



THE GOVERNMENT REPLY TO
THE THIRTEENTH REPORT FROM
THE HOME AFFAIRS COMMITTEE
SESSION 2008-09 HC 217

Managing Migration: The Points Based System

**Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty**

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MANAGED MIGRATION: THE POINTS BASED SYSTEM

The Points Based System and the current economic climate

1. There are arguments both for and against a limit on the number of economic migrants, and about the impact of migration, population growth and population density on resources and public services. We do not, however, consider these arguments in this Report, nor make any assessment of their relative merit, since they fall outside the terms of reference of our inquiry. (Paragraph 49)

2. In the context of the current economic climate it is all the more important that the Points Based System is able to respond flexibly to changing economic and labour market needs, and that the process of assessing shortage and awarding points for skill is accurate, fair and transparent. Given that the number of job vacancies in the UK has reduced by a third over the last year and currently stands at its lowest level since comparable records began in 2001, it is obvious and right that employers should seek to recruit first from the UK labour market. However, where there are certain skills of which a genuine shortage exists, recruitment from outside the EEA should be allowed if otherwise the UK's global competitiveness could be harmed. (Paragraph 50)

We welcome the Committee's comments. The Points Based System was designed to respond flexibly to the needs of the UK's economy and labour market. In March the Government used this flexibility to introduce a more robust resident labour market test, requiring that companies advertise vacancies in Jobcentre Plus. We also tightened the criteria for Tier 1, allowing the Government to be more selective about the types of skilled migrants given open access to the UK labour market.

Shortages

3. Our inquiry discerned different types of labour shortage. The three particular types thrown up by the evidence we took across a range of sectors could be summarised as: highly specialist skills not available in the resident workforce; shortages due to unattractive wages or conditions; and shortages due to insufficient investment in skills. (Paragraph 66)

4. It seems that where genuine shortages exist – for a range of reasons – which cannot be filled from within the UK or EEA labour force, a combination of short-term migration of non-EEA nationals with longer-term investment in the retraining of the British population is justified. We note that there is a case that the availability of migrant labour may lessen the incentive for employers to recruit and train the resident UK labour force. This makes it all the more important that the points criteria be robust, the resident labour market test rigorously enforced, and that priority be given to investment in retraining the resident population. (Paragraph 67)

5. We therefore conclude that the Government needs to redouble its efforts to link skills shortages to training. The very recent creation of a new Department for Business, Innovation and Skills (BIS) from the previously separate Department for Business, Enterprise and Regulatory Reform (BERR) and Department for Innovation, Universities and Skills (DIUS) offers the chance to give fresh impetus to linking training to the needs of the economy and skills gaps in the resident population. (Paragraph 68)

The National Skills Strategy published in November 2009 set out how the future skills system will better meet the needs of the economy, to ensure that employers have access to a workforce with the right skills. This will support high growth areas and the areas of the economy experiencing the biggest shortages, typically filled at present by migrant labour. In practice, this will mean a bolstered role for the UK Commission for Employment and Skills to advise government on the short, medium and long term needs of the economy. Sector Skills Councils will contribute knowledge of sectoral demand and how business processes are changing. This will enable the skills system to be more active in identifying skills gaps and shortages and more responsive in supplying training provision that raises the skills of UK workers to compete for jobs.

We will ensure that there is less need to fill skills shortages through migration by strengthening links between the Migration Advisory Committee's shortage occupation list and training priorities in the skills system. The responsibility for acting on these priorities will fall squarely to the Skills Funding Agency. They will commission the training that will be needed in the sectors and geographical areas where it will have most impact. We will work with Sector Skills Councils to ensure we build the right partnerships with employers to support training of the domestic population to compete successfully for jobs in skills shortage areas. Over time, this will ensure that the skills system is sufficiently responsive in tackling both current, acute shortages and likely future demand for skills and is better at equipping our own people with the right skills.

6. Some occupations on the shortage occupation lists reflect areas of long term structural shortages, or exceptional talent at the international level: these shortages are unlikely to change quickly. The long term inclusion of occupations such as skilled ballet dancer, for instance, appears to be to compensate for poor design elsewhere in the system – namely that it cannot recognise the skills of this occupation through the points criteria. It seems questionable whether the lists can at the same time be both a short term flexible resource, and provide for long term chronic shortages. We therefore recommend that long term and structural shortages should be addressed by adapting the points criteria, and not by inclusion on the lists. The shortage occupation lists should instead be used only to provide a degree of flexibility for short term or cyclical shortages in exceptional circumstances. (Paragraph 78)

We believe that occupations such as skilled ballet dancers are already adequately catered for in the Points Based System. Adjusting points criteria to accommodate such niche occupations would simply undermine the system's transparency.

The Migration Advisory Committee is commencing a review of its approach defining skilled occupations and labour shortages, and plans to implement any changes in its autumn 2010 review of the shortage occupation lists.

7. There appears to be some disparity between Professor Metcalf's statement that, in certain industries which experience cyclical shortages, the labour market changes "profoundly very quickly" and the Government's assertion that the six-monthly reviews of the shortage occupation lists would be frequent enough to "keep the lists current". Bearing in mind that shortages could emerge in a sector up to six months in advance of the next list, and would inevitably take some weeks, if not months, following the inclusion of that occupation on the list to fill, it is hard to see how the lists can represent a flexible and speedy method of responding to labour shortages. The converse is also true: where changing economic circumstances mean that resident workers are able to fill vacancies included on the lists, those occupations may need to be removed more quickly. Given our previous recommendation – that the lists be reserved only for short term or

cyclical shortages – the Government should consider whether the lists need to be updated on a more frequent, or rolling, basis. (Paragraph 79)

We believe that six-monthly reviews of the shortage occupation list sufficiently meet the needs of the UK labour market. However, we accept that there may be exceptional circumstances where it would be necessary to amend the list outside of this cycle and the flexibility of the PBS would allow us to do so.

8. A resident labour market test is in principle a useful tool for assessing the skills of the resident population before a migrant is considered for employment. However the current test does not seem to command confidence amongst jobseekers, employers or other commentators. It is vital that unscrupulous employers are prevented from obeying merely the letter, and not the spirit, of the test by advertising in obscure locations or at unrealistic rates. To this end we recommend that the Government again review the operation of the test to ensure that it is rigorously enforced, including considering the introduction of some form of independent inspection of its application. Use of a one-size-fits-all test, in particular the requirement that all employers advertise through JobCentre Plus, neither effectively targets the jobless resident population, nor appeals to the right workforce to fill specialist jobs. (Paragraph 80)

UKBA is committed to ensuring that the Resident Labour Market Test operates to ensure opportunities for resident workers are protected. Our network of compliance staff undertake regular spot checks on sponsors to ensure they have complied fully with the requirements of the RLMT.

As part of its review of Tier 2, the Migration Advisory Committee made a number of specific recommendations to strengthen the RLMT, which the Government accepted in September 2009.

9. If the Migration Advisory Committee were to recommend that the resident labour market test and intra-company transfer routes be closed, leaving the shortage occupation lists as the only route for skilled migrants under Tier 2, it is very difficult to imagine that political pressure would not be placed on the Committee to include or exclude certain occupations. Whilst we were concerned to hear of possible abuses of the resident labour market test, we do not consider that restricting migration to the shortage occupation lists alone would be an appropriate or effective response. (Paragraph 81)

10. Although we welcome the aim of transparency and the introduction of objective criteria under the Points Based System, measuring skill primarily on criteria such as past earnings or academic qualifications gives undue priority to easily-quantifiable attributes and ignores ability or experience. For instance, it seems spurious that a Master's graduate fresh from university on their first job should qualify as a 'highly skilled migrant' under Tier 1, whereas a businessperson of 25 years' global experience and earnings of hundreds of thousands of pounds but without a Master's degree would not. (Paragraph 111)

11. In particular, the overemphasis on formal qualifications at the expense of professional experience or training is arbitrary and unfair. Practitioners of several very skilled professions under Tier 2 – such as ballet dancers, chefs or musicians – often do not hold formal qualifications. Rather than including such professions on a shortage occupation list, the Government should draw up a list of high-level training or professional experience, by sector, which it will accept as a substitute for academic qualifications. (Paragraph 112)

12. With respect to the maintenance requirement, we agree with the Government that there is no circumventing the fact that there is a set cost of living in the UK, regardless

of whether meeting that cost is more or less onerous on migrants from different parts of the world. We therefore consider that requiring migrants to be able to support themselves at the rate of £800 for each month they are in the UK is not discriminatory, and that it is reasonable to measure this by setting a maintenance sum which migrants must demonstrate that they have saved prior to entry. (Paragraph 113)

We welcome your support on this matter

13. We welcome the Government's assurances that salary requirements will be adjusted to allow for the varying earning capacity of different countries using inflators. This is important to guard against discrimination against migrants from developing countries. (Paragraph 114)

The MAC is considering how best to go about this in its review of Tier 1. It published its findings on 4th December 2009.

14. We accept that there are a small minority of specialised professions – such as chefs in international restaurants, or international artists – in which knowledge of the English language may not be vital to the core tasks of the job. We are nevertheless of the view that knowledge of English is necessary for living in and integrating into British society, and do not therefore consider it unreasonable for the Government to make a basic level of English language a prerequisite for migration to this country. (Paragraph 115)

We welcome your support on this matter

15. We are at a loss to understand why specific exemption from the English language requirement has been made for footballers and not for any other occupation which requires international mobility. Although we acknowledge that the business of international transfers is transacted quickly, and that players themselves may have little control over their move, we do not consider a basic level of competence in English to be beyond the reach of footballers, either in terms of ability or of time. We therefore conclude this to be a case where money has spoken louder than merit and urge the Government to reverse its exemption. (Paragraph 116)

We have not exempted footballers from the English language requirement. If they apply for leave under Tier 2: Sports of the Points Based System they must meet the English language requirement for that tier, as would any other sports person. The football transfer window means that players are often brought to the UK at short notice and with little time for preparation. For that reason footballers in these circumstances will need to enter the UK using Tier 5: Creative and Sporting, which has no English language requirement, and is available to all other sports people. As this is a temporary category, we are allowing football players to be able to apply for further leave under Tier 2 once they can prove their ability to speak English, without having to leave the UK. Other migrants wishing to switch from Tier 5 to Tier 2 will need to leave the UK and apply for Entry Clearance overseas.

16. We agree with the Government that it is reasonable to expect ministers of religion to possess a higher than basic level of English language in order to communicate with their worshippers, and consider that their fluency in English ought to be on a similar level to that required from academics and other similarly skilled migrants. (Paragraph 117)

We welcome your support on this matter

17. We note that there is value in the proposition made by the Chinese Immigration Concern Committee and Unite that English classes could be provided in-country, but we consider that this should be an additional, not an alternative, requirement. We recommend

that the Government give consideration to how better provision of language teaching for migrants could be made in the UK, including placing a heavier responsibility onto employers to facilitate and pay for it. (Paragraph 118)

Sponsorship

18. Employers and educators, as the sponsors of migrants, are expected to take on greater responsibility for migrants' compliance with immigration controls. In return for taking on these duties, they have a right to expect a high quality service from the UK Border Agency. In providing this high quality service, the UK Border Agency must ensure speedy decision-making, access to helpful and well-informed staff in the UK and overseas, and consultation with sponsors to meet their concerns about the design or administration of the new system. (Paragraph 135)

We are committed to improving the time it takes to process sponsor applications. We have developed plans and working models to make our processes more efficient and to further maximise the available resources.

Sponsors have greater flexibility and a streamlined process to counterbalance the additional responsibilities under the PBS. We have simplified the process of sponsoring a migrant so that a process which formerly took weeks under the work permits system can now be completed in minutes.

Key elements of our communications strategy have been to establish a customer helpline for employers and sponsors based within the UK and also to have a dedicated sponsor support team based within the Sponsor Licensing Unit who handle any technical problems experienced by sponsors. The UKBA website is regularly updated with latest announcements and developments for both sponsors and migrants to provide a real-time resource on PBS.

UKBA works closely with its stakeholders in a number of forums including the Arts and Entertainment Taskforce, Joint Education Taskforce, Employers Taskforce and Visitors Taskforce. Discussions with these groups have supported the development of new visa products and policy and in particular in the communication of PBS information. We also work proactively with organisers of major commercial, sports or entertainment events to ensure that international participants are well-informed about the UK's visa process and apply in good time.

19. There is clearly great nervousness amongst sponsors over the possible civil and criminal penalties attached to any failure, even unwitting, to report changes in circumstance of their migrants. It seems odd that sponsors who have been rigorously assessed and awarded an 'A' rating should then be subject to harsh penalties for minor administrative oversights, especially in the context of a wholly new system. We recommend therefore that the Government introduces a degree of leeway for 'A' rated sponsors within which they will not be penalised. The Government must also make explicit to sponsors exactly how and when they can expect penalties to be applied, in order to allay the current insecurity felt by employers and educators. (Paragraph 136)

We are improving and strengthening our communications to sponsors to ensure that they are aware of their responsibilities under the system and the penalties that they are liable for. We are doing this by increasing the amount of direct email communications to sponsors, targeting key stakeholders and opinion formers, and speaking to sponsors either individually or in groups.

20. We were alarmed to hear that the system gives UK Border Agency officials wide powers of entry and inspection on sponsors' premises. We recommend that the exercise of these powers be limited strictly to the inspection of files and paperwork relating to the sponsorship of migrants. (Paragraph 137)

We note the committee's views.

21. Given the unfortunate propensity of previous large-scale Home Office IT systems to fail, we fully sympathise with the nervousness felt by universities about a Sponsorship Management System which relies entirely on a Home Office IT project. The consequences for the reputation, functioning and finances of UK businesses and educational establishments of any failure of the system at peak times of the year, are potentially dramatic. (Paragraph 138)

22. In this context we welcome the considered decision of the UK Border Agency to phase implementation of the system for the higher education sector and involve the sector in its design. However, the Government must still ensure that the system is thoroughly tested in the UK and abroad, and that pilots are run with universities in advance of the implementation date of autumn 2009, which will fall during the peak period for university enrolment. It must also ensure that adequate back up of the technology is in place. (Paragraph 139)

23. We welcome the response of the UK Border Agency to concerns voiced by the education sector about the speed of implementation of the Sponsorship Management System and its decision to implement the system more gradually for Tier 4 to allow for testing. However, we urge the UK Border Agency also to ensure adequate time for piloting, testing and feedback with users for every other aspect of the Sponsorship Management System – this is vital not only to ensure that largely untried technology and systems actually work, but also to secure the confidence of sponsors. (Paragraph 140)

The SMS has been in operation since November 2008 and is working well. The Tier 4 functionality has been rigorously tested according to an industry standard and independently verified test plan over several months and it is only on completion of this plan that the updated system will be released in Autumn.

Testing was completed at the end of September and progressed very well through all stages of the plan. Education sponsors joined the UK Border Agency in one of the final stages of testing – User Acceptance Test – on two occasions, in late August and early September. 16 sponsors representative of the sector were nominated by the Joint Education Taskforce to take part. The feedback from these sessions was very positive and sponsors commented on what an easy to use, simple system the Sponsorship Management System was. The UK Border Agency will be providing quotes and case studies to the wider education sector to provide further assurance to the sector and to build their confidence.

The UK Border Agency also invited sponsors to provide test data to use during the final stages of testing, to provide further validation that data generated from real sponsor's systems can be successfully uploaded to the SMS. During the testing, sponsors brought their own 'bulk upload' files with them to test, and tried them against the system successfully, providing further confidence that the end to end solution will meet their needs.

Administrative review

24. We agree that an administrative review on objective criteria will be more transparent and easier to administer. However, requiring a new application and a fresh fee for failing to furnish the UK Border Agency with rigidly defined types of paperwork is palpably unfair. This is particularly the case for applicants from countries in which the use of documents such as payslips is not common practice. That some applicants are unable to meet the documentation requirements through circumstances beyond their control is apparent from our conversations with UK Border Agency officials in New Delhi. We therefore recommend that applicants should be able to submit additional documentation, if it is requested, without having to make an entirely fresh application and pay another fee. (Paragraph 149)

UKBA consulted with the Independent Monitor, overseas regional managers and stakeholders on the design of the Administrative Review process to ensure it was a robust and efficient system. Since implementation, the Administrative Review process has been working well with little or no feedback from applicants/stakeholders about any need for change. A 40% sample of Tier 4 applications showed that there was a 19% refusal rate and of those refused, 7% requested an Administrative Review. In 70% of cases submitted for Administrative review the agency maintained the original decision. We have monitored its progress and ensured that all current and new staff have received training.

The Government made a commitment to Parliament in February 2006, for a review of the Administrative Review (AR) system to take place within three years of the Immigration, Asylum and Nationality Act 2006 (IAN) taking effect in February 2008. We intend to carry out such a review in 2010/11 when we have more experience of operating AR in practice and also the Independent Chief Inspector may have reviewed its operation.

Bearing in mind these commitments it would be unnecessary to put further review procedures in place now.

Additionally, the UK Border Agency issued amended guidance on 10th August 2009 in the form of an Interim Casework Instruction covering evidential flexibility. This encourages staff to contact the customer/sponsor to correct minor omissions or errors to avoid their having to make a fresh application and pay a fresh fee.

25. The Government should provide for an independent review of visa refusal cases under the Points Based System by the Chief Inspector of the UK Border Agency, but, in a departure from the current situation, the Chief Inspector must be given the authority to investigate individual cases, and the power to provide appropriate remedy to applicants. The Chief Inspector should also be asked to review visa applications that have been successfully granted to ensure that they were correctly issued. (Paragraph 150)

The Independent Chief Inspector UKBA has already confirmed that he will be looking at the grant, in addition to the refusal, of visa applications as part of his planned overseas inspection activities. Also, he has indicated he will be carrying out a thematic inspection of the Points Based System in 2010.

The current legislation (UK Borders Act 2007) does not provide for the independent Chief Inspector UKBA to investigate individual cases, although this does not prevent him from considering or drawing conclusions about an individual case for the purpose of considering a general issue. We considered the issue of giving the Chief Inspector powers to look at individual cases during the passage of the UK Borders Act 2007 but we decided against such a proposal. There is a widely recognised distinction between inspection and the type of function carried out by an Ombudsman. For example,

separate bodies deal with inspection of the police and complaints against them in individual cases. Were the Chief Inspector to take on reviews of individual cases and to provide redress there would be a risk that he would become overwhelmed with individual complaints, to the detriment of producing an assessment of the overall effectiveness of the Agency. The Chief Inspector's decisions would also be open to legal challenge. There are already clear avenues of redress for people who have an individual complaint or wish to challenge an individual decision. We consider that the independent Chief Inspector's broad role in monitoring and reporting on the efficiency and effectiveness of the performance of the functions of the UK Border Agency should remain the focus of his role and resources.

However, where the Chief Inspector has found issues with cases that he has come across in the course of his inspections, the UK Border Agency has reviewed its handling of those cases, and where appropriate provided remedy to applicants.

Biometric visas and delays

26. The requirement for applicants to provide biometrics in person for visas and the inevitable delays associated with this process seems to be causing disproportionate delays and expense to applicants. The challenge with providing biometrics is especially acute for migrants in certain parts of the world where biometric collection centres are few and far between, such as certain African countries. However there seem to be insufficient biometric collection centres in most countries. We recommend that the Government should as a matter of urgency establish more biometric collection points, including the provision of mobile biometric collection centres. (Paragraph 160)

Biometric enrolment is now an integral part of the application process. There are currently 250 biometric collection points worldwide. We keep the locations of Visa Application Centres (VACs) under review. In some countries, for example key locations like China and India, we have more VACs than there were visa sections previously.

We have opened new VACs but also need to be mindful of costs which would ultimately be reflected in the visa fee for applicants. In a few places where we have opened VACs in response to demand (for example 2 in Russia), uptake has been disappointing. So we are considering different arrangements such as the use of mobile collection arrangements where the security and commercial issues can be resolved.

We will also continue taking an innovative approach. We have agreements with several other countries allowing UK visa applicants to submit biometric information at further locations. For example in the USA, the Dept of Homeland Security collects the biometrics of applicants for UK visas from their network of 129 Application Support Centers, providing presence in every US state.

27. The UK Border Agency is consistently failing to meet its own target times for visa processing. It is unacceptable that applicants very frequently have to wait more than ten working days – not even from when they make the application, but from the point at which the decision centre receives the paperwork – for a visa decision, and often up to three or four times that long. Our witnesses are right to express concern about the new system, particularly where a visa is needed quickly, such as in the case of international performers or artists, in which cases it is by no means clear that an applicant will receive their visa in time. The UK Border Agency must improve its processing times as a matter of urgency. It must also ensure that there is a streamlined procedure for emergency applications, so that urgent cases can be processed in 24 to 48 hours in every country. (Paragraph 161)

We believe in being transparent about our processing times and therefore managing expectations of applicants and stakeholders. We publish monthly end to end processing times by Application Centre, and by type of visa application. These enable applicants to get a good idea of recent actual performance in the precise location and category they wish to apply in. We also publish quarterly performance against our service standards. See our website www.ukvisas.gov.uk.

Between July and September this year the UK Border Agency processed 97% of straightforward applications within 10 working days (against our target of 98%). For other non-straightforward applications (which are more complex) over the same period we processed over half a million applications, 82% of these within three weeks (against our target of 90%).

The implementation of PBS T4 has placed a particular strain on the system during Summer 2009 but most students have received a decision within 3 weeks.

We have faced logistical challenges in our Pakistan visa operation in 2009 which have caused serious delays but have now taken steps to address them.

The UK Border Agency International Group stakeholder team provides advice and support in cases where a visa may be needed urgently, for example in the arts and entertainment sector. In the past 18 months nearly all urgent cases have been successfully resolved to the satisfaction of the relevant organisation, normally within 48 hours.

However we cannot make guarantees that urgent cases will be resolved within 24 or 48 hours. Individual circumstances may make this impossible, for example, if an applicant applies in a 3rd country without the necessary documentation to support their visa application.

We work closely with our stakeholders in a number of forums including the Arts and Entertainment Taskforce, Joint Education Taskforce, Employers Taskforce and Visitors Taskforce. Discussions with these groups have supported the development of new visa products and policy and in particular in the communication of PBS information. We also work proactively with organisers of major commercial, sports or entertainment events to ensure that international participants are well-informed about the UK's visa process and apply in good time.

Responsiveness of the UK Border Agency

28. It is clear that the UK Border Agency was initially slow in providing adequate information about the operation of the new system, and in some cases failed to provide vital guidance in advance of tiers going live. However, our witnesses agreed that the Agency has done much to remedy this situation and has made concerted efforts not only to engage in constructive and timely dialogue, but also to display a willingness to adjust the system where stakeholders have demonstrated that it is desirable on a point of principle or pragmatism to do so. This is to the UK Border Agency's credit. It is crucial that it continues to demonstrate pragmatic flexibility, especially in the first months of a new system. (Paragraph 166)

29. However, there are a few specific areas in which UK Border Agency can clearly improve its engagement and communication. These are: to improve the quality of advice and knowledge of staff available through its telephone helpline; to increase the quality of advice and guidance available at overseas posts; and to ensure that the different parts of the UK Border Agency are communicating effectively, to guarantee that promises or decisions made by policy-makers in the design of the system are always enacted by operational staff, wherever in the world they are located. (Paragraph 167)

The UKBA will continue to work closely with stakeholders to monitor the impact of the new system as it continues to bed in and, where necessary, will flex the system where it is the best interests of the UK to do so. We appreciate the Committee's recognition of the actions we have taken to date.

The UKBA has established a programme which is currently developing an integrated set of simplified guidance products for operational staff using modern IT solutions to help them make better, faster and more consistent decisions. This work will involve improving the lines of communication between policy owners and operational staff, including staff overseas. Initially the work will concentrate on Immigration Group guidance, which accounts for a large share of UKBA guidance, but there is an expectation that the capabilities developed during the programme will be made available to the Agency as a whole. This will allow for a single source of operational guidance for all UKBA staff, which will support an improvement in the quality of decisions.

We have recently updated and re-formatted our Entry Clearance Guidance and Operating standards and Instructions for staff, and has reviewed its system for sending new guidance and instructions to Posts. All staff guidance is now in a single place on the FCO intranet.

SECTOR-SPECIFIC ISSUES

Catering and hospitality

30. The evidence we received suggests that a qualitative distinction should be drawn between low-skilled labour – of which the international catering industry appears to be experiencing a shortage, attributable at least in part to unattractive wages and working conditions – and skilled roles, such as that of specialist chef. (Paragraph 186)

31. Although witnesses argued persuasively that loss of migrant labour to fill low-skilled roles in international catering may well have a negative impact on communities overall, and in some cases lead to restaurant closures, these social aspects alone cannot make the case for including what are essentially low-skilled jobs on the shortage occupation lists. More attention needs therefore to be paid to alternative ways to fill these shortages, including through the active recruitment of UK and EEA nationals. In this endeavour two aspects will be important: first, the provision of specific training in international cuisine skills within training courses in the UK; and second, an undertaking by the industry to improve the basic rate of pay and conditions attracted by the low-skilled jobs. (Paragraph 187)

32. During the course of our inquiry skilled chefs were included on the UK shortage occupation list, subject to a minimum wage requirement of £8.45 per hour. This should go a good way towards meeting the concerns of our witnesses, including those over difficulties in meeting salary requirements and formal qualifications under Tier 2. The shortage occupation lists are due to be revised in September 2009: we recommend that skilled chefs are kept on the list, since it is clear that the arguments made in favour of their inclusion were not linked to temporary fluctuations in the British economy so much as the need to replenish specialist skills from particular countries. (Paragraph 188)

33. We note the establishment by the Bangladeshi Government of a catering trades training college in Sylhet, Bangladesh, which we consider would help formalise much of the experience currently gained on-the-job, and give those migrants the qualifications needed formally to recognise skill under the points system. (Paragraph 189)

34. However, we have concerns, arising from our seminar in North Kensington, that there may be businessmen within the Bangladeshi community who prefer to employ

Bangladeshi citizens from Bangladesh over Bangladeshis who have already received leave to remain in the UK, because the former are willing to work for lower wages. (Paragraph 190)

The Code of Practice for chefs and cooks make it clear that employers must pay the appropriate rate to migrants filling skilled chef vacancies in the UK. These are a minimum of £9.62 per hour for a Head chef, £8.65 per hour for a Second chef and £8.45 per hour for any other skilled chef.

35. Although we accept that English is often not the ‘language of the kitchen’, we reiterate our view, expressed earlier (paragraph 115) that it is not unreasonable to require those living in this country to possess a basic level of English. (Paragraph 191)

Health and social care

36. The evidence we received suggests to us that there is a sustained and chronic shortage of care workers within the UK and EEA. This conclusion is supported by JobCentre Plus data showing that the vacancy-to-unemployment ratio for the period February 2008 to January 2009 stands at 1.88, compared with 0.38 for all occupations, and the conclusions of the Migration Advisory Committee. It is also clear that much of the sector has long depended on certain immigrant communities – such as the Filipino community – to fill many of these posts. (Paragraph 209)

37. We were pleased to hear that the nursing sector does not appear to be suffering from a shortage, due in no small part to improved training initiatives for the resident population. However, we note the concerns of the Royal College of Nursing that the nursing diploma in the UK and certain nursing qualifications overseas do not seem to be recognised adequately under the Points Based System. It is clear from the Minister’s response that lower points awarded to a diploma rather than a degree, combined with lower salaries in some parts of the country, are proving prohibitive to some nurses. We note that the Government is already reviewing this situation, but recommend that it specifically recalibrates the awarding of points for nurses to ensure that all nurses who possess a diploma and are registered with the Nursing and Midwifery Council attract the same points as those holding a degree and registration. (Paragraph 210)

The Government is actively considering this proposition in consultation with the Department of Health.

38. We do not consider the loss of points for doctors under the Tier 1 age category to present an insurmountable obstacle and believe that qualified doctors should have no difficulty gaining compensatory points in other categories. (Paragraph 211)

Information and communications technology

39. We were presented with conflicting evidence on the requirements of the information and communications sector in the UK and internationally. On the one hand, the global businesses we met in India argued persuasively for the need to allow skilled workers to transfer between their different international offices, and that they could not always locate certain specialist skills from within the UK graduate workforce. On the other hand, evidence to the Migration Advisory Committee from the Sector Skills Council for IT denied the existence of any serious shortage, and the Professional Contractors’ Group suggested to us that the use of intra-company transfers was removing jobs from the UK workforce. (Paragraph 223)

40. The figure cited by the Migration Advisory Committee, that around a quarter of non-EEA migrants surveyed in the second quarter of 2008 were found to be in the UK on a

form of intra-company transfer, certainly raises a suspicion that this route is being used disproportionately. We also note that the number of intra-company transfers granted went up by 47 per cent between 2004 and 2008, whilst the economy has moved into recession, which we consider to be a striking increase. We note that intra-company transfers give a significant amount of discretion to individual companies to determine who may enter the UK to work and possibly to settle and become citizens. We therefore conclude that urgent and rigorous investigation is needed into the intra-company transfer and possible abuses of this route, and agree that, at the very least, more stringent tests of company-specific knowledge may be required. In this context we welcome the review currently being undertaken by the Migration Advisory Committee, and keenly await the results in July. (Paragraph 224)

41. We underline however, that investment in the UK by major international companies is of huge benefit to the UK economy. We caution that it is very much in the UK's interests to ensure that good relations with global businesses continue. The imposition of unnecessarily prohibitive restrictions or administrative burdens should therefore be avoided. (Paragraph 225)

The MAC considered the use of Intra Company Transfers (ICT) and the rules surrounding them in their review of Tier 2. They recommended that the qualifying period be doubled from 6 to 12 months, that the route no longer lead to settlement and that the UK Border Agency consider increasing compliance checks on ICTs. The Government accepted these recommendations on 7 September.

Legal services

42. We welcome the changes made by the UK Border Agency to the registration process for Tier 5 overarching sponsor bodies, to enable international legal and financial firms to continue to run exchange schemes and maintain partnerships with international law firms in other jurisdictions. (Paragraph 234)

We note the Committee's comment and will continue to work with representatives of business, across all sectors, to adjust and refine the policy and processes of the new system where this is appropriate.

Higher education and students

43. We conclude that it is illogical for sponsored academic researchers to fall under Tier 5. Academic researchers, perhaps unlike other temporary workers under Tier 5, typically come to a specific institution for a specific project and specific time period. Given that the institutions to which they will be attached will already hold a licence to sponsor students, requiring researchers to obtain sponsorship from an entirely unconnected third party simply seems to be reinventing the wheel. In addition there currently exists no such suitable overarching body. We therefore recommend that the Government revise the sponsorship provisions of Tier 5 to allow higher education institutions to sponsor their own academic researchers. (Paragraph 243)

The Government reviewed the issues around the provision for sponsored researchers under the Points Based System, towards the end of last year. It decided that those higher education institutions that are eligible to act as sponsors under Tier 4, the student tier, would also be able to apply for sponsor licences in their own right under the Government Authorised Exchange sub-category of Tier 5: Temporary Workers. Higher Education Institutions are therefore able to sponsor these researchers directly. This adjustment was welcomed by the sector.

44. We welcome the flexibility shown by the UK Border Agency in meeting the concerns of the higher education sector over visa length, and the issue of multiple certificates of acceptance for study to the same student. We heard of incidents where visiting academics had been prevented from attending events at UK universities by overly bureaucratic requirements for paperwork. Although there does not appear to be widespread concern in the sector over this issue, we recommend that the UK Border Agency investigate the extent to which such cases are occurring. (Paragraph 247)

Arts and entertainment

45. As discussed earlier (paragraph 111-112), we consider the use of formal qualifications as a proxy for professional experience and training to be inadequate, and we reiterate our position that the Government must recalibrate the allocation of points to recognise professional experience and training. However, we welcome the inclusion of ‘skilled ballet dancers’, ‘skilled contemporary dancers’ and ‘skilled orchestral musician’ on the latest UK shortage occupation list as an interim measure. (Paragraph 255)

46. We agree that the time delays associated with obtaining biometric visas make it almost impossible for international artists and performers to be recruited in an emergency situation, in which they might require a visa to be issued within 24 hours. Although the industry has in the past appealed in such situations directly to Ministers, this seems an extremely cumbersome process to be adopted as routine. We therefore recommend that a specific exemption be made to enable fast-tracking of visas for exceptional emergency cases such as international artistic replacements. (Paragraph 260)

The stakeholder team in UKBA International Group have given their details to the members of the Arts and Entertainment Taskforce, Joint Education Taskforce, Employers Taskforce and Visitors Taskforce to provide a contact point for assistance when urgent visa cases arise. We have worked with them, and the sports sector, to ensure requirements are well understood and applications made in good time wherever possible. Several major cultural and sporting events have taken place in the UK in 2009 involving visa nationals, and have gone smoothly.

The stakeholder team provide timely advice and support and act as an interface with visa posts overseas. In the past 18 months nearly all urgent cases have been successfully resolved to the satisfaction of the stakeholder, normally within 48 hours.

There can be no guarantees that all cases will be resolved or that a visa may be issued as individual circumstances may make this impossible, for example, where the applicant applies in a 3rd country without the necessary documentation to support their visa application.

We have met with the Arts and Entertainment Taskforce and individual organisations to discuss particular concerns.

Agriculture and horticulture

47. The Government needs to make explicit to the agricultural and horticultural industries what provision it intends to make for low-skilled labour to replace the Seasonal Agricultural Workers Scheme, and must do so well in advance of the anticipated closure of the Scheme in January 2010. (Paragraph 267)

48. The economic downturn has already created shortages in seasonal labour for these sectors. The Government should consider how temporary seasonal labour needs could better be met through Tier 5, in particular making the Youth Mobility Scheme more user-friendly. This should begin with reducing the maintenance requirement, currently set at £1,600, which is an unrealistic sum to expect students entering the UK for temporary periods to possess. (Paragraph 268)

The Government has no plans to close down the Seasonal Agricultural Workers Scheme for A2 nationals in 2010. We are however well seized of the need to ensure that the industry has as much notice as possible prior to any closure.

MPs' representations

49. We note the introduction of an online case tracking system and dedicated account managers to respond to MPs' representations in immigration and asylum cases. However, too many MPs remain dissatisfied with the quality and speed of response to their representations. It is clear from comments made by MPs in response to our survey that officials are right to diagnose the transfer of Visa Customer Services from the Foreign and Commonwealth Office to the UK Border Agency as a turning point for a deterioration in standards of service. Attention must be given by the UK Border Agency to improving the speed of their service, and improving significantly on the current performance of only responding to 60 per cent of MPs' representations within their target time of 20 days. (Paragraph 285)

We are committed to providing a high standard of service to MPs who make representations on entry clearance cases and value the relationships with MPs and their staff. The UK Border Agency receives the highest level of MPs' correspondence of all Government departments. We expect to receive over 60,000 letters this year.

The transfer of Visa Customer Services (VCS) from the FCO to the UK Border Agency did bring some logistical challenges during the transition period. But it has also brought several advantages for the way we deal with MPs, for example:

- **As the Committee has noted, in 2009 we established a network of Regional Account Managers across the UK to strengthen further our contacts with MPs and their offices.**
- **We plan to hold more events for MPs with Agency officials, including on visa related matters, to exchange information. Visa Customer Services is working in collaboration with the Regional Account Managers' network to respond to all MPs' enquiries.**
- **VCS ensures that its own answers to MPs' correspondence give a comprehensive response on behalf of the whole Agency.**

As an Agency, we are hitting the 20 day target for MPs' correspondence in about 78% of cases and are working on improving our processes further, to increase output, without reducing quality.

The Agency accepts the need to provide specific and timely replies to MPs' representations that provide as much information as possible to any points raised, whilst also observing the provisions of the Data Protection Act. In most entry clearance cases, including Points Based, the MP is writing on behalf of their constituent, who is the sponsor of the application, rather than the applicant, whose personal data is involved.

We are always looking at ways to raise our performance levels further, for example:

- **we will be testing the quality of drafting by Agency staff, accompanied by training for those who need it to reach the required standard.**
- **we pass on feedback received through correspondence, including from MPs, to operational colleagues, to make improvements to our business.**

50. On several previous occasions – including in our recent Report, Monitoring of the UK Border Agency (published on 12 January 2009) – we have recommended in no uncertain terms that visa Refusal Notices must refrain from using standardised paragraphs or unintelligible jargon, and should instead set out clearly and plainly the individual reasons for a refusal. It is essential that precisely the same principles apply also to responses to MPs' representations, which must address the specific points and circumstances raised by MPs. They are currently failing to do so. (Paragraph 286)

UKBA is required to provide a written notice to the applicant in all cases where a visa is refused. Notices of refusal must explain the basis for the decision, set out what rights of appeal attach to the application and how these can be accessed. Guidance to staff is that refusal notices should use plain English.

Refusals notices will continue to make some use of standardised paragraphs however these will always be personalised to the applicant and tailored to the specifics of their application.

A new standard refusal notice template was introduced in 2008 overseas and there is a rolling introduction of automated refusal notices populated by an IT based decision support tool introduced in early 2009. 10 posts are operating this new system in the first phase.

Entry Clearance Managers are required, as part of their responsibilities, to review all refusal decisions which go to appeal. This includes a check of the refusal notice.

51. Whilst we note the Minister for Identity's efforts personally to read and respond to correspondence, it is clear to us that no busy government minister could consider in detail the 30 or 40 letters a day she confirmed that she received. We were also concerned about a shortage of ministerial time available to deal with MPs' representations given inadequate cover arrangements made by the Government for the Minister for Identity's absence on maternity leave, especially in the context of a likely increase in MPs' representations with the right of appeal being removed under the Points Based System. (Paragraph 287)

Correspondence is considered very carefully by the Minister of State, Parliamentary Under Secretary, Chief Executive, or Deputy Chief Executive.

52. We remain seriously concerned about the scale of the backlog in processing historic asylum cases, the consequence of which is that many of our constituents are being advised that their case may not be concluded before 2011. Although in our view MPs should appeal directly to ministers only as a last resort, to ensure that ministers can give priority to the most urgent cases, we entirely understand the frustration of many MPs over the huge delays in processing cases which drives them to appeal directly to ministers. (Paragraph 288)

We are committed to improving performance and concluding new asylum cases within 6 months.

We have continued to meet our targets, most recently to conclude 60% of new cases within 6 months by the end of 2008. This is a significant improvement compared to 1997 when it took 22 months just to get an initial decision. Our targeted approach means we are increasing the speed of our conclusions and this will continue to improve as we deliver the 75% milestone from the end of 2009.

53. We consider that constituents' representations to MPs, and MPs' representations to the UK Border Agency and ministers, will increase under the Points Based System, since the system contains no independent right of appeal against visa refusals. This could lead to MPs and ministers becoming an alternative appeals process, although it would be inappropriate for anyone to receive preferential treatment simply as a result of an MP making representations. We therefore recommend that the UK Border Agency must prepare for an increase in representations, including by increasing the capacity of the MPs' Hotline and Visa Customer Services, and by liaising with MPs to advise them how best to advise constituents refused visas under the new system. (Paragraph 289)

So far we have not seen any evidence of an increase in MPs' representations following the removal of a full right of appeal under the Points Based System, but we will continue to monitor the situation.

54. The essence of dealing with MPs' representations is the provision of good customer service to those who seek information about their cases. Even UK Border Agency senior officials admit that they can 'do much better'. We agree with them. (Paragraph 290)



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