3.8.5 The Border and Immigration Agency is committed to examining the case for alternatives to detention and will identify and evaluate the options for doing this.

#### **INTERNAL ACCOUNTABILITY**

##### **Line responsibility and instruction systems**

3.8.6 There will be a Children's Code of Practice Programme Board or equivalent within the Agency to ensure on behalf of the Agency Board that the provisions of the Code are implemented.

3.8.7 **Additionally, every directorate or business unit within the Agency will appoint at the level of Assistant Director a manager with responsibility for children's issues in that directorate or unit. Such Assistant Directors will have their responsibility for children's issues clearly stated in their job description and have at least one objective related to this responsibility in the Agency's annual performance appraisal system.**

3.8.8 The Agency will issue specific instructions and guidance to staff wherever these are needed because of variations in operational or practical procedure in the different parts of the Agency.

##### **Reporting issues of concern outside the management line**

3.8.9 In carrying out their duties in the United Kingdom staff of the Border and Immigration Agency may become aware of issues or situations which could run counter to the arrangements to keep children safe from harm. These may be general concerns about the effectiveness of these arrangements; or they may relate to the way in which a particular child was dealt with; or, notwithstanding the safer recruitment arrangements and training for staff working in contact with children, they may relate to the attitude and behaviour of staff towards children.

3.8.10 Where staff members have any concern of this sort, they should first consider raising the matter with their line manager or with a line manager above that level (e.g. their countersigning officer). However, there may be occasions when because of the nature of their concerns, staff feel unable to report their concerns in this way. In such cases, staff should seek to express their concerns to the Border and Immigration Agency's Children's Champion or other senior official with lead responsibility for children's issues. The Children's Champion should treat the matter as a confidential referral.

#### **3.9 STAFF RECRUITMENT AND TRAINING ARRANGEMENTS**

3.9.1 The Border and Immigration Agency recognises the importance of having a mechanism for ensuring that Agency staff are appropriately trained to keep children safe, and have the means of expressing sensitive concerns outside their management line.

3.9.2 All staff appointments within the Border and Immigration Agency are subject to the satisfactory completion of comprehensive pre-appointment checks. These checks are carried out by Human Resources, the Security and Anti-Corruption Unit and the Departmental Security Unit. Formal job offers should only be made once these checks have been completed. The Border and Immigration Agency must not employ anyone found to have a serious conviction, including a spent conviction, particularly if this included an offence against children.

3.9.3 Additionally, the Border and Immigration Agency requires all staff whose job involves them having regular, unsupervised access with children to undergo an enhanced check against information held by the Criminal Records Bureau. The Border and Immigration Agency should also refresh the clearance for post holders on a regular basis.

**Staff training**

3.9.4 All staff of grades whose work involves children either directly or indirectly, will complete the e-learning package on child safeguarding awareness which has been developed in partnership with other organisations.

3.9.5 All staff who conduct substantive interviews with children or have regular contact with children in their work will be required to complete the specific training, also designed in conjunction with other organisations, on how to keep children safe from harm whilst carrying out their immigration duties. The training includes courses on:

- the law concerning children;
- the role of responsible adults, private fosterers, interpreters and children's legal representatives;
- trafficking, smuggling and exploitation;
- missing/abandoned children;
- interpreting children's behaviour; and
- arrangements for working together with other agencies.

# ANNEX A

## CONSULTATION CRITERIA

This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set below.

### **The six consultation criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:

**[www.cabinet-office.gov.uk/regulation/Consultation](http://www.cabinet-office.gov.uk/regulation/Consultation)**

# ANNEX B

## CONTACT FOR COMMENT AND COMPLAINTS

### **Consultation Coordinator**

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation co-ordinator Nigel Lawrence by email at:

**[Nigel.lawrence@homeoffice.gsi.gov.uk](mailto:Nigel.lawrence@homeoffice.gsi.gov.uk)**

Alternatively, you may wish to write to:

Nigel Lawrence  
Consultation Co-ordinator  
Performance and Delivery Unit  
Home Office  
3rd Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF