



House of Commons
Home Affairs Committee

**The work of the UK
Border Agency (November
2010–March 2011):
Government Response to
the Committee’s Ninth
Report of Session 2010–12**

First Special Report of Session 2012–13

*Ordered by the House of Commons
to be printed 22 May 2012*

The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Inquiry Manager), Andy Boyd (Senior Committee Assistant), John Graddon (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

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First Special Report

On 2 June 2011 the Home Affairs Committee published its Ninth Report of Session 2010-12, *The work of the UK Border Agency (November 2010–March 2011)*, HC 929. The Government’s response to the report was received on 19 July 2011, and is published as an Appendix to this Special Report.

Appendix: Government response

The Committee published its report “The work of the UK Border Agency (November 2010–March 2011)” on 2 June 2011 and included a number of comments for consideration by the UK Border Agency. The Government response is provided below.

UK Border Agency’s legacy cases

Comment 1: The target seems to have been achieved largely through increasing resort of grants to stay... or the parking of cases in a controlled archive (Paragraph 3) and

Comment 2: We consider that in practice an amnesty has taken place. (Paragraph 5)

Government Response

On 31 March 2011 the UK Border Agency had reviewed all cases in the asylum backlog, ahead of schedule. In doing so, the agency applied existing policy and legislation; there are no separate policy criteria for these cases. All cases therefore have been dealt with on their individual merits in line with existing law and policy. There is no amnesty and the fact that we have removed more than 37,000 individuals is proof of that. Those who qualify have been granted leave to remain in the UK; those who do not the UK Border Agency has either removed or is in the process of pursuing removal action.

The Case Resolution Directorate (CRD) began its final closedown on 31 March having reviewed around 500,500 cases. 455,000 of those have been fully concluded. These break down as 38% grants 8% removals and 54% concluded for another reason (i.e. duplicate records or controlled archive) - see figure 1, the response to comment 3 and Annex A all below¹. As the Committee is aware, at the beginning of the programme it was estimated that there were 400,000-450,000 older asylum records to review. As the agency has worked through the cases it has gained a more accurate picture of the cohort. The agency has always been open about the poor quality of the records that CRD was working with; this is why the number has increased because, for example, we found

¹ As with previous reports, the information provided here is subject to revisions for the same reasons set out before to the Committee regarding data quality and is being reviewed by the National Audit Office.

paper records not previously on the system and new dependants that needed to be added to existing claims. Figure 2, below, shows the number of cases remaining in the legacy programme between July 2006 and March 2011.

Fig 1: Outcome of cases dealt with under 'legacy' backlog end of May

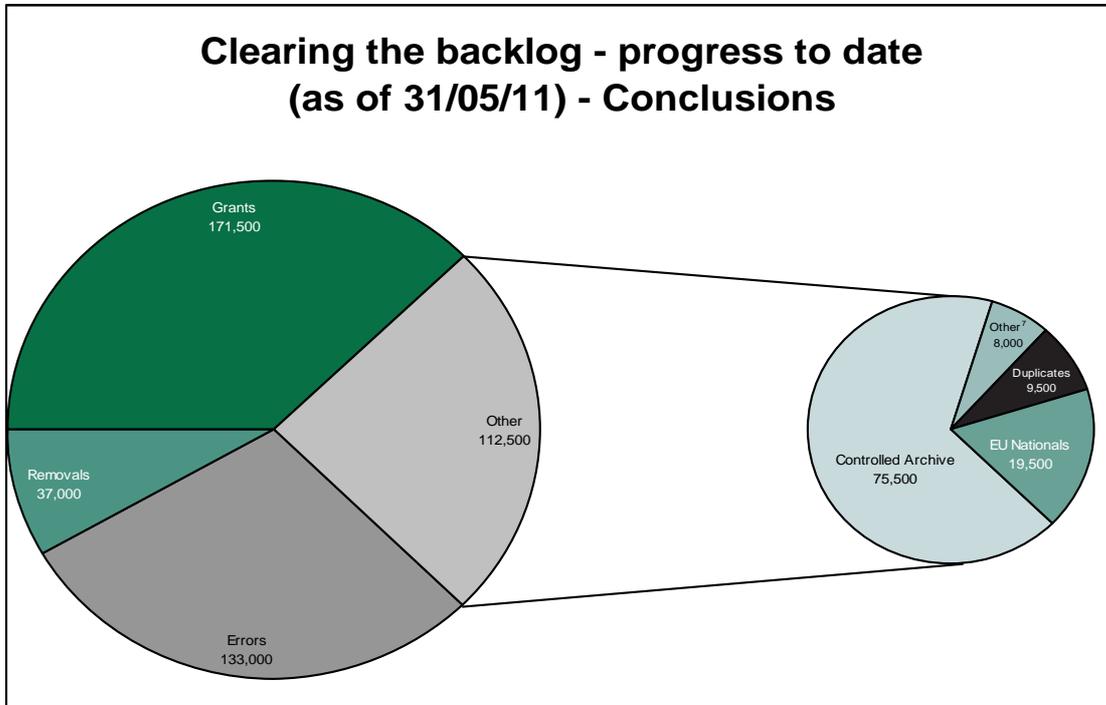
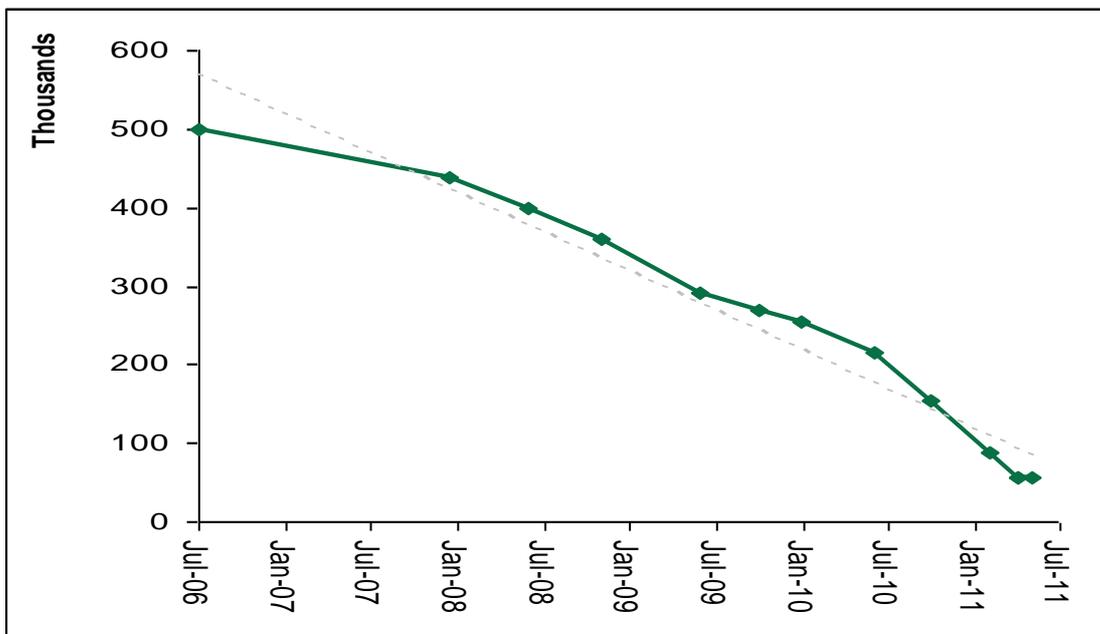


Fig 2: Estimates size of asylum backlog since July 2006



As Jonathan Sedgwick, Acting Chief Executive, informed the Committee in his letter of 2 March 2011, the Case Assurance and Audit Unit (CAAU) has been established. The CAAU is taking forward residual work on 23,000 live cases which have been reviewed and are awaiting conclusion. In many of those there are barriers to conclusion such as ongoing litigation, impending prosecutions, incomplete legal or criminal proceedings or non-compliance. We are writing to individuals whose cases were reviewed at the end of the process over the next few weeks.

The CAAU is also managing the controlled archive. A further 22,000 cases, all of which were reviewed in the last six months of the programme, will be added to the controlled archive where internal and external checks will continue to be made to attempt to locate the applicant and conclude the case.

The Committee has previously been made aware that the agency is also reviewing 40,000 outstanding migration cases. We have now concluded around 38,000 of those cases which breaks down as 3,100 grants, 2,000 refusals and 32,900 other conclusions (i.e. duplicate records or controlled archive). The cases that remain to be concluded are now with our regional teams who are working to remove the applicant.

Comment 3: In about 74,500 of the 400-450,000 cases – approximately one in six – the UK Border Agency has been unable to trace what happened to the applicant. We consider this indefensible. (Paragraph 4)

Government Response

Given the length of time that some of these individuals have been in the UK, we have always been clear that a significant proportion of the legacy cases would be likely to be eligible to remain in the UK.

Inevitably there will be legacy cases which are more difficult to trace, for example, because people have left the country. The UK Border Agency does make every effort to trace individuals, writing to them at their last known address and checking up to 19 internal and external databases. We also work with representative groups to ensure that individuals update us with their current addresses. We have also provided clear details on how to contact the legacy programme on the Home Office website. When it has not been possible to find an individual we continue to pursue the case as part of our controlled archive which is checked against watchlists and also against the Police National Computer on a regular basis. If this identifies a contact with an individual, we will follow up. Alternatively, if an applicant or their representatives make contact with us we will update our records and conclude their case.

Following the closure of Case Resolution Directorate, the Case Assurance and Audit Unit (CAAU) will continue to monitor the controlled archive pool, reactivating and concluding any cases which may come to light. CAAU will undertake strategic targeted checks on controlled archive cases.

The controlled archive increased as we reached the end of the overall programme. These were often the older cases which pre-dated our internal databases and included little contact information or the applicant had absconded, which meant that they could not be fully concluded at that time. We continue to monitor them.

Comment 4: When the UK Border Agency produces its next letter for us, which should be the final report on this legacy, we expect the Agency to have made an estimate of the total cost of this programme. (Paragraph 5)

Government Response

The operational costs associated with legacy cases – not including enforcement costs, detention and removal escort costs or asylum and immigration tribunal costs – remained stable throughout the course of the programme, at approximately £32 million per year. These operational costs are inclusive of an outsourced administrative function from 2009-2010. Support costs for applicants are accounted for separately, and the Committee will wish to note the significant reduction in this area of expenditure which, in FY06/07 stood at £360 million and were reduced to £72 million in FY10/11 as a result of the UK Border Agency's commitment to focus on asylum support spend.

New asylum cases

Comment 5: We welcome the move away from a single target for asylum caseworkers... However, a 'basket' of eleven indicators may lead to excessive bureaucracy and reporting requirements and/or a degree of confusion amongst staff as to how they are supposed to determine priorities (Paragraph 8)

Government Response

The UK Border Agency's broader suite of performance indicators has been designed to show the overall health of the asylum system, covering speed, quality, productivity and cost. A focus on the total number – and age profile – of the outstanding caseload will ensure that every case is visible and managed to conclusion. We do not believe this to be excessively bureaucratic as the indicators are complementary and will allow us to monitor the asylum system in the most effective manner and to take targeted action where appropriate. We have also committed to publish this information so the Committee and the public can scrutinise and hold us to account for a system which is effective and efficient overall.

The Asylum Improvement Project, which was established by the Government last summer, has been exploring new ways to improve the asylum system to speed up the processing of applications, whilst improving the quality of decision making. Progress to date has been good with improvements already seen in the speed of both first instance

decision making, an increase to 60% in 30 days, but also the number of removals within 12 months.

Both staff and corporate partners continue to help shape the project and in particular NGOs are involved in work being taken forward on issues around vulnerable applicants and improving our assessment of credibility. We are determined that our plans to transform the asylum system will see further improvements across the board and that we will realise our vision of an asylum system with swifter case conclusions and no backlogs, delivered at significantly lower cost to the taxpayer.

Comment 6: In a number of his reports the Independent Chief Inspector of the UK Border Agency has praised the hard work and dedication of caseworker staff, but has noted inconsistency in the quality of decision-making and administration between different offices. Ultimately, whether or not the ‘basket’ approach succeeds will depend on better training for line managers, in particular improving their awareness of best practice, and then trusting them to exercise their discretion appropriately.

Government Response

We attach great importance to the issue of consistency. As part of the UK Border Agency’s quality assurance process we consistently measure success in delivering high quality casework against a framework agreed with United Nations High Commissioner for Refugees (UNHCR). The agency continues to work closely with corporate partners, particularly UNHCR, to drive improvements and is held to be an exemplar of high quality decisions in many countries. Whilst we would say that the quality of decisions is generally high we also recognise there is room for improvement and will be taking further steps to improve quality in all regions through the agency’s Quality Implementation Plan.

Immigration statistics

Comment 7: In both [the Committee’s previous reports on Tiers 1 & 2 and Tier 4 of the Points Based System] we noted that it was not clear whether the modifications proposed by the Government would reduce net migration to the tens of thousands... Given that [the] reduction in student numbers is central to the Government’s immigration policy we will monitor progress in achieving it and the overall net immigration figure. (Paragraph 10)

Government Response

As a result of the policies we are taking forward we anticipate net migration will reduce to the tens of thousands. To do this, we will need to address every route of the immigration system.

Comment 8: It is our contention that the government's success in reducing migration numbers should be measured net of the figures of the genuine student and expert employment that are properly granted. (Paragraph 11)

Government response

Net migration is the difference between those entering the UK with an intention to remain for a year or more and those leaving on the same basis. Therefore only those people coming to the UK to work or study for longer than 12 months are considered to be long-term migrants rather than short-term migrants or visitors. We have followed the UN definition which takes a stay of 12 months as the cut-off point between the two. It does not matter that some migrants may only be intending to stay for say 2-3 years; during their stay they are part of the resident population.

Enforcement of Points-based system: Tier 2 (skilled employees)

Comment 9: In his February 2011 report on implementation of Tier 2 of the Points-Based System, the Independent Chief Inspector of the UK Border Agency was very critical of the standard of decision-making on applications and the capacity of the Agency to ensure that neither sponsors nor visa-holders breached the terms of the visa. In particular he noted:

- **inconsistent approaches to the decision making process on Tier 2 cases which meant that some applications were refused because of minor omissions of evidence or information whereas others were given additional time to supply the missing information;**
- **applicants were having to make and pay for subsequent applications because of minor omissions which could have been addressed with minimal effort by the Agency;**
- **as a result of subsequent applications, the Agency was having to use additional resources to make further assessments and decisions;**
- **there was no evidence of a systematic approach to ensure that post-licensing visits were carried out on sponsors retrospectively; and**
- **the Agency did not routinely take the required action to curtail Tier 2 migrants' leave to remain in the UK when they had stopped working for their sponsor.**

However, this was less a criticism of the staff, whom he found to be professional, enthusiastic and committed, than of inadequate guidance, quality control and management, and — in relation to inspecting employers and taking action against

migrants who had breached their visas or overstayed — grossly inadequate resources. (Paragraph 12)

Government Response

The UK Border Agency has already made changes to its policy of evidential flexibility in respect of applications under the points-based system. Revised instructions have been circulated to ensure that a consistent approach in decision making is adopted across case working units both in the UK and overseas. The revised arrangements mean that where minor omissions have been made, applicants will be given seven days to provide the information needed to determine their application. This same evidential flexibility approach has also been introduced to sponsor licence applications.

In addition to the evidential flexibility arrangements, the agency has introduced further measures to allow applicants applying in the UK to correct minor errors or omissions earlier in the application process. This approach was trialled on the Tier 1 (General) route in order to avoid rejection of applications prior to the closure of the route. The agency plans to extend this approach across all temporary migration routes this summer.

All applicants wishing to stay in the UK under the points-based system are required to submit all relevant evidence in support of their application at the time the application is made. The UK Border Agency is committed to helping migrants and sponsors to get their applications right first time wherever possible. Over the next 12 months, the agency will be reviewing and improving all guidance on offer to users of the points-based system and will begin to introduce on-line forms to make the application process easier. As part of the on-line process, a check list will be produced to clarify the documentation the applicant must provide as part of their application. Additional call centre support for on-line applicants will also be offered.

The Committee's points regarding post-licensing visits and curtailment of leave are addressed separately below.

Comment 10: In practice, the main priority was to provide assurance on Tier 4 sponsors (educational institutions sponsoring students) as these were perceived to pose a much higher risk than Tier 2 sponsors, although no-one had tested this assumption. We find it unacceptable that the Agency can operate on untested assumptions in this way. (Paragraph 13)

Government Response

Tiers 2 and 5 of the Points Based System were introduced in November 2008 and generally the arrangements were found to be working well. Tier 4 was introduced in March 2009 and, during the first year of operation, it became evident that there was some systemic abuse occurring in certain parts of the sector. All sponsors on the Tier 4

register were visited at least once by the summer of 2009 and all colleges are now visited prior to a licence being issued.

The agency reviews the risks posed by sponsors in all Tiers on a monthly basis allowing it to identify high risk sectors and sponsors. The agency will take further action against any sector, or sponsor, where it has evidence of abuse. As an example, four national operations targeting Tier 2 sponsors have been commissioned since January 2011, one of which targeted high risk sponsors in the catering and care sectors and resulted in over 150 visits. The agency is currently reviewing the visit reports and will take further action where there is evidence of immigration abuse and sponsor non-compliance. Action has already been taken to suspend and downgrade a number of sponsor licences as a result.

Comment 11: The Chief Inspector... said he believed that the Agency should completely review the database of sponsors, carry out any necessary checks and ensure that the system was kept up-to-date as sponsors changed and as more information about existing sponsors became available. He acknowledged this would not be easy with the current pressures on resources, but he thought it would be achievable if the Agency 'worked smarter'. We recommend that this is done. (Paragraph 14)

And

Comment 12: Given that the Agency does not even know how many sponsors were not visited before registration and given the backlog of post-registration visits, we cannot share Mr Sedgwick's confidence in the robustness of the system. (Paragraph 17)

Government Response

In its response to the report published on 16 February 2011, the UK Border Agency did not accept the Chief Inspector's recommendation that it should undertake checks and visits to ensure that all registered sponsors meet the criteria in the published guidance. Tier 2 sponsors are granted a licence only after the agency has completed all necessary checks. The agency looks at data available from all legacy and current immigration databases and also completes specific checks on individuals. All prospective sponsors are required to submit authentic supporting documents as part of their application for a sponsor licence. This enables the agency's sponsorship teams to check that the organisation is genuine and operating/trading lawfully in the UK.

All sponsor licence applications are assessed against risk profiles. These risk profiles have been collated and updated over many years and are based on experience of risk and abuse from the (legacy) Work Permit system and Tier 2 of the points-based system. The risk profiles are constantly reviewed and amended as abuse is detected and risks are identified through intelligence analysis.

Assessment against these risk profiles determines which prospective sponsors require a pre-licensing visit and enables visits to be targeted in an intelligent and robust manner. Pre-licensing visits are not necessary in every case and the agency does not agree with the statement that they are not carried out in all cases that require them. The Committee will wish to be aware that since 1 October 2010, UK Border Agency visiting officers have conducted around 2,500 post-licence visits to Tier 2 sponsors.

Comment 13: The Chief Inspector reported: We were concerned to find that the Agency does not routinely take action to curtail the leave to remain of migrants who stop working. When we were onsite, we were unable to ascertain from the Agency how many migrants had been reported as having ceased working and should have their leave curtailed. (Paragraph 15)

and

Comment 14: Even if the Agency does move to curtail leave to remain, it often takes no direct action to ensure that the migrant leaves the UK. (Paragraph 18)

Government Response

The UK Border Agency accepted the Chief Inspector's recommendation around the need to improve its performance on curtailment. As the Independent Chief Inspector pointed out at the time of his inspection there were 150 cases currently awaiting curtailment action on Tier 2. Most of these cases had been identified from routine casework with a small proportion being identified within the change of circumstances reports produced by the sponsor management system (SMS). Since the Chief Inspector's report was published additional resources have been allocated to sifting the notifications to the SMS. Not all of the cases identified will lead to curtailment action because a 'change of circumstances' can include a change in pay, a change in job title or a change in role.

The UK Border Agency must ensure that it uses its available resources to best effect and prioritises its enforcement activities on a risk basis that secures the removal of those that pose the greatest harm. We are committed to using the sponsorship system - that puts greater responsibility on those that benefit from migration - to place restrictions and then remove organisations that sponsor migrants who do not adhere to the rules. The agency also imposes high fines on any employers in the UK that are found to employ migrants who do not have any legitimate right to work. The strong message that the agency sends to employers creates an environment where it is not advantageous for migrants to remain in the UK beyond their period of leave.

The roll out of the Immigration Casework Programme (ICW) will make significant improvements to the ease and efficiency of taking curtailment action, including making an automated link between notifications from sponsors and the curtailment of leave.

Future roll-outs of the programme will first see student cases processed on the new ICW system and later employment cases.

Comment 15: Inspections by the Chief Inspector have demonstrated that failures to act upon intelligence of possible legality are not confined to the area of enforcement of Tier 2 visas. A recent inquiry into preventing and detecting customs and immigration offences revealed that the Agency receives more than 100,000 allegations a year from members of the public, many of which relate to suspected illegal entry into or continued residence in the UK. However, the Agency could not provide the Chief Inspector with information about the proportion of allegations that had led to enforcement action, let alone the number that had led to the prevention or detection of crime. (Paragraph 16)

Government Response

Information from the public is a vital tool in the UK Border Agency's attempt to stamp out immigration abuse and customs offences. In its formal response to the Chief Inspector's report, the agency outlined the improvements it is making in the end-to-end process of allegations handling. These include improved advice for the public on how to submit an allegation, better guidance for staff on recording and assessing allegations, and streamlined management and tasking processes. The agency also plans to put in place a central data management system which will record the contribution that allegations make to the prevention and detection of immigration and customs offences. Whilst we recognise the value of allegations in tackling crime, the agency has a duty of care to those providing information and must respect the confidentiality rights of those who are the subject of allegations, as well as maintaining the safety and security of operations. Therefore, it is not UK Border Agency policy to inform those who report allegations of the results of any subsequent operational action, except in very specific circumstances including the victims of Foreign National Prisoners or forced marriage.

The agency's operational staff also have a critical part to play in supporting the development of intelligence that informs enforcement action. The agency has established guidance on debriefing activity in support of more consistent intelligence flows and regular feedback between frontline staff and intelligence staff. The agency will also review its arrangements for enhanced engagement and information sharing with intelligence partners at national, regional and local levels, including community organisations.

Family reunions

Comment 16: We wish to be informed what impact the Government expects the withdrawal of the certificate of approval scheme to have, and what other measures, if any, the Government intends to take to deter sham marriages. (Paragraph 25)

Government Response

The certificate of approval scheme was abolished on 9 May 2011.

The Government has already taken measures to combat sham marriages making it clear that this form of immigration abuse will not be tolerated. We have worked closely with the Church of England to strengthen their ability to detect sham marriages. In April 2011 the Church of England published procedural guidance for members of the clergy on tackling sham marriages and we are currently in discussions to extend this guidance to the Church in Wales. We are also continuing to work with the Registration Services to further improve their ability to identify suspicious marriages through provision of guidance, training and awareness sessions.

The UK Border Agency investigates reports of suspected sham marriages, and in the past year has conducted two periods of targeted enforcement action resulting in 155 arrests and several convictions against the facilitators and beneficiaries of sham marriage. Of particular note, is the successful joint operation between the British and Dutch immigration authorities which has already led to 9 arrests since August 2010. We will continue to review this.

On 13 July 2011, the Government published a consultation on family migration seeking views on reforms to the family route to promote integration, reduce burdens on the taxpayer, and tackle abuse, in particular sham marriage. Those involved in sham marriages undermine our immigration system, and the consultation sets out how we are tackling this abuse and looks at possible new measures for identifying and disrupting sham marriages. The Government is also committed to tackling forced marriage and the proposals set out in the consultation build on existing cross-departmental working in this area.

Child detention

Comment 17: Unfortunately, the situation [regarding detention of children, following Government announcement that it would end from 11th May] has proved less clear-cut in practice, with, amongst other things, questions about the use of alternative accommodation for families awaiting removal from the UK. (Paragraph 26)

Government Response

The Government's plans for ending the detention of children are set out in the "Review into Ending the Detention of Children for Immigration purposes published on 16 December 2010². These included rolling out a new family returns process nationally on

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/child-detention-conclusions.pdf>

1 March 2011 and minimal use of Tinsley House Immigration Removal Centre pending the establishment of a completely new form of pre-departure accommodation in May 2011. We also said that after May we would cease to use Tinsley House for all but two categories of case: families held at the border while enquiries are made and/or a return flight is being arranged; and, pending their removal, families with individuals who may present a risk to the public.

The family returns process, including the new independent Family Returns Panel, was rolled out as planned on 1 March. The new pre-departure accommodation is expected to be ready to accept families later this summer but we have already ceased to use Tinsley House for such families in line with the commitment given.

Figures are published on a monthly basis for children held in immigration removal centres³. The most recent figures show that between 11 and 31 May 2 families were detained in Tinsley House:

No in family	No of children	Date of arrival in Tinsley House	Date of departure from Tinsley House
5	3	10/05/2011	12/05/2011
4	2	29/05/2011	29/05/2011

Both families were encountered at the border. The first was refused entry and held pending a return flight. The second family arrived in the middle of the night and was held while further enquiries were made; they were released that afternoon.

The published figures also show that one child was detained at Campsfield House in May, and we have also identified a second child who was detained in April and released in May; the latter case was not included in the April figures (because he was not considered to be a child at that point) but will be subject to inclusion in the revised quarterly figures when they are published in August. (The monthly release of numbers of children entering detention is provisional and it is expected that they will be superseded by the quarterly figures on children entering detention.) Both individuals had originally been considered to be adults but were released as soon as they were assessed to be under 18. They were detained for 9 and 18 days respectively.

The figures for June 2011 will be published on 28 July 2011.

We have since identified a further category of case where we may occasionally need to use Tinsley House to accommodate a prisoner accompanied by a child immediately prior to removal. These would be either:

- Mother and baby cases: where a mother who has been serving her sentence in a prison Mother and Baby Unit is being returned with her baby under the Early Removal Scheme (i.e. before the end of her sentence) and the time of the flight

³ <http://homeoffice.gov.uk/science-research/research-statistics/migration/migration-statistics1/>

and the distance to the airport mean that they have to be accommodated near the airport for the night before the flight; or

- Contingency arrangements: where a single parent is being returned straight from prison custody or immigration detention and meeting her child(ren) at the airport for the return flight. We need some fallback in such cases in the event of the departure not taking place as planned, e.g. because of a flight delay or cancellation.

We expect both types of cases to arise only rarely and for the period in Tinsley to be typically no more than a night.

Immigration Tribunals

Comment 18: In recent years the UK Border Agency has been frequently criticised for perceived failings in relation to asylum and immigration cases appealed to immigration tribunals. This criticism takes two forms: that the Agency is often not even represented at tribunal hearings, and that too many Agency decisions are overturned on appeal. (Paragraph 27)

Government Response

The UK Border Agency has initiated a programme of work to improve performance on appeals with a particular focus on reducing the number of appeals in the system, improving representation and organisation, and working in partnership with HM Courts and Tribunals Service to modernise the system as a whole.

Comment 19: It appears that the Agency is more likely to lose immigration and asylum appeals. The Agency indicates that this is largely owing to immigration applicants failing to provide information, but it is not clear whether the applicants do so deliberately (in the hope that by slowing down the process they may increase the chance of being allowed to remain in the UK) or because they were given insufficient or inaccurate information about what was required when they first applied. (Paragraph 29)

Government Response

In 2009-10, the Tribunals Service (Immigration and Asylum) disposed of 197,500 appeals. Of those 38% were allowed, 54% dismissed and 8% withdrawn.

We are committed to embedding a right first time every time approach to decision making and to using the information we learn from appeals heard to improve our processes.

However, the primary reason for immigration allowed appeals is further evidence submitted at appeal. For example, analysis of a sample of 300 allowed in-country PBS appeal determinations (Tiers 1, 2 and 4) between May and December 2010 showed that 63% of PBS appeals allowed by the Tribunal were due to submission of new evidence at appeal. Errors in initial decision-making accounted for 9% of allowed appeals, 6% were allowed on human rights grounds, and 4% concerned application of case law.

It is for this reason that we have implemented changes like commencing section 19 of the UK Borders Act 2007, which restricts submission of further evidence at appeal in PBS cases.

We are confident that the information and guidance provided to applicants about what is required in applications is clear and accurate. This is supported by the number of people who are able to follow that guidance properly and make successful applications in the first instance, and by our applicants' feedback. For example, customer satisfaction analysis on the PBS demonstrates a high level (around 80%) of satisfaction with the overall application process and high levels of understanding of evidence required (71-85%), and the majority (86%) of applicants agreeing the applications are easy to complete⁴.

Comment 20: If the Agency does not intend to defend its decision [at a hearing] it should inform the other party in order to save court time and taxpayers' money, and to ensure there is a fair, proper and compassionate process. (Paragraph 30)

Government Response

We are committed to increasing the UK Border Agency's national representation rate and to ensuring high quality representation at the Tribunal, and the agency has already made great strides in this regard. The agency's national representation rate increased from 74% in September 2010 to 83% in March 2011, through a series of training programmes, by sharing regional best practice to increase productivity and by seeking to reduce the flow of appeals into the system in areas such as out of time or invalid appeals⁵.

The UK Border Agency remains committed to providing representation at priority hearings, including those involving vulnerable appellants or those who may cause harm in the UK, and consistently achieves 100% representation in fast track appeals and onward appeals to the Upper Tribunal.

The agency may take pragmatic decisions not to attend in some cases, instead relying on written submissions to the court where a case is strong or the appellant has indicated

⁴ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/horr49a/?view=Standard&pubID=863063>

⁵ Figures extracted from local management information, and therefore are provisional and subject to change. These figures have not been provided under National Statistics protocols.

they will not be in attendance, thus preventing cross examination, or where the witnesses credibility is not in question. Where the agency plans not to be represented at a hearing, it makes every effort to notify the Tribunal in advance, and to request that the adjudicator deals with the appeal on the basis of the contents of the letter of refusal and any other written submissions which the agency makes when indicating it will not be represented. Non-attendance does not mean that the agency is withdrawing its decision; where the agency does withdraw the decision in an individual case it will notify the Tribunal in writing.

Comment 21: Media report have referred to the Government considering abolishing the right of appeal for those refused entry clearance to visit family members. We trust there is no such intention. (Paragraph 31)

Government Response

The Government's consultation on family migration, published on 13 July, considers arrangements for the family visit visa, and invites views on the circumstances in which an appeal right should be retained and on how the application process can be made more user-friendly.

E-Borders

Comment 22: When our predecessor Committee began to inquire into the programme in the summer of 2009, the timetable for implementing the e-Borders programme was:

- **2009: the e-Borders operations centre, the National Border Targeting Centre (NBTC) starts operating;**
- **December 2009: e-Borders aims to collect details of 60% of all international passengers and crews from a range of carriers and to check that 60% against lists of people who are of interest to authorities;**
- **December 2010: e-Borders aims to collect details of 95% of passengers and crews;**
- **April 2011: UK Border Agency starts to activate modernised entry methods at UK ports;**
- **July 2012: improvements including an ability to give clearance to passengers who are already on a train;**
- **March 2014: e-Borders is fully operational, covering all international travellers using all ports, including matching passengers' arrivals to their departures.**

As of April 2011, the e-Borders system was collecting details of about 55% of passengers and crews on airlines, although this rose to 90% of passengers and crew for journeys outside the EU. There was no coverage of ferries or trains. All deadlines other than the first were missed. (Paragraph 33)

Government Response

The slippage in the original e-Borders timeline arose as a result of the poor performance of the previous supplier, Raytheon Systems Limited; their contract, as the Committee notes, was terminated in July 2010.

e-Borders is checking the movements of over 127m passengers per year and, since the pilot went live in 2005, it has led to more than 9000 arrests for crimes including murder, rape and assault.

125 carriers on over 3,000 routes provide passenger data to e-Borders, which equates to over 55 per cent of inbound and outbound passenger movements from the UK. This includes over 90% of non-EU aviation, which is expected to rise to 100% by April 2012.

Comment 23: There have been considerable concerns about whether the requirements for carriers to gather data on passengers entering the UK are compatible with the data protection laws of a number of EU Member States. (Paragraph 35)

Government Response

The European Commission agreed in December 2009 that it is compliant with the EU Data Protection Directive for e-Borders to collect Advance Passenger Information (API) on EEA routes, subject to the approval of each Member State's Data Protection Authority (DPA). We continue to work closely with individual Member State DPAs to secure acknowledgement that law enforcement and the fight against terrorism, smuggling and other offences constitute a public and legitimate interest for the purposes of the Data Protection Directive, so that API data can be transmitted.

Officials also continue to work closely with the European Commission to reach a mutual understanding of how e-Borders operates in a way that strengthens the security of the UK and the EU more broadly but does not have an impact on the free movement of EU citizens. This has been a lengthy process, as we have been determined to achieve the best possible outcome for Government and industry alike, whilst acting in compliance with EU law. Once we have received confirmation of the Commission's final position, we will fully explore any implications with the industry.

Comment 24: Mr Sedgwick assured us that exit checks will be fully implemented by 2015... it is difficult to see how the scheme could be applied to all rail and sea

passengers within this timetable given that even air passengers are not yet fully covered. (Paragraph 35)

Government Response

Contracts have now been agreed with existing suppliers that will enable a significant increase in the volume of air passenger data being captured. The capability to capture all rail and sea passengers will be developed and implemented in time to meet the agreed 2015 milestone.

Overall, the development of e-Borders has moved forward significantly following the termination of the contract with the previous supplier. All of the services provided before termination have continued to be delivered and the exit management arrangements with the previous supplier have been completed as planned. New contractual arrangements are in place with replacement suppliers for the ongoing delivery of these services, which already provide substantial business benefit.

e-Borders will be delivered in a series of stages and the programme has now signed the first contract, to secure the resilience of existing systems and to develop a range of additional functional capability before the Olympics. This will also provide a strong technology platform for the subsequent development of the programme's services.

Asylum and immigration contracts

Comment 25: The taxpayer expects value for money and for contracts to be awarded in a transparent and fair way. We seek reassurance that this is in fact what happens and we intend to keep the area of procurement under review. (Paragraph 37)

Government Response

The current suite of asylum accommodation contracts are being retendered during 2011, with mobilisation from April 2012.

The procurement is compliant with Cabinet Office guidelines and the Public Contract Regulations (2006). This is one of the largest procurements in the UK Border Agency, and as such comes under the governance of the Home Office Group Investment Board, HM Treasury and the Cabinet Office Major Projects Authority. These bodies have provided assurance of the procurement strategy prior to the launch of the tendering process (April 2011) and will continue to do so at key milestones; contract award, contract mobilisation, and during the contract life to review the financial and strategic benefits that have been achieved.

The key drivers for the current procurement exercise are to improve the quality of service provision while driving down costs. Over the life of these services the numbers of providers and contracts has reduced. In 2005 there were 19 accommodation providers managing 32 contracts, in 2011 this reduced to 21 contracts with 13 providers and in 2012 we expect national coverage to be delivered via 6 contracts. The continued consolidation of supply base reflects the maturity of the market and the Home Office focus on improving quality and cost through its commercial relationships.

Remuneration of Home Office and UK Border Agency officials

Comment 26: Both this Committee and the Independent Chief Inspector have stated on a number of occasions that many of the problems we have observed result from the Agency lacking continuity and good management. The sudden departure of the previous Chief Executive, and the fact that there is still no permanent successor nearly five months after she left, undermine the rationale for the high salary given by officials. (Paragraph 38)

Government Response

Following an open competition, Rob Whiteman has been appointed as the new Chief Executive of the UK Border Agency. His start date will be announced shortly and Jonathan Sedgwick will continue to act as interim Chief Executive until this time.

Comment 27: We reiterate our view that it would be inappropriate for senior officials in the Home Office and its agencies to receive any bonuses this year, in light of the economic climate. (Paragraph 39)

Government Response

Any bonuses paid to senior civil servants (SCS) for the 2010/11 performance year will be in line with the requirements of the Cabinet Office civil service - wide SCS reward arrangements.

Correspondence with Members of Parliament

Comment 28: We... reiterate that we expect a response signed by the head of the Agency when we write to him/her, and we give notice that we intend to seek views from other Members during the coming months to see whether concerns remain or whether the Agency has significantly improved the service given to MPs in representing their constituents. (Paragraph 40)

Government Response

The UK Border Agency continues to receive the largest number of letters from Members and Peers across Government. It has made significant improvements to its service. In

2010 (latest figures available) more than 88% of the 57,651 enquiries received were answered within the 20 working day target.

The agency follows Cabinet Office guidance on the appropriate levels for signing replies to letters written to Ministers. Where a letter from a Member or Peer is delegated to the head of the agency, it is not further delegated to junior officials to reply. In all cases where a letter has been written to a Minister, the reply will either be signed by a Minister, the Chief Executive or, in the Chief Executive's absence, his or her nominated deputy.

Many letters from Members to the Chief Executive are routine enquiries that are best addressed by appropriate officials in the agency. Delegating these to officials can provide a faster and more efficient service to Members.

The agency is committed to improving the way it engages with Members. Its staff meet MPs regularly, both through the agency's regional Account Managers as well as via events organised for MPs and their caseworkers. Members can raise enquiries with officials on the telephone via the dedicated MP Enquiry Line, by e-mail or via the Account Managers. There is also an on-line tracker for Members to follow the progress of letters they have written.

More than 85% of enquiries received via the MP Enquiry Line have been resolved via a single call. The Enquiry Line can also provide a written summary of the call for Members to pass to on to their constituents.

When issues need to be escalated within the agency, the MP Account Manager service provides Members with a direct link to a senior official. We encourage Members to use their Account Manager as the first point of contact in these instances, as questions can often be dealt with more quickly and efficiently than is the case through formal written correspondence.

Annex A – Clearing the backlog of older cases – progress to date (as of 31/05/11)⁶

Conclusions

Table 1.1: Conclusions⁷ by main applicant and dependants

	Total number concluded	Of which, main applicants	Of which, dependants
Removals ⁸	37,000	34,500	2,500
Grants ⁹	171,500	116,500	55,000
Others ¹⁰	246,000	221,000	25,000
Total	455,000	372,500	82,500

NB. Rounded to nearest 500. Figures may not sum due to independent rounding

Table 1.2: Conclusions on supported cases¹¹

Main	40,950
Dependents	39,900
Total	80,850

NB. Rounded to nearest 50. Figures may not sum due to independent rounding

Removals and voluntary departures

Table 2.1: Removals and Voluntary Departures, by nationality (top 10 countries)

Nationality	Total
Afghanistan	3,250
Turkey	3,100
Iraq	2,800
China	2,650
Pakistan	2,050
India	2,050
Iran (Islamic Republic of)	1,600
Kosovo	1,550
Nigeria	1,550
Sri Lanka	1,400

Rounded to nearest 50, count of People

⁶ As with previous reports, the information provided here is subject to revisions for the same reasons set out before to the Committee regarding data quality and is being reviewed by the National Audit Office.

⁷ Case conclusions: Cases that are taken to a logical conclusion, including removal, grant of a period of stay within the UK and closure of the cases through updating of CID records where actions hadn't previously been recorded.

⁸ Removals: Deportations, Extraditions, Enforced Removals and Voluntary Departures, assisted and unassisted – Commissioned by Case Resolution Directorate. Count of People.

⁹ Grants: Cases granted some form of leave, be it limited or indefinite commissioned by Case Resolution Directorate. Count of Case ID.

¹⁰ Others: In these cases Case Resolution Directorate has determined that an action has occurred that led to a grant of some form of leave, or removal that wasn't recorded on the Case Information Data base. This also includes duplicate cases that have been deleted from the Case Information Database. In all circumstances Case Resolution Directorates actions have been to update or delete the Case Information Database with the appropriate information. There are also 8,000 concluded cases in live locations counted in this category.

¹¹ Cases that were on support between 5/3/07 to the date of the report.

Table 2.2: Removals and Voluntary Departures, by age of case

Time to Conclusion	Percentage
Under 3 years	22%
3-7 years	47%
7 years +	31%

Rounded to nearest %. Figures may not sum due to independent rounding

Conclusions for another reason

Table 3.1: Conclusions for another reason¹²

Type:	Total number concluded	Of which, main applicants	Of which, dependants
Duplicates	9,500	7,000	2,500
Errors	133,000	120,000	13,000
EU nationals	19,500	14,500	5,500
Controlled Archive ¹³	75,500	72,000	3,500

NB. Rounded to nearest 500. Figures may not sum due to independent rounding

Leave to remain in the UK

Table 4.1: Grants, by nationality (top 10 countries)

Nationality	Total
China	13,150
Zimbabwe	12,350
Iran (Islamic Republic of)	11,850
Sri Lanka	11,450
Pakistan	10,850
Iraq	9,650
Somalia	8,750
Democratic Republic of Congo	7,950
Afghanistan	7,250
Nigeria	6,450

Rounded to nearest 50, count of Case ID

Table 4.2: Grants, by age of case

Time to Conclusion	Percentage
Under 3 years	32%
3-7 years	34%
7 years +	34%

Rounded to nearest %. Figures may not sum due to independent rounding

¹² There are also 8,000 concluded cases in live locations also counted in this category.

¹³ The controlled archive is made up of cases where we have made extensive attempts to contact the applicant without success. Controlled archive cases are considered completed for statistical purposes when the case has been in the archive for more than six months.