Alternatives to immigration detention of families and children

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for the All Party Parliamentary Groups on Children and Refugees

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Preface

Each year, the UK detains around 2,000 children with their families for the purposes of immigration control. Many of these families are here to seek asylum, some have overstayed their visas and others are victims of trafficking. The decision to detain these children is an administrative one and does not require any judicial sanction – their detention is subject to neither independent scrutiny nor time limit. Many of these families have complex immigration or asylum cases, and have experienced trauma and distress. Their children’s health, education and emotional needs are rarely met in detention centres.

This policy makes a mockery of child rights legislation. The detention of these children runs contrary to the United Nations Convention on the Rights of the Child (UNCRC) – though the Government’s existing reservation to the UNCRC in relation to immigration means that children are excluded from its protection. Furthermore, the Government’s stated aim in its flagship children’s policy, Every Child Matters, is for “every child, whatever their background or their circumstances, to have the support they need to: be healthy; stay safe; enjoy and achieve; make a positive contribution; achieve economic well-being.”¹ Contrary to government assurances that this also applies to asylum-seeking children, it is clear that in some cases not every child matters.

There is a broad consensus that locking children up with their families is inherently harmful and to be avoided wherever possible. The UK’s Children’s Commissioners, the UK’s Chief Inspector of Prisons, international and national non-governmental organisations and community groups have all spoken out against the policy or conditions of detention. Public support is evident: the recent No Place for a Child campaign was backed by more than 13,500 members of the public and, by early July 2006, 137 MPs from across the party spectrum had signed an Early Day Motion calling for an end to the detention of children.

The Home Office is not working efficiently, nor is it working in line with its own guidelines or with the best interests of children in mind. The Government claims that detention is a last resort and detained families are held for a few days at most, immediately prior to removal. However, there are many cases of children detained for long periods of time, including when departure is not imminent because of outstanding appeals or issues in their country of origin. There are also cases of families being released from detention only to be detained again at a later date. The Government is failing to consider alternatives and is using detention as the default option rather than the last resort. Furthermore, locking up families who have committed no crime is a poor use of taxpayers’ money, costing millions of pounds each year.

There is no evidence to suggest families abscond when the threat of detention or removal looms. However, there is a growing body of evidence that more families return to their country of origin of their own accord when they can trust that the system protects those who need protection and where more support and information is available to families planning return. The experience of the Swedish model, the Canadian Failed Refugee Project and, particularly, Hotham Mission in Australia demonstrates that supporting families to make sure their protection needs are met.
and helping them to plan for return works. These models could be applied in the UK. We strongly recommend that the Home Office pilots a supportive casework model as an alternative to detention for children and families.

This report explores the current practice of detention in the UK. We do not oppose the removal of failed asylum-seekers, but we are opposed to an unfair, inconsistent and often arbitrary system where immigration control is put before the need to protect children.

It is the responsibility of the Government to design and implement a national system that protects and upholds the rights of children and meets the protection needs of those who seek asylum here. This report comes at a time when the Government is reviewing its asylum and immigration policy. We hope that this paper will help to inform the debate on behalf of some of the UK’s most vulnerable children.
1. Introduction

Prior to October 2001, the policy on detention of children in families was taken from the July 1998 White Paper Firmer, Faster, Fairer, which stated that ‘detention should be planned to be effective as close to removal as possible so as to ensure that families are not normally detained for more than a few days.’

The policy was then changed to allow ‘detention of those families whose circumstances justify this (i.e. a risk of absconding, identities and claims need to be clarified or pre removal).’ This change was ‘not derived from statistical evidence’ about absconding or other risks and was made on the basis of a ministerial decision.

As a result of this change – and the rise in the number of detention beds available – as many as 2,000 children in families are now detained each year. The detention of children for the purposes of immigration control has been widely criticised and the harmful effects of detention have been documented in various studies.

This paper argues for an alternative approach to working with families who are liable to detention, particularly those whose claims for asylum have been rejected. Its starting position is that children should not be detained for immigration purposes and that the UK Government’s current use of detention for children should end.

The debate about ending detention has often focused on a need to explore and employ alternatives. Drawing on evidence from the UK and international models, it is hoped that this paper will foster informed debate about new ways of working with families that are grounded in children’s rights and that give due regard to the welfare of children and families in the design of immigration controls.

The report explores alternatives in the light of:

a) existing law and policy designed to protect and support all children in the UK, crucially the Children Acts of 1989 and 2004, along with their associated policy and guidance

b) the profile of families who are at risk of detention and for whom alternatives need to be found

c) recent developments in UK asylum and immigration law and policy, in particular the proposed New Asylum Model, the use of stricter reporting conditions, electronic monitoring and removal of support for failed asylum seeking families

d) existing evidence about non-custodial alternatives used in other countries that could be applied here.
Facts and figures

- The number of children in detention has grown significantly over the last four years and the number of detention places designed for families has increased.9

- Estimates based on research and snapshots indicate that during 2005, more than 2,000 children were detained with their families in immigration detention centres.10

- The three immigration removal centres (IRCs) currently being used to detain families are Tinsley House near Gatwick, Dungavel House in South Lanarkshire and Yarl's Wood near Bedford. In total, these centres have 159 places allocated for children and families. Current policy states that children stay for a maximum 72 hours in Tinsley House and Dungavel House, after which they will be transferred to Yarl's Wood where they can be held indefinitely.

- Children in families may also be detained at short-term holding centres before removal or transfer to an IRC.

- Of the 540 children (465 of whom were asylum-seeking children) released from detention during the fourth quarter of 2005, 385 had been held for 7 days or less, 60 had been held for 8–14 days and 70 had been held for 15–29 days. The remaining 25 were detained for between one and two months.

- Of 540 children who left detention in last quarter of 2005, 345 (64 per cent) were removed, 180 (33 per cent) were granted temporary release/admission and 15 (3 per cent) were granted bail by a court.
2. Calling for alternatives to detention of families - why now?

Since the increase in the use of detention for families from 2001, there has been extensive discussion of alternatives to detention for families between NGOs and the Home Office. This has been based on broad consensus that locking children up is harmful to their health and well-being.\textsuperscript{11}.

Research commissioned by Save the Children and published in February 2005 considered in detail possible alternatives and explored models employed by other states. The \textit{No Place for a Child} report concluded that:

\begin{quote}
"The Home Office should pilot a system of incentivised compliance\textsuperscript{12}. ...These approaches provide a combination of freedom from detention, a graduated scale of supervision, individualised needs and risk assessment and support, primarily through provision of information and legal advice and representation from the beginning of the asylum determination process."
\end{quote}

Successive Home Office ministers have acknowledged that it is regrettable to detain children\textsuperscript{13} and have stated a preference for avoiding enforced returns.\textsuperscript{14}

Despite this, the use of detention has continued to rise and it appears that the Government is increasingly intent on meeting removals targets set out in the five-year strategy on asylum and immigration\textsuperscript{15}, which explicitly anticipates a significant increase in the use of detention:

\begin{quote}
Over time, [...] we will move towards the point where it becomes the norm that those who fail can be detained.\textsuperscript{16}
\end{quote}

During the same period, the Home Office piloted s. 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which allowed the National Asylum Support Service to withdraw support from families whose asylum claim has been rejected in order to ‘encourage’ voluntary return.

The Government has failed to make detention safer for families and children. Over recent years, Her Majesty’s Inspectorate of Prisons (HMIP) has issued several reports outlining serious concerns about the welfare of children in detention\textsuperscript{17} and making recommendations designed to mitigate the damaging effects of detention on children\textsuperscript{18}. To date, the Home Office has failed to implement these recommendations.

The experience of organisations working with detained families – such as Bail for Immigration Detainees\textsuperscript{19}, the Black Women’s Rape Action Project and Women Against Rape\textsuperscript{20} – suggests that conditions in detention remain poor and that families often face long periods of detention with little or no access to supportive services or to independent, high-quality legal advice.

As children and families continue to suffer, a groundswell of support among parliamentarians and members of the public, coupled with new evidence about alternatives and some key policy changes, have brought a sense of urgency to this debate:
**Policy change**

- The development and implementation of the New Asylum Model (NAM)\(^{21}\) offers an unprecedented opportunity to introduce a supportive casework approach to working with families throughout the asylum determination process. The ‘case owner’ model, which is at the heart of NAM, is based on the hope that making a single worker responsible for individual asylum claims from beginning to end promotes higher quality decision-making and more effective communication between asylum-seekers and the Immigration and Nationality Directorate (IND).\(^{22}\)

- In response to an IND national review of removal of families procedures, organisations have highlighted the distressing experiences of families being detained and removed, providing more impetus to consider supportive approaches.\(^{23}\) It is to be hoped that responses to the consultation will inform revised instructions to enforcement staff.\(^{24}\)

- Responses to the evaluation of the pilot of s. 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004\(^{25}\) have highlighted the disastrous effects of taking a punitive approach to families whose claims have failed.\(^{26}\) Families involved in the s. 9 pilot are terrified and surviving without support or housing in order to avoid being separated from their children or returned to a country where they feel they and their children would be at risk.

**Evidence**

- Comprehensive research for United Nations High Commissioner for Refugees (UNHCR), *Alternatives to Detention of Asylum Seekers and Refugees*\(^{27}\), published in April 2006 examines the practices of 34 states and offers a concise overview of the legal standards under international law applicable to both detention and alternatives. In addition, it examines the available evidence on absconding in receiving and transit states, drawing conclusions of particular relevance to the UK as a receiving country.

- *Child First, Migrant Second: Ensuring Every Child Matters*, published by the Immigration Law Practitioners Association in February 2006\(^{28}\), sets out the case for change to ensure that asylum-seeking children are firmly placed within the Every Child Matters framework. The paper highlights the need for “*proper consideration of alternatives to the detention of children for the purpose of immigration control*”, stating that:

> “The starting point is an acknowledgement that children subject to immigration control are children first and migrants second. This does not mean that immigration controls cannot be implemented or that the Children Act 1989 needs to be changed. Rather what it means is that those responsible for implementing and delivering immigration control will need to work around the need to safeguard children and adapt their approach accordingly.”\(^{29}\)
The parliamentary Public Accounts Committee (PAC), Home Affairs Committee and the National Audit Office have all scrutinised the detention and removal of families as part of recent inquiries.

The Children’s Commissioner for England, Al Aynsley-Green, has strongly expressed his view that the UK’s use of detention for children is in breach of the UNCRC. He has called for non-custodial alternatives and commissioned an analysis by the Children’s Legal Centre of models used in other countries (forthcoming publication).

“It is clear that as long as the UK retains a reservation to the UN Convention on the Rights of the Child relating to immigration matters, the Convention cannot be fully implemented. By detaining children for immigration purposes, other than as a matter of last resort, and for the shortest possible time, the UK is, but for the reservation, in breach of the Convention”

Public and parliamentary support

- 137 MPs have signed an Early Day Motion expressing concern about the detention of children in UK immigration detention centres as part of the standard immigration procedure.

- 19 Members of the Scottish Parliament (MSPs) have signed a parliamentary motion at Holyrood (lodged by Sandra White MSP, 29 March 2006).

- Detained families and community groups continue to oppose the use of detention, often with considerable local support.

- In a public campaign calling for an end to detention of children, more than 13,500 members of the public have written to the Home Secretary John Reid and lobbied their MPs or MSPs.
3. The need for alternatives

3.1 The impact of detention on children

Health

Detention has a well-documented detrimental effect on the development and emotional and physical well-being of children, who may suffer depression, changes in behaviour and confusion in addition to refusal to eat, weight loss, lack of sleep, skin complaints and persistent respiratory conditions.33

Detainees often mistrust the ability and willingness of detention centre medical staff to treat their symptoms or those of their children:

_Those doctors in detention, they don’t believe anything. They don’t take your sickness seriously. My impression is they think you’re lying._34

Even without detention, asylum-seeking children are highly susceptible to mental health problems due to their experiences of trauma and loss.35 Detention is an intensely stressful and confusing environment for children, which can cause re-traumatisation. The mental health of children is also directly affected by the distress and depression of adult family members, particularly parents and carers.36

Education

Children’s right to education is enshrined in the UNCRC and the Education Act 194437 and is central to the current children’s policy agenda, Every Child Matters. Despite this, children in detention are denied access to an adequate education: Her Majesty’s Chief Inspector of Prisons describes educational provision in the Yarl’s Wood Immigration Removal Centre as “unsatisfactory and depressing”.38 Moreover, detention has consequences for subsequent education and development of children that go beyond the period of detention itself: disrupted learning has a well-documented impact on overall education outcomes.

3.2 Compliance with international legal standards

Human rights standards require that any deprivation of liberty be justified in defined circumstances and proportionate to the policy objective. Article 5 of the European Convention on Human Rights (ECHR), incorporated into the UK’s domestic law by the Human Rights Act 1998, protects the right to liberty and sets out the exceptions where detention can be lawful, including to prevent unauthorised entry or to effect removal.39

In recognition of the vulnerability of children, international law and policy places the needs of children above the requirements of immigration control. Thus, when used other than as an exceptional measure of last resort, the detention of children for the purposes of immigration control runs contrary to international standards for the treatment of children set by the UNCRC, the UNHCR40 and the UN Rules on Juveniles Deprived of their Liberty (UN JDL Rules).41
The UK Government has lodged a reservation on the application of Article 22 of the UNCRC, which aims to exclude children subject to immigration control from the full ambit of the Convention. This reservation is commonly questioned in debates on the rights of children in detention. The Joint Committee on Human Rights has stated its view that the reservation contradicts both the object and purpose of the UNCRC, and in its concluding observations of 1995 and 2002, the UN Committee on the Rights of the Child has recommended that the reservation be withdrawn for the same reason.

In principle, the IND has accepted its responsibility to act in the best interests of children, including children at risk of detention. In practice, it is clear that the best interests of children are not considered in the decision to detain a family: the process for deciding to detain does not include an independent, best-interests assessment.

Research has demonstrated that ministers' claims that detention is used only as a measure of last resort and for the shortest possible period of time are untrue. The documented cases of single mothers with children attending school being detained despite complying with reporting obligations and being 'low risk' for non-compliance or absconding exemplifies how this general legal requirement is violated.

Finally, recent research paints a picture of deteriorating physical and particularly mental health amongst detainees. In itself, this could amount to cruel, inhuman or degrading treatment, as held by the Human Rights Committee, based on article 7 of the International Covenant on Civil and Political Rights 1966.

3.3 Compliance with the UK law and policy on children

In principle -
Children who are subject to immigration control are children first and foremost and therefore included within the provisions of the Children Acts 1989 and 2004. Indeed, in recognition of their special status, unaccompanied children were expressly excluded from the adult national asylum support scheme (NASS) that was established as part of the statutory framework.

In practice -
Current policy and practice regarding detained children clearly contravenes and undermines UK law and policy on children in a number of ways, by prioritising immigration controls over the welfare of children.

a) Failure to meet the goals of Every Child Matters (ECM)
The use of immigration detention for children undermines the ECM strategy and prevents children from accessing the support and treatment they are entitled to under the Children Acts, despite assurances from ministers during the passage of the Children Act 2004 that the ECM strategy applied to all children, including those subject to immigration control. The Children’s Commissioners, Her Majesty’s Chief Inspector of Prisons and the Joint Chief Inspectors have all criticised the failure to treat this group of children as children first and foremost.
b) Failure to extend the safeguarding duties in Section 11 of the Children Act 2004 to the Immigration Service

The immigration service is not included in s. 11 of the Children Act 2004, where safeguarding obligations are described. It was argued by Ministers during debate on the bill that became the Children Act 2004 and the bill that became the Asylum and Immigration Act 2006, that such a requirement would impede the primary function of the service to enforce immigration controls. Ministers were unable to explain why this was true of the immigration service but not true of the police service and the prison service, both of whom are subject to the duty. The lack of the s. 11 duty was found by the second Joint Chief Inspectors’ report to undermine IND’s ability to ensure that safeguards are taken into account in service decisions regarding children and their families.

c) Children’s needs are invisible in the decision to detain

Instructions to immigration officers regarding the decision to detain a family include no requirement to consider the Children Act 1989 or the principles of the UNCRC before making decisions to detain. In short, this means that no one is actively considering the best interests of the child; they have become, in the words of Anne Owers, “invisible”.

UK detention policy, set down in the Operational Enforcement Manual, requires the decision-maker to balance potential breaches of human rights against the necessity of detention. Arguably, this requirement is wrong in law – it is necessary to design detention procedures that do not violate human rights. Even if the balancing approach was acceptable as a matter of law, HMIP inspections have shown no evidence that such a balancing exercise has been carried out or that IND was following its operational guidance in relation to ensuring that decisions to detain families with children were taken by high-ranking immigration officers, of at least the rank of inspector or assistant director.

d) Lack of adequate child protection arrangements

No environment where children are found – be it a school, sports club or a detention centre – can ignore child protection concerns. Children have a right to be safe from neglect and abuse whether from the institution, its staff or others within the institution – in the case of a detention centre, other detainees or members of their own family.

The Joint Chief Inspectors’ report in 2005 was critical of the lack of effective child protection systems in immigration removal centres, the failure to establish effective protocols with relevant local agencies and the absence of independent assessments about the welfare and developmental needs of detained children. The report comments on the lack of child protection procedures, even though “it must be assumed that the longer the child remains in detention, the greater the risk of significant harm”.
In numerous recent reports into conditions in short and long term detention facilities, HMIP has noted:

- staff with no child protection training, and no enhanced level Criminal Records Bureau (CRB) checks
- an absence of child protection policies or child protection protocols that had been agreed with the local authority
- a failure to ensure that staff training, systems and procedures properly reflect the needs of women and children, which had “implications for safety which needed urgently to be addressed”
- in short-term holding facilities, holding rooms which were found to be unsuitable for children, some described as ‘totally unsuitable’.

In August 2003, HMIP recommended that there should be an independent assessment of the welfare, developmental and educational needs of each detained child, guided by the principles set out in international and UK domestic law in relation to children and “to be carried out as soon as practicable after detention and repeated at regular intervals thereafter, to advise on the compatibility of detention with the welfare of the child, and to inform decisions on detention and continued detention.”

This recommendation has not been implemented. Steps taken by the Government to introduce welfare assessments at 21 days fall well short of those envisaged by HMIP. It remains the case that there is no benchmark for assessing a child’s welfare through the course of their detention, which may stretch to long periods.

3.4 Compliance with UK detention law and policy

Immigration detention does not need to be ordered or sanctioned by a court. The power to detain asylum-seekers and migrants stems from provisions of the Immigration Acts and is very widely drawn.

Stated policy requires that:

- Detention is subject to ongoing internal review, and written reasons outlining the basis for maintaining detention must be provided monthly to detainees.
- If detention is reviewed as no longer necessary, proportionate or reasonable, for example, if the reason for detaining is imminent removal and removal is not or is no longer imminent, then detainees should be released. Providing they have been in the UK for seven days, all detainees are entitled to apply to an immigration judge for bail. The burden of proving that the detention is necessary lies on the Secretary of State.

However, HMIP and independent research have found that:

- Long periods of detention have been documented in some cases. Of the 32 case studies in the *No Place for a Child* research, the length of detention ranged from 7 to 268 days. Half of these families were detained for more than 28 days.
Figures disclosed by IND to detention charity, Bail for Immigration Detainees, show that of 540 children recorded as leaving detention in the last three months of 2005, 36% were not removed from the UK, but were released on temporary admission or bailed. Research by Amnesty International, *Seeking Asylum is not a Crime*, published in June 2005, found three cases where families who had been detained had subsequently been granted refugee status.68

The UK Government does not provide detainees or their representatives with information about the consideration of alternatives. There is extensive anecdotal evidence of families complying with reporting requirements, but being detained with no warning and when, for documentation or administrative reasons, removal cannot be imminent.

In the experience of organisations working with families currently at risk of being detained, families are unlikely to abscond, since they wish to remain in contact with services, including health and education.69

Many detainees have no, or very poor, legal representation and many experience great difficulty in accessing an independent review of their detention by way of a bail application. HMIP has drawn attention to the fact that “Access to competent and independent legal advice is becoming more, not less, difficult as fewer private practitioners offer legally aided advice and representation.”70 Independent research commissioned by the Office of the Immigration Services Commissioner (OISC) also highlighted difficulties for detainees to access advice, in particular stating that “Information on bail and how to apply for this is vitally needed. It was clear that some solicitors are exploiting the situation around bail to extract significant fees just to prepare applications.”71 The European Union Commissioner for Human Rights, Alvaro Gil-Robles, following his visit to the UK in November 2004 found it “perverse that the burden should lie on the child or his family to take arduous steps to challenge their detention, rather than on the Immigration Service to prove its continuing necessity to an independent authority.”

### 3.5 Cost of detention

The use of immigration detention is acknowledged to be extremely expensive. In answer to a parliamentary question on 16 June 2006, Immigration Minister Liam Byrne disclosed that the average direct cost (not including overheads) of holding an individual in an immigration removal centre for one week is £812.72 The weekly cost of holding a family is likely to be higher than the average, given additional staffing costs.

The report of the House of Lords Subcommittee E refers to an annual budget of around £120 million for Yarl's Wood, and states that they were told “about 7,000 people had come through Yarl's Wood in 2005.”73 This works out at an average of £17,142 per person detained. Those sums, as detailed above, are not paying for a regime that provides education or addresses urgent child protection concerns.

Research by UNHCR highlights that “where comparative costs of detention vis-à-vis alternatives to detention are available, alternatives are universally more cost-effective than detention.” 74
4. Families liable to detention

4.1 How many families?

There very little information about children and families in detention, and almost no
publicly available information about children and families who could be detained, in
particular, families whose asylum claims have been rejected.75 In addition, there are
no robust data on absconding.

Without baseline information about the number of families concerned, their countries
of origin and the length of their stay in the UK, it is difficult to see how the
Government can construct an evidence-based justification for detention - and for
why the detention estate concentrates a significant proportion of its limited number
of available places on families with children. Better information, allied with an in-
depth exploration of the needs, experiences, hopes and fears of these families, are
essential.

4.2 Why some ‘failed asylum-seeking’ families do not leave the UK

Unmet protection needs
Poor-quality decision-making76, lack of access to high-quality legal representation77
and tightening of legal procedures, combined with legislative changes designed to
speed up asylum decisions, have resulted in families becoming ‘failed asylum-
seekers’ even where significant protection concerns are outstanding. They are from
countries widely acknowledged to be volatile and conflict-ridden, including Iran, Iraq,
Zimbabwe, the Democratic Republic of Congo and Somalia.

Physical and mental health needs, and other humanitarian considerations
As many as 20 per cent of asylum-seekers and refugees have severe physical health
problems 78 and between 5 and 30 per cent of asylum-seekers have been tortured.79

Women and children are particularly vulnerable to physical and mental health
problems. The high incidence of rape as a form of persecution perpetuated on
women asylum-seekers results in a range of sexual health and psychological needs
which may go unmet as a result of barriers to accessing help and the difficulty of
speaking about rape and sexual abuse.80

Children in asylum-seeking families are also known to experience acute health needs
as a result of deprivation before entering the UK, a situation that may be worsened
by living in poverty in the UK.81 In some cases, the physical and mental health needs
of a child or family will mean that return will not be safe.

Lack of support, information and advice about possible return
Families who have previously been forced to flee their country of origin to seek
safety but whose asylum claim in the UK is unsuccessful are expected to return,
often without warning, with no means of supporting themselves or their children
when they return. Some have had no contact with children or relatives since fleeing,
and need help with family tracing and information about their country of origin to
plan their return. Families in this situation are concerned about where they will live
on return, how they can support themselves, and whether their children will be able
to go to school or access healthcare. Families need information and support to plan return to their country of origin – in some cases a country their children have never seen. Without this support, families are likely to fear and resist return.

4.3 How do families leave the UK?

Despite the factors that prevent some families whose asylum claim has been refused from returning to their country of origin, approximately 34 per cent of refused asylum-seekers who left the UK in 2005 did so either without any support or through a voluntary assisted return scheme. Clearly, detention and forced removal is not the only way to ensure families comply with immigration control. There is a strong case for investing in more incentivised compliance schemes, which would ensure that families with protection needs are given asylum, while those whose claims are refused are supported to return in a safe and sustainable manner.

4.3.1 Informal return

The IND has no standardised system for collecting data on the numbers of refused asylum-seekers who leave the UK of their own accord, without state assistance.\(^8^2\) Therefore, other than the small number of people picked up by embarkation controls or applying for entry clearance at British missions overseas (see below), the number of families who leave the UK without Home Office involvement is simply not known.

Nevertheless, there are figures for the number of asylum-seekers recorded as having ‘left the UK without informing Immigration Authorities’. During 2005, this was recorded as 46,583, which represents 3 per cent of the total number of asylum-seekers who returned (15,650)\(^8^4\). Given that this number is compiled through minimal embarkation controls, plus the number of people applying for entry clearance at British Missions overseas, there is good reason to assume that the actual number of non-assisted returns is far higher.\(^8^5\)

4.3.2 Assisted voluntary return

As noted above, for those families without protection or care needs, support in planning for return to their country of origin and practical assistance on return can play a vital role both in avoiding the risk of punitive measures such as detention in the UK and in securing these families’ long-term welfare on return.

There are a number of Assisted Voluntary Return (AVR) programmes in the UK, all run by the International Organisation for Migration (IOM) on behalf of the Home Office. Applications are received and processed by IOM and approved by the IND. Indicative figures for removals in 2005 show 3,236 applicants returning to their country of origin under AVR programmes run by IOM, which constitutes 21 per cent of the total return figure of 15,650.

**Voluntary Assisted Return and Reintegration Programme (VARRP)**

VARRP is the primary assisted return programme in the UK\(^8^6\). Founded in 1999, VARRP expanded in 2002 to include reintegration support. The core VARRP package comprises:

- advice, counselling and information
- landmine-awareness training
- flights to the country of origin
- a £500 grant (in the form of in-kind assistance only).
Since 2005, VARRP has provided additional integration assistance to the value of £2,500 per person, with the option of receiving £1,500 in cash payments over a 12-month period or as in-kind support.87

Between August 2005 and May 2006, 7,685 people applied to return under the VARRP programme, of whom 5,032 asked for reintegration assistance.88 A total of 4,064 people returned, with 1,462 people taking up assistance from the IOM, primarily in the form of support for starting small businesses in their country of origin.89

**Assisted Voluntary Return for Irregular Migrants (AVRIM)**

AVRIM is a new project, started in 2004, and aimed at supporting the return of irregular migrants (those who have never made a claim for refugee or humanitarian protection). The AVRIM programme includes:

- advice and information
- assistance in obtaining relevant travel documents
- flights
- support at the airport at departure and on arrival.

AVRIM is open to people who have arrived in the UK legally and overstayed their leave and to those who have arrived in the UK illegally, including those who have been trafficked or smuggled into the UK.

In addition to the AVR projects outlined above, there are a number of other projects aimed at supporting people to consider voluntary return, offering advice, counselling and information, such as Safe Haven90, Refugee Action’s Choices Project91 and Refugee Council’s Voluntary Returns Project.92

### 4.3.3 Removals

The Home Office figures for removals in 2005 include those people who the Immigration Service (IS) establish have returned informally without previously having notified the IS, those who return under AVR programmes run by the IOM, those who approach the IS for voluntary departure and enforced removals by the immigration service.

The 15,650 total figure for removals in 2005, includes 3,236 AVR returns and 465 returns where the individual did not inform the immigration service prior to departure. This leaves a total of 11,949 whose removal either was enforced by the IS or who asked the IS to help with their departure.

All forced removals entail detention, albeit for very short periods, as the process of arresting a family involves using detention powers. IND policy on family removals is that a same-day removal cannot be carried out as a result of the findings of the enquiry into the death of Joy Gardner.93
In May 2006, the Home Office conducted a consultation on the family removal process, prompted by concerns about the welfare of children subject to immigration enforcement in Scotland. Respondents to the consultation raised serious concerns about the process including: families being given no warning of removal and picked up from their homes in the early morning; unnecessary and intimidating police presence and use of protective clothing; absence of interpreting facilities; and, in some cases, children being removed from their classrooms. In some instances the removal process is brutal and traumatic.

Enforced removals, like detention, are unsafe, distressing and expensive. The UK Government should make good its commitment to prioritising alternatives to detention and voluntary return by focusing its resources on developing a model of incentivised compliance based on community-based support and welfare, rather than punishment.
5. Alternatives to detention

Detention of families is commonly justified as necessary in order to prevent or avoid families absconding. This is despite what UNHCR has recently described as ‘the remarkable scarcity of official data, at least in the public realm, relating to the number of (non detained) asylum seekers, and failed asylum seekers, who abscond.’

UNCHR further notes that in destination countries detention during the claim is unnecessary, citing a study of some 76 states, and arguing that ‘alternatives ought to be implemented at least until their claim has failed and they are required to be returned to their country of origin.’

The following sections outline some existing community-based ‘alternatives’ to detention, both in the UK and internationally. Although variable in approach, these programmes can be broadly categorised in two ways: community-based approaches that have a casework and welfare focus, and community-based approaches that primarily use restrictive conditions to encourage compliance.

5.1 Existing alternatives in the UK

Temporary admission
As we have noted, there is significant evidence that detention is harmful to children and no evidence that suggests children and families are at high risk of absconding. Given this, and the limited capacity of the detention estate, the most obvious alternative to detention is simply to not detain.

Bail
As mentioned above, all detainees are entitled to apply for release from detention on bail from a chief immigration officer or port, or from an immigration judge at the Asylum and Immigration Tribunal (AIT). If bail is granted, the individual will be bailed to live at an address agreed by the court, often with friends or contacts agreeing to act as ‘surety’ guaranteeing to keep in touch and putting forward a sum of money which can be forfeited to the court if the person absconds.

Bail can therefore be considered as an alternative to detention, once detention has already been employed but is no longer justified. However, as noted by the European Human Rights Commissioner and HMIP, many detainees are unable to exercise their right to apply for bail due to lack of legal representation or they may be unaware of this right. The lack of an automatic bail application (legislated for in 1999 but never implemented, and repealed in 2001) means that people remain in detention who would be bailed if they were to apply. In addition to the personal costs to that individual, this situation also results in the blocking of detention spaces.

Reporting
Asylum-seekers on temporary admission or bail are all subject to reporting conditions, which involves travelling to ‘reporting centres’ at regular intervals. Failure to report leads to withdrawal of support.

While reporting is clearly preferable to detention, current reporting practice in the UK can be extremely invasive and difficult to comply with, especially for families with
children. It is not uncommon for people to be expected to report several times a week to a centre many miles from their home, a journey that they have to make with little or no money.99

Through the roll out of the New Asylum Model, the Government has the opportunity to develop the reporting system into a more meaningful and positive process as part of the case owner approach. This would allow more sensitive reporting arrangements and for the reporting process to be directly linked with casework contact, where families could get information about their case, explanation of delays and opportunities to raise any concerns or difficulties they experience.

**Electronic monitoring**
Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act (2004) enabled electronic monitoring of all adults subject to immigration control. Monitoring mechanisms include voice recognition, electronic tagging and tracking.

As with reporting, tagging is clearly preferable to detention, but at present, there is no publicly available information on the effect of electronic surveillance on absconding rates. There has been widespread concern among refugee supporting agencies about the negative effect tagging can have on the lives of asylum-seekers.

UNHCR’s recent report on alternatives to detention notes that in the 2001 Home Office evaluation of tagging in the criminal justice field there was a 90 per cent compliance rate amongst criminals. Also in 2001, South Bank University conducted research into outcomes for asylum-seekers whose claims had failed, who were considered ‘high flight risks’ and who had been released on ordinary bail conditions. This group complied at 80 per cent with no other intervention.100 The report suggests that tagging may only be necessary or effective in a minority of cases.

### 5.2 Models from abroad
#### Casework/ welfare approaches

In **Sweden** families with children are initially accommodated in a reception centre where their health and support needs are assessed, before being dispersed to regional ‘refugee centres’: flats organised round a central office.101 Each asylum-seeker is assigned a caseworker who:
- explains the determination process and their client’s rights within it
- ensures that the application is handled properly and that the client is able to access interpreting and legal representation
- provides referrals to counselling and healthcare.

Asylum-seekers are required to visit the caseworker at least once a month, when they receive a case update, their subsistence allowance and a review of their needs and risks assessments. Reviews of the system suggest it is successful in both providing support and securing compliance with immigration decisions, including return.102 Detention is very rarely used, and the maximum detention period for children under 18 in Swedish legislation is three days, with a possible extension to six days in extreme circumstances. This system is reported to have brought significant cost reductions in the treatment of asylum-seekers.
In Canada, the state-funded **Failed Refugee Project**, run by the Greater Toronto Enforcement Agency, provides counselling and practical assistance to asylum-seekers whose claims have been refused. Clients of the project are given a 30-day period to plan return and organise their affairs. In 2001–02, 60 per cent of the project’s clients returned to their country of origin after this period, and a further 20 per cent after a follow up visit from the project. Thus, overall 80 per cent of the project’s clients returned without any need for punitive measures, detention or enforced removal. The British Columbia and Yukon Regional Enforcement Agencies trialled this approach with similar results. All three programmes are now being scaled back as a result of budget cuts.103

Perhaps the most comprehensive welfare-based casework approach to working with asylum-seekers, including asylum-seekers whose claims have been refused, is that employed by **Hotham Mission** in Melbourne, outlined in some detail below.

**Bail**
The state funded **Toronto Bail Programme** works with people who have no family or other person to act as surety. Clients are released without bond to the programme and required to comply with regular reporting and unannounced visits. The programme reported a 91.6 per cent compliance rate for 2002–03.

However, there is also evidence that bail without restrictive conditions is equally effective. Several homeless shelters in Toronto provide support and access to legal advice. ‘Hamilton House, for example, reports that 99 per cent of its residents have complied with the full asylum procedure. Matthew House reports that only three out of 300 residents have disappeared from its premises in the past five years.’104

**Reporting**
‘As with most alternatives to detention, the possibility of imposing reporting requirements appears to be under-utilised as a measure to be considered prior to and in place of detention, particularly in specific cases where there is deemed to be some moderate degree of flight risk.’105

The UK is the state with the most comprehensive use of reporting, although states such as France, Luxembourg and South Africa require asylum-seekers to periodically present and renew their identity documentation, and states such as Thailand, Japan, Canada and the USA impose reporting requirements on particular asylum-seekers.

**Electronic monitoring**
The USA is the only country other than the UK to have piloted wide-ranging use of electronic monitoring, running pilot projects using tagging alongside home curfew in Miami, Detroit, Seattle and Anchorage. This programme is now being rolled out in other cities across the USA, under contract with Behavioural Interventions Ltd. At present, there is no publicly available data on the compliance rates achieved by tagging asylum-seekers, and the USA programme has been subjected to significant criticism by community groups and refugee supporting organisations.
6. Taking a positive approach to families at the end of the process

‘Information in this study reveals that there may be several common factors that influence the effectiveness of a particular alternative measure as far as preventing absconding and/or improving compliance with asylum procedures namely (a) providing legal advice; (b) ensuring that asylum seekers are not only informed of their rights and obligations but that they also understand them; including all conditions of their release and the consequences of failing to appear for a hearing; (c) providing adequate material support and accommodation throughout the asylum procedure; (d) screening for either family or community ties or, alternatively using community groups to ‘create’ guarantors / sponsors.’

As we have noted, detention, including detention of families with children, is becoming increasingly common in the UK. This is occurring in spite of evidence that detention is both harmful and unnecessary, and that families with children are even less likely to abscond than single adult asylum seekers. To date, exploration of alternatives has commonly been limited to restrictive approaches such as bail, reporting and tagging.

The creation of the New Asylum Model, with its emphasis on an end-to-end managed casework provides an ideal opportunity to build an alternative approach to working with families whose claims have been refused, which focuses on providing support, safety and dignity. However, any such model needs to begin by responding to the situation of families who cannot be returned, whatever their immigration outcome.

6.1 The family indefinite leave to remain exercise

In August 2004, the Home Office announced what is known as the ‘family leave to remain exercise’. This process made Indefinite Leave to Remain (ILR) available to families who had at least one child under 18 in the UK on 2 October 2000 or 24 October 2003, and whose principal applicant had lodged their asylum claim before 2 October 2000. The rationale driving the one-off exercise was pragmatic: where families have been in the UK for a substantial period of time, their children are likely to have integrated into UK society, may have little or no meaningful links with their country of origin and removal would have a significant impact on their well-being. Challenges brought on human rights grounds were therefore likely to succeed, at vast expense. These principles are not time-limited, and equally apply to children and families who have entered the UK since October 2000. We urge the Home Office to consider granting ILR to families on compassionate grounds, in line with the best interests and welfare of the children.

6.2 Families who cannot be returned

For many people return is not an option as a result of the situation in their country of origin. Where there is no prospect of returning a family safely, the Home Office should grant temporary renewable leave to remain. Attempting to force families to return with their children to conflict or post-conflict situations is not only impractical, but also puts children and families at risk of harm.
Granting of temporary leave to nationality groups is not uncommon: Finland grants temporary residence permits to Iraqis, Somalis and Afghans on the grounds that it is not safe to return to these countries, and Sweden grants full refugee protection to people from southern Iraq and temporary residence permits to Iraqis from the northern, Kurdish regions.\textsuperscript{109} In the UK, by contrast, Zimbabweans and Somalis, are left in limbo, unable to rebuild their lives.

Additionally, some families cannot be returned safely as a consequence of the health or welfare needs of family members. When assessing whether a safe return is possible, the vulnerability of all family members should be taken into account, with particular emphasis given to the needs and interests of children. \textbf{Families who cannot be returned for welfare reasons should be given indefinite or temporary leave as appropriate.}

\textbf{6.3 Casework and welfare approach}

The underlying principles of the casework and welfare approach to working with families at the end of the process should be:

- access to independent, high-quality legal advice to ensure that families with outstanding refugee or humanitarian protection needs are identified, and in order to build trust and confidence in the asylum system
- access to an independent caseworker whose role includes:
  - ensuring the family has legal representation
  - ensuring the family’s housing, support and welfare needs are fully met
  - providing practical and emotional support to the family in planning for the future including, where appropriate, planning for return (this should include family tracing, support to wind up affairs in the UK and planning for housing, employment, school enrolment and rebuilding community links in their country of origin)

These principles are based on the work of the Asylum Seeker Project run by Hotham Mission in Melbourne, outlined in detail below:

\textbf{Asylum Seeker Project, Hotham Mission, Melbourne}

The Asylum Seeker Project (ASP) was established in 1997, in response to the needs of destitute and homeless asylum-seekers on Bridging Visa E.\textsuperscript{110} The approach of the project builds on the Swedish model (see above) and provides:

- \textbf{Casework}
  The casework response seeks to ensure a sound basis for improved welfare, establishing a safe environment and empowering and helping facilitate the best possible immigration outcomes for the client, whether they be settlement or return outcomes.\textsuperscript{111}

The emphasis of the casework is on meeting the protection and welfare needs of the client, ensuring that they both fully understand and can contribute to shaping their situation. The relationship of trust built between the client and the caseworker is seen as central to the positive outcomes achieved by the project.
In addition to the services directly provided by ASP (housing, cash support, advice and groupwork), the caseworker ensures that their clients have access to independent, high-quality legal advice and representation, as well as to the health, welfare and education services they and their family need.

The casework role is undertaken by qualified social workers and is provided through an office-based case co-ordination team and a housing-based outreach team. The new case management system being instituted with the Australian Department for Immigration and Multicultural Affairs (DIMA) draws heavily on the learning from ASP.

**Housing**
Currently, ASP houses 120 asylum-seekers in 38 properties across Melbourne. It is the only specialist housing provider for asylum-seekers in Australia.

**Support**
ASP provides cash support in the form of ‘basic living assistance’ and emergency funds. The basic living assistance is provided through a cash payment of Aus $125 per month, supplemented by support sourced through food banks and other aid providers. The emergency funds provide support for housing, medical and daily living.

**Befriending/social support**
The project runs a volunteer ‘Link Up’ programme that offers social support to isolated asylum-seekers, particularly young people and lone parents. In addition, it runs support and social groups for young people, men, and women.

**ASP clients**
In 2005, ASP worked with 374 clients. Over 40 per cent of them were in families with children under 15, and 34 per cent of these were single parent families. Children under 15 made up 30 per cent of all ASP clients.

Research in 2003 into the work of the project found that 31 per cent of ASP clients had been detained at some point. Since late 2000, the Australian Government has begun releasing detained asylum-seekers to ASP. The success of this work has led to DIMA funding a community care pilot through the work of the Australian Red Cross.

**Outcomes**
ASP has consistently delivered exceptional outcomes for its clients. An evaluation of the ASP in 2003, which considered 111 cases (203 people) supported by the ASP between February 2001 and February 2003, revealed that:

- 43 per cent of cases received immigration status (permanent or temporary)
- 57 per cent of cases had their claims refused and left the country
- 0 per cent of clients absconded.

Of the 37 cases finally refused, 18 cases returned voluntarily, including voluntary return to their own country and to a safe third country. The high level of voluntary return highlights the success of the ASP’s casework system in preparing, supporting and empowering asylum-seekers at the end of the process. Three years on, the rate of compliance with immigration decisions remains exceptionally high.
Resources

In 2005/06, ASP employed 15 staff and had annual income of $904,058 AUS (£363,955). Its work relies heavily on the support of volunteers, community and church groups, and it is funded entirely from trusts and individual contributions.

Building on the ASP in the UK

Drawing on the success of ASP in Australia, there is clearly potential in the UK to build on the New Asylum Model (NAM) by extending its casework principles to asylum-seekers whose claims have been rejected. Now, with the National Asylum Support Service in the process of merging with NAM to create a single support and decision-making structure, the case for taking a holistic approach to families at the end of the asylum process is yet more compelling.
7. Next steps

The Government should change its policy on detaining children in families and introduce an alternative approach to working with families at the end of the process:

- a) The Home Office should grant ILR to families on compassionate grounds, where return is clearly counter to the best interests of the children.

- b) Families who cannot be returned for safety or welfare reasons should be given indefinite or temporary leave as appropriate.

- c) For families who are not given status, the Government should develop a caseworker model, drawing from lessons of the Asylum Seeker Project, Hotham Mission, Melbourne.

The underlying principles of this approach should be:

- Access to independent, high quality legal advice to ensure that families with outstanding refugee or humanitarian protection needs are identified, and in order to build trust and confidence in the asylum system
- Access to an independent caseworker whose role includes:
  - ensuring the family has legal representation
  - ensuring their housing, support and welfare needs are fully met;
  - providing practical and emotional support to the family in planning for the future, including, where appropriate, planning for return (this should include family tracing, support to wind up affairs in the UK and planning for housing, employment, school places and rebuilding community links in their country of origin).

7.1 Safeguards for detention

This paper puts forward evidence that there are alternatives to detention and that families are unlikely to abscond. It also seeks to promote an alternative approach to families at the end of the process. However, for as long as the policy of detaining children is maintained, the following safeguards must be implemented:

- Detention should only be used where it is a necessary and proportionate response to an individual case. Any decision to detain should include:
  - a strong presumption in favour of non-detained options, including positive casework support and reporting where necessary
  - an objective assessment of risk in each case, made on the basis of clear and publicly available criteria
  - an independent social work assessment of the child’s welfare needs, and the likely impact of detention or other measures on their well-being before detention. The assessment should include a determination as to what is in the child’s best interests, and reflect the views and wishes of the child.

- All families should be supported to access independent, high-quality legal advice throughout the process. Decisions to detain should be subject to automatic independent judicial scrutiny
Conclusion

Detaining children is harmful, unnecessary and expensive. The Government should make good its commitment to international and UK human rights and child welfare standards by investing in a welfare and casework approach to working with families whose asylum claims have been rejected. Evidence shows that these systems work for families and for states. Only by doing this can the UK Government ensure protection for those who need it, safety for those who return to their countries of origin, and trust and confidence in the system from those who pass through it and from the public at large.
Amnesty International (2005) *Seeking Asylum is Not a Crime: Detention of people who have sought asylum.*

Aynsley Green, Prof. A, (December 2005) *An announced visit to Yarl’s Wood Immigration Removal Centre, 31st October 2005.*

Bail for Immigration Detainees (Feb 2005) *Update on the detention of families.*

BID & Asylum Aid (May 2005) *Justice Denied: Asylum and Immigration Legal Aid – A System in Crisis.*


Bruegel and Natamba (June 2002) ‘*Maintaining Contact: What happens after detained asylum-seekers get bail?’* South Bank University.


Crawley, H (February 2006), *Child First, Migrant Second: Ensuring Every Child Matters,* ILPA.

Cutler, S (2005), *Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs,* Bail for Immigration Detainees, London.


Joint Chief Inspectors (July 2005), *Safeguarding Children: The second joint Chief Inspectors’ Report on Arrangements to Safeguard Children*

Legal Action for Women, Black Women’s Rape Action Project and Women Against Rape (December 2005) *A ‘Bleak House’ for our times: An investigation into women’s rights violations at Yarl’s Wood Removal Centres.*


Peel, Dr. M. (Ed.) (2004). *Rape as a Method of Torture,* The Medical Foundation for the Care of Victims of Torture: UK.


1 See: [http://www.everychildmatters.gov.uk/aims/](http://www.everychildmatters.gov.uk/aims/)

2 *Fairer, Faster, Firmer: A modern approach to immigration and asylum,* para 12.5, Home Office, HMSO

3 Letter from Kevan Brewer, Director of Immigration Detention Services Services to BID 25/9/2001

4 Letter from Simon Barrett, Assistant Director of the Detention Services Policy Unit to BID 18/6/2002


6 See for example:
   - Amnesty International (2005), *Seeking asylum is not a crime: detention of people who have sought asylum*
   - Cutler, S (2005), *Fit to be Detained? Challenging the detention of asylum seekers and migrants with health needs,* Bail for Immigration Detainees, London

7 See ss 36 & 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004

8 Drawing in particular on Ophelia Field’s 2006 study for UNHCR on alternatives to detention across 34 states and Dr Heaven Crawley’s 2005 study for Save the Children UK, No Place for a Child – Impacts, Alternatives and Safeguards

9 In January 2005, a new family centre opened at Yarl’s Wood Immigration Removal Centre. See Update on the detention of families, February 2005, Bail for Immigration Detainees,

10 Estimate contained in Crawley, H (2005) op cit

11 See, for example, Save the Children’s advocacy on the basis of the No Place for a Child report, or work done by the Interagency Partnership (Migrant Helpline, Refugee Action, Refugee Arrivals Project, Refugee Council, Scottish Refugee Council and Welsh Refugee Council) as part of the evaluation of the s. 9 pilot.

12 ‘Incentivised compliance’ is a generic term for models of working that provide additional support to families in order to ensure protection and support needs are met.

13 “While the detention of families with children is very regrettable, it nevertheless remains necessary in appropriate cases in order to maintain an effective immigration control and to tackle abuses of the asylum system.” Tony McNulty MP, Answer to a Parliamentary Question, Hansard, 18 Apr 2006: Column 312W. See: http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060418/text/60418w80.htm#60418w80.html_spnew6

14 “Let me make it clear to my hon. Friend that Ministers—including the Minister of State—would prefer no enforced returns to any country, and particularly no enforced returns of children. We would prefer to persuade and encourage people with no basis of stay or leave to remain in the country to leave voluntarily. That would be better for all concerned. Clearly it would be better for the Home Office, but it would also allow people to leave with more dignity and at a time of their choosing. That is a preferable outcome for all concerned.” Andy Burnham MP, Hansard, 10 Jan 2006: Column 46WH.


17 The remit of HMIP is restricted to considering welfare conditions in detention, and therefore reports do not comment on decisions to detain families.

18 http://inspectorates.homeoffice.gov.uk/hmprisons/inspect_reports/irc-inspections.html/

19 See Update on the detention of families, February 2005, Bail for Immigration Detainees,

20 See A ‘Bleak House’ for our times: An investigation into women’s rights violations at Yarl’s Wood Removal Centres by Legal Action for Women, Black Women’s Rape Action Project and Women against Rape, December 2005. The report outlines concerns about the quality of decision-making in claims of gender-based persecution, as well as serious shortcomings in the care of women and children in detention.


22 Refugee Council (September 2005), Briefing on the New Asylum Model

24 "Immigration Service is reviewing all aspects of the process for effecting family removals, and the outcome will take the form of guidance, which will be made available to operational enforcement staff, through the operational enforcement manual." Baroness Scotland of Asthal, Hansard, 18 May 2006: Column WA64

25 Section 9 allows the National Asylum Support Service to withdraw support from asylum-seeking families whose claims have been rejected and are refusing to co-operate with redocumentation and return.


27 A study by Ophelia Field with the assistance of Alice Edwards (April 2006)


29 Ibid, p 64


31 EDM 1845: CHILDREN IN DETENTION (Tabled by Neil Gerrard MP 17.03.2006)
That this House is concerned by the detention of children in UK immigration detention centres as part of the standard immigration procedure; recognises the negative impact on children's mental and physical health and the disruption of their education; welcomes the work conducted by Save the Children, the Refugee Council, Bail for Immigration Detainees, the Scottish Refugee Council and the Welsh Refugee Council to bring an end to this unjust policy; supports their recommendations that children should be treated as children first and foremost and their needs and rights protected; calls for alternatives to detention to be piloted; and urges the Government to make detailed statistics available on an ongoing basis regarding the ages of, and numbers of, children held in detention and the length of time each is held in detention.

32 S2M-4209: No Place for a Child: Stop Detaining Children Now!
That the Parliament welcomes the "No Place for a Child: Stop Detaining Children Now! Campaign" launched on 27 March 2006 by Save the Children UK and the Scottish Refugee Council along with the Welsh Refugee Council and Bail for Immigration Detainees; notes that the UK Government locks up thousands of children and babies each year; further notes that parents and children are not told how long they will be detained for and observes that this can be for over a year; is concerned that internment can be physically and mentally traumatic for children, with long-term negative repercussions; agrees that most of these families have complied with immigration regulations, and suggests that there are other, less expensive, ways of dealing with immigration which protect both the rights of those seeking immigration and the rights of the child not to be scarred for life.

33 See for example, Coles, E (2003), A Few Families too Many: The detention of asylum seeking families, BID

34 Crawley, H (2005) op cit


37 The 1944 Act created a statutory right to free state education for all children.


41 Adopted by the General Assembly Resolution 45/113 of 14 December 1990. The Rules set a general standard to which states should aspire, but do not have the status of a treaty.

42 (1991, UK Reservation to UNCRC) “The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time”.


44 IND guidance for dealing with children in need (forthcoming)

45 see Key facts and figures above

46 Crawley, H (2005) op cit

47 see section 3.1. of this report

48 Ophelia Field (2006), Alternatives to Detention of Asylum Seekers and Refugees, UNHCR p.17

49 Crawley H (February 2006) op cit, p 9

50 Immigration and Asylum Act 1999 s. 94 (1)

51 For example, the Children Act 2004 has excluded asylum-seeking children from key provisions – notably s. 11 on safeguarding arrangements. Other examples of recent divergence from the inclusive principle of children’s law are the Adoption and Children Act 2002, s. 116, which redefined ‘looked after’ to exclude many asylum-seeking children supported by s. 17 of the Children Act 1989 and hence exclude them from leaving care duties; Schedule 3 of the Nationality Immigration and Asylum Act 2002 also attempts to render children and families ineligible for support under the Children Act 1989 in certain circumstances.

52 Baroness Ashton said during the Lords Grand Committee reading of the Children bill (now the Children Act 2004) that “a duty to have regard to the need to safeguard and promote the welfare of children could severely compromise our ability to maintain an effective asylum system and strong immigration control.” (Official Report, 17/6/04; col. 996.)


54 ‘Illegal Migrants: Proposals for a common EU returns policy’. HoL EU Subcommittee F. Evidence Q255 Anne Owers


57 Parental stress is a risk factor for physical abuse of children.

58 July 2005, Safeguarding Children: The second joint Chief Inspectors’ report on arrangements to safeguard children, p 81


60 Required for staff with substantial unsupervised access to children, recommended for all those in contact with children in the workplace.


HMIP Yarl’s Wood report, 2005, p.5

An Inspection of Dungavel Immigration Removal Centre, October 2003, HMIP, August 2003, p 45

In December 2003, an intention to introduce welfare assessments at 21 days was announced for Dungavel IRC (See: Home Office Press Release, Stat 054/2003, 16 December 2003). It was later confirmed that these would be extended to other IRCs. Welfare assessments began for children at Yarl’s Wood in late 2005.


Instructions to Immigration Judges state: “As detention is an infringement of the applicant’s human right to liberty, you have to be satisfied to a high standard that any infringement of that right is essential.” Chief Adjudicator’s Guidance Notes on Bail, 3rd edition May 2003

Crawley, H (2005) op cit

p 5, Seeking Asylum is not a Crime: Detention of people who have sought asylum, Amnesty International UK, June 2005

See p 27, Coles, E., (March 2003) A Few Families too Many, Bail for Immigration Detainees

HM Inspectorate of Prisons, inspection report on Dover Immigration Removal Centre, July 2004.

‘Conclusions of and recommendations made to the Office of the Immigration Services Commissioner’, presented by independent consultants, OISC Annual report, 31 March 2005

Liam Byrne MP, Answer to a parliamentary question, 16 Jun 2006, Hansard, Column 1423W. http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060616/text/60616w1000.htm#06061625000212

‘Illegal Migrants: proposals for a common EU returns policy’. HoL EU Subcommittee F. Evidence, May 2006, appendix4


Those families subject to detention linked to removal fall into two broad classifications: families who have sought asylum in the UK, and exhausted all appeal rights, and families who have never claimed asylum, but have overstayed visas, or entered the UK illegally. The latter group can include families who need international protection, either as refugees or victims of trafficking.

In quarter one of 2006, 26% of appeals were successful.

See Justice Denied: Asylum and Immigration Legal Aid – A System in Crisis, May 2005 and Into the Labyrinth: Legal advice for asylum seekers in London, Greater London Authority, March 2005


Peel, Dr. M. (Ed.)(2004). Rape as a Method of Torture. The Medical Foundation for the Care of Victims of Torture: UK.

Ibid


The Immigration Service discontinued the process of recording people entering and leaving the country at ferry ports and small and medium sized airports in 1994 and in large airports in 1998. Since 1994 there have been a number of targeted operations by UKIS. One such operation, Operation Union, fingerprint checked (with consent) all departing passengers on selected flights out of Heathrow during Christmas 2002, February, April and December 2003 for a total of 34 days. Operation Union identified 191 immigration offenders of which 40 were failed asylum-seekers
Home Office (2006) Asylum Statistics: 1st Quarter 2006, United Kingdom, RDS, National Statistics. These are the provisional statistics for 2005 and are subject to change.

Home Office data on removals includes voluntary returns, voluntary assisted returns, those who have left the UK without informing the immigration service and those returned to a third country under the Dublin II regulation.

In December 2004, the Home Office began a pilot programme screening arrivals to the UK and departures on specific routes. The pilot will screen a total of six million passengers and will be rolled out from 2008 as part of the five-year strategy on immigration.

There are two programmes open exclusively to asylum seekers and refused asylum seekers from Afghanistan: RAP (similar in content to VAARP) and Explore and Prepare, which allows Afghan asylum-seekers to return temporarily to Afghanistan in order to consider and or plan for permanent return.

Open to asylum-seekers, former asylum-seekers, people with ELR/E, HP or discretionary leave and those in long-term immigration detention or prison. VARRP is not open to people if arrangements for return are already in place, or a deportation order has already been issued. Once an application has been made and approved, the applicant is asked to sign a declaration withdrawing their asylum application on departure from the UK. See http://www.ind.homeoffice.gov.uk/lawandpolicy/voluntaryreturn/varrp for more details.

IOM offers reintegration support in the form of either small business start up programmes, or education and training.

Statistics provided by IOM to the Refugee Council, last updated June 2006

An IOM-funded pilot project aimed at providing a family friendly voluntary return information service in Yorkshire and Humberside. The project offers written telephone and one-to-one advice to families considering voluntary return, and runs family friendly information groups outside of school hours in community centres with childcare facilities

Run in partnership with IOM, Choices provides confidential, independent and impartial advice, information and informal counselling, to refugees and asylum seekers who are considering return to their country of origin.

Funded by the Home Office, VRP provides independent, impartial information about return to Afghanistan and Iraq, facilitates community liaison meetings between the Home Office and refugee community organisations and works to influence effective development of voluntary return policies and programmes.


See, for example, Refugee Council's Response to the IND National Review of Family Removals Process, May 2006.


The term destination countries refers to those countries in which large numbers of refugees seek protection (as opposed to source and transit countries).

Field, O and Edwards, E (2006) op cit


Ibid, p 93


Living in the flat is not mandatory, but the monthly reporting process is.

Alternatives to Detention', consultation paper, 1997, European Council on Refugees and Exiles
The northern region of Iraq is generally considered to be more stable than the South.

These people have had an initial determination of their claim and appeals rejected, but are making representations to the Minister. Their legal position is broadly analogous to that of an asylum-seeker classed as ‘appeal rights exhausted’ in the UK.

See http://asp.hothammission.org.au/

Main countries of origin were, Sri Lanka, Turkey (Kurds), Albania, Russia, India


Katherine Marshall, Outreach and Casework Co-ordinator for ASP 2002-2006 stated that over that period, only four clients had absconded. Interview with Katherine Marshall, 19 June 2006
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