

EVERY CHILD MATTERS

CHANGE FOR CHILDREN

Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children

Issued under section 55 of the Borders, Citizenship and Immigration Act 2009

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department for
children, schools and families

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MINISTERIAL FOREWORD



It is the duty of Government and of society as a whole to keep children safe. Public agencies have a particular responsibility to do this, both within their own area of business and in the way in which they work together.

Section 11 of the Children Act 2004 places a duty on specified public bodies and key individuals to carry out their functions having regard to the need to safeguard and promote the welfare of children. This applies across a wide range of public activity, from schools to prisons.

Section 55 of the Borders, Citizenship and Immigration Act 2009 now places a similar duty on the UK Border Agency. This is a natural progression for the Agency which has been steadily improving how it works with children. Last year, the Government lifted its general reservation relating to immigration on the UN Convention on the Rights of the Child, and in January of this year we introduced

a statutory Code of Practice for the UK Border Agency on Keeping Children Safe from Harm. The Code is superseded by this new duty which now places the UK Border Agency on the same footing as other public bodies working with children.

As Ministers for Immigration and Children, we welcome this coming together and are confident that it will help to support more effective joint working.

The UK Border Agency undertakes difficult and sensitive work on behalf of society as a whole. Working with children presents particular challenges. To meet these challenges effectively, the UK Border Agency needs the support of all those with an interest in children. The development of this guidance has been greatly assisted by the input of a range of organisations outside Government. We are grateful for this and look forward to continued co-operation to achieve the better outcomes for children which we all want to see.

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for Borders and
Immigration

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of State for Children, Young
People and Families

INTRODUCTION

1. Improving the way key people and bodies safeguard and promote the welfare of children is crucial to improving outcomes for children.
2. Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) therefore places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. A similar duty is placed on the Director of Border Revenue in respect of the Director's functions.
3. The guidance sets out the key arrangements for safeguarding and promoting the welfare of children as they apply both generally to public bodies who deal with children (Part 1) and specifically to the UK Border Agency (Part 2). These arrangements will help agencies to create and maintain the right organisational ethos for working with children. They include:
 - Senior management commitment to the importance of safeguarding and promoting children's welfare;
 - A clear statement of the agency's responsibilities towards children available for all staff;
 - A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children;
 - Service developments that take account of the need to safeguard and promote welfare and is informed, where appropriate, by the views of children and families;
 - Staff training on safeguarding and promoting the welfare of children for all staff working with or in contact with children and families;
4. Section 55 is intended to achieve the same effect as section 11 of the Children Act 2004 (the 2004 Act) which places a similar duty on other public organisations¹. As well as providing a driver for improvement within the UK Border Agency, the duty will also help to improve inter-agency working in respect of children. Section 55 applies to the carrying out of the relevant functions anywhere in the UK.
 - Safe recruitment procedures in place;
 - Effective inter-agency working to safeguard and promote the welfare the children, and
 - Effective information sharing.

THE ROLE AND STATUS OF THIS GUIDANCE

5. This guidance is aimed at staff of the UK Border Agency and contractors when carrying out UK Border Agency functions. It sets out the key arrangements for safeguarding and promoting the welfare of children. The guidance is modelled on the guidance which supports section 11 of the 2004 Act². It is in two parts. Part 1 describes the general arrangements to safeguard and promote the welfare of children which are likely to be common to all agencies covered by section 11 and, in the case of the UK Border Agency, by section 55. Part 1 is intended to make clear how the work of the UK Border Agency fits

¹ For the full list of bodies covered by Section 11 see paragraph 1.1 of the guidance below.

² Statutory Guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004 updated March 2007. Issued by DCSF and available at www.dcsf.gov.uk/everychildmatters/_download/?id=1372

into the wider arrangements, although not all of Part 1 is directly relevant to it. Part 2 sets out how those general arrangements apply specifically to the UK Border Agency.

6. This guidance is issued under section 55 (3) and 55 (5) which requires any person exercising immigration, asylum, nationality and customs functions to have regard to the guidance given to them for the purpose by the Secretary of State. **This means they must take this guidance into account and, if they decide to depart from it, have clear reasons for doing so.**
7. Where private or voluntary organisations are commissioned to provide services on behalf of the UK Border Agency, the agreement under which the arrangements are made should require that the private or voluntary organisation concerned takes this guidance into account in the provision of those services and, if they decide to depart from it, have clear reasons for doing so.
8. The guidance does not replace any current operational instructions and should be read alongside them.

TIMETABLE

9. The commencement date for section 55 of the Borders, Citizenship and Immigration Act 2009 was 2 November 2009.

PART 1

UNDERSTANDING THE DUTY TO MAKE ARRANGEMENTS TO SAFEGUARD AND PROMOTE THE WELFARE OF CHILDREN

1.1. Section 11 of the 2004 Act places a duty on key people and bodies in England to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. Section 28 of the Act requires similar bodies in Wales to do the same. The application of this duty will vary according to the nature of each agency and its functions. The key people and bodies that are covered by the duty are:

- local authorities, including district councils;
- the police;
- the probation service;
- NHS bodies (Strategic Health Authorities, Designated Special Health Authorities, Primary Care Trusts, NHS Trusts, Local Health Boards and NHS Foundation Trusts);
- Organisations (currently the Connexions Service) providing services under section 114 of the Learning and Skills Act 2007;
- Youth offending teams;
- Governors / Directors of Prisons and Young Offender Institutions;
- Directors of Secure Training Centres;
- The British Transport Police.

1.2. The UK Border Agency functions are not devolved, unlike those of the bodies listed in the 2004 Act, and so the Government has chosen to apply the duty to safeguard and promote the welfare of children to the UK

Border Agency in an Act that deals directly with UK Border Agency work. It therefore appears in section 55 of the Borders, Citizenship and Immigration Act 2009³.

1.3. The duty does not give the UK Border Agency any new functions, nor does it override its existing functions. It does require the Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children.

1.4. Safeguarding and promoting the welfare of children is defined in the guidance to section 11 of the 2004 Act (section 28 in Wales) and in *Working Together to Safeguard Children*⁴ as:

- protecting children from maltreatment;
- preventing impairment of children's health or development (where health means 'physical or mental health' and development means 'physical, intellectual, emotional, social or behavioural development');

3 In Scotland the legislative provisions for protecting children and promoting their welfare are contained in the Protection of Children (Scotland) Act 2007 and the Children (Scotland) Act 1995. The principles of co-operation and information sharing between agencies in the safeguarding of children are, however, important themes in the legislative framework and guidance governing the delivery of children's services in Northern Ireland, where the legislative provisions are the Children (Northern Ireland) Order 1995, and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. In both jurisdictions Area Child Protection Committees are the means of providing local procedures and processes for agencies to comply with the legislation to safeguard children and to co-operate together, and for anyone working with children.

4 The Welsh Assembly Government has produced its own version of "Working Together" with a definition that matches this albeit expressed in a different way. It is available at: <http://cymru.gov.uk/pubs/circulars/2007/nafwc1207en.pdf?lang=en>

- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

1.5. The overall framework set out in the 2004 Act is to provide a basis for achieving the vision of safeguarding set out in the report *Safeguarding Children*⁵ i.e:

- all agencies working with children, young people and their families take all reasonable measures to ensure that the risks of harm to children's welfare are minimised; and
- where there are concerns about children and young people's welfare, all agencies take all appropriate actions to address those concerns, working to agreed local policies and procedures in partnership with other agencies.

FRAMEWORK FOR MAKING EFFECTIVE ARRANGEMENTS TO SAFEGUARD AND PROMOTE CHILDREN'S WELFARE

1.6. Each agency will have different contributions to make towards safeguarding and promoting the welfare of children depending on the functions for which they have responsibility. For example, the main contribution of some services might be to identify and act on their concerns about the welfare of children with whom they come into contact, perhaps during or following completion of a common assessment while others might be more involved in supporting a child once concerns have been identified. **The UK Border Agency is among the former.** There are some key features of effective arrangements to safeguard and promote the

welfare of children which all agencies will need to take account of in addition to those that are particular to its own work, when undertaking their particular functions. These arrangements will help agencies to create and maintain an organisational culture and ethos that reflects the importance of safeguarding and promoting the welfare of children.

STRATEGIC AND ORGANISATIONAL ARRANGEMENTS

1.7. Many organisations subject to the section 11 duty (or in Wales the section 28 duty) are also required to take part in Local Safeguarding Children Boards (LSCBs). LSCBs are the key statutory mechanism for agreeing how the relevant organisations in each local area cooperate to safeguard and promote the welfare of children in that locality, and for ensuring their effectiveness. The Local Authority convenes and is also a member of the LSCB. The Board partners are set out in section 13(3) of the 2004 Act for England and in section 31(3) for Wales⁶. They are:

- district councils in local government areas that have them;
- the chief police officer for a police area of which any part falls within the area of the Local Authority;
- the local probation board for an area of which any part falls within the area of the Local Authority;
- the Youth Offending Team for an area of which any part falls within the area of the Local Authority;

⁵ Chief Inspector of Social Services, Commission for Health Improvement, Her Majesty's Chief Inspector of Constabulary, Her Majesty's Chief inspector of the Crown Prosecution Service, Her Majesty's Chief Inspector of the Magistrates' Courts Service, Her Majesty's Chief Inspector of Schools, Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of Probation (2002). *Safeguarding Children – A Joint Chief Inspectors' Report on Arrangements to Safeguard Children*. London, Department of Health.

⁶ In Wales they are: the members a children's services authority in Wales; a Local Health Board; an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales; the police authority and chief officer of police for a police area in Wales; the British Transport Police Authority, so far as exercising functions in relation to Wales; a local probation board for an area in Wales; a youth offending team for an area in Wales; (h) the governor of a prison or secure training centre in Wales (or, in the case of a contracted out prison or secure training centre, its director); (i) any person to the extent that he is providing services pursuant to arrangements made by a children's services authority in Wales under section 123(1)(b) of the Learning and Skills Act 2000 (c. 21) (youth support services).

- Strategic Health Authorities and Primary Care Trusts for an area of which any part falls within the area of the Local Authority;
- NHS Trusts and NHS Foundation Trusts, all or most of whose hospitals or establishments and facilities are situated in the Local Authority area;
- the Connexions service operating in any part of the area of the Local Authority;
- CAFCASS (Children and Family Courts Advisory and Support Service),
- the Governor or Director of any Secure Training Centre in the area of the Local Authority; and
- the Governor or Director of any prison in the Local Authority area that ordinarily detains children.

1.8. Other organisations can be involved in LSCB by agreement. **The UK Border Agency is one of these. For details of how the UK Border Agency fits in with these arrangements see Part 2 of this guidance.**

1.9. At an organisational or strategic level within individual agencies, key features for safeguarding and promoting the welfare of children are:

a. Senior management commitment to the importance of safeguarding and promoting children’s welfare

Senior managers will need to demonstrate leadership, be informed about, and take responsibility for the actions of their staff who are providing services to children and their families. This could mean identifying a named person at senior management level to champion the importance of safeguarding and promoting the welfare of children throughout the organisation. Senior managers will also be responsible for monitoring the actions of their staff to safeguard and promote the welfare of children. This includes ensuring

that children and young people are listened to appropriately and concerns expressed about their or any other child’s welfare are taken seriously and responded to in an appropriate manner.

b. A clear statement of the agency’s responsibilities towards children is available for all staff

This should include any children in the care of the agencies, any with whom they work directly and those with whom they come into contact. It could form part of an agency’s existing policy and/or procedures. All staff should be made aware of their agency’s policies and procedures on safeguarding and promoting the welfare of children and the importance of listening to children and young people, particularly when they are expressing concerns about either their own or other children’s welfare. Effective systems should be in place for children, staff and other people to make a complaint where there are concerns that action to safeguard and promote a child’s welfare has not been taken in accordance with the agency’s procedures.

c. A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children

It should be clear who has overall responsibility for the agency’s contribution to safeguarding and promoting the welfare of children and what the lines of accountability are from each staff member up through the organisation to the person with ultimate accountability for children’s welfare. It should also be clear with whom each staff member should discuss, and to whom they should report, any concerns about a child’s welfare. Responsibilities for safeguarding and promoting the welfare of children can operate at three levels:

- i. Individual, which can be encompassed within job descriptions;
- ii. Professional, which is governed by codes of conduct for different disciplines or by distinct guidance on the functions being carried out; and

- iii. Organisational, with clear lines of accountability throughout the organisation to senior office level.

d. Service development takes account of the need to safeguard and promote welfare and is informed, where appropriate, by the views of children and families

In developing services, those responsible should consider how the delivery of these services will take account of the need to safeguard and promote the welfare of children.

e. Staff training on safeguarding and promoting the welfare of children for all staff working with or, depending on the agency's primary functions, in contact with children and families

Staff should have an understanding of both their roles and responsibilities and those of other professionals and organisations. This is essential for effective multi- and inter-agency collaboration. Agencies are encouraged to enable staff to participate in training provided on an inter-agency basis as well as in single agency training provided by the agency itself. Safeguarding and promoting the welfare of children is one of the six areas of the *Common Core of Skills and Knowledge for the Children's Workforce* (2005) prospectus. This prospectus informs the training provided to all those working in children's services. Training on safeguarding and promoting the welfare of children should be relevant to the roles and responsibilities of each staff member.

f. Safer recruitment

Robust recruitment and vetting procedures must be in place to help prevent unsuitable people from working with children. This means thorough checks are carried out on all people as part of the recruitment process, and references are always taken up. People who recruit staff to work with children must have the appropriate training. The Safeguarding Vulnerable Groups Act 2006 establishes a new vetting and barring scheme from October 2009 for those who work with children and vulnerable adults.

g. Effective inter-agency working to safeguard and promote the welfare of children

This involves agencies and staff working together to safeguard and promote the welfare of children. Inter-agency working is crucial to ensuring the effectiveness of such working. The sharing of information and constructive relationships between individual members of staff and teams should be supported by a strong lead from the Lead Member for Children's Services, and Director of Children's Services and commitment of all Chief Officers. This effective working should be at a strategic and an individual child level, in accordance with guidance from their LSCB, regarding safeguarding children, or for the Prison Service, in accordance with the policy agreed with the LSCB local to each prison. The LSCB guidance should be consistent with the current statutory guidance *The Framework for the Assessment of Children in Need and their Families* (2000) and *Working Together to Safeguard Children* (2006). The Government's practice guidance, *What To Do If You're Worried A Child Is Being Abused* (HM Government 2006), is for use by practitioners and their managers in all agencies to inform them about what to do when they have concerns that a child may be a child in need, including concerns about a child whom it is believed is, or may be at risk of, suffering significant harm⁷. The UK Border Agency contribution to inter-agency work is described in Part 2.

h. Information sharing

Effective information sharing by professionals is central to safeguarding and promoting the welfare of children. It is therefore essential that effective arrangements for sharing information about a child and their family within each agency and between agencies are in place. This will usually be set out in the form of a protocol or information sharing agreement setting out

⁷ These documents can be found at:
www.dcsf.gov.uk/everychildmatters/1240;
www.dcsf.gov.uk/everychildmatters/1236;
www.dcsf.gov.uk/everychildmatters/_download/?id=760

the process to be followed and the legal and security issues that need to be considered. However, the lack of an information sharing agreement between agencies should never be a reason for not sharing information that could help a practitioner deliver services to a child. The Welsh version of “*Working Together*” contains non-statutory guidance on good practice in information sharing.

The decision to share or not to share information about a child should always be taken on a case by case basis based on professional judgement, supported by the cross-Government *Information Sharing: Practitioners’ Guide* (published in April 2006)⁸ and in line with the provisions of the Data Protection Act and Human Rights Act 1998 with consideration of any duty of confidence which is owed and the data security issues raised by the Cabinet Office guidelines on handling personal data. Full guidance on these issues is provided in *Information Sharing: Practitioners’ Guide* (HM Government, 2006). The consent of children, young people and their caregivers should be obtained when sharing information unless to do so would place the child at risk of significant harm.

1.10. In order to safeguard and promote children’s welfare, arrangements should ensure that:

- all staff in contact with children understand what to do and the most effective ways of sharing information if they believe that a child and family may require particular services in order to achieve their optimum outcomes;
- all staff in contact with children understand what to do and when to share information if they believe that a child may be a child in need, including those children suffering or at risk of suffering harm;

- appropriate agency-specific guidance is produced to complement guidance issued by central Government, and such guidance and appropriate training is made available to existing and new staff as part of their induction and ongoing training;
- guidance and training specifically covers the sharing of information between professions, organisations and agencies, as well as within them, and arrangements for training take into account the value of multi-agency training as well as single agency training;
- managers in children’s services are fully conversant with the legal framework and good practice guidance issued for practitioners working with children.

CONTACT POINT⁹

1.11. Contact Point is a key part of the Every Child Matters programme to improve outcomes for children and will support practitioners, local authorities and other organisations in fulfilling their duties to safeguard and promote the welfare of children. It is currently being delivered in phases that began in May 2009 and that are gradually being rolled out to other local authorities and partners. Contact Point will be the quick way to find out who else is working with the same child or young person and allow services to contact one another more efficiently. This basic online directory will be available to authorised staff who need it to do their jobs.

1.12. Contact Point will not contain any detailed information (such as case notes, assessments, and clinical data or exam results). The legal framework for the operation of Contact Point is provided by regulations, made under section 12 of the 2004 Act and further operational details are set out in Statutory Guidance that was published in late 2007.

⁸ This is cross-government guidance that complements and supports policies to improve information sharing across all services. It is at www.dcsf.gov.uk/everychildmatters/_download/?id=103

⁹ Contact Point exists in England only.

WORK WITH INDIVIDUAL CHILDREN AND THEIR FAMILIES

1.13. The ways in which agencies work with or have contact with individual children and their families will differ depending on the functions of each agency. Some will focus on direct work with children and young people, whereas others will work with children and their families, and still others will work with adults with parenting responsibilities for children.

1.14. In order to safeguard and promote the welfare of individual children, the following should be taken into account, **in addition to the relevant section of Part 2 of this guidance**. The key features of an effective system are:

- Children and young people are listened to and what they have to say is taken seriously and acted on;
- Interventions take place at an early point when difficulties or problems are identified;
- Where possible the wishes and feelings of the particular child are obtained and taken into account when deciding on action to be undertaken in relation to him or her. Communication is according to his or her preferred communication method or language;
- Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family;
- Practitioners are clear when and how it is appropriate to make a referral to Local Authority children's services where children may need services to safeguard them or to promote their welfare;
- Where children are being provided with services to respond to their needs and support their welfare (usually by Local Authority children's services), professionals including the UK Border Agency contribute to subsequent plans, interventions and reviews in accordance with requirements in relevant regulations and guidance;

- Following assessment, relevant services are provided to respond to the assessed needs of children and to support parents or carers in effectively undertaking their parenting roles. Wherever such services are being provided the UK Border Agency will take account of them in planning their future interaction with the family and the children.

1.15. The following principles underpin work with children and their families to safeguard and promote the welfare of children. They are relevant to varying degrees depending on the functions and level of involvement of the particular agency and the individual practitioner concerned. **The UK Border Agency should seek to reflect them as appropriate.**

1.16. Work with children and families should be:

- child centred;
- rooted in child development;
- supporting the achievement of the best possible outcomes for children and improving their wellbeing;
- holistic in approach;
- ensuring equality of opportunity;
- involve children and families, taking their wishes and feelings into account;
- building on strengths as well as identifying and addressing difficulties;
- multi and inter-agency in its approach;
- a continuing process, not an event;
- designed to identify and provide the services required, and monitor the impact their provision has on a child's developmental progress;
- informed by evidence.

- 1.17. Some of these apply to specialised professional work, whilst others relate to more general work that can affect children.

Ensuring equality of opportunity

a. Equality of opportunity means that all children have the opportunity to achieve the best possible development. Some children may have been deprived of opportunities and assistance in early life and will, as a result, require services to meet their health and educational needs, to promote their immediate welfare so that they can achieve their potential into adulthood.

Involvement of children and families

b. In order to appreciate the child's needs and how they make sense of their circumstances it is important to listen and take account of their wishes and feelings. It is also important to develop a co-operative constructive working relationship with parents or caregivers so that they recognise that they are being respected and are being kept informed. Where there is respect and honesty in relating to parents they are likely to feel more confident about providing vital information about their child, themselves and their circumstances.

Building on strengths as well as identifying difficulties

c. Identifying both strengths and difficulties within the child, his or her family and the context in which they are living is important, as is considering how these factors have an impact on the child's health and development. Working with a child or family's strengths becomes an important part of a plan to resolve difficulties.

Multi and Inter-agency in approach

d. From birth, there will be a variety of different agencies and programmes in the community involved with children and their development, particularly in relation to their health and education. Multi and inter-agency work to safeguard and promote children's welfare starts as soon as there are concerns

about a child's welfare, not just when there are questions about possible harm.

A continuing process not an event

e. Understanding what is happening to a vulnerable child within the context of his or her family and the local community, and taking appropriate action, are continuing and interactive processes, not single events. Assessment should continue throughout a period of intervention, and intervention may start at the beginning of an assessment.

Providing and Reviewing services

f. Action and services should be provided according to the identified needs of the child and family in parallel with assessment where necessary. It is not necessary to await completion of the assessment process. Immediate and practical needs should be addressed alongside more complex and longer term ones. The impact of service provision on a child's developmental progress should be reviewed.

Informed by evidence

g. Effective practice with children and families requires sound professional judgements which are underpinned by a rigorous evidence base, and draw on the practitioner's knowledge and experience.

INTER-AGENCY CO-OPERATION TO IMPROVE THE WELLBEING OF CHILDREN

- 1.18. A key aspect of the Every Child Matters: Change for Children programme is about encouraging relevant services to integrate around the needs of the child through children's trust arrangements¹⁰. To this end, section 10 of the 2004 Act places a duty on top tier and unitary local authorities in England to promote co-operation with a view to improving the wellbeing of children, and places a reciprocal duty on 'relevant partners'

¹⁰ A children's trust is the 'wrapper' that brings together all services for children and young people in an area underpinned by the duty to cooperate that is in the Children Act 2004.

to co-operate with the authority in the making of these arrangements¹¹. Most of the strategic organisations covered by the section 11 (and section 28) duty are also under a duty to co-operate with the local authority in the making of co-operation arrangements (children's trust). Those that are not will however wish to engage with the local authority and partners where appropriate in the interests of promoting children's wellbeing. As a matter of law, the UK Border Agency is not subject to the duty in section 10, and details of the UK Border Agency contribution to inter-agency work is described in Part 2.

MONITORING AND INSPECTION OF ARRANGEMENTS TO SAFEGUARD AND PROMOTE WELFARE

- 1.19. Agencies' responsibilities for safeguarding and promoting the welfare of children, including the arrangements they make under section 11, will be monitored through the LSCB.
- 1.20. Agencies, and the LSCB, are subject to independent assessment and inspection. The Framework for the Inspection of Children's Services, published in July 2005 by Ofsted on behalf of all relevant inspectorates and commissions, sets out principles to be applied by an inspectorate or commission assessing any children's service, and defines the key judgements which, where appropriate and practical, inspections will seek to make¹². It is available from www.ofsted.gov.uk. The key judgements include several relating to children and young people staying safe.
- 1.21. Details of the arrangements that apply to the UK Border Agency are contained in Part 2 of this guidance.

11 The relevant powers to improve cooperation and well-being are set out in s.25 for Wales, where children's trusts do not exist and which has taken a different approach to applying co-operation arrangements to that in England.

12 The inspection body in Wales is *Estyn* which performs a similar function to that of Ofsted in England.

PART 2

THE ROLE OF THE UK BORDER AGENCY IN RELATION TO SAFEGUARDING AND PROMOTING THE WELFARE OF CHILDREN

INTRODUCTION

- 2.1. The UK Border Agency is an executive agency of the Home Office and its primary duties are to **maintain a secure border, to detect and prevent border tax fraud, smuggling and immigration crime, and to ensure controlled, fair migration that protects the public and that contributes to economic growth and benefits the country.**
- 2.2. It carries out these duties by applying and enforcing the Immigration Acts and the Immigration Rules, by having regard to policy guidance and instructions issued by the Secretary of State, and by exercising general customs functions as defined in the Borders, Citizenship and Immigration Act 2009. The application and enforcement of the Immigration Acts includes removing from the UK persons who have no legal entitlement to remain in the UK and, in certain circumstances, detaining those individuals pending their removal from the UK. The UK Border Agency also has a role in granting protection to those who need it according to international conventions and the laws of the UK.
- 2.3. Within this legislative and policy framework, section 55 of the 2009 Act requires the Secretary of State to make arrangements to ensure that immigration, asylum, nationality and customs functions are exercised having regard to the need to safeguard and promote the welfare of children in the United Kingdom. The functions of the Director of Border Revenue must also be exercised having regard to the need to safeguard and promote the welfare of children in the United Kingdom. The duty does not create any new functions, nor does it over-ride any existing functions, rather it requires them to be carried out in a way that takes into account the need to safeguard and promote the welfare of children.
- 2.4. The UK Border Agency's main contributions to safeguarding and promoting the welfare of children include:
- Ensuring good treatment and good interactions with children throughout the immigration and customs process.
 - Applying laws and policies that prevent the exploitation of children throughout and following facilitated illegal entry and trafficking.
 - Detecting at the border any material linked to child exploitation through pornography.
- 2.5. Other parts of the UK Border Agency's contribution include:
- Exercising vigilance when dealing with children with whom staff come into contact and identifying children who may be at risk of harm.
 - Making timely and appropriate referrals to agencies that provide ongoing care and support to children.
- MAKING ARRANGEMENTS TO SAFEGUARD AND PROMOTE WELFARE IN THE UK BORDER AGENCY**
- 2.6. The UK Border Agency acknowledges the status and importance of the following: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the EU Reception Conditions Directive, the Council of Europe Convention on Action

Against Trafficking in Human Beings, and the UN Convention on the Rights of the Child. The UK Border Agency must fulfil the requirements of these instruments in relation to children whilst exercising its functions as expressed in UK domestic legislation and policies.

- 2.7. The UK Border Agency must also act according to the following principles:
- Every child matters even if they are someone subject to immigration control.
 - In accordance with the UN Convention on the Rights of the Child the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children¹³.
 - Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family.
 - Children should be consulted and the wishes and feelings of children taken into account wherever practicable when decisions affecting them are made, even though it will not always be possible to reach decisions with which the child will agree. In instances where parents and carers are present they will have primary responsibility for the children's concerns.
 - Children should have their applications dealt with in a timely way and that minimises the uncertainty that they may experience.
- 2.8. When speaking to a child or dealing with a case involving their welfare, staff must be sensitive to each child's needs. Staff must respond to them in a way that communicates respect, taking into account their needs, and their responsibilities to safeguard and promote their welfare.

SENIOR MANAGEMENT COMMITMENT AND ACCOUNTABILITY

- 2.9. There shall be a senior member of staff (the "Children's Champion") who is responsible to the Chief Executive of the UK Border Agency for promoting the duty to safeguard and promote the welfare of children throughout the UK Border Agency, for offering advice and support to UK Border Agency staff in issues related to children, and identifying and escalating areas of concern.
- 2.10. Senior managers throughout the UK Border Agency remain directly responsible for monitoring the actions of their staff to safeguard and promote the welfare of children. This includes ensuring that children are listened to appropriately and concerns expressed about their or any other child's welfare are taken seriously and responded to in an appropriate manner. In addition, an identified member of the senior civil service will have lead responsibility for promoting the duty within each business area.

CLEAR STATEMENTS OF RESPONSIBILITY, A CLEAR LINE OF ACCOUNTABILITY

- 2.11. Responsibility for the UK Border Agency's contribution to safeguarding and promoting the welfare of children lies with each member of staff according to their role. They are accountable to their line managers for this, with ultimate accountability for the Agency's contribution lying with the Chief Executive. Within the UK Border Agency each function or unit led at senior civil service level must be proactive in ensuring that staff at all levels within that unit are aware of the duty and its relevance to their work. The approach might take the form of regularly finding time at team meetings to ensure that the requirements are known and understood or issuing specific instructions depending on the role and work of the unit. Managers should aim to encourage and enable a positive attitude to the needs of children among their staff as well as setting out clear formal instructions.
- 2.12. There must be clear arrangements whereby staff who become aware of instances where

¹³ Cf. UNHCR Guidelines on Determining the Best Interests of the Child, pages 14 -15 section entitled "The Use of the Term 'Best Interests' in the CRC" (CRC = Convention on the Rights of the Child).

the duty is not being taken properly into account are able to report their concerns. These may be general concerns about the effectiveness of these arrangements; they may relate to the way in which a particular child was dealt with by the UK Border Agency; or, they may relate to the attitude and behaviour of staff towards children. 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 express their concerns to the UK Border 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 as far as possible.

DEVELOPMENT OF THE AGENCY'S POLICIES

2.13. The duty will be taken into account when developing any new policies. Where appropriate new operational and policy instructions should make reference to the duty and how it is to be taken into account.

TRAINING

2.14. The UK Border Agency must ensure that members of staff are appropriately trained with regard to their duty to safeguard and promote the welfare of children.

2.15. Training on safeguarding and promoting the welfare of children must be provided that is proportionate and relevant to the roles and responsibilities of staff members. All Agency staff should have a general understanding of children's issues, while those whose work brings them into contact with children, directly or indirectly, should have more in-depth training.

SAFER RECRUITMENT, VETTING AND COMPLAINTS PROCEDURES

2.16. Recruitment and vetting procedures must ensure that new members of staff and

those existing employees who move to posts with contact with children work safely and competently with children. The Safeguarding Vulnerable Groups Act 2006 will establish a new vetting and barring scheme for those who work with children and vulnerable adults which the UK Border Agency will implement.

2.17. The UK Border Agency complaints systems will be reviewed, and adapted if necessary, to ensure that they are suitably accessible to children.

WORK WITH INDIVIDUAL CHILDREN

2.18. This guidance cannot cover all the different situations in which the UK Border Agency comes in to contact with children. Staff need to be ready to use their judgement in how to apply the duty in particular situations and to refer to the detailed operational guidance which applies to their specific area of work. In general, staff should seek to be as responsive as they reasonably can be to the needs of the children with whom they deal, whilst still carrying out their core functions.

2.19. It may be helpful to set out here, by way of example, some of the key policy commitments which apply at different stages of the process:

- Where there is doubt on arrival or subsequently about who is caring for the child staff must take action, for instance by seeking evidence that a particular named adult is caring for the child with the parent's consent.
- Special care must be taken when dealing with unaccompanied asylum seeking children, for instance by checking with them that they understand the process for making and resolving their asylum claim, and ensuring that the physical settings in which their applications are dealt with are as child-friendly as possible to ensure that the child feels safe and protected.
- When unaccompanied or separated children are being escorted from their normal place of residence to a port where removal will take place, they must be

subject to detention procedures in the sense of being served with formal notice whilst the supervised escort is taking place. Other than in these situations, unaccompanied or separated children must be detained only in the most exceptional circumstances whilst other arrangements for their care and safety are made.

- Families who have no right to be in this country must be encouraged to leave voluntarily and detention should be used only as a last resort and for the shortest possible time.
- During any period of detention, reasonable steps should be taken to ensure that a child is able to continue his or her education, maintain contact with friends, and practise his or her religion.
- Family detention arrangements must respect as fully as possible the principle that the primary responsibility for a child during this time still rests with the parents.
- When children have to be transported from one venue to another, only suitable vehicles are used.
- Nursing mothers and their children must not be separated at any stage unless there is a compelling reason that involves the safety of the child (for instance, an accompanying parent has threatened to harm the child). Other than in the most urgent circumstances involving the safety of the child, such a decision must be made and supervised by a qualified children's social worker.

2.20. There should also be recognition that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved. Every effort must therefore be made to achieve timely decisions for them.

2.21. In co-operation with the bodies qualified to plan for children's futures, including Local Authority Children's Services, schools, primary and specialist health services, arrangements

must be put in place to secure the support needed by the individual child as they mature and develop into adulthood. Unless it is clear from the outset that a child's future is going to be in the UK, these arrangements will necessarily involve planning for the possibility that children and their families may have to be returned to their countries of origin (or in some cases the EU country in which they first claimed asylum).

2.22. The UK Border Agency must always make a referral to a statutory agency responsible for child protection or child welfare such as the police, the Health Service, or the Children's Department of a Local Authority¹⁴ in the following circumstances:

- When a potential indicator of harm (the most comprehensive such list is found in *Working Together to Safeguard Children who have been Trafficked*¹⁵ and their application is wider than trafficking cases alone) 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 appears to be cared for by a person who is not a close relative (i.e. where a private fostering arrangement has been identified). The Children Act 1989 (Part IX, section 66) defines privately fostered children. All professionals and agencies that work with children must establish the relationship that exists between any child and those who care for him or her. If that relationship appears to be a private fostering relationship — or if the relationship cannot be established — a referral to the relevant Local Authority must be made.

¹⁴ All references to a Local Authority here in Part 2 should be taken as a reference to Local Authority Children's Services in England and Wales and Scotland. In Northern Ireland this will be the local Health and Social Care Trust.

¹⁵ *Working Together to Safeguard Children who have been Trafficked* issued by Home Office and DCSF, December 2007. The indicators are reproduced at Annex A. Separate guidance for Wales was issued by the Welsh Assembly Government in April 2008.

- When a child is a potential victim of trafficking.
- When a child is identified as having run away from their parents, or where they are looked after by a Local Authority and have gone missing from their care placement¹⁶.

HUMAN TRAFFICKING AND TRAFFICKING OF CHILDREN

2.23. Since 1 April 2009, the UK has been bound by the Council of Europe Convention on action against trafficking in human beings. The purpose of the Convention is to:

- prevent and combat trafficking in human beings;
- identify and protect victims of trafficking and to safeguard their rights;
- promote international co-operation against trafficking.

2.24. Although the UK Border Agency was already active in identifying and supporting victims of trafficking, the Convention has resulted in the introduction of even stronger arrangements. All UK Border Agency staff at operational and case working grades are required to complete training on how to identify potential victims of trafficking, which contains specific sections on the features of child trafficking. Where a child is identified as vulnerable as a result of a suspicion of trafficking, details of the case are referred simultaneously to the relevant Local Authority and to specially trained ‘competent authority’ teams based in the UK Border Agency and the UK Human Trafficking Centre.

2.25. These specially trained ‘competent authority’ teams were established under the Council of Europe Convention on Action against Trafficking in Human Beings and consider all relevant information, including any provided by local authority Children Services, in determining whether a case meets the thresholds for trafficking set out in the Convention. A positive decision will lead to a 45-day reflection period during which the victim will have access to support and will not be removed from the UK. This may be followed by the grant of an extendable residence permit. This is a significant safeguarding role for all UK Border Agency staff and a major contribution by the Agency to the wider safeguarding of children¹⁷.

WORKING WITHIN THE DEVOLVED ADMINISTRATIONS OF WALES, SCOTLAND AND NORTHERN IRELAND

2.26. Statutory children’s services have been devolved to each of the devolved administrations of Scotland, Wales, and Northern Ireland. Referrals to children’s services must be made to the relevant public authority by the UK Border Agency when members of staff have identified children as being in need or at risk. Differences in legislation and local arrangements for making referrals must be respected and, where necessary, the relevant UK Border Agency regional directors will ensure that these differences are taken into account and suitable arrangements developed in Northern Ireland, Scotland and Wales.

2.27. For instance, in Scotland there is a Children’s Charter that sets out what children and young people need and expect to help protect them from harm. It has been developed through talking to children and young people who have experienced the need to be protected and supported - but what it says applies to any child.

2.28. It is available at www.scotland.gov.uk/library5/education/ccel-00.asp and UK

¹⁶ UKBA staff must always make a referral to a Local Authority using the UKBA form available for this purpose at <http://horizon/ind/manuals/keeping-children-safe/resources/word/ReferralForm15.doc> (Word), or <http://horizon/ind/manuals/keeping-children-safe/resources/word/ReferralForm16.doc> (E-mail). Further useful information can be found in “Statutory Guidance on Children who run away and go missing from home or care” prepared to support Local Authorities and issued under s. 7 of the Local Authority Social Services Act 1970 by the DCSF in July 2009. It is available at www.dcsf.gov.uk/everychildmatters/_download/?id=6178

Whilst the guidance is specific to England the challenge is common across all four countries of the United Kingdom and each is working to address the issues in ways that meet their own circumstances and needs.

¹⁷ The arrangements in overview are on the Home Office website at <http://police.homeoffice.gov.uk/operational-policing/safeguarding-vulnerable-persons/child-trafficking/>

Border Agency staff working in Scotland should seek to be guided by and to follow it in their interactions with children.

LOCAL SAFEGUARDING CHILDREN BOARDS AND INTER-AGENCY WORKING

- 2.29. In support of effective interagency working, the UK Border Agency should participate in LSCBs where appropriate and invited to do so, and should seek to contribute in accordance with *Working Together to Safeguard Children* (2006). The UK Border Agency is not a statutory member of LSCB nor is it a statutory partner under section 13 (section 31 in Wales) of the 2004 Act. Instead the UK Border Agency will be invited to participate in those LSCBs where its presence is agreed to be necessary or desirable by Directors for Children and Learning in Regional Government Offices, or the Director of Children's Services with responsibility for the particular Board or by the UK Border Agency regional director. The work of LSCBs is co-ordinated by regional and national meetings and the UK Border Agency will make an appropriate contribution to these by agreement with the meeting organisers. The UK Border Agency should also take part in any appropriate inter-agency training arranged by LSCBs. In Scotland and Northern Ireland the UK Border Agency will co-operate with Child Protection Committees in the same way.
- 2.30. The UK Border Agency will allow any LSCB in whose work it participates as an invited partner to include it in these monitoring and continuous improvement processes and must respond appropriately to concerns that are expressed as a result. The UK Border Agency is also subject to inspection from the independent Chief Inspector of the Border Agency which may include children's issues in its inspections, and from the Chief Inspector of Prisons who inspects all facilities in which children and young people may be detained.
- 2.31. The UK Border Agency will assist other appropriate agencies who have contact with children and who are seeking to safeguard a child and promote his or her welfare.

INFORMATION SHARING

- 2.32. The UK Border Agency should make best use of information exchanges between agencies including Contact Point and should ensure that other safeguarding agencies recognise, accept and respond to the referral forms that it sends to these and other bodies.
- 2.33. UK Border Agency staff should work with other statutory agencies, including but not limited to, LSCBs, children's services, the police and other relevant agencies. UK Border Agency staff should ensure that they share information appropriately with those agencies and with due regard to the provisions of the Data Protection and Human Rights Act 1998 and any duty of confidentiality which may exist. There should be clear responsibility within the agency for putting in place, and ensuring that all staff are aware of and follow procedures for ensuring that relevant information is passed to those other agencies where necessary.

CHILDREN AND UK BORDER AGENCY STAFF OVERSEAS

- 2.34. The statutory duty in section 55 of the 2009 Act does not apply in relation to children who are outside the United Kingdom. However, UK Border Agency staff working overseas must adhere to the spirit of the duty and make enquiries when they have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances international or local agreements are in place that permit or require children to be referred to the authorities of other countries and UK Border Agency staff will abide by these.
- 2.35. As a matter of policy, posts overseas that receive or deal with applications will seek to work with local agencies in order to develop arrangements that will protect children, or promote their welfare, or reduce the risk of their being trafficked and exploited.
- 2.36. Before taking up entry clearance or visa duties, UK Border Agency staff must receive

training on the importance of having regard to the need safeguard and promote the welfare of children that they may encounter when working overseas.

CONTRACTORS

2.37. Any services provided by contractors which relate to the discharge of UK Border Agency functions must be carried out having regard to the need to safeguard and promote the welfare of children. Operational instructions for contractors providing such services must refer explicitly to this. Examples of such services are detention and escorting functions. Although the duty does not extend to UK Border Agency staff and contractors overseas it is a matter of UK Border Agency policy that when they are escorting children overseas, they should have regard to the need to safeguard and promote the welfare of children at every stage of the journey.

2.38. Contractors must be adequately monitored to ensure that they have regard to the duty and the guidance.

ANNEX A

POSSIBLE INDICATORS THAT A CHILD MAY HAVE BEEN TRAFFICKED

There a number of indicators which suggest that a child may have been trafficked into the UK, and may still be controlled by the traffickers or receiving adults. These are as follows:

AT THE PORT OF ENTRY

The child:

- has entered the country illegally;
- has no passport or other means of identification;
- has false documentation;
- possesses money and goods not accounted for;
- is malnourished;
- is unable to confirm the name and address of the person meeting them on arrival;
- has had their journey or visa arranged by someone other than themselves or their family;
- is accompanied by an adult who insists on remaining with the child at all times;
- is withdrawn and refuses to talk or appears afraid to talk to a person in authority;
- has a prepared story very similar to those that other children have given;
- exhibits self-assurance, maturity and self-confidence not expected to be seen in a child of such age;
- does not appear to have money but does have a mobile phone; and/or
- is unable, or reluctant to give details of accommodation or other personal details.

The sponsor:

- has previously made multiple visa applications for other children and/or has acted as the guarantor for other children's visa applications; and/or
- is known to have acted as the guarantor on the visa applications for other visitors who have not returned to their countries of origin on the expiry of those visas.

WHILST RESIDENT IN THE UK

The child:

- does not appear to have money but does have a mobile phone;
- receives unexplained/unidentified phone calls whilst in placement / temporary accommodation;
- possesses money and goods not accounted for;
- exhibits self assurance, maturity and self-confidence not expected to be seen in a child of such age;
- has a prepared story very similar to those that other children have given;
- shows signs of physical or sexual abuse, and/or has contracted a sexually transmitted infection or has an unwanted pregnancy;
- has a history with missing links and unexplained moves;
- has gone missing from local authority care;
- is required to earn a minimum amount of money every day;

- works in various locations;
- has limited freedom of movement;
- appears to be missing for periods;
- is known to beg for money;
- performs excessive housework chores and rarely leaves the residence;
- is malnourished;
- is being cared for by adult/s who are not their parents and the quality of the relationship between the child and their adult carers is not good;
- is one among a number of unrelated children found at one address;
- has not been registered with or attended a GP practice;
- has not been enrolled in school;
- has to pay off an exorbitant debt, e.g. for travel costs, before having control over own earnings;
- is permanently deprived of a large part of their earnings by another person; and/or
- is excessively afraid of being deported.
- Evidence of drug, alcohol or substance misuse;
- Leaving home/care setting in clothing unusual for the individual child (inappropriate for age, borrowing clothing from older people);
- Phone calls or letters from adults outside the usual range of social contacts;
- Adults loitering outside the child's usual place of residence;
- Significantly older boyfriend;
- Accounts of social activities with no plausible explanation of the source of necessary funding;
- Persistently missing, staying out overnight or returning late with no plausible explanation;
- Returning after having been missing, looking well cared for despite having no known base;
- Missing for long periods, with no known base;
- Placement breakdown;
- Pattern of street homelessness;
- Possession of large amounts of money with no plausible explanation;
- Acquisition of expensive clothes, mobile phones or other possessions without plausible explanation;
- Having keys to premises other than those known about;
- Low self-image, low self-esteem, self-harming behaviour including cutting, overdosing, eating disorder, promiscuity;
- Truancy/disengagement with education;
- Entering or leaving vehicles driven by unknown adults;
- Going missing and being found in areas where the child or young person has no known links; and/or

CHILDREN INTERNALLY TRAFFICKED WITHIN THE UK

Indicators include:

- Physical symptoms (bruising indicating either physical or sexual assault);
- Prevalence of a sexually transmitted infection or unwanted pregnancy;
- Young person known to be sexually active;
- Reports from reliable sources suggesting the likelihood of involvement in sexual exploitation;
- Reports that the child has been seen in places known to be used for sexual exploitation;

- Possible inappropriate use of the internet and forming on-line relationships, particularly with adults.

The indicators above should not be read as a definitive list and practitioners should be aware of any other unusual factors that may suggest a child might have been trafficked. They are intended as a guide, which should be included in a wider assessment of the young person's circumstances. The final set of indicators is applicable to both cases of sexual exploitation and internal trafficking.

It is also important to note that trafficked children might not show obvious signs of distress or abuse and this makes identifying children who may have been trafficked difficult. Some children are unaware that they have been trafficked, while others may actively participate in hiding that they have been trafficked.

