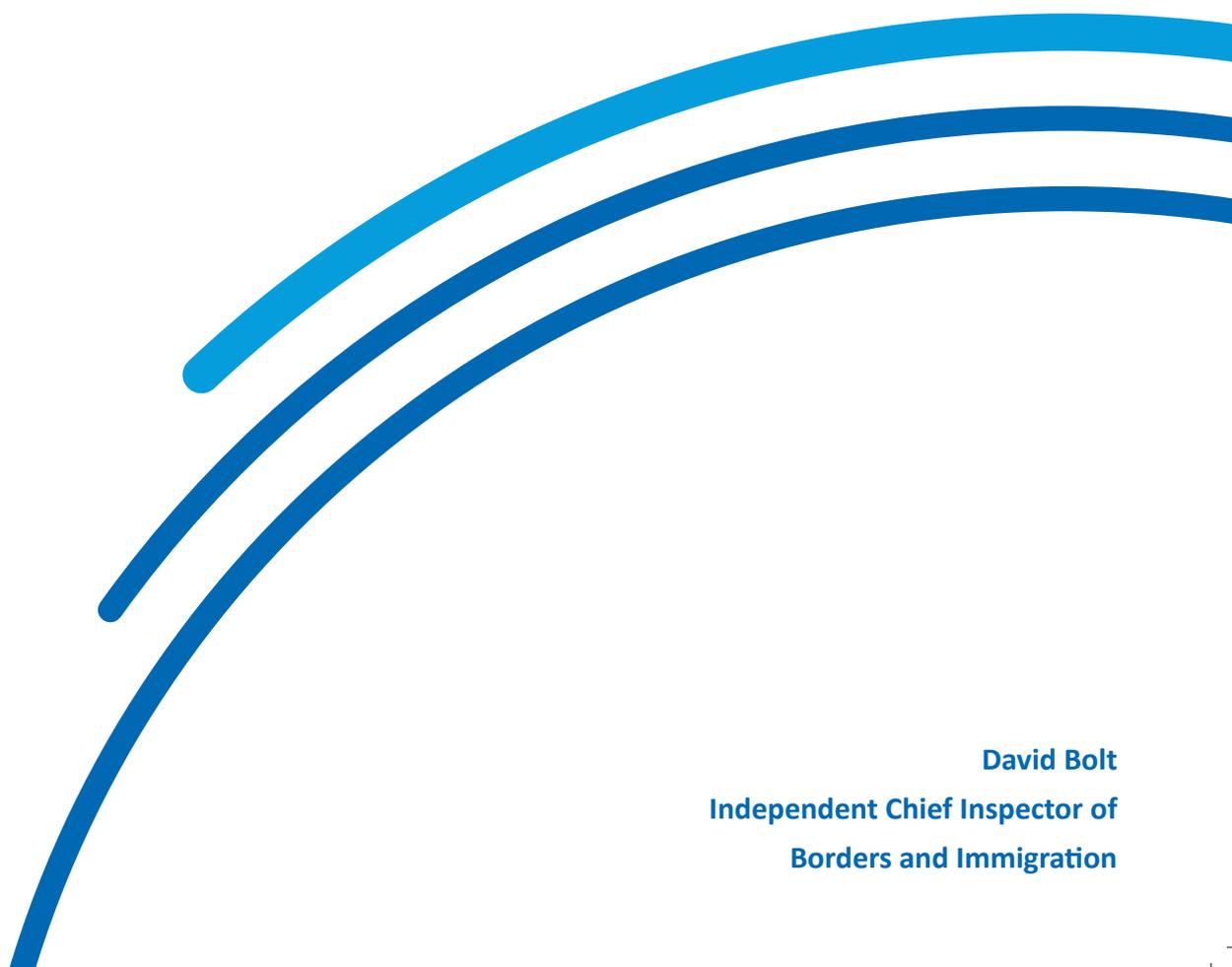




A re-inspection of the handling of Tier 4 sponsor licence compliance

July 2016



David Bolt
Independent Chief Inspector of
Borders and Immigration

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To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

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Foreword

This report covers the re-inspection of the handling of Tier 4 sponsor licence compliance by UK Visas and Immigration (UKVI) directorate. It focuses on what the Home Office has done to give effect to the recommendations contained in my earlier report 'An inspection of the effectiveness of the monitoring of Tier 4 sponsor licences (June to October 2014)¹, which was sent to the Home Secretary on 2 June 2015.

Between June and October 2014, the Inspectorate examined how effectively the Home Office monitored the compliance of Tier 4 sponsors with their sponsor duties², and also looked at its handling of investigations into sponsors linked to English language test centres operated by the Educational Testing Service (ETS).³

The inspection found that managers and staff had worked efficiently and effectively to visit and assess the large number of colleges identified as having some link to ETS, and to maintain, suspend and/or revoke sponsor licences in light of what they found. This had led to the creation of a dedicated Tier 4 compliance network to deal with the more complex cases and to improvements in the scrutiny of new licence applications and of secure English Language Test (SELT) providers.

However, the inspection also identified weaknesses in procedures and practice, in particular the lack of detail in visit reports where sponsors were deemed to be fully compliant, and the fact that compliance visits and 'satisfactory' reports received little or no management oversight, making it highly likely that non-compliance was being missed.

The original report made five recommendations⁴, all of which were accepted.

The re-inspection found that the quality and consistency of compliance visit reports had been improved through revised guidance, a template and checklist, and new quality assurance measures, although the latter would be more robust if applied to all reports, not just those with adverse outcomes. In relation to record storage and retrieval and to the grading of staff, UKVI had made some progress, but the solutions rested with a restructuring of the Sponsor Management Network, which was well in hand but not due to be completed until September 2016.

This report makes no new Recommendations. It was sent to the Home Secretary on 22 August 2016.

1 See ICIBI website.

2 Educational establishments sponsoring foreign students under Tier 4 of the points-based system (PBS) 1 must hold a Tier 4 sponsor licence. All non-EEA students must have a sponsor before they can apply to study in the UK under Tier 4 of PBS, and sponsors must assess the student's ability and intention to complete the course before issuing a Confirmation of Acceptance for Studies (CAS). Sponsors are required to ensure that the system is not abused, and must comply with certain duties in order to retain their Tier 4 sponsor licence.

3 On 24 June 2014, the Home Office suspended 57 private colleges from the Tier 4 sponsor register, as a result of investigations initiated when systematic cheating was uncovered at English Language Test Centres operated by the Educational Testing Service (ETS).

4 The Recommendations and the written Home Office responses are listed at Annex A.

1. The re-inspection

1.1 The re-inspection process involved:

- a familiarisation visit to the UKVI Sponsor Management Unit (SMU) at Vulcan House, Sheffield on 8 June 2016;
- examination of documentary evidence, including staff guidance and instructions, internal reports related to the original Recommendations and responses;
- analysis of statistics relating to Tier 4 sponsor compliance visits; and
- a file sample of 30 compliance reports and 30 Metastorm⁵ records to assess whether they were in line with UKVI guidance and had addressed the points raised in the original inspection regarding report quality and consistency.

1.2 The re-inspection team was onsite at Vulcan House on 28 June 2016 and interviewed relevant UKVI staff at all grades from grade 6 to executive officer.

⁵ Metastorm is the IT system used by the Sponsor Compliance Network to record the outcome of compliance visits and casework actions on sponsor licences.

2. Re-inspection findings

Recommendation 1:

Cease the practice of 'reporting by exception' and require compliance reports to show how the sponsor has demonstrated compliance where a 'Met' marking is given.

- 2.1 The original inspection found that UKVI guidance instructed compliance officers to report only on compliance failings and to mark simply as 'Met' where the sponsor had complied with its duties, a process known as 'reporting by exception'⁶. File sampling had shown that the majority of compliance reports with 'Met' markings provided little or no further explanation of what exactly had been checked and how the sponsor had demonstrated compliance.
- 2.2 In accepting the recommendation, UKVI stated that the practice of 'reporting by exception' had been removed from the standard compliance reporting process, and that all compliance officers had been trained on a new approach and had been using the new guidance and supporting products for visits from May 2015.
- 2.3 The re-inspection team confirmed that the guidance⁷ and compliance report template⁸ had been updated and no longer refer to 'reporting by exception'. The revised template includes 'evidence' fields as well as an 'overall sponsor compliance summary field' and 'rating' to provide feedback to sponsors. It covers all areas of a compliance visit. The revised guidance makes it clear that a report must be completed for all compliance visits, regardless of the outcome.
- 2.4 Interviews with staff and managers confirmed that the practice of 'reporting by exception' had stopped completely, even before new guidance was brought formally in place. In all 28 sampled cases where a compliance visit report could be located on Metastorm⁹, the reports had ratings for each of the 5 criteria used in the 'overall sponsor compliance summary field', along with a note of the supporting evidence for each sponsor's overall 'rating'.
- 2.5 However, compliance officers were not always following the examples of best practice set out in the guidance, and the quality assurance regime could do more to promote best practice.

Conclusion

- 2.6 Based on the evidence provided to the re-inspection team, file sampling and onsite interviews, the revised guidance and compliance report template are used as intended for all compliance visits, and 'reporting by exception' has ceased as recommended.

6 <http://icinspector.independent.gov.uk/wp-content/uploads/2015/07/Inspection-of-Tier-4-Sponsor-Management-16.07.2015.pdf>.

7 'How to complete a sponsor compliance report' Version 1 is available via the Home Office intranet.

8 'Sponsor compliance report template' Version 1 is available via the Home Office intranet.

9 The inspection had requested 30 sample cases, but two could not be located on Metastorm.

Recommendation 2:

Introduce a requirement for compliance officers to record in their compliance reports in all cases:

- *details of the checks and interviews conducted; and*
- *the compliance officer's assessment of each failing or irregularity they find and whether it constitutes non-compliance with sponsor duties.*

2.7 The original inspection sampled 50 compliance reports. In 14 of these reports inspectors found a failure to:

- specify how many file checks had been conducted, and in particular, to specify whether all the file checks requested in the tasking referral had been undertaken and, if not, the reasons why;
- record details of the migrant interviews conducted, the outcomes of those interviews and the reason why interviews were not conducted, if applicable; and
- state clearly whether the issues identified amounted to sponsor non-compliance.

2.8 In accepting this recommendation, UKVI stated that it had reviewed and amended the Tier 4 report template used by compliance officers. The new version of the template now detailed how the sponsor was either compliant, or in breach of each duty in an area, and provided a meaningful overview of the sponsor's compliance with sponsor duties, with direct reference to the relevant 'guidance for sponsors' paragraphs.

2.9 The re-inspection found in all 28 sampled cases that the compliance report contained details of the interviews conducted (or the reasons why an interview had not been conducted) and evidence of the checks performed by the compliance officer.

2.10 However, not all of the sampled reports were fully in line with the published guidance. For example, in some cases the record of checks performed omitted certain mandatory elements, such as details of the 'primary interviewee', possibly because the guidance on how this information should be incorporated into the body of the report is not explicit.

2.11 The examples set out within the guidance include an opening paragraph in the 'overall compliance summary' section of the report stating whether the sponsor is 'fully compliant' or 'non-compliant'. The guidance does not require compliance officers to follow these examples.

Conclusion

2.12 The updated guidance and compliance report template provide compliance officers with a structure and checklist for the details they need to capture and record during a compliance visit. They also make clear to compliance officers how to determine and explain whether a sponsor is 'fully compliant' or 'non-compliant'. If the examples are to be used there needs to be a requirement for this in the guidance.

Recommendation 3:

Strengthen its quality assurance regime by:

- *setting compliance managers an objective to observe ('shadow') a specified number of compliance visits per compliance officer per quarter and ensuring it is met;*

- *setting managers a further objective in relation to checking the quality of compliance reports and providing written feedback to compliance officers; and*
- *requiring that all compliance reports are countersigned by an HEO or above, not just those identifying non-compliance.*

- 2.13 The original inspection found that compliance officers had no quality targets, and concluded that the quality of compliance visits needed to be assessed regularly, with compliance officers set targets for visit quality in their Performance Development Review (PDR).
- 2.14 UKVI's evidence submission for this re-inspection included a copy of the HEO SMU manager's objectives. 'Work objective 2' stated a requirement for the manager to promote and achieve high performance by conducting 'one observed visit per staff member per quarter including verbal and written feedback to the compliance officer'. UKVI assured the re-inspection team that this requirement was being met; however, no evidence was provided of its impact (e.g. assurance reports, feedback to staff).
- 2.15 Staff and managers were inconsistent when describing this aspect of the assurance regime to the re-inspection team. Some referred to a national target for managers of one observation per quarter for each member of staff, and others to one observation per month. The re-inspection team was also told that the visit assessment tool used by managers had 'too many unused tabs and was not quite right for the job'. In response, UKVI reported that a 'fuller quality assurance tool is under development' and 'whilst there may have been some inconsistencies in the description of QA processes, these are clear and definitive in PDR objectives'.
- 2.16 The original inspection found that quality assurance of compliance reports was inconsistent and in places inadequate, in particular where the sponsor was reported to be 'fully compliant'. In its response to recommendation 3, the SMU had introduced a quality assurance framework, incorporating quality measures for every stage of the end to end visit process.
- 2.17 As well as observing a percentage of compliance visits to inform training and development and drive performance, UKVI reported that managers now conducted a regular, random dip-sampling of all reports, visit notes and preparation documents. Meanwhile, all adverse reports (recommending a licence refusal, downgrade, maintenance of a downgrade, suspension or revocation) were countersigned by an HEO or above (unless completed by an HEO or above).
- 2.18 All 28 of the sampled compliance reports had either been completed by or countersigned by an HEO or above. However, one manager told the re-inspection team that HEO sign off for all Reports was not currently contained in the guidance in order to provide for some 'flexibility'.

Conclusion

- 2.19 Based on the file sample, management assurance of compliance reports has improved, and UKVI has taken steps to improve the quality of visits by setting managers quality targets, although the re-inspection team found there was some confusion about the required frequency of management observations of visits, which UKVI needs to clarify for managers and compliance officers. The evidence suggests that all compliance visits are being authorised by an HEO, and all compliance reports are being countersigned by an HEO or above; however, the robustness of the latter assurance check would be improved if it applied to all reports, not just those with adverse outcomes and this was set out in written guidance¹⁰.

¹⁰ UKVI Document 'Quality_Assurance_v1.3' is available on the Home Office intranet.

Recommendation 4:

Clarify its retention and storage policy for compliance visit notes and ensure the policy is consistently applied, so that notes are more easily retrievable.

- 2.20 The original inspection sampled 50 compliance visit records files and found none contained visit notes. Retention and storage of compliance visit notes was inconsistent: some areas sent visit notes immediately to storage to be linked to the sponsor file; others retained notes locally for between six months and a year before sending them to storage; others stored all visit notes locally.
- 2.21 Practice also varied when passing visit notes recommending action to the Suspensions and Revocations team in Sheffield. Some areas sent hard copies of all paperwork to Sheffield; some sent electronic copies; and some did nothing until the paperwork was requested.
- 2.22 UKVI responded that it had 'reviewed and amended the process; from 18 May 2015 all compliance reports and notes are scanned and saved on the shared drive, within the relevant sponsor folder', that 'certain documentation must be scanned after the visit, into the corresponding locations on the shared drive. This allows all colleagues, regardless of location, access to the required information', and that 'work is currently underway to migrate sponsor specific data to a single, central electronic hold'.
- 2.23 UKVI provided the re-inspection team with seven different access links to the central electronic hold to enable file sampling. The re-inspection team encountered difficulties in locating sponsor-specific data within these locations and noted that each of the seven access links used different paths¹¹.
- 2.24 In interviews, staff and managers confirmed that the current 'solution' to providing the Sponsor Compliance Network (SCN) with shared access to sponsor-specific data often did not work as they were unable to access the required information from another region's folder and had to 're-work' the case.
- 2.25 The re-inspection team was later told that, by the end of September 2016, UKVI expects to have in place 'a Portal (webpage) for the SCN, which will act as a library of sorts containing useful contacts, webpage links and hyperlinks to existing guidance. The documents that the Portal will hyperlink to will be stored in a central area accessible by all (most likely the Transfer drive).' Also that it saw 'no reason why the rest of the SCN's electronic documents (referrals, reports etc) cannot be stored there also.'

Conclusion

- 2.26 UKVI has not yet fully addressed Recommendation 4. The current technical solution to storage and retrieval is neither efficient nor effective, with sponsor information saved in six locations with different naming conventions and file pathways for each.
- 2.27 UKVI is working towards a web-based solution as part of a restructure of the Sponsor Compliance Network (SCN). The Inspectorate will look for confirmation post-September 2016 that this has worked and that information storage is consistent across the SCN and readily retrievable by those who need it, including historical information.

¹¹ A path, the general form of the name of a file or directory, specifies a unique location in a file system.

Recommendation 5:

Differentiate the responsibilities of HEO and EO compliance officers to reflect the grade distinction.

- 2.28 The original inspection found that some compliance officers were HEOs and some EOs. They appeared to be carrying out the same role and there was no clear justification for the difference in grade.
- 2.29 UKVI responded that it was 'currently conducting a review of the Sponsorship Compliance Network to ensure that the locations of staff are aligned to the volumes of work across the country and those structures and grade responsibilities are consistent. As identified by the Independent Chief Inspector this will take longer to achieve, due to the nature of the recommendation to ensure the experience of colleagues at the HEO grade is not lost'.
- 2.30 After a consultation exercise with staff, Trade Unions and stakeholders, a proposed draft final operating structure for the Sponsor Compliance Network (SCN) was agreed. It was signed off by the Senior Civil Servant for Temporary Migration in June 2016.
- 2.31 The initial plan was to reduce the SCN footprint to 8 locations; however, it has been agreed that the new structure will reduce the SCN footprint from 19 to 11 locations, in order to retain skills, expertise and reduce the need to recruit new staff.
- 2.32 The new structure includes two specialist HEO roles to support performance in relation to reporting, and to maintain operational guidance and internal training in addition to the current HEO compliance officer role. The aim of this is to enable enhanced delivery and provide a clear distinction between the roles of HEO and EO grades.

Conclusion

- 2.33 At the time of the re-inspection in June 2016, some HEOs were still carrying out compliance visits. However, the planned restructure of the Sponsor Compliance Network will address this, and interviews with staff and with the Implementation Team who are responsible for the delivery, planning, implementation and transition of the new structure confirmed that work to restructure the SCN was well in hand.

Annex A

Recommendations from the original inspection and Home Office responses

Recommendation 1

Cease the practice of 'reporting by exception' and require compliance reports to show how the sponsor has demonstrated compliance where a 'Met' marking is given.

Home Office Response (Accepted)

We accept the Independent Chief Inspector's view. We have reviewed and amended the Tier 4 reporting process used by compliance officers.

The practice of reporting by exception has now been removed from standard compliance reporting process. Each report now provides full details of where the sponsor has met and not met their sponsor duties.

The sponsor compliance function no longer reports 'by exception'. The report template has been updated to accommodate this change. The report now includes 'evidence' fields for each human resource (HR) and compliance area, as well as an 'overall sponsor compliance summary field' to provide feedback to sponsors. This demonstrates how the sponsor is either compliant or in breach of each duty in an area, and provides a meaningful overview of the sponsor's compliance with sponsor duties, with direct reference to the relevant 'guidance for sponsors' paragraphs.

All compliance officers have received training on the new approach and have been using the new guidance and supporting products for visits that took place from 18 May 2015.

Recommendation 2

Introduce a requirement for compliance officers to record in their compliance reports in all cases:

- details of the checks and interviews conducted; and
- the compliance officer's assessment of each failing or irregularity they find and whether it constitutes non-compliance with sponsor duties.

Home Office Response (Accepted)

We accept the Independent Chief Inspector's view. We have reviewed and amended the Tier 4 report stencils used by compliance officers.

The report now details how the sponsor is either compliant, or in breach of each duty in an area, and provides a meaningful overview of the sponsor's compliance with sponsor duties, with direct reference to the relevant 'guidance for sponsors' paragraphs. This includes a breakdown of performance against each area of responsibility, clearly setting out how the sponsor has either been assessed to be compliant or non-compliant.

Recommendation 3

Strengthen its quality assurance regime by:

- setting compliance managers an objective to observe ('shadow') a specified number of compliance visits per compliance officer per quarter and ensuring it is met;
- setting managers a further objective in relation to checking the quality of compliance reports and providing written feedback to compliance officers; and
- requiring that all compliance reports are countersigned by an HEO or above, not just those identifying non-compliance.

Home Office Response (Accepted)

We accept the Independent Chief Inspector's view. We have reviewed and amended the Tier 4 process: all adverse decisions are now countersigned by an HEO or above, and there is regular, random dip sampling of all reports, visit notes and preparation.

The Sponsor Management Unit has introduced a quality assurance framework, incorporating quality measures for every stage of the end-to-end visit process.

All reports which recommend refusal, downgrade, maintaining a downgrade, suspension or revocation, must be countersigned by a higher executive officer (HEO) or above, unless the report is completed by staff at or above that level.

Managers will also check a cross-section of reports, interview notes and visit preparation documents, across a range of visit outcomes, observing a percentage of compliance visits to inform training and development and drive performance.

Recommendation 4

Clarify its retention and storage policy for compliance visit notes and ensure the policy is consistently applied, so that notes are more easily retrievable.

Home Office Response (Accepted)

We accept the Independent Chief Inspector's view. We have reviewed and amended the process: from 18 May 2015 all compliance reports and notes are scanned and saved on the shared drive, within the relevant sponsor folder.

Certain documentation must be scanned after the visit, into the corresponding locations on the shared drive. This allows all colleagues, regardless of location, access to the required information. All handwritten documents, including notes taken during the sponsor visit, telephone conversations, letters and/or emails relating to the sponsor visit (compliant sponsor) are now all scanned and retained.

In order for managers to check the quality of compliant outcomes, handwritten notes and all other documentary evidence from these visits must be retained locally for 2-6 weeks, before sending to offsite storage, or discarded. Once the report is complete and the necessary documents have been scanned, any original documents belonging to the sponsor are returned.

Work is currently underway to migrate sponsor specific data to a single, central electronic hold.

Recommendation 5

Differentiate the responsibilities of HEO and EO compliance officers to reflect the grade distinction.

Home Office Response (Accepted)

We accept the Independent Chief Inspector's view. We are currently conducting a review of the Sponsorship Compliance Network to ensure that the locations of staff are aligned to the volumes of work across the country and those structures and grade responsibilities are consistent. As identified by the ICI this will take longer to achieve, due to the nature of the recommendation to ensure the experience of colleagues at the HEO grade is not lost.

Appendix 1

Role and Remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act
- 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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