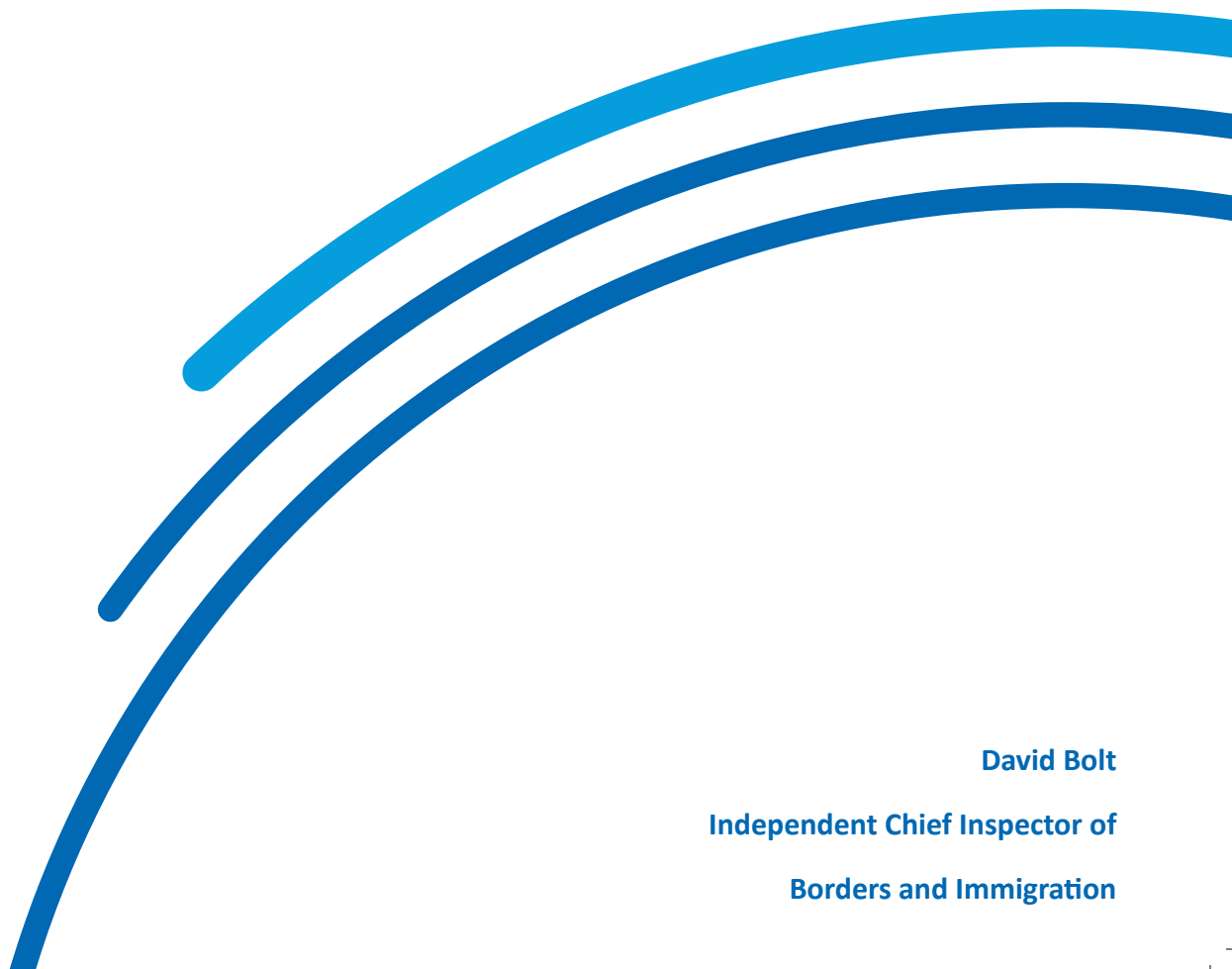




A re-inspection of the Tier 4 curtailment process

November 2016 – January 2017



David Bolt
Independent Chief Inspector of
Borders and Immigration

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November 2016 – January 2017

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

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Foreword

My inspection report on the Tier 4 Curtailment Process¹ was published on 23 March 2016. The report made nine recommendations of which the Home Office accepted six, partially accepted two, and rejected one. The Home Office's formal response was published at the same time as the report (see Annex A).

This re-inspection examined the Home Office's progress in making the improvements it committed to making in its response. It also looked at the partially accepted and rejected recommendations to see if the concerns that led to these persisted.

In the case of the rejected recommendation, which referred to the publishing of service standards for the curtailment consideration process, my concerns have in fact intensified, and I am asking the Home Office to reconsider its original response. The reason I am more concerned than I was before is the size (c.25,000) and age (five months plus) of the 'Work in Progress' (WiP), and the severely scaled back resources allocated to this work.

Allowing the WiP to grow has been a conscious decision based on priorities, and the Home Office has argued that as it knows the size, age and makeup of the WiP, and as there are systems in place to report against it and expedite any urgent cases, it is therefore under control. While I sympathise with the point about resourcing to priorities, I believe the WiP is too large and too far behind, affecting sponsors, students and follow-up actions, and that this would not have been tolerated had published service standards been in place.

The original report recommended that the Home Office should 'Take the necessary steps to identify and locate those individuals amongst the c.71,000 curtailment not pursued (CNP) cases decided between 1 April 2013 and 31 March 2015 who have remained in the UK illegally, with a view to effecting their removal.' This was accepted. The figure for those still unaccounted for at the time of the re-inspection had been reduced to 24,995 through a series of data matching exercises. However, there had been no directly related enforcement activity, and I believe that the Home Office's approach has lacked urgency, a view that the Home Office strongly disputes. The Home Office's case would be helped if it were to set a clear timescale for the completion of this work.

There are no new recommendations. The Home Office has made progress in a number of areas, for example improving communication with sponsors and quality assuring the sifting out of notifications. But, overall, there is a good deal more work required to achieve the improvements that the original report and recommendations identified were needed, and the Home Office has to ensure that this work is properly prioritised and the necessary resources made available to deliver these improvements.

This report was sent to the Home Secretary on 1 March 2017.

David Bolt

Independent Chief Inspector of Borders and Immigration

¹ <http://icinspector.independent.gov.uk/wp-content/uploads/2016/03/ICIBI-report-on-Student-Curtailment-Final.pdf>.

1. The re-inspection

- 1.1 Nationals of countries outside the European Economic Area (EEA) plus Switzerland may apply to enter the UK to study under Tier 4 of the points-based immigration system (PBS).² The system is administered by UK Visas and Immigration (UKVI). Applicants for a Tier 4 visa must submit a Confirmation of Acceptance of Studies (CAS) form from an educational establishment that holds a Home Office sponsor licence with their application.
- 1.2 Under the terms of their licence, Tier 4 sponsors must notify the Home Office of changes in circumstances affecting their sponsorship of a student. They use the Sponsor Management System (SMS) to notify a change in a student's circumstances, such as:
 - failure to enrol on the stated course;
 - ten consecutive unauthorised absences;
 - withdrawal or expulsion; or
 - completion of a course earlier than expected.
- 1.3 This re-inspection looked at the Home Office's progress in making the improvements identified in the 2016 report into its management of the curtailment of Tier 4 visas. It did so by:
 - examining stakeholder concerns;
 - examining Home Office documentary evidence, including guidance;
 - sampling individual cases, and analysing data; and
 - carrying out an onsite inspection of the Temporary Migration Notifications Team in Manchester.
- 1.4 The re-inspection team made an initial familiarisation visit to the Notifications Team (which operates within UKVI's Temporary Migration business area) on 29 November 2016. Senior management gave a presentation on the latest Tier 4 notifications processes and updated the team on the improvements made.
- 1.5 Inspectors sampled 60 cases where the SMS notification was considered between 1 September and 31 October 2016, split equally between those that were curtailed³ and those where no curtailment action was taken.⁴ The sampling focused on:
 - whether caseworkers were using the correct paragraphs of the Immigration Rules when curtailing;

² <https://www.gov.uk/tier-4-general-visa>.

³ Where an individual's leave to remain in the UK still had more than 60 days to run at the point that the Home Office considered curtailment, the Home Office could curtail the leave to 60 days, in which case it would inform the individual in writing, urging them to make arrangements to leave the UK within 60 days.

⁴ Where an individual had fewer than 60 days leave to remain in the UK at the point that the Home Office considered curtailment, it became a Curtailment Not Pursued (CNP) case and there was no communication with the individual. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520008/Curtailmentv16.0.pdf.

- whether decisions to curtail or not to pursue curtailment were reasonable based on the information available;
- whether curtailment letters were accurate; and
- whether new sub-categories for curtailment cases brought in from 12 September 2016 were being applied correctly.

1.6 The re-inspection team was onsite in Home Office accommodation at The Soapworks, Manchester on 10 and 11 January 2017, during which time the team:

- interviewed staff at all grades from Administrative Officer (AO) to Grade 7;
- were given a demonstration of the SMS from the user perspective (via a dummy sponsor account); and
- presented its initial re-inspection findings to members of the UKVI Senior Management Team (SMT).⁵

⁵ Senior Executive Officer (SEO) to Senior Civil Service (SCS) grades.

2. Findings and conclusions

Recommendation 1

- 2.1 The original inspection found that almost half of the Sponsor Management System (SMS) notifications received from licensed sponsors in both 2013-14 and 2014-15 were sifted out as not requiring consideration of curtailment or any further action.⁶ Paragraph 5.20 of the report explained: ‘Managers told us there was a culture of ‘over-reporting’ and many sponsors were overly cautious following the revocation of licences linked to bogus colleges in 2014 and felt that they needed to report any minor changes to protect their own licensed status. This was confirmed by the representative bodies of licensed sponsors.’
- 2.2 SMS, as used by sponsors to inform UKVI of changes in student circumstances, was a one-way tool. The inspection found that Tier 4 sponsors would welcome feedback on curtailment decisions, but the Home Office was not able at that time to provide direct feedback to them. This led to the first recommendation:

Recommendation 1: Find a workable solution to providing Tier 4 licensed sponsors with direct feedback on the quality of their SMS notifications, with a view to achieving a significant reduction in the number of unnecessary notifications submitted each year.

- 2.3 UKVI partially accepted this recommendation, anticipating the development of a new case working system that might include the ability to feed back to sponsors, although this was at an early stage of development. Its response explained: ‘UKVI continues to work with the education sector to ensure its understanding of the sponsorship guidance and its requirements in terms of reporting activity to UKVI. This continued joint working will educate sponsors on reporting only the necessary information required by UKVI.’

Findings

- 2.4 Regarding the development of a new case working system, UKVI reported that: ‘Work is ongoing with IT colleagues to ensure the new case working system, being delivered by the Integrated Platform Technology (IPT) programme, encompasses notification and curtailment activity and provides us with capabilities such as a reporting function back to sponsors informing them of a status change following a notification.’⁷
- 2.5 Managers told inspectors that IPT was currently being tested on asylum casework. While there was no clear timeline for the migration of Tier 4 curtailment casework to IPT, managers were prepared to wait to obtain the ‘right’ system. The plan was to replace SMS by the end of 2017, with more features coming online from April 2018, and a complete new system in place by April

⁶ Paragraph 5.9 reported 42,174 of 84,464 notifications received in 2013/14 sifted out with 49,551 of 93,724 notifications received in 2014/15 sifted out.

⁷ Subsequently, in response to the draft re-inspection report, UKVI commented that: ‘The reference to the new caseworking system should be removed and instead it should be referenced that UKVI will have linked IT systems which we hope will allow for the feedback function. There are multiple new IT systems being developed and it is not specifically the case working one that will allow for this functionality.’

2019. Changes would include 'assisted decision making', where the system would suggest the appropriate paragraph of the Immigration Rules to the caseworker.

- 2.6 At the time of the re-inspection, UKVI was still not providing direct feedback to sponsors on outcomes of individual notifications. However, it had taken steps to improve the education sector's understanding of Home Office guidance and reporting requirements. Six events had been held for sponsors who had subscribed to the Tier 4 'premium' service,⁸ with an additional workshop dedicated to the curtailment process. UKVI's records showed that 55 delegates had attended the dedicated session. The other six events had been attended by 277 delegates from 157 sponsoring organisations and had included a shorter session on curtailment.
- 2.7 Some stakeholders had voiced a view to inspectors that UKVI provided 'premium' sponsors with a better level of contact, and that it was therefore harder for 'non-premium' sponsors to operate effectively and ensure an adequate level of compliance.
- 2.8 UKVI managers told inspectors that efforts to reduce notifications that were not required had been targeted at subscribers to the Tier 4 'premium' service, as they produced most notifications. Home Office data for the busy months of September and October 2016 showed that 89.95% of notifications were from 'premium' service subscribers. The data also showed that UKVI's targeted approach was having an effect. Between April and September 2016, 7,185 notifications were sifted out as requiring no action, compared to 24,428 during the same six month period in 2015.

Conclusion

- 2.9 The re-inspection found that, pending the development of a new IT system, UKVI had taken reasonable steps to improve communication with Tier 4 'premium' sponsors and had achieved a significant (roughly two-thirds) reduction in the number of notifications. However, over 7,000 notifications that were not required was still too high. While prioritising 'premium' sponsors made sense, UKVI also needed to allocate effort to engaging 'non-premium' sponsors. This recommendation remains open.

Recommendation 2

- 2.10 The original inspection found that the sifting process used by the curtailment team (manually-entered keyword searches) was open to human error.⁹ No quality assurance records were kept and the sifted out cases were not subject to further checks. This led to the second recommendation:

Recommendation 2: Maintain a record of the quality assurance of the sifting process for SMS notifications in order to evidence its effectiveness in ensuring that cases are not being incorrectly sifted 'out' as not requiring consideration for curtailment or any other action.

- 2.11 UKVI accepted this recommendation and referred to a new process that had been established to ensure that a minimum of 2% of sifted out cases would be reviewed by a manager. A proportion of those checks would then be subject to further review. UKVI committed to recording all checks on a local spreadsheet.

⁸ 'Premium' sponsors pay an £8,000 annual fee for an enhanced level of support (for example, tailored advice and support with the sponsor licence and students' immigration needs). There are 178 organisations paying for the Tier 4 'premium' service, of which 138 are universities and other Higher Education Institutes.

⁹ Paragraph 2.6 of the March 2016 report.

Findings

- 2.12 Inspectors were told that, since the publication of the original report, 2% of cases sifted out for 'No Further Action' had been checked by a line manager (Executive Officer). Half of these (50%) were then re-checked by a team leader (Higher Executive Officer). All assurance checks were recorded on the SMS spreadsheet and stored locally on the team's shared drive to enable closer compliance monitoring. To date, no sifting process errors had been identified.
- 2.13 UKVI's evidence included copies of spreadsheets. The cases that had been quality assured were highlighted with a note of any action taken by the relevant manager. In each spreadsheet, at least 2% of cases had been sampled, and a summary spreadsheet confirmed that the 2% and 50% targets had been met since April 2016.

Conclusion

- 2.14 The Home Office has embedded a process to quality assure the sifting out of notifications and has kept records that evidence its effectiveness. This recommendation is therefore closed. Looking ahead, the quality assurance regime should be reviewed periodically to confirm that the relatively small sample size (2%) provides an adequate level of assurance.

Recommendation 3

- 2.15 Following on from Recommendation 2, inspectors concluded in the March 2016 report that the quality assurance regime for curtailment decisions 'was not operating as intended'.¹⁰ The report advised UKVI to focus on another area of assurance:

Recommendation 3: Ensure that the assurance regime for Tier 4 curtailment covers the correct application by caseworkers of all relevant Immigration Rules and Home Office guidance (including the UKVI Operating Mandate), and that it informs the training and individual feedback provided to caseworkers.

- 2.16 UKVI accepted this recommendation. It responded that a new quality assurance process was being implemented to ensure that a minimum of 2% of cases were checked, and a further new process had been developed to ensure that individual caseworkers received detailed feedback, with any overall issues being fed back to the team. A full day of refresher training had been provided and a revised training package had been used for new starters.

Findings

- 2.17 In respect of feedback, UKVI reported that: 'The TM¹¹ Notifications Team Feedback is given to caseworkers using a standard feedback template where possible. Feedback is on occasion also verbal to individuals and common themes are discussed at team huddles and used to inform future training packages. The team now also uses a productivity monitoring tool called 'Insight', which allows it to see the cases concluded by an individual and enables easier monitoring and sampling of cases.'
- 2.18 Inspectors were provided with a copy of the blank email feedback template, which included an overall quality rating section. Staff told inspectors that the processes for providing feedback had improved since the original inspection.

¹⁰ Paragraph 2.9 of the report.

¹¹ Temporary Migration.

- 2.19 Evidence was also provided of the revised training package, and of the number of new staff trained (16 in December 2015, 29 in September 2016, and three in November 2016). At the time of re-inspection, no new staff were awaiting training, although UKVI had advertised to recruit a further 14.
- 2.20 Once trained, new staff had 100% of their work checked until a supervising officer confirmed that they were working at the required standard. Inspectors queried whether there was capacity to carry out 100% checking for the planned new recruits, and were told that new management grades were also being recruited. Current managers said that they had experience of achieving 100% quality assurance checking of large numbers of new staff as, for two consecutive years, HM Passport Office staff had been moved across to help the Notifications Team at its busiest time (September to December).
- 2.21 Other units in the Temporary Migration business area use an internal Home Office quality assurance and feedback tool called 'QATRO'. Staff dealing with Tier 4 curtailments felt that operating the current assurance regime was becoming 'cumbersome', and managers said that they were pushing for the rollout of the QATRO system to support their assurance processes.
- 2.22 The re-inspection examined 30 curtailed cases. Inspectors identified eight that failed to cite the most appropriate paragraph of the Immigration Rules, not differentiating between those who had completed their studies early and those who had stopped studying.¹² When this was raised with UKVI they confirmed: 'There was a "better" paragraph to use, which specifically states that the student has completed early. The one quoted in the letter simply states that we have been notified that the migrant has ceased studying, although in essence this is also correct.'
- 2.23 Managers acknowledged that clearer wording to differentiate the two types of case might help to eradicate the inaccuracies. They undertook to review the curtailment notice with policy colleagues in light of the re-inspection's finding.

Conclusion

- 2.24 The Home Office had made improvements to its quality assurance processes following the original inspection, but these processes could be more efficiently managed, for example by using the QATRO system. However, failure to cite the most appropriate Immigration Rule in a significant proportion of the sampled decision letters suggests that quality assurance checks are not yet rigorous enough. This recommendation remains open.

Recommendation 4

- 2.25 The original inspection noted that UKVI did not have a published service standard for consideration of curtailment cases. The 90 day internal target (from SMS notification to case consideration) was frequently missed.¹³ Inspectors considered that 90 days was out of step with the licensed sponsors having a 10 day deadline in which to submit notifications on SMS. The report recommended that UKVI implement a published service standard as set out below:

Recommendation 4: Publish service standards for the curtailment consideration process that: take account of the 10 day deadline imposed on licensed sponsors for the submission of SMS notifications; and drive the efficient use of resources.

¹² The original inspection report noted that the inaccurate citing of the Immigration Rules could have an adverse impact on genuine students who had worked hard to finish early in order to move on to further studies.

¹³ Paragraph 2.8 of the report.

- 2.26 UKVI rejected this recommendation. It stated that, due to the varying complexity of notifications, any service standard would need to be significant in length to allow sufficient time for investigations. However, it did commit to raising awareness of the facility within SMS that enabled sponsors to check that a notification had been received by UKVI. To this end, it undertook to place a bulletin on the SMS notice board, and stated that a newsletter had gone out in February 2016 to promote the facility to those sponsors who subscribe to the Tier 4 'premium' service.

Findings

- 2.27 In its update, UKVI wished to clarify that the sponsors' '10 day deadline' was not a short deadline. It was only once a sponsor had finished its investigation, or other action in respect of an individual student (however long this took), that it had 10 days to notify UKVI.
- 2.28 Inspectors asked UKVI to provide a copy of the bulletin mentioned in the original response. UKVI responded that 'it appears that this bulletin was never posted on the SMS notice board. However, as soon as this was identified, arrangements were made for its publication and it was posted on the notice board on Wednesday 7 December 2016'. While onsite, inspectors were shown the SMS system and saw the bulletin in question (which had been placed on the notice board for a period of one month).
- 2.29 All 60 of the randomly-selected cases examined as part of the re-inspection took longer between SMS notification and consideration than UKVI's internal target of 90 days. Of the 30 cases in the sample that attracted a curtailment not pursued (CNP) decision, 19 had had leave of more than 60 days remaining at the time of the SMS notification, but by the time curtailment was considered this had dwindled to fewer than 60 days.
- 2.30 In light of the argument that 'due to the varying complexity of notifications, any service standard would need to be significant in length to allow sufficient time for investigations to be completed', inspectors looked at the complexity of the cases within the sample of 60. There was no evidence of any complexity requiring further investigation in any of these 60 cases. Staff and managers said that the number of complex cases was small, adding that an effective triage process was in place to identify high-harm cases for expeditious processing.¹⁴
- 2.31 When inspectors made their onsite visit in January 2017, there were just two members of staff working on Tier 4 curtailments and two more working on complex cases, which included some non-Tier 4 casework. Other staff had been reallocated to process 'live' Tier 4 applications. At this time, the number of Tier 4 curtailment notifications waiting to be considered (described by UKVI as 'Work in Progress' (WIP)) stood at 24,145, and the two members of staff were dealing with notifications dating from early August 2016.
- 2.32 Inspectors asked about the size of the WIP and the age of the notifications. Senior managers said that, having no published service standard, they were able to focus resources efficiently on the most pressing UKVI work with the shortest deadlines. They stated that the 24,145 did not mean that UKVI did not have a 'grip' on the WIP as the decision to reallocate resources had been agreed across UKVI at board level and the WIP was closely monitored. They added that past experience had shown that numbers could be driven down quickly once new staff had been recruited, and they were not concerned about the size of the WIP while the dates of notifications were within the current academic year.

¹⁴ An example of a high harm case would be someone asserting that their non-EEA student spouse or partner was committing assaults on them.

Conclusion

- 2.33 The Home Office should reconsider its rejection of the original recommendation. The skeleton staffing, large WIP and significant time lag in responding to notifications indicate that, since August 2016 at least, UKVI has not seen the Tier 4 curtailment function as a priority. The failure to place a bulletin on the SMS notice board, as promised, reinforces the impression that the focus has been elsewhere. While the WIP may be reduced quickly when resources permit, this see-saw approach fails to recognise that UKVI's actions (or inaction) have a real world impact. For example, genuine students who had planned to move quickly to further studies are left in limbo; failed and fraudulent students are not promptly removed, as information about their whereabouts is out of date by the time removal action is considered; and sponsors are left to wonder about the value of complying with the reporting regime.

Recommendation 5

- 2.34 The original inspection found that caseworkers did not routinely use Advanced Passenger Information (API)¹⁵ data to close cases on the shared Case Information Database (CID).¹⁶ Managers stated that the team had previously closed cases on CID but had stopped doing so in November 2014 when this work transferred elsewhere.
- 2.35 The original inspection team were told that where a visa had not been activated it could not be curtailed.¹⁷ The Curtailment Team had responsibility for passing these cases back to the UKVI overseas post that had issued the visa, but they had not been referring cases since May 2014.
- 2.36 The 2016 report concluded that practice in relation to the closure of Tier 4 cases where API data was used was inconsistent, and the fifth recommendation sought to address this:

Recommendation 5: Issue clear instructions to caseworkers in relation to the closing of cases, and the referral of cases to issuing Entry Clearance Officers for cancellation, based on Advance Passenger Information (API) indicating that a Tier 4 student has departed the UK, or the absence of an API record of an individual in possession of a Tier 4 visa having entered the UK, and ensure these instructions are followed consistently.

- 2.37 UKVI accepted this recommendation. It referred in its written response to a new process that had been introduced. Any cases where API checks showed the migrant to have left the UK and had their leave curtailed were sent to the National Returns Command (NRC) on a monthly basis to be considered for closure using its dedicated guidance. With regard to the cancellation of visas, a clear process had been defined and was communicated to the curtailment team at a refresher training session held in December 2015.

Findings

- 2.38 The 60 sample cases examined as part of this re-inspection were in line with this new process, and there were no examples of the UKVI Notifications Team closing cases. There were some examples of the NRC closing cases at a later stage based on API data. Managers confirmed NRC's responsibility for administratively closing cases. Every two to four weeks a Notifications Team manager ran a report of all curtailed cases. The individuals were then subject to a fresh API check and any shown as having departed the UK were entered on a spreadsheet, which was emailed to the NRC for closure.

¹⁵ Data provided by commercial operators to the Home Office concerning passengers travelling to and from the UK.

¹⁶ CID is an electronic database that Home Office caseworkers use to record immigration decisions.

¹⁷ Paragraph 7.12 of the March 2016 report.

- 2.39 In January 2016, a new process involving Biometric Residence Permits (BRP) was introduced. This effectively identified anyone who had not travelled to the UK. A 30 day temporary visa for travel to the UK would be granted, and a BRP would be issued on arrival. If the visa was not activated within the 30 days, the individual had to apply for a new one. If a sponsor reported a failure to arrive, and API data showed that the individual had not travelled to the UK since the visa was issued, the Notifications Team was under instruction to update the relevant systems. This information is then available to Entry Clearance Officers should a fresh visa application be made.
- 2.40 Inspectors saw guidance telling caseworkers what they needed to ascertain before a case could be closed, and also a 19 January 2016 instruction on dealing with cases where a visa applicant had failed to activate their BRP.

Conclusion

- 2.41 The new processes for closing cases appear to be effective and to address all of the concerns raised in the original inspection. This recommendation is closed.

Recommendation 6

- 2.42 The original inspection found that UKVI deemed curtailment of leave a 'negative decision'. Cases entered the Migration Refusal Pool (MRP)¹⁸ and efforts could be made to contact migrants and encourage them to depart. However, curtailment not pursued (CNP) cases were not deemed 'negative' and no further action was taken. This included cases where the individual had already overstayed their leave or had abandoned their studies but had up to 59 more days to remain in the UK.¹⁹ This led to the sixth recommendation:

Recommendation 6: Treat cases that attract a curtailment not pursued (CNP) decision because the individual is an overstayer or has a period of leave remaining that is shorter than their permitted period of grace and curtailment would have no practical effect in the same way as curtailed cases.

- 2.43 UKVI partially accepted this recommendation. It committed to considering a range of measures to monitor CNP cases covered by this recommendation more proactively, and to consider changes to the curtailment policy to ensure it was 'more appropriately tailored according to risk',²⁰ but stated that giving migrants with less than 60 days extant leave additional leave up to 60 days would be perverse in some cases.
- 2.44 This was a misreading of the recommendation,²¹ which had not intended that UKVI should grant CNP cases additional leave up to 60 days, but that action following the decision to curtail or not curtail should take account of the individual's compliance record. The original inspection identified that hard-working students finishing their courses early received a strongly worded letter curtailing their remaining leave to 60 days, in effect treating them as if they intended to become irregular migrants. Meanwhile, failed or fraudulent students, who may have already overstayed and become irregular migrants, were recorded as CNP and no action was taken. This was illogical and unfair.

¹⁸ The MRP consists of cases where a negative decision has been recorded on CID and the Home Office has been unable to satisfy itself that the individual has left the UK or obtained another grant of leave to remain.

¹⁹ Paragraph 2.11 of the March 2016 report.

²⁰ Paragraph 6.3 of the March 2016 report.

²¹ In response to the draft re-inspection report, UKVI stated that it 'did not misunderstand the recommendation', but that it 'was taken at face value'. In hindsight, the recommendation could have been more explicit. The relevant finding is at paragraph 2.11 of the original report, which refers to the treatment of curtailed cases as a 'negative decision' resulting in entry into the Migration Refusal Pool (MRP) for action, initially to encourage voluntary departure and, if unsuccessful, liability for enforced removal. In contrast, Curtailment Not Pursued (CNP) cases were not deemed 'negative', and no further action was taken in respect of them.

Findings

- 2.45 UKVI had commissioned a Continuous Improvement project that included considering the way it handled CNP cases. As a result, it had introduced two new sub-categories for CNP cases: 'CNP – compliant' and 'CNP – non-compliant', with a CNP decision letter for the former (those with fewer than 60 days leave extant) and a 'red letter' enforcement notice (RED.0001) for the latter (those whose leave had already expired).
- 2.46 The new process took effect from 12 September 2016. Home Office data showed that, from then until 31 December 2016, 157 CNP 'red letter' notices had been served. Migrants served with 'red letters' entered the Migrant Refusal Pool (MRP) for follow-up enforcement action.
- 2.47 In the sample of 30 CNP cases from 1 September to 31 October 2016 examined as part of this re-inspection, 24 were categorised as 'CNP – compliant' and six as 'CNP - non-compliant'. Inspectors were able to see from the record that this was correct in 27 of the 30 cases. In the other three cases, the reasons for categorising them as 'CNP - compliant' or 'CNP - non-compliant' were not clearly recorded, so it was not possible to say whether the categorisations were correct.
- 2.48 Regarding the length of time cases spent in the WIP awaiting consideration, Immigration Enforcement stated that delays in routing non-compliant individuals into the MRP could affect their ability to locate and remove them. Meanwhile, some staff expressed concern that delays could impact on the '5 year cap'²² for genuine students. Anecdotally, staff reported some complaints that planned study time in the UK had been lost because student notifications were waiting in the WIP, but could not provide documentary evidence. Stakeholders also raised concerns about the impact of delays on the time limit imposed on students, for which no concessions were made. They questioned whether a change in policy would solve this, alongside more expeditious processing of SMS notifications by UKVI.

Conclusion

- 2.49 The introduction of the 'CNP - compliant' and 'CNP - non-compliant' subcategories for curtailment not pursued (CNP) cases, and CNP decision letters and 'red letters', has addressed the issue of fairness identified in the original inspection report. However, for the new system to work effectively, UKVI must ensure that appropriate outcomes are not compromised by delays in dealing with CNP cases. This recommendation remains open.

Recommendation 7

- 2.50 The original inspection found that there was no systematic monitoring of CNP cases to ensure that individuals with no right to remain in the UK had departed voluntarily or had been identified for enforcement action.²³ Between 1 April 2013 and 31 March 2015, 71,601 CNP decisions were taken. While many of these individuals might have left the UK or been granted further leave to remain, the true position, including the number and whereabouts of those who had remained in the UK illegally was not known. The seventh recommendation dealt with this:

Recommendation 7: Take the necessary steps to identify and locate those individuals amongst the c.71,000 curtailment not pursued (CNP) cases decided between 1 April 2013 and 31 March 2015 who have remained in the UK illegally, with a view to effecting their removal.

²² The maximum period of leave a migrant is eligible for under the Tier 4 student route.

²³ Paragraph 2.13 of the March 2016 report.

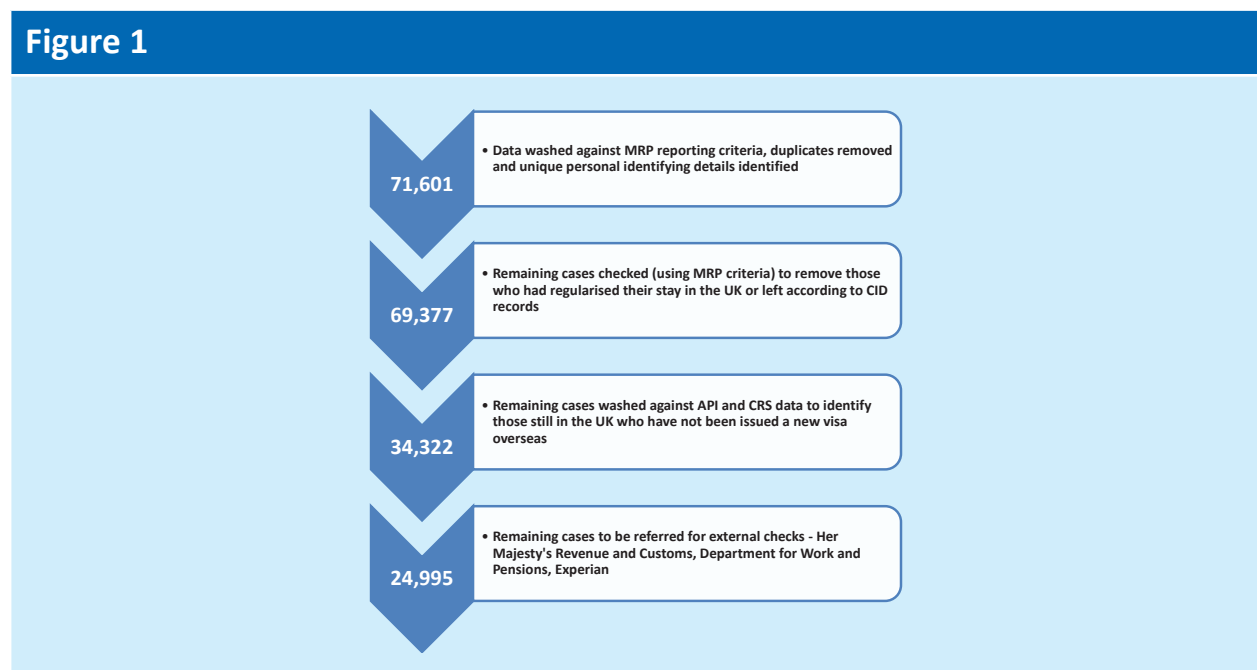
2.51 UKVI accepted this recommendation. It committed to running the details of the 71,000 against Home Office systems to confirm how many had left the UK or had obtained further leave to remain. Further checks would be run against external systems for the remainder to identify if they still had a footprint in the UK.²⁴ Those who did would ‘be subject to a range of escalated interventions and hostile environment measures to prompt compliance and, where necessary, enforce removal’.²⁵

Findings

2.52 UKVI provided the following update:

‘UKVI has run details of the 71,000 cases referenced in the report against Home Office systems using the MRP criteria. Those highlighted by the data wash²⁶ as having a potential continuing footprint in the UK were then washed against API data and overseas visa application systems to establish their current whereabouts. Given the length of time elapsed since the first data run, a decision has been taken to re-run these checks again to ensure the data is as current as possible. Once this rerun has completed, the team will work with Interventions and Sanctions Directorate (ISD)²⁷ to match this data against other government records and Experian to identify any migrants with a continuing footprint in the UK with a view to the Home Office taking enforcement action against them.’

2.53 By the end of 2016, the original figure of 71,601 individuals had been reduced to 24,955. The figure below shows the steps taken by UKVI to review records and achieve this reduction.²⁸ UKVI managers told inspectors that the strategy was designed to reduce unnecessary enforcement work. Immigration Enforcement (IE) managers confirmed they had been consulted in its development and supported it.



24 This followed the process adopted for Older Live Cases that was reviewed by the National Audit Office.

25 Paragraph 7.2 of the Home Office response to the ICI report of March 2016. See <https://www.gov.uk/government/publications/home-office-response-to-the-report-on-a-short-notice-inspection-of-the-tier-4-curtailment-process>.

26 The term ‘wash’ refers to a type of data cleansing by comparing the student records with other relevant records.

27 ISD was formed in June 2013 to help deliver the ‘Hostile Environment’ and has ‘overall responsibility for removing incentives for people to stay illegally and encourage those who are in the country unlawfully to regularise their stay or leave the UK’. See <http://icinspector.independent.gov.uk/wp-content/uploads/2016/10/Hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf>.

28 CRS is a system containing information from applications to enter the UK made abroad.

- 2.55 UKVI was working with IE's Interventions and Sanctions Directorate to run the remaining cases against other records every quarter, to identify if any of the individuals had a 'footprint' in the UK, for example an active National Insurance number or bank account. An individual who did not appear on any of the databases after a year was deemed to have left the UK.

Conclusion

- 2.56 Although data matching and cleansing has substantially reduced the 71,601 figure, the Home Office's approach has lacked urgency. More than a year after it was first alerted to this issue there has been no directly linked enforcement action, and almost 25,000 individuals remain unaccounted for. At the same time, the numbers in the WIP have been allowed to increase, inevitably adding to the total of those who have remained in the UK illegally and will need to be traced. The Home Office should reconsider its strategy and the priority it attaches to this work. This recommendation remains open.

Recommendation 8

- 2.57 The original inspection found that curtailed case references were entering the MRP while still within the period of grace granted for lodging an appeal or making a fresh application. As this period formed a barrier to removal, Capita (the contractor responsible for contact management with some of those in the MRP) might begin action but would be unable to pursue it. The inspection concluded that this was 'wasted effort for all parties'²⁹ and made recommendation 8:

Recommendation 8: Review the flow of cases referred to Capita to eliminate cases bouncing back as unworkable, including those that should have been closed based on Advance Passenger Information (API) and those curtailed cases where the period of grace has not expired when referred.

- 2.58 UKVI accepted this recommendation, stating that API was routinely used as part of the curtailment process to verify whether the migrant was still in the UK (which would cause those records to enter the MRP and be available to Capita). Where API showed that the migrant had departed the UK, electronic records should be updated by the curtailment team, which would prevent the record from entering the MRP. UKVI had reminded staff to adhere to the process to avoid departed cases incorrectly entering the MRP.

Findings

- 2.59 UKVI stated that Capita was no longer contracted for the work and inspectors confirmed this through file sampling. The period for appeals and fresh applications was now being taken into account before cases were passed to the MRP for enforcement action.

Conclusion

- 2.60 The current process (as set out under Recommendation 5) closes cases only after the appeals and fresh application periods are exhausted, so this recommendation is closed.

²⁹ Paragraph 2.12 of the March 2016 report.

Recommendation 9

- 2.61 The original inspection team found that Immigration Enforcement’s tasking process did not classify the removal of students whose leave had been curtailed as high priority. This was despite Home Office acceptance of a recommendation from a previous inspection³⁰ to take the necessary steps to locate and remove students with curtailed leave, and the view of staff and managers that these individuals were generally easier to remove than many other migrants.³¹ This resulted in recommendation 9:

Recommendation 9: Review whether the priority currently given to Tier 4 curtailed cases within the Immigration Enforcement national prioritisation matrix is appropriate.

- 2.62 The Home Office accepted this recommendation and explained that students were already included in the Immigration Enforcement (IE) national prioritisation matrix. UKVI also referred to joint working that takes place with IE where specific exercises target a particular group (such as students).

Findings

- 2.63 Immigration Enforcement’s priorities are set by a National Tasking Board. However, local IE teams may still task individual cases on their merits if the individual is removable from the UK and there are no barriers, such as the absence of a valid travel document. When this recommendation was accepted, students whose leave had been curtailed featured on IE’s national prioritisation matrix. At the time of this re-inspection, they did not.
- 2.64 Inspectors spoke to IE managers who said that students whose leave had been curtailed are found routinely during enforcement operations targeted against other priority areas, including under ‘Operation Magnify’, which targets illegal working.

Conclusion

- 2.65 Review of the situation closed this recommendation. It is a matter for the Home Office to determine whether students whose leave has been curtailed should feature in the Immigration Enforcement national prioritisation matrix. However, if not, it should ensure it is able to evidence the effectiveness of tackling curtailed students through other enforcement activities.

³⁰ An inspection of Tier 4 of the Points Based System (Students) was published on 29 November 2012. See <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/An-inspection-of-Tier-4-of-the-Points-Based-System-29.11.2012.pdf>.

³¹ Paragraph 2.14 of the March 2016 report.

Annex A: Recommendations from the original inspection and Home Office responses³²

1. Find a workable solution to providing Tier 4 licensed sponsors with direct feedback on the quality of their SMS notifications, with a view to achieving a significant reduction in the number of unnecessary notifications submitted each year.

1.1 Partially accepted

1.2 UKVI partially accepts the Independent Chief Inspector's recommendation. UKVI acknowledges sponsors' eagerness to receive feedback on actions taken following their notification to the Home Office and this is something that is being investigated from a data protection perspective.

1.3 It is anticipated that a new case working system, Integrated Platform Technology (IPT), will provide the Home Office with numerous new capabilities, which may include a reporting function back to sponsors informing them of a status change following a notification. IPT is still in the early stages of development, and whilst UKVI is seeking such functionality, it cannot be confirmed that this will be viable.

1.4 Current IT systems do not allow us to provide an automated feedback mechanism and to rectify this would mean significant and expensive changes to IT systems which are about to be replaced.

1.5 UKVI continues to work with the education sector to ensure its understanding of the Sponsorship guidance and its requirements in terms of reporting activity to UKVI. This continued joint working will educate sponsors on reporting only the necessary information required by UKVI.

2. Maintain a record of the quality assurance of the sifting process for SMS notifications in order to evidence its effectiveness in ensuring that cases are not being incorrectly sifted 'out' as not requiring consideration for curtailment or any other action.

2.1 Accepted

2.2 UKVI accepts the Independent Chief Inspector's recommendation and it is currently being implemented by the Curtailment Team. A new process has been established to ensure that a minimum of 2% of those cases sifted out as being "No Further Action" are reviewed by a manager.

2.3 A proportion of these checks will then be subject to a secondary check by a team leader.

2.4 All checks completed will be recorded on the sifting spreadsheet and stored locally on the team's shared drive to enable closer compliance monitoring.

³² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510299/Home_Office_response_to_ICI_report_on_the_Tier_4_curtailment_process.pdf.

3. Ensure that the assurance regime for Tier 4 curtailment covers the correct application by caseworkers of all relevant Immigration Rules and Home Office guidance (including the UKVI Operating Mandate), and that it informs the training and individual feedback provided to caseworkers.

3.1 Accepted

3.2 UKVI accepts the Independent Chief Inspector's recommendation. A new quality assurance process is being implemented to ensure a minimum of 2% checks are undertaken. A proportion of the initial management checks will then be subject to a secondary check by a team leader.

3.3 A new process has been developed to ensure individuals receive feedback on their cases and any issues or errors are fed back to the team and included in training material. A dedicated note has been created and placed on our case working system to provide an audit trail of checks undertaken on curtailment cases by all managers.

3.4 In addition, a full day refresher training session has been held to refresh caseworker knowledge on all aspects of curtailment case working. Following this, a revised curtailment training package was created and which has since been used successfully with new starters in the unit.

4. Publish service standards for the curtailment consideration process that: take account of the 10 day deadline imposed on licensed sponsors for the submission of SMS notifications; and drive the efficient use of resources.

4.1 Rejected

4.2 UKVI rejects this recommendation. Notifications received cover a variety of subjects and involve individuals with a range of immigration statuses. These notifications can vary in complexity. Upon receipt of a notification, UKVI often needs to undertake additional checks and investigations prior to taking curtailment action. This means that any service standard set would need to be significant in length to allow sufficient time for these investigations to be completed.

4.3 It should be noted that the 10 day deadline for sponsors is the time allowed for them to report to UKVI on any action taken against an individual; it is **not** the time that the sponsor has to undertake the action they wish against the individual.

4.4 There is currently a facility on the Sponsor Management System (SMS) to enable sponsors to check that the Home Office has received the notification they submitted. This facility can be found on the "Report student activity – activity history" screen.

4.5 To raise awareness of this facility, UKVI will ensure that a bulletin is placed on the SMS notice board, which is available to view by all sponsors. UKVI has also promoted this facility in a newsletter sent to Premium Tier 4 sponsors on 26 February 2016. Whilst this does not guarantee a notification will be dealt with within a specified time period, it does provide some reassurance to sponsors that their notification has been received and is being considered, and that no further action is required on their part.

5. Issue clear instructions to caseworkers in relation to the closing of cases, and the referral of cases to issuing Entry Clearance Officers for cancellation, based on Advance Passenger Information (API) indicating that a Tier 4 student has departed the UK, or the absence of an API record of an individual in possession of a Tier 4 visa having entered the UK, and ensure these instructions are followed consistently.

5.1 Accepted

5.2 UKVI accepts the Independent Chief Inspector's recommendation. The closure of cases where a migrant has left the UK and their leave has been curtailed is now undertaken by the National Removals Centre (NRC), which has its own dedicated guidance.

5.3 On a monthly basis, any cases which have been actioned as a curtailment, and API checks show the migrant to be out of the UK, are sent to the NRC for consideration of case closure in line with its processes.

5.4 With regard to the cancellation of entry clearance cases, a clear process has been defined and was communicated to the Curtailment Team at the refresher training session on 7 December 2015.

6. Treat cases that attract a curtailment not pursued (CNP) decision because the individual is an overstayer, or has a period of leave remaining that is shorter than their permitted period of grace and curtailment would have no practical effect, in the same way as curtailed cases.

6.1 Partially accepted

6.2 UKVI partially accepts the Independent Chief Inspector's recommendation. As with any aspect of the immigration system, it is not appropriate to treat all individuals in the same regardless of compliance or behaviour. To implement this recommendation entirely would involve giving migrants with less than 60 days extant leave *additional* leave up to 60 days, which would be perverse given these migrants have had their sponsorship withdrawn.

6.3 UKVI will, however, consider a range of measures to more proactively monitor such cases, including writing to the individuals concerned to remind them of their leave dates and responsibilities, using exit checks data to identify CNP cases amongst the overstayer cohort and to tackle this in line with agreed processes, and considering changes to the policy regarding curtailments to ensure it is more appropriately tailored according to risk. Some such measures will require wider consultation and UKVI commits to keeping the ICI informed as this work develops.

7. Take the necessary steps to identify and locate those individuals amongst the c.71,000 curtailment not pursued (CNP) cases decided between 1 April 2013 and 31 March 2015 who have remained in the UK illegally, with a view to effecting their removal.

7.1 Accepted

7.2 UKVI accepts the Independent Chief Inspector's recommendation. At present CNP cases are treated the same as other cases in which curtailment is not a consideration and as such their leave expires naturally and they are expected to return home or extend their leave in another category. In order to identify those that did not, UKVI will run details of the 71,000 cases referenced in this report against Home Office systems to confirm how many have left the UK and how many have extended their leave compliantly and therefore have a continued right to be here. The remainder will be run against external systems, following the process previously

adopted for Older Live Cases that was reviewed by the National Audit Office, to establish whether they have a continuing footprint in the UK. Those that do will be subject to a range of escalated interventions and hostile environment measures to prompt compliance and, where necessary, enforce removal.

8. Review the flow of cases referred to Capita to eliminate cases bouncing back as unworkable, including those that should have been closed based on Advance Passenger Information (API) and those curtailed cases where the period of grace has not expired when referred.

8.1 Accepted

8.2 UKVI accepts the Independent Chief Inspector's recommendation. Advance Passenger Information (API) is routinely used as part of the curtailment process, using a bulk check facility to verify whether the migrant is still in the UK before undertaking curtailment of leave that would cause their records to be counted in the Migration Refusal Pool (MRP). In the event that there is an outbound API match, the process is for the Case Information Database to be updated by UKVI and this will prevent the record from entering the MRP and being passed for consideration of contact management by Capita.

8.3 The nature of the MRP is such that cases only enter the MRP at the point where a migrant's grace period expires (which allows for them to submit an appeal where appropriate).

8.4 Curtailment staff have been reminded to ensure the process implemented is adhered to in order to ensure that departed cases do not enter the MRP.

9. Review whether the priority currently given to Tier 4 curtailed cases within the Immigration Enforcement national prioritisation matrix is appropriate.

9.1 Accepted

9.2 UKVI accepts the Independent Chief Inspector's recommendation. Students are already included in the priorities matrix and it is important to note that the cohorts listed are not in priority order. The relative position of a group on the matrix does not equate to that group being of a relatively lower priority than another.

9.3 Where specific exercises are required to target a particular group, UKVI works with Immigration Enforcement to ensure that appropriate prioritised activity takes place.

Annex B: 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;
- whether 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.

