



**SECURING  
OUR BORDER  
CONTROLLING  
MIGRATION**

**REPORT ON REMOVAL OF FULL APPEAL  
RIGHTS AGAINST REFUSAL OF ENTRY  
CLEARANCE DECISIONS UNDER THE  
POINTS-BASED SYSTEM**

March 2011

Report pursuant to Section 4 (3) of the Immigration, Nationality and Asylum Act 2006

# **REPORT ON REMOVAL OF FULL APPEAL RIGHTS AGAINST REFUSAL OF ENTRY CLEARANCE DECISIONS UNDER THE POINTS-BASED SYSTEM**

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Presented to Parliament pursuant to section 4(3) of the Immigration,  
Asylum & Nationality Act 2006

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# REPORT FROM UK BORDER AGENCY PURSUANT TO SECTION 4 (3) OF THE IMMIGRATION, ASYLUM & NATIONALITY ACT 2006

## INTRODUCTION

1. The Immigration, Nationality and Asylum Act 2006 introduced a provision [subsection 1] to the Nationality, Immigration and Asylum Act (NIAA) 2002, to limit all appeals against refusal of entry clearance to residual grounds (human rights and race discrimination), with the exceptions of family visitors and some dependants. These categories retain a full right of appeal. This provision has not been fully commenced and is limited to applications considered under the points-based system (PBS).
2. The purpose of this report is to focus on the effects of the removal of full appeal rights against refusal of entry clearance decisions made under the points-based system. The removal of appeal rights was commenced on 1 April 2008. This is the date that the points-based system was first implemented overseas with the introduction of Tier 1 in India prior to global rollout of Tier 1 in June 2008. Tiers 2 and 5 were implemented overseas on 27 November 2008. Tier 4 was implemented on 31 March 2009. Full appeal rights of the points-based system entry clearance refusals were removed as each Tier was introduced overseas.
3. In place of a full right of appeal, the UK Border Agency implemented a new process of Administrative Review for refusal of entry clearance decisions under the points-based system only. The purpose of an Administrative Review process for entry clearance decisions is to enable migrants to challenge any factual errors made in the decision making process. A senior officer will then overturn a refusal if a decision has been made incorrectly against the Immigration Rules and policy guidance. Limited appeal rights on Race Relations and Human Rights grounds remain for refusal of points-based system entry clearance decisions.
4. The 2006 Act states that within the period of three years beginning with the commencement of the provision to remove appeal rights, the Secretary of State shall lay before Parliament a Report about the effect of the removal of full appeal rights for points-based system entry clearance decisions overseas. The full text of this commitment is set out in Section I of the Report. The text requires specific information to be provided in the Report which includes statistical data on entry clearance decisions and Administrative Review requests, and details of arrangements in place to review points-based system decisions made overseas. These requirements are fully covered in the following sections.

# SECTION I

## THE COMMITMENT IN LEGISLATION

5. Section 4 (3) of the Immigration, Nationality and Asylum Act 2006 requires provision of a Report following the removal of appeal rights against refusal of points-based system entry clearance decisions.
6. The relevant extract from the legislation is as follows:
  - (3) Within the period of three years beginning with the commencement (for any purpose) of subsection (1), the Secretary of State shall lay before Parliament a report about the effect of that subsection; and the report
    - a) must specify the number of applications for entry clearance made during that period,
    - b) must specify the number of those applications refused,
    - c) must specify the number of those applications granted, after an initial indication to the applicant of intention to refuse the application, as a result of further consideration in accordance with arrangements established by the Secretary of State,
    - d) must describe those arrangements,
    - e) must describe the effect of regulations made under section 88A(1)(a) or (b) as substituted by subsection (1) above,
    - f) may include other information about the process and criteria used to determine applications for entry clearance, and
    - g) may record opinions.
7. The legislation requires us to report on the effect of Section 4 (1) of the **Immigration, Asylum and Nationality Act 2006**. Subsection 1 of Section 4 of the IAN Act 2006 added the following words to section 88A(1) of the Nationality Immigration and Asylum Act 2002:
  - (1) A person may not appeal under section 82(1) against a refusal of an application for entry clearance unless the application was made for the purpose of –
    - a) visiting a person of a class of description prescribed by regulations for the purpose of this subsection, or
    - b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.’
8. Subsection (1) is the provision that applies only to points-based system applications and is the mechanism by which appeal rights against refusal of entry clearance were removed for those applying under the points-based system. The section was commenced on 1 April 2008 which is when the points-based system was first implemented overseas.
9. Sections II to VIII of this Report provides the information required as stated at a) to g) of the commitment above.

# SECTION II

## INTRODUCTION OF THE POINTS-BASED SYSTEM

10. The purpose of the points-based system was to create a clearer system, consolidating 80+ immigration work and study routes into 5 Tiers. It introduced objective criteria to decision making, removing the previous testing of intentions and credibility. The points-based system also introduced self assessment to allow applicants to see whether they met the criteria of the relevant Tier, and submit the documents specified in the guidance to support their application.
11. It formalises the relationship between the migrant and the employer or educational institution in the UK. In order to apply under the points-based system, except for Tier 1, migrants must be sponsored by a UK Border Agency registered sponsor. The sponsor will issue a Certificate of Sponsorship if they are satisfied that the migrant has the ability and intention to undertake employment or study with them in the UK.
12. The Home Office set out its Immigration strategy designed to simplify the Immigration system and strengthen UK borders. **Controlling our borders: Making migration work for Britain the five year strategy for asylum and immigration**, published on 7 February 2005
13. The 5 year strategy, set out the proposals to:
  - Bring all the current work schemes and students into a single points-based system;
  - Abolish appeal rights for work and study routes for those refused entry clearance overseas;
  - Extend the current independent entry clearance monitoring process to guard against any risk of unreasonable decisions.
14. These provisions were set out in the Nationality, Immigration and Asylum Act:

- Sections 88A, 90 and 91 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) restricted rights of appeal against refusal of entry clearance for some visitors & students, and other categories of cases as could be specified by order of the Secretary of State;
- Section 4(1) of the Immigration, Asylum & Nationality Act 2006 (the 2006 Act) substituted for the above sections of the 2002 Act:
  - One provision which limits all appeals against refusal of entry clearance to limited grounds (human rights and race discrimination, with the exceptions of family visitors and people entering as dependants of somebody already in the UK). These two categories retain a full right of appeal;
  - Section 4(2) amends section 23(1) of the Immigration & Asylum Act 1999 to require the Secretary of State to appoint a person to monitor refusals of entry clearance which carry only a limited right of appeal;
- 15. Royal Assent was given to the Immigration, Asylum & Nationality Act 2006 on 30 March.

## ADMINISTRATIVE REVIEW

16. In July 2005, the Home Office published a consultation document, **Selective Admission: Making Migration Work for Britain**. The consultation document set out proposals for implementing the Government's strategy outlined in the 5 year strategy.
17. The consultation document stated 'We propose to extend our independent monitoring function to help to safeguard consistency and quality of decisions, and propose developing a system of administrative review.'

18. The Government published a Command Paper **'Making Migration Work for Britain'** on 7 March 2006 which stated 'we know that it is always possible for mistakes to be made, which is why under the new system we are proposing that where the right of appeal has been removed and an applicant believes a factual error has been made in the consideration of his application by an Entry Clearance Officer (ECO), as demonstrated by the reason(s) set out for his refusal, he can request a review of that application by a senior officer.'
19. The proposal was to create an alternative system to guard against unfair/incorrect decision-making, to be known as Administrative Review. In the context of the new more objective and transparent process for taking decisions under the points-based system, it was acknowledged that mistakes would sometimes be made and there should be a formal mechanism for overturning them. A system was developed to enable an in-house review by a senior Entry Clearance Manager (ECM) of refusals of entry clearance cases where the right of appeal has been removed, and where the applicant alleges an error has been made in the decision.
20. The Administrative Review policy was built from discussion of its framework during the passage of the Bill through the House of Lords and in consultation with key stakeholders and with the then Independent Monitor. The key objectives of the Administrative Review were as follows:
- The Review is available to anyone who is refused a visa under the points-based system;
  - The Review process will ensure that incorrect decisions are overturned quickly and effectively;
  - The purpose of the Review is to ensure that no administrative errors were made during the decision making process;
  - The Review will be free;
  - The process will be overseen by the Independent Monitor (although s/he will not conduct the reviews) to ensure consistency and fairness; and
  - The Reviewer should be 'demonstrably independent of the original decision'.

## INDEPENDENT MONITOR

21. The role of the Independent Monitor for Entry Clearance Refusals without the Right of Appeal was set out in section 23 of the Immigration and Asylum Act 1999 and amended by paragraph 27 of schedule 7 of the Nationality, Immigration & Asylum Act 2002. Applications within the Independent Monitor's remit were limited to entry clearance refusals that attracted a limited right of appeal - specifically, non family visitors, short term students, prospective students and student dependents.
22. The role of the Independent Monitor served as a check on the standards being applied to refusal decisions by entry clearance posts. It covered the quality of entry clearance decision-making with particular reference to consistency, fairness and the procedures leading to refusal decisions, but did not lead to recommendations on individual cases or become an alternative appeal system; nor was it to be a procedure for applicants or sponsors to have the decision in a specific case overturned.
23. In 2007, the Secretary of State issued a direction confirming that applications handled under the points-based system fell within the Independent Monitor's remit.
24. The Independent Monitor was consulted during the development of the Administrative Review policy and process and her recommendations were incorporated. She reviewed the application process and development of guidance. The Independent Monitor submitted reports on at least an annual basis to the Secretary of State. These were then placed in the libraries of both Houses of Parliament. The Independent Monitor based her reports on a sample of files of refused applications.
25. The last Independent Monitor left post on 25 April 2009. The Independent Monitor's statutory remit continues to exist but has been subsumed into the Independent Chief Inspector's wider role as set out in section 48 of the Borders Act 2007. This remit allows the Independent Chief Inspector to look at all case types, including those that are issued.

## SECTION III

26. Subsection a) to c) of the commitment requires that the Report:

- must specify the number of applications for entry clearance made during that period;
- must specify the number of those applications refused;
- must specify the number of those applications granted, after an initial indication to the applicant of intention to refuse the application, as a result of further consideration in accordance with arrangements established by the Secretary of State.

27. The following table provides statistical data on the number of points-based system entry clearance applications made and the number of applications refused for the period since the introduction of the points-based system on 1 April 2008 until 31 December 2010.

Main/ Dependants	Main applicants							
Year	Endorsement Category	Applica- tions	Issued	Refused	With- drawn	Lapsed	Resolved	Refusal Rate
<b>2008*</b>	PBS Tier 1	14074	8602	2958	94	7	11661	25%
	PBS Tier 2	235	65	28	1	1	95	29%
	PBS Tier 5	1055	382	45	10	1	438	10%
<b>2008 Total</b>		<b>15364</b>	<b>9049</b>	<b>3031</b>	<b>105</b>	<b>9</b>	<b>12194</b>	<b>25%</b>
<b>2009</b>	PBS Tier 1	21695	18446	4753	164	25	23388	20%
	PBS Tier 2	34891	31223	2945	124	30	34322	9%
	PBS Tier 4	325801	228343	61795	5871	58	296067	21%
	PBS Tier 5	33788	31102	2322	320	30	33774	7%
<b>2009 Total</b>		<b>416175</b>	<b>309114</b>	<b>71815</b>	<b>6479</b>	<b>143</b>	<b>387551</b>	<b>19%</b>
<b>2010</b>	PBS Tier 1	21304	15889	3871	147	29	19936	19%
	PBS Tier 2	42689	39685	2849	130	19	42683	7%
	PBS Tier 4	322248	250436	76192	13008	106	339742	22%
	PBS Tier 5	38881	35976	2400	302	20	38698	6%
<b>2010 Total</b>		<b>425122</b>	<b>341986</b>	<b>85312</b>	<b>13587</b>	<b>174</b>	<b>441059</b>	<b>19%</b>
<b>Grand Total</b>		<b>856661</b>	<b>660149</b>	<b>160158</b>	<b>20171</b>	<b>326</b>	<b>840804</b>	<b>19%</b>

\*Stats for 2008 are from April to December

Source: CRS

Run date: 07/03/2011

The data is based on management information. It is provisional and subject to change.

Main/ Dependants		Dependants						
Year	Endorsement Category	Applica-tions	Issued	Refused	With-drawn	Lapsed	Resolved	Refusal Rate
<b>2008*</b>	PBS Tier 1	5784	3433	1280	45	9	4767	27%
	PBS Tier 2	99	25	4	0	3	32	13%
	PBS Tier 5	1	0	1	0	0	1	100%
<b>2008 Total</b>		<b>5884</b>	<b>3458</b>	<b>1285</b>	<b>45</b>	<b>12</b>	<b>4800</b>	<b>27%</b>
<b>2009</b>	PBS Tier 1	16341	13323	2629	85	9	16046	16%
	PBS Tier 2	17448	15501	1493	50	8	17052	9%
	PBS Tier 4	30112	19504	6030	301	6	25841	23%
	PBS Tier 5	1023	755	225	13	0	993	23%
<b>2009 Total</b>		<b>64924</b>	<b>49083</b>	<b>10377</b>	<b>449</b>	<b>23</b>	<b>59932</b>	<b>17%</b>
<b>2010</b>	PBS Tier 1	19267	16690	2651	93	15	19449	14%
	PBS Tier 2	27496	24611	2604	77	12	27304	10%
	PBS Tier 4	42414	29829	12612	1948	16	44405	28%
	PBS Tier 5	1523	1278	214	12	0	1504	14%
<b>2010 Total</b>		<b>90700</b>	<b>72408</b>	<b>18081</b>	<b>2130</b>	<b>43</b>	<b>92662</b>	<b>20%</b>
<b>Grand Total</b>		<b>161522</b>	<b>124949</b>	<b>29743</b>	<b>2624</b>	<b>78</b>	<b>157394</b>	<b>19%</b>

\*Stats for 2008 are from April to December

Source: CRS

Run date: 07/03/2011

The data is based on management information. It is provisional and subject to change.

28. Subsection c) of the commitment states that the Secretary of State must specify the number of those applications granted, after an initial indication of intention to refuse the application, as a result of further consideration in accordance with arrangements established by the Secretary of State. The intention of the legislation is to address how many initial refusals have been overturned following an Administrative Review and we should regard it that way for

the purposes of the Report. Statistics on Administrative Review requests are required for the period April 2008 to December 2010. However, Administrative Review data is not available for the full period required by the legislation. From April 2010 an automated system was set up to record the number of Administrative Reviews and, as such, comprehensive data is only available from April 2010 to December 2010.

Admin Review Performance by Tier - April 2010 to December 2010						
Global	AR received	decisions overturned	Total processed	% overturned	%age of Applications	Total Applications
<b>Tier 1</b>	1597	303	1373	22%	5%	32084
<b>Tier 2</b>	664	118	436	27%	1%	53132
<b>Tier 4</b>	8669	1408	8172	17%	3%	286618
<b>Tier 5</b>	328	48	239	20%	1%	29090
<b>All Tiers</b>	<b>11258</b>	<b>1877</b>	<b>10220</b>	<b>18%</b>	<b>3%</b>	<b>400924</b>

## SECTION IV

29. Subsection d) of the commitment states that the Report must:

describe those arrangements referring to subsection c) after an initial indication to the applicant of intention to refuse the application, as a result of further consideration in accordance with arrangements established by the Secretary of State.

30. This section of the Report sets out the arrangements in place for the Administrative Review process that is in place of the full right of appeal for points-based system entry clearance decisions.

### OVERSEAS ARRANGEMENTS FOR ADMINISTRATIVE REVIEW

31. Administrative Review is the mechanism for reviewing refusal decisions made under the points-based system where an applicant believes an error has been made in the decision. The Administrative Review is free of charge. It is a non-statutory scheme; in that is there is no legislation setting out what it covers or who is eligible to apply. The policy is contained in the relevant points-based system guidance. The request for Administrative Review must be completed by the applicant. The applicant is not allowed to submit further documents that were not available to the ECO at the time the original decision was made. Therefore, any representations that introduce new evidence and are submitted with an Administrative Review request will not be considered and the applicant will be advised of the fact.

#### 32. The process for the applicant

- The applicant can apply for an Administrative Review if they believe the ECO has made an error in the consideration of the application.

- He/she completes an Administrative Review Request Notice stating what they want reviewed and why.
- The Administrative Review Request Notice must be submitted within 28 days of receipt of the refusal notice.
- The applicant may not submit any new evidence in support of the request for Administrative Review, unless refusal is for use of deception under paragraph 320 (7A) or (7B).
- He/she may only seek one Administrative Review of the decision unless any of the reasons for the initial refusal have changed.

#### 33. The process for the entry clearance Post

- The Administrative Review request is allocated to an ECM for review action
- The Review is completed within 28 days of receipt
- A written outcome of the Administrative Review is sent to the applicant
- The Administrative Review is completed by an independent reviewer

34. The ECM reviewing the decision will be independent of the decision:

- **They will not have been** involved in the initial decision (i.e. provided advice)
- **They will not be** in a partner relationship with the decision maker
- **They will not** review the original decision.

35. The ECM reviews areas of the decision raised by the applicant in the Review Request and will check that points were awarded correctly, documents were correctly assessed and verification checks were carried out properly.
36. There are three outcomes of Administrative Review:
  1. Overturn decision and issue entry clearance.
  2. Uphold decision, reasons for refusal remain the same.
  3. Uphold decision, with revised reasons for refusal. In this instance, the applicant may request a further review of any new reasons for refusal.
37. The ECM will recommend reasons for refusal are overturned if the ECO:
  - failed to properly consider evidence submitted with the original application;
  - failed to apply the Immigration Rules correctly;
  - made a mistake in processing the application;
  - failed to give adequate reasons for refusing entry clearance.

## SECTION V

38. Subsection e) of the commitment states that the Secretary of State for the Home Department must describe the effect of regulations made under section 88A(1)(a) or (b) as substituted by subsection (1) above.
39. This requires the Secretary of State to describe any regulations that have been made to 'permit rights of appeal for visitors or dependants, as allowed by subsections (a) and (b) of s.88A 2002 Act'. It is confirmed that no regulations have been made under s.88A(1)(a) or (b) 2002 Act.

## SECTION VI

40. Subsection f) of the commitment states that the Secretary of State: may include other information about the process and criteria used to determine applications for entry clearance.

### POINTS-BASED SYSTEM ASSESSMENT CRITERIA

41. The criteria to be assessed under each points-based system Tier is set out in the Immigration Rules sections 245AA - 245ZZD. Migrants must score sufficient points under the relevant category and meet the terms of the Immigration Rules and policy guidance published on the UK Border Agency website.

### ENTRY CLEARANCE PROCESS FOR POINTS-BASED SYSTEM APPLICATIONS

- Migrants applying to work or study in the UK may apply under the points-based system.
- Migrants can complete an online self-assessment on the Points Based calculator prior to applying to see if they can attain sufficient points for attributes which include sponsorship, age, qualifications, previous earnings and English language ability.
- The migrant (except under Tier 1) must be sponsored by a UK Border Agency registered sponsor. He/she will receive a Certificate of Sponsorship or Confirmation of Acceptance of Studies, and he/she must submit their sponsorship reference number with their application. Migrants can make a points-based system application either online or by paper application.
- All points-based system migrants will submit their biometric details with their entry clearance application.
- An ECO will assess the application and supporting evidence to determine whether the applicant has scored sufficient points and meets the requirements of the Immigration Rules and guidance. The ECO will check details of the Certificate of Sponsorship on the electronic points-based system checker system.
- Verification checks may be made on documents submitted to ensure they are genuine. Policy on verification is set out in the policy guidance on the UK Border Agency website.
- If the application is successful, a visa will be issued. If the decision is refused, a refusal notice will be sent to the migrant with information on how to request an Administrative Review.
- The migrant may submit an Administrative Review within 28 days of receipt of the refusal decision. The request for Review will be processed by an ECM within 28 days of receipt of the request.
- Migrants continue to have a limited right of appeal under the Human Rights Act and Race Relations Act.

# SECTION VII

42. The commitment in the 2006 Act requires the Secretary of State to report on the effects of Subsection (1) which is the mechanism by which appeal rights against refusal of entry clearance were removed for those applying under the points-based system.
43. To achieve this, it is appropriate to make some comparisons between the appeal system and the Administrative Review process. Assessment is made on the benefits of the Administrative Review process based on the objectives it was set out to achieve. Analysis is therefore provided on the following:
- a) The Review will be quick and efficient.
  - b) The Review will be independent of the original decision.
  - c) Administrative Review is appropriate in the context of a more objective and transparent decision making process.

## A) THE REVIEW WILL BE QUICK AND EFFICIENT

To evaluate whether this is achieved, it is useful to make comparisons with the appeal system.

### Time

44. This section sets out average time taken by staff to process the Review and the appeal. It also sets out the length of time experienced by the applicant from start to end of the process.

### Staff processing times

45. The average time overseas to process one appeal and one Administrative Review is set out in the tables below.

Administrative Review	Average time
Tier 1	56.7 mins
Tier 2	46.1 mins
Tier 4	44.6 mins
Tier 5	45.9 mins

46. The time taken to process an Administrative Review is based on the administrative work required, the review performed by the ECM and any resulting changes to the decision required by the ECO.

Appeal	Average time
Overseas Admin time	2 hours
UK Admin Time	5 hours
Additional ECM time to review lodged appeals	0.5 hours
Additional ECO time for allowed appeals	0.5 hours
<b>Total</b>	<b>8 hours</b>

47. The average time taken per case across all appeal types to deal with administrative functions in the UK, including file movements, tracking, linking, associated IT inputting, file and IT record creation and bundling is estimated to take 5 hours. An additional 2 hours of administration time is factored in for visit visa and out of country appeals to cover admin time required overseas. In addition, ECMs are required to review all appealed decisions to check whether initial concerns have been met by the appeal documentation. The estimated time for this is 30 minutes. Where a decision is made to allow an appeal, then additional time is taken by the ECO to rerun certain checks, estimated to take 30 minutes.

48. The appeal process involves handling considerable amounts of paperwork and movement of documents from overseas to the UK. In comparison, the Administrative Review is relatively straightforward to administer. The Review is based on the documents submitted at the time of the decision only, except in limited circumstances. Some movement of documentation is required if the Review is performed at a different location to where the decision was taken. The ECM performs the Review, completes a recommendation form to the ECO if changes are required, and provides a written outcome of the Review to the migrant.

### **Length of time experienced by applicant**

#### **Administrative Review**

49. The applicant has 28 days from the date of receipt of the refusal notice to submit a request for Administrative Review.
50. The administrative reviewer will complete their review and notify the applicant in writing of their decision within 28 days from the date of receipt of the Administrative Review request notice.

#### **Appeals**

51. The Tribunals Service sets out appeal times on its website and states that applicants can lodge their appeal at the entry clearance office or directly with the Tribunals Service.
52. In most cases, an appeal lodged at post will be heard three weeks earlier than appeals lodged with the Tribunals Service. Appeals lodged with entry clearance offices:
- For visit visa appeals lodged at post the earliest time an appeal would be heard is 16 weeks after the appeal was lodged.
  - For non-settlement appeals lodged at post the earliest time an appeal would be heard is, 16 weeks after the appeal was lodged.
  - For settlement appeals lodged at post the earliest time an appeal would be heard is 24 weeks after the appeal was lodged.

### **B) THE REVIEW WILL BE INDEPENDENT OF THE ORIGINAL DECISION**

53. The Independent Monitor recommended that the Review should be demonstrably independent of the original decision.
54. In order to ensure that the Review is sufficiently independent, the UK Border Agency worked closely with overseas visa managers to explore options for implementation. In large Posts with multiple ECMs, an ECM not involved in the original decision as defined below would perform the Review. In smaller Posts where there is only one ECM, the Review would be designated to a neighbouring Post or would be sent to a larger Hub Post for the Review to be performed.
55. The guidelines for ensuring the ECM is independent are that the Reviewer:
- is not involved in the initial decision (provided advice)
  - is not in a partner relationship with decision maker
  - did not review the original decision
56. The role of the Independent Monitor provided a further layer of independent review, although the applicant had no direct access to the Independent Monitor nor redress if a decision was found incorrect. Independent oversight of the process is now provided by the Independent Chief Inspector.
57. The appeal system gives applicants access to an independent review of entry clearance decisions. The Immigration Judge, who adjudicates whether the appeal against the refusal decision should be allowed or dismissed, is fully independent of the Home Office. Whilst the Administrative Review is an internal process and is performed by officers within the department, the process has been developed to ensure that the Review is carried out by an officer who had no involvement in the original decision.

### C) ADMINISTRATIVE REVIEW IS APPROPRIATE IN THE CONTEXT OF A MORE OBJECTIVE AND TRANSPARENT DECISION MAKING PROCESS

58. The Administrative Review was introduced in the context of a new, more objective and transparent process for taking decisions under the points-based system. The applicant would be able to self assess to see if they attained the points required under the relevant points-based system category. This would give them a clearer expectation as to whether they would qualify and allow an informed decision to be made prior to submitting an application.
59. It follows then, that with a simpler, objective and transparent approach to decision making, the number of decisions that would need to be overturned by an ECM at Administrative Review would be reduced. This is on the basis that the entry clearance decision would be correct from the beginning in accordance with the Immigration Rules and guidance.
60. In order to make an assessment as to whether this expectation has been met, the data below allows some comparisons on overturn rates for student entry clearance applications. The student category is considered to be the only one where such comparisons can be drawn as most of the student categories in existence before 2009 were subsumed by Tier 4 of the points-based system. There is not a direct correlation between pre-points-based system work categories and the new points-based system employment routes.
61. Table A below provides data on appeals lodged and allowed under the student route that was in place prior to the points-based system for the period April 2008 to December 2008. Table B provides data on Administrative Review numbers and overturn rates for Tier 4 of the points-based system for the same period in 2010.
62. Results should be considered as indicative only, given that the comparison is between two different systems and different criteria for assessing student applications.

**Table A: Student appeals. April 2008 – December 2008**

Global	Appeal receipts	Appeals withdrawn	Appeals allowed	Appeals dismissed	Resolved + withdrawn	Appeals allowed %	Appeals dismissed %
Student	29735	671	6830	17719	25220	28%	70%

**Table B: Tier 4 Administrative Reviews. April 2010 – December 2010**

Global	AR received	Decisions overturned	Total processed	% overturned
Tier 4	8669	1408	8172	17%

## SECTION VIII

63. Subsection g) of the commitments states that the SSHD may Record opinions.

### **VIEWS ON ADMINISTRATIVE REVIEW ARE PROVIDED FROM THE CHIEF INSPECTOR'S REPORT**

64. Administrative Review cases are routinely sampled by the Independent Chief Inspector of the UK Border Agency during his overseas visa section inspections and are a regular feature of the reports. The inspection reports have focused on the quality of the Administrative Reviews and the timeliness of the process.
65. In the inspection reports for Kuala Lumpur and Chennai, all Administrative Reviews passed the Chief Inspector's quality test. In the Abu Dhabi report 90% of Reviews passed the quality threshold and in the Guangzhou report 83% of Reviews passed the quality test.
- 'We were pleased to note that administrative reviews were being carried out effectively – this included a considerable number of decisions being overturned in favour of the customer' – Chennai Inspection Report (August – November 2009).
66. The Chief Inspector's reports have highlighted a consistent failure in the inspected posts to meet the 28 day target for completing the Review. In Kuala Lumpur 72% of the 50 cases reviewed had been completed outside of the 28 day target. In Chennai 65% of cases were reviewed outside 28 days, 71% had failed to meet the target in Abu Dhabi and 96% had failed to meet the target in Guangzhou.
67. The Kuala Lumpur, Chennai and Guangzhou reports contained recommendations regarding the UK Border Agency's failure to meet the 28 day target for completion of the process.
- 'We found considerable delays in dealing with administrative reviews of points-based applications. This has been a consistent finding in our previous overseas inspections, including our inspections of visa sections in Kuala Lumpur, Chennai and Abu Dhabi/Islamabad. It is therefore disappointing that, despite accepting two previous recommendations on this issue, the UK Border Agency continues to miss its processing target. For this reason we believe the UK Border Agency should now review whether its completion target of 28 days for administrative review remains realistic, whilst remembering this procedure replaced a full right of appeal.' Guangzhou Inspection report (May - August 2010).
68. In response to these recommendations the UK Border Agency has introduced a change to the way Administrative Reviews are recorded on its overseas caseworking system. This allows an ECM to monitor the progress of Administrative Reviews through the production of a daily report. The progress of Administrative Reviews is now also monitored centrally and performance against the target is published on a monthly basis. There has been a steady improvement in the performance against the 28 day target since the introduction of these measures. In December 2010 UK Border Agency figures showed that 76% of Administrative Reviews were completed within the 28 day target. The UK Border Agency expects this figure to reach 90% by end 2011.

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