Managing Migration: The Points Based System

Thirteenth Report of Session 2008–09

Volume I

Report, together with formal minutes

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The Home Affairs Committee

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

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Summary

In the context of the current economic climate it is all the more important that the Points Based System for immigration is able to respond flexibly to changing economic and labour market needs, and that the process of assessing shortages and awarding points for skills 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.

The practical implementation of the Points Based System for managed migration has on the whole received a cautious welcome, in particular for the emphasis it places on transparent and objective criteria. However, several key structures on which the system is built—most notably the calibration of points, the shortage occupation lists, compliance responsibilities placed on sponsors and the introduction of administrative review—require further consideration.

Although objectivity is to be welcomed, measuring skill by awarding points for criteria such as past earnings or academic qualifications gives undue priority to easily-quantifiable attributes and ignores ability or experience in a job. In particular, the overemphasis on formal qualifications at the expense of professional experience or training is arbitrary and unfair. Practitioners of several skilled professions—such as ballet dancers, chefs or musicians—do not necessarily hold formal qualifications. Rather than including such professions on a shortage occupation list, we recommend that 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.

The long term inclusion on the shortage occupation lists of occupations which reflect areas of long term structural shortage, or the need to compete internationally for a small number of exceptionally talented people appears to be to compensate for poor design elsewhere in the system. We recommend that these shortages should be addressed by adapting the points criteria, and not by inclusion on the lists. The shortage occupation lists should be used only to provide flexibility for short term or cyclical shortages; to this end the Government should consider updating the lists on a more frequent, or rolling, basis.

Employers and educators, as the sponsors of migrants, are expected to take on greater responsibility for migrants’ compliance with immigration controls. There is clearly great nervousness amongst sponsors over the possible penalties attached to any failure, even unwitting, to report changes in circumstance of their migrants. We recommend that these shortages should be addressed by adapting the points criteria, and not by inclusion on the lists. The shortage occupation lists should be used only to provide flexibility for short term or cyclical shortages; to this end the Government should consider updating the lists on a more frequent, or rolling, basis.

Employers and educators, as the sponsors of migrants, are expected to take on greater responsibility for migrants’ compliance with immigration controls. There is clearly great nervousness amongst sponsors over the possible penalties attached to any failure, even unwitting, to report changes in circumstance of their migrants. We recommend that the Government gives a degree of leeway to ‘A’ rated sponsors, and that it makes explicit to sponsors exactly how and when they can expect penalties to be applied. It must also ensure that the Sponsorship Management System—on which administration of the whole system of migrant sponsorship rests—is adequately piloted and tested, or risk potentially dramatic consequences for the reputation, functioning and finance of UK business and education.
We conclude that representations by Members of Parliament to the UK Border Agency and ministers on immigration and asylum cases will increase, since the system contains no independent right of appeal against visa refusals but only a paper-based administrative review. This could lead to MPs and ministers becoming an alternative appeals process. Already too many MPs are dissatisfied with the quality and speed of response to their representations—understandably so, since the UK Border Agency is spectacularly failing to meet its target of responding to 95 per cent of correspondence within 20 days.

Different industries—catering and hospitality, health and social care, information and communications technology, legal services, higher education and students, arts and entertainment and agriculture and horticulture—have experienced specific problems with the implementation of the system. We consider these issues individually in Chapter 11.
CONTEXT

1 The Committee’s inquiry

1. On 5 June 2008 the Committee announced its intention to inquire into the Government’s implementation plans for its new Points Based System of migration, including an examination of the impact of the proposed system on particular groups and sectors and an assessment of the introduction of new sponsorship arrangements. We wished in particular to consider: the proposed Points Based System of managed migration; the implementation of Tier 1 (highly-skilled migrants); the impact on certain sectors of phasing out sector-specific schemes, including the Seasonal Agricultural Workers Scheme and Sectors Based Schemes; the effect of the proposed changes on the education, sports and culture sectors; proposed sponsorship arrangements, including the impact of fees and greater responsibility on small and medium enterprises; and the immigration-related provisions of the Government’s draft Citizenship, Immigration and Borders Bill.1

2. In the course of this inquiry we received 69 items of written evidence and took oral evidence on five occasions. We held a seminar on 23 June 2008 in North Kensington to launch the inquiry, with speakers including the Bangladeshi Caterers Association, the Immigration Law Practitioners’ Association, the Federation of Small Businesses, and the former Home Secretary Charles Clarke MP. We visited India and Bangladesh in October 2008, where we met UK Border Agency entry clearance officers and operations managers, held roundtable discussions with Indian industry representatives, met Indian and Bangladeshi Home Affairs ministers, and hosted a roundtable discussion with community stakeholders in Sylhet, Bangladesh. In addition we visited the UK Border Agency in Croydon; entry clearance operations in Gatwick Airport; and the Royal Opera House in London.

3. We also held a one-off evidence session on 3 March 2009 to consider MPs’ representations on immigration and asylum cases. These issues are discussed in chapter 12 of this Report, and we publish the transcript of the session along with our other evidence.

4. During the course of our inquiry a large proportion of the Points Based System has been implemented. Accordingly, some of the points made to us in evidence have become outdated as the Government has refined aspects of the system in response to concerns from different sectors. Where these points were significant we nevertheless note them in this Report. During our investigations the Government published a draft (Partial) Immigration and Citizenship Bill on 14 July 2008, and subsequently replaced this with a full Borders, Citizenship and Immigration Bill [HL], introduced in the House of Lords on 14 January 2009. We decided to scrutinise this Bill separately, and set out our conclusions in a Report published on 29 April 2009.2

1 Home Affairs Committee inquiry terms of reference, published in Press Notice 43 of Session 2007–08 (5 June 2008), www.parliament.uk/homeaffairscom

2 Home Affairs Committee, Fifth Report of Session 2008–09, Borders, Citizenship and Immigration Bill [HL], HC 425
5. We would like to thank all those who gave us evidence in writing, in person or during our visits, and those who helped arrange the visits, in particular the staff of the British High Commissions in India and Bangladesh.
2 International migration to the UK

Before considering the design and administration of the new system, in this chapter we briefly set out the context for managed migration, including: which persons are subject to immigration control, trends in migration to and from the UK, and trends in those coming from outside the European Economic Area to the UK to work.

Immigration control

6. Citizens of European Economic Area (EEA) countries and Switzerland, accompanied by their family members, can come to the UK for any purpose for up to three months, under European free movement rules. Having entered the UK they are free to take up employment or to set themselves up in business. To stay beyond three months they must be a worker, self-employed, a provider or recipient of services, self-sufficient, retired or a student. There are more restrictive arrangements for citizens of the two newest EU member states, Bulgaria and Romania, who must get specific permission to take up a job here. Citizens of the eight member states which joined in 2004 have to register with the Worker Registration Scheme if they wish to work in the UK, although there are no restrictions on them taking employment.

7. People from the rest of the world have to comply with the UK’s immigration laws. They may obtain permission to enter or stay in the UK for a limited or indefinite period if they meet the conditions set out in the Immigration Rules or in published concessions outside the Immigration Rules, for asylum or human rights reasons or at the Home Secretary’s discretion. The new Points Based System applies to most categories of immigrant from the rest of the world.

Immigration legislation

8. The foundation of the current legal framework for immigration is the Immigration Act 1971. Since 1971 ten major other Acts have been passed. The Borders, Citizenship and Immigration Bill [HL] is currently under consideration in the House of Commons, with a further Immigration Simplification Bill expected in the autumn of 2009.

Reliability of statistics

9. There is no single source of information on migration data in the UK. The principal sources are the annual Home Office Command Paper, Control of Immigration: Statistics United Kingdom, the annual Home Office Bulletin of the same name, the joint Foreign Office, Home Office and UK Visas annual bulletin, Entry Clearance Statistics, the annual Office for National Statistics publication, International Migration, the quarterly Home Office bulletin, Asylum statistics, and the annual Home Office statistical bulletin, Persons granted British Citizenship.

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10. The accuracy of migration data collected in the UK has been widely criticised. For instance, the House of Lords Economic Affairs Committee concluded, in its recent Report *The Economic Impact of Immigration*, that:

There are significant unknowns and uncertainties in the existing data on immigration and immigrants in the UK. There are insufficient data about people leaving the UK and about short-term immigration to the UK...The gaps in migration data create significant difficulties for the analysis and public debate of immigration.4

11. There are four main inadequacies with migration data. First, existing data do not allow for accurate measurement of numbers of immigrants at national, regional and local levels. Labour Force Survey (LFS) data, the main source for measuring the annual stock of immigrants in the UK, exclude people who have lived in the UK for less than six months and people who do not live in private households. Second, available data on gross and net immigration flows include only international long-term migrants (those who enter or leave the UK for a period of more than one year) and therefore exclude those who enter or leave the UK for less than one year. Third, there are insufficient data about people leaving the UK, since there are currently no border exit controls. Fourth, little is known about the scale of illegal immigration and illegal employment in the UK.5

12. The Government argues that the introduction of its e-Borders programme, due to be fully operational by March 2014, will significantly improve migration data, by allowing people to be counted (in and) out of the country. From August 2009 two of the main immigration statistics publications—*Asylum Statistics United Kingdom* and *Control of Immigration: Statistics United Kingdom*—will be merged into one volume to provide a more comprehensive overview of immigration data. At the same time information relating to the Points Based System may be included in these publications.

**Migration trends**

13. In 2007 an estimated total of 340,000 people emigrated from the UK and an estimated 577,000 people arrived to live in the UK for at least a year, meaning that total net migration into the UK was 237,000.6 This was an increase of 46,000 from 2006, but below the record estimate of 244,000 in 2004. 34 per cent of the total (197,000) were from the 27 EU member states.

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5 Adapted from: House of Lords Economic Affairs Committee, *The Economic Impact of Migration*, paras 9–12

14. The 2007 International Passenger Survey⁷ shows that, of the reasons for migration, having a definite job was the most cited (with approximately 30 per cent of inflow reporting this), followed by formal study (26 per cent), accompanying or joining a relative (15 per cent) and looking for work (12 per cent).⁹

EEA nationals

15. The number of A8 nationals (nationals of the 2004 EU accession states) approved on the Worker Registration Scheme totalled 227,875 in 2006, three quarters of whom (162,495) were Polish.¹⁰ Since 2006 the number of A8 nationals on the Scheme has fallen. The latest Home Office Control of Immigration quarterly statistical summary shows that the number of approved applicants making initial applications in Q1 2009 (21,000) was less than half that of Q1 2008 (47,000). This compares to 50,000 in Q1 2007. It states that “the decrease is mainly explained by the fall in approved Polish national applicants, which fell to 12,000 in Q1 2009 from 32,000 in Q1 2008 and 36,000 in Q1 2007”.¹¹ However, an estimate from the UK Statistics Authority, using data from the Labour Force Survey, suggests that the number of EU nationals working in the UK was at or near its highest level in the first quarter of 2009.¹² The number of such workers has risen significantly since the accession of the A8 countries in 2004.

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⁷ Source: Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.32 (using data from the International Passenger Survey 2007). EU15 refers to the 15 member states of the EU prior to enlargement in 2004; A8 refers to the 8 new member states after 2004 enlargement.


¹⁰ Home Office, Control of Immigration: Quarterly Statistical Summary, United Kingdom, January–March 2009, p.40 (Table 13)

¹¹ Home Office, Control of Immigration: Quarterly Statistical Summary, United Kingdom, January–March 2009, p.2

¹² HC Deb, 23 June 2009, col 798W–800W [Written Answer]
16. Approved applications for accession worker cards from Bulgarian and Romanian nationals wishing to take up employment in the UK fell by 33 per cent in the last year, from 645 in Q1 2008 to 435 in Q1 2009. This compares to the higher number of 840 in Q1 2007.\textsuperscript{13} Operators of the Seasonal Agricultural Workers’ Scheme (SAWS)—restricted to Bulgarian and Romanian nationals—issued a total of 6,770 SAWS work cards in Q1 2009, slightly down on the 6,865 issued in Q1 2008.\textsuperscript{14}

**Non-EEA migration**

17. Nationals of every non-EEA country wishing to come to the UK for over 6 months or to work require a visa. The latest available figures show that, in 2007/08, the UK received 1.27 million visit applications, 459,000 family visit applications, 344,000 student applications, and 89,000 work permit applications (not including working holidaymakers). The main categories in which applications decreased in 2007/08 were settlement and working holidaymakers (both down 16 per cent). Applications increased for work permits (up 12 per cent) and students (up 9 per cent). The overall refusal rate was 18 per cent, down 1 per cent on 2006/07.\textsuperscript{15} The Labour Force Survey estimates that the number of non-EU nationals in employment in the UK has more than doubled since 1997, and in the first quarter of 2009 stood at approximately 1.2 million workers out of a total workforce in the UK\textsuperscript{16} of 27.8 million.\textsuperscript{17}

\textbf{Figure 2: Global visa demand by endorsement category, 2007/08}\textsuperscript{18}

\begin{itemize}
  \item \textbf{Visit, 1,269,885}
  \item \textbf{EEA Family Permits, 26,235}
  \item \textbf{Transit, 41,885}
  \item \textbf{Working Holiday Maker, 53,000}
  \item \textbf{Settlement, 88,075}
  \item \textbf{Work Permit, 89,445}
  \item \textbf{Non Settlement, 143,020}
  \item \textbf{Student, 343,095}
  \item \textbf{Family Visit, 458,675}
\end{itemize}

\textsuperscript{13} Home Office, \textit{Control of Immigration: Quarterly Statistical Summary, United Kingdom}, January–March 2009, p.41 (Table 14)

\textsuperscript{14} Home Office, \textit{Control of Immigration: Quarterly Statistical Summary, United Kingdom}, January–March 2009, p.20


\textsuperscript{16} Total workforce in the UK comprises both UK nationals and non-UK nationals.

\textsuperscript{17} HC Deb, 23 June 2009, col 798W–800W [Written Answer]

Previous work entry routes

18. Prior to the Points Based System (PBS) a number of different schemes allowed non-EEA nationals to work in the UK. The work permits scheme allowed work permits to be issued for up to five years and those admitted could qualify for settlement after five years. The criteria included a skills requirement and a requirement that the employer had made a genuine attempt to fill the vacancy from the resident workforce. Separate provisions existed for sportspeople and entertainers, intra-corporate transfers and those coming for training and work experience. Tier 2 (General) of the PBS replaces the work permits scheme, and sub-categories under Tiers 2 and 5 replace these other separate provisions.

19. The Highly Skilled Migrant Programme, introduced in 2002, was designed to allow highly-skilled people to migrate to the UK to look for work or be self-employed. Unlike the work permits scheme, applicants did not require a specific job offer in the UK. HSMP gave credit for educational qualifications, work experience and past earnings. As with the work permits scheme, migrants could apply for settlement after five years. Tier 1 (Highly Skilled Migrants) of the Points Based System replaces the Highly Skilled Migrant Programme.

20. Low-skilled permit routes included the Seasonal Agricultural Workers Scheme (SAWS), which allowed workers to come to the UK for up to six months on a quota basis to do seasonal agricultural work for farmers and growers, and the Sectors Based Schemes, which allowed people to enter the UK to take up short-term or casual jobs, again on a quota scheme. Since the introduction of the Points Based System the SAWS remains in operation, but has been restricted to Romanian and Bulgarian nationals only, and the Government has announced its intention to phase out the scheme altogether by the end of 2010.19 The Sectors Based Schemes have been stopped. Tier 3 (low-skilled) of the Points Based System replaces these previous schemes—however, this tier is indefinitely suspended, and the Government has no current plans to implement it since it considers that it can recruit all low-skilled labour required by the UK from within the EEA labour force.

21. In addition to these routes separate provisions existed for business people, investors and innovators. There were also around 40 permit-free routes—such as the ‘UK ancestry’ route, the International Graduates Scheme and the Working Holidaymakers Scheme—and a number of specialist routes—such as academic visitors, au pairs and business visitors. All these previous entry routes have been replaced under the various Tiers of the Points Based System.

22. The following table shows the numbers of work permits and first permissions granted by industry in 199520 and 2007. In 1995 a total of 24,161 permits were issued, and in 2007 a total of 83,968: over three times as many. In 1995 the greatest proportion of permits was issued for administration, business and management services, whereas in 2007 it was for computer services.

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19 HC Deb 7 March 2006 c55WS [Written Ministerial Statement]
20 Data on work permits from the current statistical systems are available from 1995 onwards.
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<thead>
<tr>
<th>Industry</th>
<th>1995</th>
<th></th>
<th>2007</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number (nearest 100)</td>
<td>%</td>
<td>Number (nearest 100)</td>
<td>%</td>
</tr>
<tr>
<td>Computer services</td>
<td>1,800</td>
<td>7.6</td>
<td>23,700</td>
<td>26.9</td>
</tr>
<tr>
<td>Administration, business and management services</td>
<td>4,000</td>
<td>16.7</td>
<td>11,300</td>
<td>12.8</td>
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<tr>
<td>Financial services</td>
<td>3,200</td>
<td>13.2</td>
<td>9,700</td>
<td>11.0</td>
</tr>
<tr>
<td>Health and medical services</td>
<td>1,800</td>
<td>7.3</td>
<td>7,500</td>
<td>8.6</td>
</tr>
<tr>
<td>Education and cultural activities</td>
<td>1,900</td>
<td>7.9</td>
<td>7,100</td>
<td>8.1</td>
</tr>
<tr>
<td>Hospitality, hotels, catering and other services</td>
<td>300</td>
<td>1.3</td>
<td>4,800</td>
<td>5.5</td>
</tr>
<tr>
<td>Entertainment and leisure services</td>
<td>2,900</td>
<td>12.1</td>
<td>4,600</td>
<td>5.3</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>500</td>
<td>1.9</td>
<td>3,700</td>
<td>4.2</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>2,000</td>
<td>8.2</td>
<td>3,000</td>
<td>3.4</td>
</tr>
<tr>
<td>Construction and land services</td>
<td>200</td>
<td>0.8</td>
<td>3,000</td>
<td>3.4</td>
</tr>
<tr>
<td>Sporting activities</td>
<td>500</td>
<td>2.3</td>
<td>2,400</td>
<td>2.7</td>
</tr>
<tr>
<td>Retail and related services</td>
<td>2,800</td>
<td>11.7</td>
<td>1,500</td>
<td>1.7</td>
</tr>
<tr>
<td>Extraction industries</td>
<td>400</td>
<td>1.8</td>
<td>1,400</td>
<td>1.6</td>
</tr>
<tr>
<td>Law-related services</td>
<td>300</td>
<td>1.1</td>
<td>1,200</td>
<td>1.4</td>
</tr>
<tr>
<td>Transport</td>
<td>300</td>
<td>1.4</td>
<td>800</td>
<td>0.9</td>
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<tr>
<td>Unconfirmed</td>
<td>-</td>
<td>-</td>
<td>800</td>
<td>0.9</td>
</tr>
<tr>
<td>Government</td>
<td>&lt;100</td>
<td>0.2</td>
<td>500</td>
<td>0.6</td>
</tr>
<tr>
<td>Agriculture activities</td>
<td>1000</td>
<td>3.9</td>
<td>400</td>
<td>0.5</td>
</tr>
<tr>
<td>Real estate and property services</td>
<td>&lt;100</td>
<td>0</td>
<td>300</td>
<td>0.4</td>
</tr>
<tr>
<td>Utilities: gas, electricity, water</td>
<td>200</td>
<td>0.7</td>
<td>200</td>
<td>0.2</td>
</tr>
<tr>
<td>Security and protective services</td>
<td>&lt;100</td>
<td>0</td>
<td>100</td>
<td>0.2</td>
</tr>
<tr>
<td>Total</td>
<td>24,161</td>
<td>100</td>
<td>87,968</td>
<td>100</td>
</tr>
</tbody>
</table>

Figure 3: Work permits and first permissions granted by industry, 1995 and 2007

Source: Migration Advisory Committee, *Skilled, Shortage, Sensible: The recommended shortage occupation lists for the UK and Scotland*, September 2008, p.52. Citing: Salt and Millar (2006) based on management information data collected by the UKBA. Work permits and first permissions are presented against the Home Office sector classification. This does not correspond with the Standard Industrial Classification.
23. The following graph shows the number of approved applications by type under the previous work permit system between 1995 and 2008.\(^{22}\) In 2008 overall there was a decrease in the number of work permits issued.

Figure 4: Approved applications under the work permit system, 1995 to 2008\(^{23}\)

24. Applications for work permits in the last year for which figures are available (2007/08) were highest from South Asia (35,685), followed by the Americas (17,095). A total of 89,450 were applied for worldwide. 34,420 (96 per cent) were actually issued for South Asia, 16,790 (98 per cent) for the Americas, and 86,000 issued worldwide.

Figure 5: Volume of work permit applications and issues by region, 2007/08\(^{24}\)

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\(^{22}\) Data on work permits from the current statistical systems are available from 1995 onwards.

\(^{23}\) Migration Advisory Committee, *Skilled, shortage, sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009*, April 2009, p.34. Note: Total permits approved refers to permits issued under the work permit system. It excludes dependants and lower skilled schemes such as the Sectors Based Scheme and Seasonal Agricultural Workers Scheme applications. ‘Other’ includes self-certification and in-country technical change. With the launch of Tier 2 of the PBS on 26 November 2008 applicants (except for Bulgarian and Romanian nationals) could no longer apply for work permits; nevertheless, lags in approval meant that work permits were approved in December 2008 in similar numbers as in previous months (Source: Salt, 2007, management information collected by UKBA).

25. Equivalent information on applications and visas issued under the Points Based System are not yet available because the system has only been in operation for a matter of months. The Migration Advisory Committee does, however, expect this data to be available in time for its next report, in September 2009.\textsuperscript{25}

\textsuperscript{25} Migration Advisory Committee, \textit{Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009}, April 2009, p.34.
SYSTEM DESIGN

3 Architecture of the new system

Rationale for a new system

26. In July 2005 the Government published a consultation document on a proposed Points Based System for migration, *Selective Admission: Making Migration Work for Britain*. Following the conclusion of the consultation, the Government’s detailed proposals for the Points Based System were published as a Command Paper, *A points-based system: Making Migration Work for Britain*, in March 2006. The then Home Secretary, Charles Clarke, set out the rationale for the system:

The system we have at present is complex and difficult to understand. We will bring all our current work schemes and students into a simple points-based system designed to ensure that we are only taking migrants for jobs that cannot be filled from our own workforce and focusing on the skilled workers we need most like doctors, engineers, finance experts, nurses and teachers.26

The Points Based System was launched on 28 February 2008, with the implementation of Tier 1. Tiers 2 and 5 were implemented on 27 November 2008; Tier 4 on 31 March 2009.

The Tiers

27. The Points Based System consists of five tiers, each of which represents a possible route for non-EEA nationals to enter the UK to work, train or study. Tier 1 covers highly skilled individuals, Tier 2 covers skilled workers with a job offer to fill gaps in the UK labour force, Tier 3 relates to low-skilled workers and is suspended indefinitely (until the Government decides that there is a need for unskilled workers from outside the EEA), Tier 4 relates to students, and Tier 5 to youth mobility and temporary workers, as follows:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Category</th>
<th>Replaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>Highly Skilled Migrants</td>
<td>Highly Skilled Migrant Programme</td>
</tr>
<tr>
<td>Tier 2</td>
<td>Skilled workers with a job offer</td>
<td>Work permits scheme Intra corporate transfers</td>
</tr>
<tr>
<td></td>
<td>Intra company transfers</td>
<td></td>
</tr>
<tr>
<td>Tier 3 (suspended)</td>
<td>Low skilled workers for temporary labour shortages</td>
<td>Sector Based Schemes</td>
</tr>
<tr>
<td>Tier 4</td>
<td>Students</td>
<td>Students</td>
</tr>
<tr>
<td>Tier 5</td>
<td>Youth mobility and temporary workers</td>
<td>Temporary routes, such as working holidaymaker</td>
</tr>
</tbody>
</table>
28. Points are allocated according to attributes, such as age, qualifications, earnings, language and funds, with a different number of points needed for each of the five tiers. Tiers 3 and 5 are temporary routes, and migrants will not be able to switch out of them once in the UK. Those in Tiers 1, 2 and 4 will be eligible to switch between tiers subject to meeting the requirements of the tier they wish to switch into. Dependents are allowed under Tiers 1, 2, 4 and 5. However, dependents will not be allowed to work where accompanying a student (tier 4) or a temporary worker (tier 5) who has been given permission to remain for less than 12 months in the UK.

**Migration Advisory Committee and shortage occupation lists**

29. The Government set up a Migration Advisory Committee (MAC) in 2007 to advise on labour market shortages to inform the design of the Points Based System. The Committee’s remit is to

   Produce shortage occupation lists for the UK and for Scotland only (Tier 2 skilled employment). These lists comprise occupations where, in the MAC’s view, there are shortages which can sensibly be filled by enabling employers to recruit migrants”.27

30. The lists consist of occupations which the Migration Advisory Committee judges to be skilled and to be suffering a labour shortage that can sensibly be filled by enabling employers to recruit migrants. Occupations on the lists attract extra points, and therefore individuals in these occupations automatically gain the points needed for entry, provided they have a job offer from a licensed sponsor and meet requirements relating to English language and maintenance.

31. The first lists were published in August 2008. They were revised in November 2008, and again in April 2009. The latest UK list contains certain specialities within occupations including civil engineers, medical practitioners, veterinarians, secondary education teachers, social workers, nurses, dancers and choreographers, musicians, chefs, and care assistants.28 The lists are fully revised every two years, and partially reviewed every six months.

32. The Migration Advisory Committee describes the process it uses for assessing shortage occupations as follows:

   We have used a three-stage approach to drawing up the shortage occupation lists for the UK and Scotland.

   • First, we consider whether individual occupations or categories of jobs are sufficiently skilled to be included on the shortage occupation lists;

   • Then, we assess whether there is a shortage of labour within each skilled occupation; and

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27 Migration Advisory Committee, Skilled, Shortage, Sensible: The recommended shortage occupation lists for the UK and Scotland, September 2008, p.11

28 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, pp.126–132
• Finally, we consider whether it is sensible for immigrant labour from outside the EEA to be used to fill these shortages.

When addressing these questions, we used a hybrid method that combined the consistency and comprehensiveness of a ‘top-down’ approach using national-level data with the fine-grained detail and contextualisation of a 'bottom-up' method using evidence relating to particular categories of jobs and sectors.29

Resident labour market test

33. An employer can recruit a migrant to a Tier 2 job which is not on the shortage occupation lists only when they can demonstrate that they have carried out a resident labour market test. The test is designed to ensure that no suitably qualified settled worker can fill the job, before it is offered to a migrant. The test requires that the employer must have advertised the job in JobCentre Plus and as agreed in a sector-specific Code of Practice for at least two weeks (or one week where the salary is higher than £40,000). When a Sponsor issues a Certificate of Sponsorship for a non-EEA national, they are required to confirm that a resident labour market test has been conducted.

Scoring points

Points are awarded for attributes such as age, previous or prospective salary, and qualifications. The points criteria vary somewhat by Tier, as follows.

**Tier 1**

34. Under Tier 1 applicants must score at least 95 points, including at least 75 points scored for primary attributes, as outlined in the following tables:

<table>
<thead>
<tr>
<th>Age</th>
<th>Under 28 years</th>
<th>28 or 29</th>
<th>30 or 31</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Points</td>
<td>20</td>
<td>10</td>
<td>5</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Qualifications</th>
<th>PhD</th>
<th>Master’s degree</th>
<th>Bachelor’s degree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Points</td>
<td>50</td>
<td>35</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Earnings</th>
<th>£20,000–£22,999</th>
<th>£23,000–£25,999</th>
<th>£26,000–£28,999</th>
<th>£29,000–£31,999</th>
<th>£32,000–£34,999</th>
<th>£35,000–£39,999</th>
<th>£40,000+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Points</td>
<td>0</td>
<td>15</td>
<td>20</td>
<td>25</td>
<td>30</td>
<td>35</td>
<td>40</td>
</tr>
</tbody>
</table>

29 Migration Advisory Committee, *Skilled, Shortage, Sensible: The recommended shortage occupation lists for the UK and Scotland*, September 2008, p.12

30 Prior to March 2009, 5 points were available for earnings in the range of £16,000–£17,999 and 10 points for earnings in the range of £18,000–£19,999. However, these were removed by the then Home Secretary in order to tighten the points requirement under Tier 1.
In addition, 5 points are awarded if £16,000 or more of the applicant’s previous earnings for which points are claimed were earned in the UK, or the applicant has completed full-time study in the UK for at least one full academic year, or has been awarded a qualification at bachelor’s degree level or above.

35. The applicant must also gain 10 points for English language, and 10 points for available funds (maintenance). The 10 points for English language are awarded if the applicant is from a majority English speaking country, or, if not, for an approved English language test or a degree taught in English. The 10 points for maintenance are awarded to applicants who are overseas and have £2,800 in available funds, or to applicants who are in the UK and have £800 in available funds.

**Tier 2**

Under Tier 2, at least 70 points, including 10 for maintenance and 10 for English, are needed from the following table to apply for entry.

<table>
<thead>
<tr>
<th>Section</th>
<th>Certificate of Sponsorship</th>
<th>Qualifications</th>
<th>Prospective Earnings (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Offer of job in shortage occupation</td>
<td>No qualifications</td>
<td>17,000-19,999</td>
</tr>
<tr>
<td></td>
<td>Offer of job that passes Resident Labour Market Test</td>
<td>NVQ3</td>
<td>20,000-21,999</td>
</tr>
<tr>
<td></td>
<td>Intra Company Transfer</td>
<td>Bachelors or Masters</td>
<td>22,000-23,999</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PhD</td>
<td>24,000 +</td>
</tr>
<tr>
<td>B</td>
<td>Maintenance requirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Competence in English(^{31})</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Tier 4**

Under Tier 4 students need to score 40 points, consisting of 30 points for a place on a course with an approved education provider which is at level 3 or above on the National Vocational Qualifications (NVQ) framework, and 10 points for maintenance (funds).

**Tier 5**

Under Tier 5, temporary workers need to score 40 points, consisting of 30 points for a Certificate of Sponsorship from an overarching sponsor body, and 10 points for maintenance. Those on the youth mobility scheme must score 50 points, consisting of 30 points for nationality, 10 for age (in the age range 18-31 years old) and 10 for maintenance.

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\(^{31}\) Applicants are required to speak English to a basic user standard. Applicants will need to prove their competence by either: proving that they have passed a test in English equivalent to the appropriate level; come from a majority English–speaking country; or have taken a degree in English.
Sponsorship

36. All migrants except those in Tier 1 require a sponsor in order to apply for a visa. Individuals or organisations wishing to sponsor migrants must register with the UK Border Agency and apply for a sponsor licence. A separate licence is needed for each Tier in which the sponsor wishes to bring in migrants, and licences are valid for four years. Approved sponsors are awarded an ‘A’ or ‘B’ rating by the UK Border Agency. A ‘B’ rating is transitional, meaning that the sponsor will have to improve their performance, as specified in a tailored ‘sponsorship action plan’ within a given time period. Those who do not comply with the plan within three months are likely to lose their licence.

37. Sponsors take on a number of new compliance responsibilities, including the duty to alert the UK Border Agency if migrants do not comply with their immigration conditions—for example if they do not turn up to work, or disappear. Licensed employers are able to sponsor skilled migrants under Tier 2 under one of three conditions:

- In shortage occupations identified by the Migration Advisory Committee;
- Where jobs have passed the Resident Labour Market Test;
- Intra company transfers, where an employee works for a company overseas which transfers the migrant to work in the UK for a temporary period.\(^\text{32}\)

38. We note that, in the context of the current economic recession, on 22 February 2009 the then Home Secretary asked the Migration Advisory Committee to consider whether there was an economic case for restricting Tier 2 (skilled workers) only to occupations on the shortage occupation lists.

Administrative Review

39. If an application is refused, the applicant has no right of appeal against refusal, except on human rights or race discrimination grounds.\(^\text{33}\) Instead they can ask for a non-statutory, free administrative review. Any request for administrative review must be made within 28 days of receipt of the refusal notice, and applicants may only request one administrative review per application. The review is carried out by an UK Border Agency entry clearance manager who was not connected with the initial decision. This official reassesses the whole application, considering whether points have been correctly awarded, documents have been correctly assessed, and verification checks have been properly carried out. The three possible outcomes of administrative review are to overturn the decision and issue entry clearance, to uphold the decision with the same reasons for refusal, or to uphold the decision with revised reasons for refusal.\(^\text{34}\)

\(^\text{32}\) UK Border Agency, Skilled workers under the Points Based System (Tier 2), Statement of Intent, May 2008, p.7

\(^\text{33}\) As set out in the Nationality, Immigration and Asylum Act 2002, Sections 84 (1) (b) and (c)

\(^\text{34}\) UK Border Agency, Tier 1 (General) of the Points Based System – Policy Guidance, March 2009, p.44 [Annex C]
4 The Points Based System and the current economic climate

Recession and employment

40. During the course of our inquiry the UK economy officially entered a recession. From 1992 to 2007 the UK experienced a continuous period of sustained economic growth, averaging real growth of 2.8 per cent per annum. However, in 2008 growth fell to 0.7 per cent, and in the third quarter of 2008 it was negative. Negative growth in the last quarter of 2008 implies an official recession by accepted definitions.35

41. The Office for National Statistics (ONS) records that the employment rate for people of working age was 72.9 per cent for the three months to May 2009, down 0.9 from the previous quarter and down 2.0 on the year. This is the largest quarterly fall in the working age employment rate since comparable records began in 1971. The total number of people in employment for the three months to May 2009 was just under 29 million, down 269,000 over the quarter and down 543,000 over the year.36

42. Reduction in labour demand has led to a sharp increase in the number of redundancies over 2008 and 2009. The ONS records that the redundancies level for the three months to May 2009 was 301,000, up 31,000 over the quarter and up 182,000 over the year. There were 429,000 job vacancies in the three months to June 2009, down 35,000 over the previous quarter and down 222,000 over the year. This is the lowest figure since comparable records began in 2001.37 The following graph shows the total vacancies in the UK, November—January 2007 to November—January 2009:

Figure 6: Jobcentre vacancies by occupation, January 2008 and January 200938

35 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.19
38 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.27
43. In its latest report (April 2009) the Migration Advisory Committee noted that vacancies in lower-skilled occupations, as well as the skilled trades and administrative occupations, had fallen substantially, but that vacancies in the higher-skilled occupations had not been affected in the same way. Managerial and associate professional occupations both showed increases in vacancies, and although they had fallen for professional occupations, this had been at a slower rate than for the lower-skilled occupations. The following table shows in which occupations the number of vacancies increased, and in which they decreased, between January 2008 and January 2009.

![Figure 7: Jobcentre vacancies by occupation, January 2008 and January 2009](image)

**Adjusting the Points Based System for economic circumstances**

44. Concern amongst the public and politicians about redundancies sparked debate about the extent to which migrants should be allowed to work in the UK, and how much jobs could and should be protected for UK residents. In this context the language used by the Government about the Points Based System became tougher. Launching the new system in February 2008, the then Home Secretary Jacqui Smith MP stated:

> The introduction of our Australian-style points based system will ensure that only those with skills the country needs can come. Migrants benefit this country economically, contributing an estimated £6bn to our national output, as well as socially and culturally, and it is right that we have a system which is fair but firm, accessible but controlled.

45. By February 2009, introducing changes to tighten up the points criteria under Tiers 1 and 2, the language had become stronger:

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39 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.27

40 UK Border Agency press release, Points-based immigration system goes live, 29 February 2008
We have always said it is important to be selective about who comes here to work, and we have already put a stop to low-skilled labour entering the UK from outside Europe. Just as in a growth period we needed migrants to support growth, it is right in a downturn to be more selective about the skill levels of those migrants, and to do more to put British workers first. These measures are not about narrow protectionism—a flexible immigration system, rather than an arbitrary cap, is better for British business and the British economy.\textsuperscript{41}

46. Freedom of movement within the European Union means that citizens of other member states—excepting Romania and Bulgaria, for whom restrictions still apply—are able to live and work in the UK, in the same way that UK citizens can live and work in other member states. Therefore the British Government is not in a position to reserve jobs for British citizens, should it wish to do so. This was noted by John Cridland of the Confederation of British Industry, who told us that, whilst he was sympathetic to the concerns of British workers facing possible job losses, “it is important that people understand that all workers in the European Union, unless there are transitional arrangements as with some East European states, have the right to work here if there are jobs to be done”.\textsuperscript{42}

47. The advent of a period of economic uncertainty and higher unemployment, coupled with open EU labour markets, arguably make it even more important to ensure that non-EEA nationals coming to the UK to work only fill vacancies that cannot be met from within the UK and EEA labour force. The Chair of the Government’s Migration Advisory Committee wrote in April 2009 that

> All indicators point to the economic downturn impacting on the labour market. Vacancies have fallen significantly in the last year while unemployment and redundancies are sharply up. In such circumstances it is entirely appropriate that the Points Based System in general and the shortage occupation lists in particular, are reviewed to assess what modifications are required to ensure they operate to the benefit of UK citizens and workers.\textsuperscript{43}

48. Several of our witnesses argued that a key strength of the Points Based System was its ability to respond flexibly to the state of the economy and labour market, allowing a series of thresholds—such as the requirement for qualifications, or the jobs listed as shortage occupations—to be raised or lowered, as desired. The Government has recently altered some of these thresholds. On 22 February 2009 the Home Secretary announced changes to Tiers 1 and 2 to tighten up the points requirements. From 1 April 2009 the minimum qualifications requirement for highly skilled migrants under Tier 1 was raised to a Masters degree, and the minimum salary to £20,000. In addition, the Government stated that it was strengthening the Resident Labour Market Test for Tier 2 skilled jobs so that employers

\textsuperscript{41} UK Border Agency press release, Migrant workers face tougher test to work in the United Kingdom, 22 February 2009

\textsuperscript{42} Q 106

\textsuperscript{43} Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.7
would have to advertise jobs to resident workers through JobCentre Plus before bringing in a worker from outside Europe.44

49. 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.

50. 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.

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44 UK Border Agency press release, Migrant workers face tougher test to work in the United Kingdom, 22 February 2009
5 Shortages

Types of shortage

51. In the latest report of the Migration Advisory Committee in April 2009 the Committee chair Professor David Metcalf set out different types of possible labour shortage:

Labour shortages come in a variety of forms. It is a mistake to think that all such shortages will be eliminated by the upheaval in the labour market. Where a sector is badly hit by recession—construction for example—it is likely that the severity of labour shortage will be reduced, or that it will be eliminated altogether. But if a shortage is structural—caused for example by insufficient investment in skills or poor forward planning—it is likely to persist even during a recession. And some shortages reflect Britain’s position at the peak of a global labour market for talent: examples include the culture, media and arts industries. Finally, some shortages reflect constraints on public expenditure; these need very careful monitoring because immigration in such occupations may provide a short-term fix, but also has the potential to inhibit necessary up-skilling and to dampen pay.45

Our inquiry also discerned different types of labour shortage, which could be summarised as follows.

Highly specialist skills not available in the resident workforce

52. We heard examples of certain sectors in which shortages were occurring because of a need for very specific skills which employers could not find within the UK or EEA labour force. For instance, The Law Society described certain specialist expertise required by the legal sector. Des Hudson, Chief Executive of The Law Society, pointed out that, though there were an estimated 2,500 solicitors made redundant in the UK in 2008, their skills would not necessarily match the specialist skills required where vacancies arose:

Let us talk about someone who comes from my office in Shanghai to work in my London office. That may well be an individual who has a particular set of skills in Chinese law. It is not something I can do, even though I might want to use a displaced solicitor working in a completely unrelated domestic environment. I understand the pressures and the wish to see every possible solicitor who wants to practise to be able to do so fully, but there is a different range of skills and jobs.46

53. Another example was provided by Louise de Winter of the National Campaign for the Arts, who pointed out that “most [international artists]…are not displacing British workers. After all, it is very hard to justify British morris dancers dancing Hungarian folk dance, or even British circus performers working for the Chinese State Circus”.47 She added that “I do not agree that people coming in are displacing British workers and British

45 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.7
46 Q 263
47 Q 321
Malcolm Clay of the Association of Circus Proprietors of Great Britain agreed that there was no demand within the performance sector or artists’ unions for “British clowns for British circuses” and that there was no “pool of British unemployed circus performers”.49

54. The restaurant industry took a similar position with regard to specialist skills needed to work in top end international restaurants. Ranjit Mathrani of Masala World argued that:

Indian cuisines…are a product of 2,000 years of culture, cross-culture, of cooking with a whole range of spices and ingredients and cooking processes which are very complex…these take years and years and years to learn…you are not going to produce high-quality Indian or Chinese chefs out of British soil.50

**Shortages due to unattractive wages or conditions**

55. Others told us that the principal cause of shortages in their industry was the poor wages attracted by certain jobs, and that vacancies existed but the British workforce were not prepared to take them. This was particularly the case in the care industry, and in the agricultural and horticultural sectors. Mandy Thorn of the National Care Association told us that “we are seeing not just a skills shortage but a shortage of the supply of labour that is prepared to do what is an extremely difficult job…people are not prepared or not able o do the very personal intimate care that is needed, and that is particularly where wages are lower than we would like to pay”.51

56. Paul Temple of the National Farmers Union and James Davies of HOPS Labour Solutions categorically stated that, in the agriculture and horticulture industries, “job opportunities are there and people do not choose to take them, even in areas of high unemployment”52. Although they argued that “most of our clients are paying quite well above the minimum wage”,53 they acknowledged that, at a rate of £5.74 per hour for a grade 1 standard worker, the pay was not high. Mr Temple told us that “quite simply, it is the economic situation. The work rates and employment rates that go into agriculture are out of sync with many other industries”.54 Mr Temple and Mr Davies argued that the ability to recruit EU nationals to fill vacancies in agriculture and horticulture was waning with the falling value of the pound:

Candidates that we were managing to find in countries such as Poland and Slovakia are now looking to go into Germany or Spain. If they want to pluck fruit then they can go to Spain and earn €5 an hour, which is not a massive difference from the £6 or £7 we are paying here.55
57. However, they discerned the beginnings of a change in attitudes amongst British workers, noting that the same economic downturn that was driving away workers from Eastern Europe was starting to draw in some British workers to vacancies in occupations previously considered unattractive. Mr Davies said that he had heard anecdotally about one farm which had “a total requirement of 350 people through their calendar year…of those, six people are British, and they have just had eight people return to them having lost their jobs in other sectors”.56

58. With regard to shortages which existed because of low wages or unattractive working conditions, Sir Andrew Green of Migration Watch UK considered that there was no good case for filling such shortages with migrants:

Do we not have to ask ourselves whether it is right to import what, without being offensive, you might call a kind of underclass of foreign workers who are prepared to work in conditions that British people are not prepared to accept?…Access to cheap labour of this kind reduces employers’ incentives to look at other options, particularly changing production methods.57

**Shortages due to insufficient investment in skills**

59. Several of our witnesses considered that shortages had occurred due to insufficient investment in skills training over time, and that much could be done to alleviate these shortages through retraining of the British population. For instance, the catering and restaurant industries argued that there was a complete absence of professional skills training available in the UK, which meant that skilled chefs had to be imported. Mr Lam of the Chinese Immigration Concern Committee told us that:

there are no Chinese catering or professional cookery courses in this country, People First, which is the Sector Skills Council for the hospitality sector, have done research on the knowledge and skills required for entry into a vocation of catering and found that there is no elementary level of training in this country for either Asian or Chinese catering.58

60. One profession in which retraining programmes have recently borne fruit in tackling shortages is that of medical doctors. Alastair Henderson of NHS Employers told us that, although “historically, since the NHS began, we have relied on overseas-trained doctors”,59 over the past 10 years there had been “very substantially higher numbers coming out of medical school and through training, so the numbers of UK-trained doctors has grown very considerably”.60 He informed us that the number of UK-qualified doctors had increased from 66,660 in 1997 to 83,313 in 2007.61
61. In fact, as a result of increased training of UK nationals as doctors, in 2008 the Government implemented restrictions on non-EEA nationals accessing postgraduate medical training in the UK. Mr Henderson told us that, on the whole, “hospitals really welcomed some of the changes and have found it a lot easier to fill posts where they were having difficulty”, and that the effect had been to move UK graduates into medical specialties which had traditionally been hard to fill:

   One of the purposes of the new training programme was that people did not mill around in the senior house officer grade. If people cannot do that they do have to make other choices about other specialties so we ought to be able to move people into the less attractive specialties, which I think is a benefit.

62. Paul Temple of the National Farmers’ Union agreed that the economic climate offered a good opportunity to re-train people to address shortages in the British agricultural and horticultural sectors, although he warned that re-training would take time:

   In today’s recessionary backdrop, it offers a new opportunity thorough the new skills training or the land-based diplomas to put in front of students and young people what happens in horticulture and agriculture and the opportunities for skilled, unskilled and semi-skilled workers in the future. But that will not bear fruit for several years to come.

63. Migration Watch UK also considered that retraining was key to meeting shortages: “the main effect of the [PBS] will be to open the skilled section of our labour market to competition from overseas, thus reducing the incentive for employers to train British staff.”

64. Professor Metcalf of the Migration Advisory Committee asserted that his committee was “very keen that immigration is not seen as a substitute for up-skilling the British workforce”. He told us that areas of skills shortages identified by the MAC were being used by the Government to target training:

   Our occupation list is being used now by the new commission and by DIUS in terms of guidance for the sector skills councils that these are areas where they should put resources to make sure we get some upskilling.

65. We asked the Minister for Borders and Immigration, Phil Woolas MP, how the Government could guarantee that its initiatives to retrain and upskill the resident British population would produce enough skilled candidates when employers needed them. The Minister could not guarantee that they would, but agreed that “that is the challenge” and

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62 Q 166
63 Q 167
64 Q 206
65 Ev 84
66 Q 353
67 The Department for Innovation, Universities and Skills (DIUS). Following a Cabinet reshuffle on 5 June 2009 now the Department for Business, Innovation and Skills (BIS).
68 Q 382
told us that “efforts across government departments—the work of the Learning and Skills Council, the work of DIUS, the universities, and the various training councils” were geared towards matching training with skills demand. He gave the example of the catering sector, agreeing that it was difficult to understand why, for example, labour shortages in South Asian or Chinese catering could not be filled by recruiting and training from within those communities in the UK. He explained that this would require better training in such skills within the UK:

We are not putting into place strategies to provide training in skilled cuisine for British people...Oldham College of Catering has not provided specific training in the past in those areas, and our argument is that perhaps it should do.70

66. 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.

67. 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.

68. 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.

Assessing shortages

Methodology of the Migration Advisory Committee

69. The Migration Advisory Committee uses the following indicators to measure skill and shortages:

When thinking about whether an occupation is skilled, we plan to look at indicators including qualifications held by people within that occupation and average earnings. When considering whether an occupation is experiencing shortage we will look at data on indicators including earning, vacancies and unemployment, and skill survey data. When considering whether it is sensible to fill a shortage with non-EEA
migrant labour, the indicators we will examine will include efforts that are being made to fill the shortage by other means, including up-skilling the UK workforce and attempts to recruit from within the EEA.\footnote{Migration Advisory Committee, \textit{Identifying skilled occupations where migration can sensibly help to fill labour shortages: Methods of investigation and next steps for the Committee’s first Shortage Occupation List}, February 2008, p.7}

As a result of analysing these data the Migration Advisory Committee produces shortage occupation lists, one for the UK and one for Scotland only, of those occupations it considers to be both skilled and experiencing a shortage of labour, for use alongside Tier 2. The most recent shortage occupation lists were published in April 2009.

70. The Government does not have to accept the Migration Advisory Committee’s recommendation, although in practice it has to date done so. We questioned the Chair, Professor David Metcalf, about whether his Committee had come under any pressure from Government to make particular recommendations. Professor Metcalf considered not:

I can state unambiguously that nobody has put pressure on whatsoever. For what it is worth I would not stand for it. I have spent ten years setting the minimum wage and there was no political interference on that either. Also, my strong-minded colleagues on the Migration Advisory Committee would not.\footnote{Q 353}

He stated that, “on the two major reports that we have done so far, the first on the Shortage Occupation List, and the second on the restrictions on Romania and Bulgaria, pretty much the Government accepted all of our recommendations in full”.\footnote{Q 357} However, he did note that the Government had added social workers to the November 2008 shortage occupation list.\footnote{Q 357} The Minister for Borders and Immigration, Phil Woolas MP, was also adamant that no political pressure was brought to bear on the Committee.\footnote{Q 407}

71. Most of our witnesses considered the Migration Advisory Committee to have done a good job to date. Sir Andrew Green of Migration Watch UK told us “are the MAC the right people? Yes, why not. They are quite small, but then I think small organisations are nearly always better”.\footnote{Q 5} Jabez Lam of the Chinese Immigration Concern Committee judged that it “did a very good job” and particularly welcomed that “they have actually visited four times Chinatown in Liverpool and in London to observe how the Chinese catering outlets are operating…and that is the bottom-line approach which we appreciate very much”. However, Mr Lam argued that the Committee should include a social policy expert, to represent the social aspects of migration.\footnote{Q 98}
Use of the shortage occupation lists

72. We asked Professor Metcalf whether, in fast-changing economic circumstances, the shortage occupation lists could be kept up-to-date and could represent a fair reflection of actual skills and jobs shortages. Professor Metcalf pointed out that “not all of the shortages are actually of a cyclical nature; some of the labour shortages are very different to that. So I would not expect many of the occupations presently on the list immediately to come off, even in a downturn”.78 However, he agreed that other shortages were cyclical, and mentioned in particular the construction-related industries, in which he said “the labour market has changed profoundly very quickly”.79 He also agreed “we have to keep the shortage lists under very close review”.80 The Minister for Borders and Immigration, Phil Woolas MP, and his officials considered that the six-monthly review of the shortage occupation lists provided “the right balance between creating certainty for people but also keeping the list current”.81

73. Professor Metcalf noted that “there were quite a lot of occupations that we did not put on the list where people say there is a skills shortage. The reasons that we did not put them on was that in our judgment there were plenty of British people to do those jobs”82 He also agreed that there were some occupations on the UK list which resident workers were in the process of being trained to do: “for example, we know that with (medical) consultants, which are on the list presently, there are a lot of people being trained and they will become consultants quite soon; electricity linesmen are on the list and a lot of training is going on there”.83

74. Regular reviews and changes to the lists raise the question of whether the removal of occupations from the list would be applied retrospectively. The Minister confirmed to us that they would not: “no, the change is within the tiers and there is no retrospection”.84

The resident labour market test

75. Under Tier 2 an employer wishing to bring in a migrant for any job not on the shortage occupation lists, or in certain creative sectors (or under intra-company transfer) must first perform a resident labour market test. If a settled worker applies for the job but does not have the necessary qualifications, experience or skills, the employer cannot refuse to employ them unless they specifically requested those qualifications, experience or skills in the job advertisement. See paragraph 33 for further detail on the operation of the test.

76. Witnesses had mixed views on the effectiveness of the test. The Professional Contractors’ Group (PCG) pointed out that a similar test under the previous system had been a byword for abuse: “[we are] aware of anecdotal evidence suggesting employers were

78 Q 361
79 Q 362
80 Q 365
81 Q 414 [Mr Coats]
82 Q 383
83 Q 382
84 Q 415
advertising jobs in obscure locations at low rates which would never attract a skilled worker”. However, the PCG considered that the new system provided for a more robust test: “by making sponsors advertise on a central portal such as JobCentre Plus, other bodies will be able to monitor employers’ compliance with the rules more easily”.85 The Immigration Law Practitioners’ Association criticised the appropriateness of a ‘one size fits all’ test: “an investment bank recruiting MBA graduates or board level roles would be most unlikely to use JobCentre Plus if genuinely seeking to attract resident applicants, yet this is the one medium which is acceptable for all sectors”.86

77. The Confederation of British Industry considered that the test added crucial flexibility to the system:

Firms can still hire where the MAC has not yet been able to identify a shortage, but the firms can demonstrate that one exists. This is vital to the system’s flexibility.87

However, GlaxoSmithKline told us that it was concerned that it posed unnecessary and irrelevant hurdles to international companies wishing to offer training placements to international chemistry postdoctoral fellows: “advertising these positions on the resident labour market will defeat the purpose of GSK’s initiative, which is to provide training to overseas nationals to enhance their long term career overseas”.88

78. 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.

79. 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.

80. 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.

81. 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.
6 Points criteria: fair, transparent, flexible?

Are the points categories a fair measure of skill?

82. Much has been made of the advantages of a Points Based System in terms of the transparency and equality generated by the formulaic application of points for attributes. The Green Paper which introduced the system, *A points-based system: making migration work for Britain*, stated:

> Applicants will find the system simpler to understand and the rules for entry clearer and more consistently applied. It will be quicker and simpler for employers and educational institutions to bring in the migrants they need, and there will be more certainty about whether prospective migrants will be able to come to the UK. The public will better be able to understand who we are allowing into the UK and why, and have confidence that the system is not being abused. It will also be more straightforward for entry clearance officers and caseworkers to administer.⁸⁹

83. Others welcomed the introduction of the system for these reasons. John Cridland of the Confederation of British Industry considered that the regular review of the skills requirements and shortages in the economy by the Migration Advisory Committee gave the points-based system “the merit of flexibility”.⁹⁰ Sir Andrew Green of Migration Watch UK told us that the points requirement enabled the Government to “raise or lower the threshold”,⁹¹ and the Immigration Advisory Service welcomed “the change from a subjective approach to an objective one by entry clearance officers as many refusals based on a subjective assessment of whether or not an applicants has the intention of leaving the UK at the end of limited leave to remain were found to be wrong and overturned on appeal”.⁹² During our visit to India in October 2008 we heard similar sentiments from international businesses.

84. Yet, these same characteristics introduce a degree of rigidity and inflexibility. Attributes which fall outside the Government’s strict definition of what attracts points, and how many points, cannot be acknowledged. This is exacerbated by the fact that exceptional cases cannot be considered, and any formulaic application of the rules provides little incentive for immigration officers to exercise judgment on the circumstances of individual cases. It is further compounded by the lack of any right of independent appeal. It therefore becomes all the more imperative that points are awarded in a way that recognises the diverse nature of skills across widely differing industries, the range of ways in which skills are learnt, and differences between countries in terms of earnings attracted for the same skill.

85. In assessing whether an occupation is ‘skilled’, the Migration Advisory Committee (MAC) has adopted a methodology which combines five indicators: pay; qualifications;
Office for National Statistics classification; innate ability; and training and experience. It describes its combination of ‘top-down’ and ‘bottom-up’ analysis as follows:

We have looked at factors that might indicate whether an occupation is relatively skilled. These include qualifications held by people within that occupation, average earnings and skill level within the SOC2000.93 Other indicators of skill, such as on-the-job training or experience and innate ability required to carry out the job to the appropriate level, are important too, and were considered through our bottom-up analysis.

For our purposes, we defined an occupation as top-down skilled if at least two of three criteria are satisfied: 50 per cent or more of the workforce are qualified to NVQ level 3 or above; median hourly earnings for all employees is £10 or more; and the occupation is defined as skill level 3 or 4 in the SOC2000. Applying these criteria, 192 occupations out of 355 satisfy our definition of skilled.94

In terms of the ‘bottom-up’ analysis, the MAC describes the indicators of ‘innate ability’ and ‘training and experience’ as follows:

On-the-job training or experience: this may result in the job or occupation being skilled at level 3+, even in cases where many job holders do not have formal qualifications. For example, in occupation 5231—motor mechanics—only 40 per cent have formal qualifications at level 3 or above. Presumably, a fraction of the remainder have acquired the requisite skills via on-the-job training;

Innate ability: some occupations require skills that cannot readily be taught or learnt—what we refer to as ‘innate ability’. This, for many of us, implies a high level of skill, even though many in the occupation may not have formal qualifications. Consider, for example, occupation 3414—dancers and choreographers. Only 30 per cent in this occupation have formal qualifications at level 3 or above. Yet there will be a limited supply of individuals with the ability to become what most people will regard as a skilled practitioner of this occupation.95

86. Professor Metcalf told us that pay, qualifications and age constituted important objective criteria, whereas “it would be very difficult indeed to measure both the nature of the experience that people have had on an individual basis and innate ability”.96 He agreed, however, that “it may be that the calibration of the points requires a little bit of tweaking periodically”.97

87. However, witnesses suggested that, in the search for objective criteria, the system risks allocating points for form rather than substance. The Immigration Law Practitioners’ Association argued, for instance, that “the pursuit of perceived ‘objectivity’ has become the
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88. The Government’s own consultation in March 2006 on the new system asked which attributes were the most important in determining points for Tiers 1 and 2. Of the 517 responses received to the question “which attributes do you think are the most important for Tiers 1 and 2?”, attributes were ranked as set out in the following table.

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>English language</th>
<th>Job Offer</th>
<th>Previous Salary</th>
<th>Work Experience</th>
<th>Skills</th>
</tr>
</thead>
<tbody>
<tr>
<td>Least</td>
<td>27%</td>
<td>4%</td>
<td>3%</td>
<td>34%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Less</td>
<td>19%</td>
<td>7%</td>
<td>5%</td>
<td>25%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Neutral</td>
<td>39%</td>
<td>12%</td>
<td>18%</td>
<td>32%</td>
<td>10%</td>
<td>7%</td>
</tr>
<tr>
<td>More</td>
<td>13%</td>
<td>52%</td>
<td>36%</td>
<td>8%</td>
<td>47%</td>
<td>27%</td>
</tr>
<tr>
<td>Most</td>
<td>2%</td>
<td>26%</td>
<td>38%</td>
<td>1%</td>
<td>40%</td>
<td>64%</td>
</tr>
</tbody>
</table>

The consultation paper concluded that “the attribute considered most important by respondents is skills/qualifications, followed by English language ability”. This is an interesting conclusion, since the consultation in fact asked about “skills” but in the analysis this has been conflated with “qualifications”—as we suggest below, qualifications are not by any means an accurate measure of skill.

89. The Immigration Law Practitioners’ Association commented on these findings, highlighting that “only 2 per cent of those who responded considered age to be the most important attribute and only 1 per cent considered previous salary to be the most important. 64 per cent considered skills to be most important and 40 per cent work experience”. It argued that “the attributes test for Tier 1 is based solely on age, previous earnings and qualifications; it does not take into account at all the applicant’s skills or previous work experience”.

90. Given such concerns, we considered briefly the appropriateness of the main points categories stipulated by the PBS: qualifications; maintenance and salary; and English language.

Qualifications vs experience

91. We heard compelling evidence that the emphasis placed on formal qualifications by the Points Based System failed to take into account jobs where skill cannot be gauged primarily on qualifications. Under Tier 1, applicants must now hold formal qualifications at the level...
of Master’s degree or higher in order to gain any points for qualifications. Under Tier 2, applicants must hold at least NVQ level 3 qualification. There are no points allocated under either Tier for training or on-the-job experience.

92. During our visit to Bangladesh in October 2008 the argument was put to us that points should be more directly linked to the skills required for specific jobs, and that the requirement for skilled workers under Tier 2 to have an official qualification at NVQ level 3 should be relaxed for experienced workers. We were told, for example, that chefs often had ‘on-the-job’ experience rather than formal training or qualifications.101 This was emphasised also in formal evidence. The Chinese Immigration Concern Committee argued that the Government’s designation of NVQ level 3 as a benchmark qualification to earn points was inappropriate and did not reflect the skills required by the job. Its research into the NVQ Level 3 Professional Cookery or the NVQ Level 3 Food Preparation and Cooking “found that none of the courses contain any unit or content on Chinese cooking”.102

93. Similar concerns were reflected in the arts sector. Louise De Winter of the National Campaign for the Arts (NCA) told us “the big area of contention and a problem for our artists is around qualifications. Obviously, you do not need academic qualifications to be good at acting or dancing or playing the violin”.103 The NCA suggested that “there should be an alternative means of accruing points, perhaps through training and experience”.104 It stated that many international artists would not meet the points required for entry under Tier 2, which are set at 50 points for attributes including salary, 10 points for English language and 10 points for maintenance. It explained that:

This is because of the nature of qualifications and earnings in various areas of the arts sector and not a reflection of the talent of the artist in question: for example, a dancer might be professionally trained, but not have any professional qualifications.105

94. The Immigration Law Practitioners’ Association criticised the way in which points are awarded under Tier 1, particularly the emphasis on qualifications. It stated:

A 22 year-old graduate with a bachelor’s [now a Master’s] degree from a UK institution who has earned £23,000 in his first 12 months of work experience would meet the attributes requirements of Tier 1. Whereas a businessperson of 25 years experience, with a global reputation and earnings of hundreds of thousands of pounds, but who lacks a bachelor’s [now a Master’s] degree would not qualify as “highly skilled” under Tier 1. Tier 1 is fundamentally flawed in this regard and cannot cater for the different types of highly skilled applicant. This is in contrast to its forerunner, the highly skilled migrant programme, where points could be awarded for extensive experience which would compensate for the lack of degree.106

101 Annex A [India and Bangladesh visit notes]
102 Ev 89
103 Q 323
104 Ev 172
105 Ev 172
106 Ev 97
(At the time of this comment, Tier 1 required migrants to possess a bachelor’s degree—however, this requirement has subsequently been raised to a minimum of a master’s degree).

95. The Minister for Borders and Immigration, Phil Woolas MP, acknowledged that some people were highly skilled but did not possess formal academic qualifications. He stated that the system allowed “enough flexibility to meet the Einsteins of this world” but did not suggest how points could be allocated for experience or skill other than through a formal qualification.\textsuperscript{107}

### Maintenance and salary

96. All applicants are required to prove that they are able to support themselves financially in the UK without recourse to public money. To this end they must meet a maintenance test which stipulates that they must hold a certain sum in available funds in their bank account, based on a cost of living calculation of £800 a month (or £600 outside London). The figure is derived from British Council research on the cost of living in the UK. The precise sum required varies depending on the Tier: Tier 1 applicants are required to hold £2,800, since they are able to enter the UK without a job offer, whereas Tier 2 applicants need only £800, since they hold a job offer. For those applying within the UK, the sum is £800; whereas for overseas applicants it is £2,800. All applicants must prove that they have held the sum continuously in their bank account for the previous three months.

97. Sophie Barrett-Brown of the Immigration Law Practitioners’ Association (ILPA) argued that this would “have the effect of having a poorly discriminatory effect against certain nationals who are coming from developing countries and, therefore, will not have the level of funds that nationals from more developed countries will have”.\textsuperscript{108} ILPA provided an illustrative example:

> A Tier 1 applicant outside the UK must show £2,800 for themselves and £1,600 for each family member. For a typical family of four this would therefore be £7,600. For an applicant from Ghana for example this would be equivalent in real terms to £83,600 (by the UKBA’s own measures of relative income values world-wide, which it uses for calculating the points for the past earnings attribute).\textsuperscript{109}

98. We heard similar concerns during our visit to India in October 2008. UK Border Agency staff in Delhi told us that, to that date, 65 per cent of refusals under Tier 1 had been based on applicants not meeting the £2,800 per person maintenance requirement. They said that there had typically been two reasons for this—insufficient savings by the applicant, and/or poor documentation, and told the Committee that professional salaries in India tended not to be as high as their UK equivalents, making it hard for even highly skilled migrants to meet this criterion.\textsuperscript{110}

\textsuperscript{107} Qq 419–420
\textsuperscript{108} Q 54
\textsuperscript{109} Ev 209
\textsuperscript{110} Annex A [India and Bangladesh visit notes]
99. The requirement that an applicant must have held the sum in their bank account for the whole of the previous three months has also come under fire. The Immigration Law Practitioners’ Association argued that “a single applicant who ordinarily maintains a balance of £50,000 but on one day in the last three months dropped to £2,799 simply due to the order in which transactions were processed by his bank will fall to be refused”. The Joint Council for the Welfare of Immigrants calculated that a Bangladeshi accountant/professor would take 18.7 years to earn enough to meet the maintenance requirement for himself, a spouse and three children. Evidence from the Canadian Education Exchange Foundation, which manages teacher exchanges between the UK and Canada, argued that it was unnecessary for the maintenance requirement to apply to teachers who had been continuously, and continued to be, paid a regular salary from their home institution:

The financial requirement seems unnecessary given that these teachers remain employed and paid by their Canadian Boards of Education during the entire duration of the exchange period.113

100. Similar concerns have been expressed about the points requirement for previous salary under Tier 1. Points are allocated on the basis of the salary previously commanded by a migrants, as follows:

- £16,000–£17,999: 5 points
- £18,000–£19,000: 10 points
- £20,000–£22,999: 15 points
- £23,000–£25,999: 20 points
- £26,000–£28,999: 25 points
- £29,000–£31,999: 30 points
- £32,000–£34,999: 35 points
- £35,000–£39,999: 40 points
- £40,000+: 45 points114

The Home Secretary announced in February 2009 that the salary requirement would be tightened with effect from 1 April 2009, to a minimum of £20,000, thereby further reducing the points available.

101. Several witnesses agreed that future salary earnings provided an unfair measure of skill. The Highly Skilled Migrants’ Forum asserted that it could create a gender bias, since female migrants tend to draw lower salaries than their male counterparts: “if women working in the UK earn on average 12.6 per cent less than men, it will be that much harder for a woman than a man to hit the £35,000 salary joint extension threshold”. The Joint Council for the Welfare of Immigrants added that the requirement was “very difficult for the majority of women, particularly those from non-European countries, to meet”.115

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111 Ev 98
112 Ev 240
113 Ev 257
114 UK Border Agency website: http://www.ukba.homeoffice.gov.uk/workingintheuk/
115 Ev 79
Council for the Welfare of Immigrants agreed, noting for example that the gender pay gap in India was around 40 per cent in rural areas and 25 per cent in urban areas.\footnote{Ev 241}

102. We questioned the Minister for Borders and Immigration, Phil Woolas MP, about the maintenance and salary requirements. He advised that, in calculating previous earnings, the Government intended to use inflators to reflect lower salaries in certain countries. Neil Hughes of the UK Border Agency explained that “for example, for Australia and New Zealand the multiplier is one to one, so we just do a direct conversion. In somewhere like the Ghana, Nigeria, Somalia, we use an 11.4 multiplier to reflect the fact that earnings in that country are normally much lower”.\footnote{Q 425. The UK Border Agency provided a list of the multipliers it uses: Ev 249.} He commented that he did “not think it will impact on developing countries disproportionately because of the multipliers that we use”.\footnote{Q 427}

103. The Government accepted that “saving this money will be more difficult for people from poorer countries but are satisfied that it is the right thing to do”.\footnote{Ev 247} However, Mr Hughes observed that the figures involved simply reflected the cost of living in the UK: “the fact is, if you are coming to the UK, I do not think your landlord, who you are going to pay, charges you less because you are coming from a developing country. I do not think the supermarket charges you any less for a basket of groceries because you are from a developing country. That is how much you need to survive in the UK”.\footnote{Q 426} However, in a concession to concerns, the Government has allowed ‘A’ rated sponsors of Tier 2 migrants to provide a written undertaking that, should it become necessary, they will maintain and accommodate the migrant up to the end of his first month of employment.\footnote{Ev 247} This is mirrored by a concession under the intra-company transfer route which allows the sponsor to send a letter of undertaking to support the migrant and their dependents.\footnote{Q 149 [John Cridland]}

**English language**

104. The Points Based System requires applicants to have a basic level of English language fluency. For applicants under Tier 1 this is equivalent to C1 on the Council of Europe Common European Framework of Reference; for applicants under Tier 2 it is lower, the equivalent of A1 (very basic conversation)\footnote{UK Border Agency Tier 2 Policy Guidance describes the standard as “being able to understand and use familiar everyday expressions and very basic phrases, to introduce himself/herself and others, and to ask and answer questions about very basic personal details”, UK Border Agency, *Tier 2 of the Points Based System – Policy Guidance*, March 2009, version 03/09, p.31} on the same Framework. There are exemptions from the requirement for employees under the intra-company transfer route, who only have to meet the requirement if they intend to stay in the country for more than three years. There is also a transitional exemption for football players entering under Tier 5 who do not have to meet the requirement for 12 months, after which they must pass a test and transfer to Tier 2, should they wish to remain in the UK. The language requirement for

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116 Ev 241
117 Q 425. The UK Border Agency provided a list of the multipliers it uses: Ev 249.
118 Q 427
119 Ev 247
120 Q 426
121 Ev 247
122 Q 149 [John Cridland]
123 UK Border Agency Tier 2 Policy Guidance describes the standard as “being able to understand and use familiar everyday expressions and very basic phrases, to introduce himself/herself and others, and to ask and answer questions about very basic personal details”, UK Border Agency, *Tier 2 of the Points Based System – Policy Guidance*, March 2009, version 03/09, p.31
religious workers under Tier 2 is also higher than that for other applicants, at B2 level. Applicants can meet the English language requirement in one of three ways. They can either be a national of a majority English speaking country, pass an English test at a specified level, or hold a degree that was taught in English and is equivalent to a UK Bachelors degree or above.

105. NASSCOM welcomed the three-year suspension of the English language requirement for intra-company transfer employees, stating that there would be significant time and cost implications in requiring them to pass a test on arrival.124

106. Some witnesses rejected the idea that knowledge of English was necessary to work in the UK. The Chinese Immigration Concern Committee stated that “there is little or no requirement in command of English language to cook Chinese food. The kitchens in British Chinese catering are traditionally organised and operated in a Chinese language environment”.125 This view was echoed during the Committee’s roundtable discussion held with community representatives in Sylhet, Bangladesh. Participants argued that the basic education of many Bangladeshi chefs was only at primary school level and questioned how chefs could be expected to gain formal qualifications in English.126

107. The National Campaign for the Arts presented a similar argument:

Some flexibility is also required for the English language skills requirement, which, especially in the field of dance for instance, is not essential to the migrant’s ability to perform in the job. (It is interesting to note that Rudolf Nureyev is unlikely to have met the requirement had it been in force in his day.) A more pragmatic approach, perhaps instituting a test after a migrant has been here 12 months, would make more sense, allowing the company and the individual time to invest in assimilation.127

108. The trade union, Unite, argued that the requirement introduced “bias in favour of migrants from English speaking countries and against those from the developing world”.128 Unite recommended that the Government restore funding to ESOL [English for Speakers of Other Languages] courses in order to increase access to English language learning within the UK. The Chinese Immigration Concern Committee proposed “in-country compulsory English classes for migrants, provided by the employer”.129

109. The Church of England objected to the higher level of English language required for religious workers under Tier 2. The Government states that this is “because of the need to communicate with worshippers”.130 The Church of England argued that:

It is hard to see that this rule is an effective or proportionate way to achieve any objective except to make it harder for many Christians and other perfectly benign

124 Ev 122
125 Ev 90
126 Annex A [India and Bangladesh visit notes]
127 Ev 172
128 Ev 109
129 Ev 90
130 UK Border Agency, Tier 2 of the Points Based System – Policy Guidance, March 2009, version 03/09, p.31
ministers of religion to come here, and making it more difficult for the churches to maintain their ministry to indigenous congregations and migrant communities.\textsuperscript{131}

It recommended that the language requirement be brought into line with the (lower) requirement for other workers in Tier 2.\textsuperscript{132}

110. We questioned the Minister for Borders and Immigration on the reasons behind the 12 month exemption for footballers from the English language requirement. Phil Woolas MP told us that:

- The football profession is covered by international rules and the transfer window and the argument they put to us was that the existence of the transfer window, which is not within their power to change, required a different route for their members, so we allowed a change to have “transferring country” from Tier 5 to Tier 2 in that one case.\textsuperscript{133}

111. 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.

112. 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.

113. 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.

114. 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.

\textsuperscript{131} Ev 235
\textsuperscript{132} Ev 237
\textsuperscript{133} Q 456
115. 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.

116. 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.

117. 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.

118. 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.
7 Sponsorship

Rebalancing compliance

119. A key feature of the new system is the transfer of responsibility for enforcement of immigration control from the UK Border Agency to employers. It introduces a process of sponsorship whereby all migrants, with the exception of those under Tier 1, must be sponsored by an employer, educational institute or certain other categories of overarching body. Sponsors take on compliance responsibilities for migrants, including duties to: keep accurate and up-to-date records, report changes in circumstances, comply with the law, cooperate with the UK Border Agency, and meet any additional tier-specific duties—for example, applying the Resident Labour Market Test. The Government set out the rationale for this reconfiguration:

The policy intent underpinning sponsorship is that those who benefit from migration—not just the Government, but also employers and educational institutions—should play a part in ensuring the system is not being abused.

120. Businesses cautiously welcomed the sponsorship system. John Cridland of the Confederation of British Industry told us “as an organisation we have accepted that we needed to step up to the plate and share the responsibilities to make sure the system is managed”. The Institute for Employment Studies reported that research conducted with potential sponsors had found that:

Overall, there was qualified support for the proposed sponsorship rating system...most participants responded positively to the proposals regarding compliance and felt it was both common sense to work in partnership with BIA [now UKBA] around this issue and that the monitoring procedures were reasonable.

121. Witnesses made clear, though, that, as a correlative to increased compliance responsibilities, they would expect a higher level of service from the UK Border Agency. Mr Cridland told us “all we ask in return is that the service level from the Border Agency in terms of guidance sent out at the appropriate time, guidance right first time, helplines staffed by people who can answer questions, here and in international posts, has to be right”.

122. The education sector had a specific worry about the impact of compliance arrangements on the relationship between education provider and student. The London School of Economics (LSE) told us:

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134 Ev 196 [UK Border Agency]
135 Home Office, A points-based system: making migration work for Britain, Cm 6741, March 2006, p.19
136 Q 156
137 Ev 124
138 Q 156
Our concern, which is shared by many UK universities, is that these additional responsibilities might fundamentally change the university/student relationship. Students may well view the universities as monitoring students on behalf of the UK Government. For many of them, particularly those who have come from countries with more authoritarian regimes, this may affect their enjoyment of UK higher education, which in turn may have knock-on consequences for the ‘brand’ over the medium term.139

**Sponsor licensing process**

123. Organisations wishing to become sponsors must apply to the UK Border Agency for a sponsor licence. The UK Border Agency carries out an inspection of the prospective sponsor, including of their human resources processes, before issuing them with a licence. Approved sponsors are awarded an ‘A’ or ‘B’ rating by the UK Border Agency. A ‘B’ rating is transitional, meaning that the sponsor must improve their performance according to a tailored plan. Strict penalties have been introduced against any sponsor who does not fully meet the new compliance and reporting procedures.

124. Our witnesses were concerned on the one hand that sponsors were being asked to provide a lot of detailed information which sponsors might struggle to access; and on the other that the potential penalties for any failure to provide this information, even unwittingly, were unduly stringent.

125. During our visit to India in October 2008 the National Association of Services and Software Companies (NASSCOM) told us that it was concerned that employers could be penalised for not reporting information, even when the employee did not inform them of any changes in their circumstance. Research conducted by the Institute for Employment Studies uncovered similar concerns amongst education providers.140 The Immigration Law Practitioners’ Association reported that many of their members were being instructed by anxious employers for the same reasons. Sophie Barrett-Brown told us:

> Most of the clients that our members represent are extremely anxious about ensuring that they can meet the new duties. Some of them are exceedingly onerous and unclear. There are duties about reporting changes, including such minutiae as changing mobile phone provider, the type of data that is very difficult for an employer to ensure that they are capturing.141

Sarah Lee, partner at Slaughter and May law firm, remarked that: “my understanding is that the penalties are very stringent even for technical breaches and there are severe consequences, both civil and criminal”.142

126. Des Hudson of the Law Society criticised the powers of inspection that have been afforded to the UK Border Agency in carrying out compliance checks:

139 Ev 138
140 Ev 123ff
141 Q 60
142 Q 279
The things that concern me are the very ill-defined and rather vague rights of entry and inspection of documents. We must all be concerned about authorities having power to come in and go through the files of a law firm. The files and papers that they can look at are not explicitly limited to those matters relating to sponsorship. Let us say that I am acting as a solicitor for a prominent Member of this House who is the subject of police investigations and I have a file on it and I also have some people from the Abu Dhabi office working in my office. I think we would all be very concerned about the powers of UKBA to go through my files.143

Mr Hudson proposed that the powers of entry and inspection given to UK Border Agency officials should be restricted “to be exercisable by reference to looking only at papers relation to an issue concerning an individual who is being sponsored. I would like to see...some arrangement as to what conditions must be satisfied by UKBA before it can exercise those powers of entry”.144

127. Some witnesses were concerned about the administrative burden, particularly on small businesses. The Highly Skilled Migrants Forum told us that:

The risk of misunderstanding any aspect of the PBS in terms of duties as a sponsor would effectively bankrupt smaller businesses, yet demands significant financial investment in fees, legal advice and employing HR staff with the requisite expertise.145

It concluded that “given...the red-tape, recordkeeping, and monitoring, only large firms with HR departments will plan on becoming Tier 2 sponsors”.146

**Sponsorship Management System**

128. Administration of the sponsorship process rests on a new Sponsorship Management System (SMS)—a secure online IT system which allows licensed sponsors to bring in and manage migrants under Tiers 2, 4 and 5. Designated individuals within a sponsoring organisation are granted differing user rights to the system. Sponsors use the SMS to provide and update information about their migrants, view and issue certificates of sponsorship, and make payments.

129. Universities were sceptical of the capacity of the Sponsorship Management System to handle the intensive period of demand during the three month university enrolment season, during which up to 80,000147 students might need to be registered; and of the speed with which it was being implemented by the UK Border Agency. Simeon Underwood told us:

We have repeatedly warned UKBA that PBS is going to result in a very high level of demand on their system in a very concentrated space of time, principally between

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143 Q 277
144 Q 278
145 Ev 78
146 Ev 79
147 Q 307
July and September each year. We do not wish to assume the worst but what we would like to see is more discussion about the precise specification and the way that the UKBA system can integrate with the student record systems that exist. We would also like to see piloting going on.148

130. Witnesses elucidated the consequences for the higher education sector and the UK economy if any failure in the Sponsorship Management System prevented universities competing effectively for international students. Professor Wellings told us that “higher education is worth something like £19.5 billion to the UK economy. International students are worth 8 per cent of that”.149 Mr Underwood said that, if the system failed:

We would be totally unable to plan for the year that is happening around us…from the point of view of our finances this could be very dramatic indeed. We could find ourselves having to rearrange substantial parts of our curriculum and timetable at very short notice.150

Professor Wellings added:

There are some strategic things that would follow very quickly. You would see rather forensic holes appearing in the system at discipline level that would be really rather unintended and potentially quite deleterious to the UK’s economy.151

This was echoed by other universities in written evidence.152

131. Education providers were also critical that use of the SMS would reinvent the wheel by requiring them to collect and input data already stored on other databases. Universities UK stated:

In particular the new sponsor management system must be able to receive data from and have an interface with HEIs’ [Higher Education Institutions] own student record systems. HEIs will be handling several thousand migrants each year and it is both inefficient and insecure to expect HEIs to re-enter data into the new Home Office system when the data is already in HEIs own systems and could be transferred to the new Home Office database.153

The London School of Economics calculated the cost of such additional work:

At LSE, based on an estimate of 6,500 annual non-EU offers, this will amount to 1625 hours of additional work and £160k in additional salary costs.154

148 Q 292 [Mr Underwood]
149 Q 295
150 Q 307
151 Q 307
152 Ev 103ff [University of Oxford]
153 Ev 117
154 Ev 136
132. Others reported that there had been limited or no testing of the new system. The National Campaign for the Arts was “concerned that throughout the development of the IT systems for PBS there has been no end-user testing. We believe such testing could have produced solutions to the difficulties currently faced”.\textsuperscript{155} The Association of Circus Proprietors of Great Britain stated that “there was no opportunity to test the system by making trial applications”.\textsuperscript{156}

133. Although the Minister for Borders and Immigration, Phil Woolas MP, told us that he was “very aware that everyone will be expecting a major Government-sponsored IT system to fail”,\textsuperscript{157} UK Border Agency officials were confident in the capacity of the Sponsorship Management System. Neil Hughes considered that, in terms of the volume of traffic handled by the system, “the numbers coming through are within our estimates and we filled the pipe much bigger than it needed to be…so [we are] very confident on volume”.\textsuperscript{158} However, in response to the concerns of the sector, during the course of our inquiry the UK Border Agency agreed to implement Tier 4 in phases, and to set up a working group with the higher education sector to advise on data management and technical design. Matthew Coats of the UK Border Agency told us:

> The way we want to introduce the rest of the system is progressively and carefully to ensure that we reduce the risk of any problems. We have drawn together a group of interested parties to make sure that, as we finish the implementation of Tier 4, everybody is involved in those decisions.\textsuperscript{159}

134. Universities UK welcomed the slowing-down of implementation, but re-emphasised that:

> We remain concerned about a lack of time for testing by universities by the autumn. The student route will have to cope with large volumes of transactions in a very short period of time so it is essential that thorough testing by universities and UKBA takes place both in the UK and overseas.\textsuperscript{160}

135. 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.

136. 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.

137. 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.

138. 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.

139. 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.

140. 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.
Administrative review

141. Prior to the introduction of the Points Based System, a person applying for entry in a work-related capacity would have had a right of appeal against refusal of that entry clearance. Where a right of appeal existed, it was only against the refusal of entry clearance. The refusal by Work Permits UK to grant a work permit was not open to appeal, although applicants could submit fresh evidence and ask for reconsideration. Under the Points Based System the right of appeal is replaced by administrative review. See paragraph 39 for further details on its operation.

142. An administrative review can only be requested on point of fact: for example, did the entry clearance officer miss a document or incorrectly award too few points? The applicant is not able to submit any additional documentation. So, for instance, if the applicant only submitted a copy of their IELTS [English language] certificate and the guidance asks for the original document, they would be refused but could not provide the original in an administrative review. The applicant would have to reapply, pay a new fee and provide all the evidence that they should have submitted with the first application. The cost of making an application under the Points Based System ranges from £125 (Tier 5 temporary worker categories) to £1,020 (Tier 1 in-country application in person). UK Border Agency officials in Delhi told us that around 15 per cent of refusals are overturned at administrative review.

143. The principal difference between administrative review and the right of appeal under the previous system is that one is an administrative/bureaucratic process, and the other a judicial one. The Minister for Borders and Immigration, Phil Woolas MP, argued that systematic abuse of the appeals system by some immigration lawyers and Non Governmental Organisations made the appeal system unworkable:

The evidence is there from the figures on the number of appeals, on the number of JRss [Judicial Reviews] that are applied for; on the way in which multiple applications can be made; on the way in which people are encouraged to further appeal and to JR when clear decisions have been taken, and often where the appeal has been refused.

144. Our witnesses were virtually unanimously against the replacement of the right of independent appeal with administrative review on a point of principle. Many viewed administrative review as effectively an internal review which lacked impartiality. John Cridland of the Confederation of British Industry considered that “it is a matter of natural justice that any process of this kind should have the ability to appeal”.

161 Subject to certain general exclusions from the right of appeal, as set out in the Nationality, Immigration and Asylum Act 2002, Section 88
162 UK Border Agency website, www.ukba.homeoffice.gov.uk/workingintheuk /
163 Annex A [India and Bangladesh visit notes]
164 Oral evidence taken before the Home Affairs Committee on 20 November 2008, HC 1199–I, Q 23
165 Q 146
appeal…it strikes us as being slightly perverse that you would not allow a right of appeal against a very new system where entry clearance officers were clearly having to make judgments that they have never been charged to make before”.166 Des Hudson of The Law Society unequivocally thought that “the principles of natural justice and rule of law, and therefore the process of law, make a right of appeal an absolute necessity”.167 Louise De Winter of the National Campaign for the Arts stated that “not to be able to appeal against a new system would be a little bit perverse”.168

145. The Immigration Advisory Service voiced disquiet:

We are deeply concerned at the removal of rights of appeal and the substitution of Administrative Review which, we believe, will require considerable clarification in the Administrative Court, and will create confusion and resentment.169

In a letter to the Chief Executive of the UK Border Agency, the Immigration Advisory Service argued that removal of appeal rights would generate an increase in judicial review, noting that there was

A widespread view that Administrative Review will not bring satisfaction in all cases where it is felt that the entry clearance officer made a wrong decision and we feel that this is likely to lead to an increase in applications for judicial review in the Administrative Court.170

146. Others were concerned that a review carried out by a UK Border Agency colleague of the official making the original decision would not be impartial. A participant in our community roundtable discussion in Sylhet, Bangladesh, argued that a review carried out by an individual in the same organisation, and possibly the same department, as the person making the initial decision would compromise the impartiality of the review.171 UK Border Agency visa staff in Delhi assured us that the review would be carried out by an official entirely unconnected with the initial application decision. Nevertheless, the Government acknowledges that administrative review is an internal process, with the Minister for Borders and Immigration, Phil Woolas MP, telling us that it “is an internal review”. 172

147. Sophie-Barrett Brown of the Immigration Law Practitioners’ Association suggested that the process was not robust:

Under the work permit scheme, two administrative reviews are permitted. It is a little bit of a running joke in immigration circles that you will always have a first review refused immediately, quite possibly your second, but if you actually telephone the

166 Q 318  
167 Q 286  
168 Q 346  
169 Ev 151  
170 Ev 154  
171 Annex A [India and Bangladesh visit notes]  
172 Q 461
manager to look at the case you will almost always get it overturned. So experience has taught us not to have confidence in administrative review.  

148. The Points Based System relies heavily on applicants providing documentary evidence for the various attributes, such as bank statements and qualifications certificates. Problems with providing the required documentation in some parts of the world were mentioned during our Indian visit. Visa officials in Delhi told us that they had encountered difficulties with paperwork relating to salary in countries such as India and China, where it is not standard practice to pay salaries directly into employees’ bank accounts. This meant that some applicants did not have the bank slips required to prove evidence of salary or maintenance.  The Joint Council for the Welfare of Immigrants was similarly exercised over the prohibition on submitting additional or clarifying documentation, criticising that under the system:

> Innocent oversight cannot be made good by a commonsense approach that permits the submission of fresh evidence...experience shows that in most cases the right decision is promoted through the production of further evidence, the need for which is often not appreciated until notification of an adverse decision clarifies quite what material is perceived as inadequate by the entry clearance officer.

The JCWI also noted that “whilst entry clearance decisions which do not attract a right of appeal are to fall within the remit of the Entry Clearance Monitor [now the Chief Inspector of UKBA], this is not a sufficient replacement for a full right of appeal, as the Monitor is not able to investigate individual complaints or provide an appropriate remedy to applicants.”  

149. 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.  

150. 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.
Biometric visas and delays

151. All visa applications under the Points Based System require the applicant to provide biometric data—ten fingerprints and a digital photograph—at the point of application. These data can only be taken at certain biometric data collection points which, outside the UK, are located either at the Foreign Office overseas mission or visa issuing post, and in some cases also via the host Government. In many countries the data are taken by UK Visas’ commercial partners, VFS Global or Worldbridge.

152. We heard from a range of witnesses that the requirement to provide data in person, and processing times for biometric visas, were causing great difficulties and delays in some parts of the world. For instance, the National Campaign for the Arts observed that there were particular difficulties for applicants for whom there was no application centre nearby:

Large groups of artists (including, for example, orchestras) will have to make their visa applications individually and in person, rather than being able to pass the appropriate paperwork to a manager to submit the applications together.177

We have recently had examples of Malian musicians who have to travel thousands of miles to their nearest visa application centre in Dakar (3 days travel) and then had an expected wait of up to 10 days while their applications were sent for processing in Banjul, The Gambia, all the time being separated from their passports and relevant documentation.178

The NCA gave a case study:

Dancers from Salia ni Seydou, a company based in Burkina Faso, who performed at BITE04, had to cross into war torn Cote d'Ivoire to apply individually in person for their visas from the British Consulate. The Foreign Office advised that they should not travel by road as it was too risky. They had to travel by air, stay overnight and find two days out of their schedule. The additional costs had to be met by the Barbican as it would have been unfair to expect the company to pay these unforeseen costs out of their fee. The new proposals would have a similar negative financial and administrative impact.179

153. A quick perusal on the UK Visas website of the visa issuing centres in different parts of the world confirms this picture. An applicant in Mali, for example, must travel to the capital of Senegal, Dakar, in order to make an application. An applicant in Australia must travel to Canberra in order to give biometrics. In many countries there is only one, or less than one, biometric data collection centre. The United States seems to be the exception to this rule: it is possible to give biometrics at one of 129 Department of Homeland Security Application Support Centres across the country.

177 Ev 171
178 Ev 255
179 Ev 171
154. Other witnesses mentioned delays in the processing and issue of biometric visas. Ruth Jarratt of the Royal Opera House told us that in the case of emergency visa issues for international artists “the issue now is the biometric visa…we do not know how we would do it (i.e. secure the biometric visa in time)”\textsuperscript{180} Louise De Winter of the National Campaign for the Arts agreed: “there are difficulties about where some of the posts are where you can get the biometrics processed. Something that could potentially have been turned round in a matter of hours now takes as much as up to 10 days”.\textsuperscript{181} Asgard Promotions Ltd, a concert promotions and booking agency company, told us that “in most places the passports are sent from one consulate to another for the actual processing and seven to 14 days seems to be the norm. For a touring act in some cases this is almost impossible and is causing severe problems”.\textsuperscript{182}

155. Various articles in the press have described similar problems. On 7 May 2009 \textit{The Independent} reported that Iranian film director Abbas Kiarostami, due to direct a production of Mozart’s \textit{Cosi Fan Tutte} at the English National Opera experienced such delays in applying for a temporary work visa that he gave up trying to enter the UK.\textsuperscript{183} The same paper also gave case studies of Congolese musicians who had to travel to Nairobi and an African musician who made a 16-hour journey from Mali to Dakar, Senegal, to apply for visas.\textsuperscript{184} \textit{The Times} reported on 3 June 2009 that contemporary dancers and university lecturers were finding it similarly “impossible to obtain the necessary short-term work visas”.\textsuperscript{185}

156. Decisions on visa applications are only made at Foreign and Commonwealth Office overseas missions. Biometrics and paperwork, including passports, are taken at other centres and sent for processing at the FCO mission. UK Visas has a target processing time to complete 95 per cent of non-settlement applications in not more than a week (5 working days); 98 per cent in not more than 2 weeks (10 working days) and 100 per cent in not more than 12 weeks (60 working days).\textsuperscript{186} Actual visa processing times for Points Based System applications for April 2009 in the top five overseas missions by volume of total PBS decisions are shown in the following table. The processing time is measured from when the application arrives at the decision centre from the biometric collection point.

\textsuperscript{180} Q 328  
\textsuperscript{181} Q 332  
\textsuperscript{182} Ev 238  
\textsuperscript{183} “ENO director’s boycott shines light on British visa scandal”, \textit{The Independent (main)}, 7 May 2009  
\textsuperscript{184} “This outburst will strike a chord around the world”, \textit{The Independent (main)}, 7 May 2009  
\textsuperscript{185} “If stars can’t get in...the show can’t go on”, \textit{The Times (main)}, 3 June 2009  
\textsuperscript{186} These target times relate to straightforward non-settlement applications. ‘Straightforward’ is defined as an application which “can be decided on the basis of the application and the supporting documents submitted without the need for further enquiries or more detailed scrutiny”. This covers all applications under the Points Based System. Accessed at http://www.ukvisas.gov.uk/en/aboutus/customerservicestandards/ on 23 June 2009.
### Table: Visa Processing Times, April 2009

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**Figure 8: Visa processing times, April 2009: percentage processed in 5, 10, 30 and 60 working days**

157. Figure 12 shows that, for April 2009, all these five top posts for visa decisions were very far from meeting the target of 95 per cent of visa decisions within 5 working days. None of them met the target in any tier, and in 14 out of 20 tier measures the decision rate was lower than 50 per cent in 5 working days. Only Tier 2 in the USA and Tier 5 in India: Ahmedabad (where there was only one application) met the target of 98 per cent of visa decisions in 10 working days. Except for one Tier in New Zealand: Wellington, all posts met the target of 100 per cent in 60 working days. UK Visas’ own figures seem to support the assertions made by our witnesses that there are long delays to the decision and issue of biometric visas under the Points Based System.

158. Other witnesses reported delays and difficulties with the registration process itself. The League for the Exchange of Commonwealth Teachers (LECT), despite having applied for a sponsors’ licence in November 2008, had still not received one by June 2009. This had

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187 Mean averages calculated from combined processing times from State Groups 1–3

188 Combined totals from all three State Groups

resulted in this year’s cohort of Canadian teachers due to take up an exchange programme with UK teachers being refused visas.  

159. The National Campaign for the Arts recommended:

The provision of mobile biometric units for cases involving immensely long and complex journeys; agents would be willing to pay for an agreed premium service where a consular official travels with a mobile unit.

160. 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.

161. 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.
10 Responsiveness of the UK Border Agency

162. On the whole witnesses reported that the UK Border Agency had initially been slow to respond to their concerns or provide clarification, but that this situation had now much improved and they were positive that it was engaging with them constructively. The Immigration Law Practitioners’ Association summarised the concern voiced by a number of others:

One of the greatest problems is the lack of information…When Tier 1 went live in the UK on 29 February [2008], the guidance notes, which really are what explains the proper criteria, did not become available until 29 February.\(^{192}\)

John Cridland of the Confederation of British Industry reported that:

For a long while [employers] did not have the service level from the UK Border Agency that they felt they were entitled to. That has created some real tensions in the run-up to the end of November [the implementation date], but I should balance that by saying that ministers and the UK Border Agency officials have responded with great urgency to our concerns on that matter and the efficiency of their service to employers is getting better by the week.\(^{193}\)

Intellect echoed this, stating:

We would like to observe generally that the preparations at the UK Border Agency for the go live date of Thursday 27 November were not carried out with enough care or foresight to enable employers to have confidence that Tier 2 of the PBS would function effectively without significant transitional arrangements being put in place…Although there was an extremely shaky start, we have had some positive comment around the system and the helpfulness of UKBA with questions and concerns.\(^{194}\)

NASSCOM told us that it had been “impressed by the level of openness shown by the Home Office and its willingness to engage with stakeholders regarding their concerns about the proposed new rules”.\(^{195}\)

163. Several witnesses told us that the UK Border Agency had taken a pragmatic approach to possible glitches in the new system, and had exercised a necessary degree of flexibility in practice over the initial period of implementation. Over the rating of sponsors as ‘A’ or ‘B’ in the licensing process, John Cridland of the CBI reported that the UK Border Agency had taken a flexible approach:

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192 Q 56
193 Q 128
194 Ev 216
195 Ev 123
Informally they have said to companies, “You have not yet done enough to receive a category A but if you take the following steps we will look at it again.” Companies have found this very helpful...that is a good example of the Agency and employers working in partnership to make sure that the threshold is met on a constructive basis rather than a punishment basis.196

Simeon Underwood of the London School of Economics told us:

I would like to acknowledge that UKBA have met our needs in a number of ways. For example, the timescale has actually been slowed down...a major change happened in terms of the system pre-arrival where at one stage UKBA were looking for one student, one certificate of acceptance for studies; they have now moved to what is called multiple CASs.197

164. However, a number of concrete suggestions were offered as to how UKBA could further improve its engagement and information. John Cridland of the CBI considered that:

They have a responsibility to provide better advice, particularly on their telephone helpline. We look forward to the point where the telephone helpline is staffed by people who are able to use their discretion in giving advice rather than a tendency to read out the literal wording of regulations, which is not always helpful to someone who has bothered to phone them, and we hope that as we move to the next roll-out, tier 4, the guidance will be available in appropriate time.198

Mr Cridland further recommended that “there is a need to provide better guidance and advice at post”.199 In fact, following our visit to India and Bangladesh in October 2008 we ourselves wrote to the Home Secretary with a similar suggestion, recommending that she urgently implement the provision of better information overseas. The letter stated:

We detected a degree of confusion and anxiety amongst potential applicants about how the mechanics of the new system will operate and the impact the changes will have on their eligibility to apply for visas and the application process itself. For example, many were concerned that one visa refusal would affect any subsequent visa applications. UKBA staff who accompanied us were able to clarify the situation and allay this fear on the spot.

It seems to us that these anxieties are not matters of policy, but simply call for effective communication of the changes. We therefore consider that, as part of the implementation of the PBS, it would be very helpful for UKBA and UK Visas staff to hold a series of ‘advice centres’ or ‘drop in centres’ in major cities in India and Bangladesh. Such centres would give an opportunity for potential applicants—both individuals and businesses—to clarify any questions immediately, and would aid the smooth implementation of the system. We recommend that advice sessions take

196 Q 141
197 Q 293
198 Q 129
199 Q 151
place in Delhi, Mumbai, Chennai, Dhaka and Sylhet, and should be held before the implementation of the next tiers on 30 November 2008.\textsuperscript{200}

165. Simeon Underwood of the LSE observed that difficulties in communicating with UKBA had been in part caused by the different organisational elements operating within UKBA, including policy, operations and IT officials:

In meetings we have had with them on a number of different occasions we have dealt with different individuals and had to go back to the start on certain issues, and we still have a residual nervousness that what the policy people are saying to us might turn out to be different in practice over time.\textsuperscript{201}

166. 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.

167. 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.

\textsuperscript{200} Chairman to Home Secretary, 15 October 2008

\textsuperscript{201} Q 294
11 Sector-specific issues

168. In addition to comments on the principle, design and administration of the new system, we took evidence from a range of industries employing migrants under different tiers of the Points Based System. In this section we report on problems specific to different industries.

Catering and hospitality

169. In addition to hearing from the Bangladeshi Caterers’ Association at our launch seminar in June 2008, we took oral evidence from Jabez Lam of the Chinese Immigration Concern Committee, Ranjit Mathrani of Masala World, and met a wide range of representatives from the Bangladeshi catering sector during our visit to Bangladesh in October 2008. We also received written evidence from London Assembly Member Murad Qureshi, the Chinese Immigration Concern Committee, the British Hospitality Association, Kaman Tsang, Christine Lee & Co Solicitors, and Mei Wong.

170. Representatives of the international catering and restaurant industries—in particular Bangladeshi, Indian and Chinese cuisines—argued that they were already suffering from a labour shortage, which would be unduly exacerbated by the Points Based System. This was in part due to the long hours and low pay of certain roles, traditionally filled by migrant workers, the recruitment of whom the suspension of Tier 3 (low-skilled) of the PBS would prevent. On the other hand, they argued, skilled roles such as that of specialist chef would struggle to meet the points requirement under Tier 2 of the Points Based System, particularly in respect of formal qualifications and of the English language requirement. The industry had made representations to the Migration Advisory Committee for inclusion of these jobs on the shortage occupation list.

Labour shortage

171. The catering industries are a key employer for minority ethnic communities in the UK. The Chinese Immigration Concern Committee (CICC) stated that:

> [There are] 17,500 Chinese catering outlets in the UK, with an annual turnover of nearly £5 billion employing 100,000 workers directly; together with the related businesses are employing over 50 per cent of the UK Chinese working population. British Chinese catering is the economic backbone of Chinese community in the UK.202

According to the Bangladeshi Caterers Association (BCA) the 12,000 Bangladeshi restaurants and takeaways that make up its membership turn over £3.5bn per year. In a written submission, London Assembly member, Murad Qureshi, told us that:
There are over 2,100 ethnic restaurants in London, and most of them (over 1,200) are Indian or Chinese. The ethnic restaurant market is worth in excess of £3bn nationally and contributed over £1.2bn to London’s economy in 2002. 203

172. The Chinese Immigration Concern Committee (CICC) pointed out that certain international cuisines have historically relied heavily on migrant labour:

Since the 1980s UK Chinese catering has experienced a continuous labour shortage as children left their family in pursuit of their own careers. The Chinese catering industry has relied on migrant workers to fill the vacancies and support its growth…Each new wave of Chinese migrant provided new workforce to the industry and brought with them knowledge and skilled of new cuisines.204

173. Witnesses reported that the sector was already suffering labour shortages. Jabez Lam of the CICC told us that research conducted in 2008 which asked Jobcentre Plus to refer suitable candidates for 101 vacancies for Chinese chefs found that “over the six-week period we only had one suitable referral and the wages we offered were between £17,000 and £18,000 initially and in the mid point we increased all the jobs by £1,000”.205 Banglor Rashid of the Bangladeshi Caterers’ Association told us that the Bangladeshi curry industry in the UK employs 90,000 people but estimates that it has 27,500 vacancies.206

174. An article in The Guardian newspaper of 6 May 2008 suggested that shortages were caused in part by an intergenerational problem, with the children of those in the sector declining to follow their parents into the business:

Dr Shyam Patiar, who runs a hotel business and is director of skills development at Llandrillo College in Colwyn Bay, north Wales, says jokingly: “I am guilty. I put all my children through private schools to give them a chance”. His elder daughter is an ear, nose and throat surgeon, her sister is an employment lawyer, and his son is a trader in the city. They did not want to work in a kitchen seven days a week for a fraction of what they can earn with their education.207

Bangloor Rashid, President, and other members of the Bangladeshi Caterers’ Association referred to this reluctance of second generation migrants to follow their parents into the catering industry as a key cause of staffing shortages, during the Committee’s seminar in North Kensington. Jabez Lam of the Chinese Immigration Concern Committee agreed:

We are at a juncture whereby the first-generation Chinese have worked very hard to establish themselves in Chinese catering and their children, who are the highest

203 Ev 86
204 Ev 88
205 Q 82
206 Presentation given to the Home Affairs Committee seminar on the Points Based System in North Kensington by Bangloor Rashid, President of the Bangladeshi Caterers’ Association, on 23 June 2008.
207 “Not too many cooks”, The Guardian (Education), 6 May 2008
education achievers across all ethnic groups, have their own aspirations and move on to other careers.208

**Impact on communities**

175. Representatives of the Bangladeshi, Indian and Chinese catering and restaurant industries declared that an inability to recruit migrant labour, both low-skilled and skilled, into the sector would have a devastating effect on their communities in the UK. Ranjit Mathrani of Masala World said that, under the Points Based System, top end restaurants would “eventually close over time with attrition because they cannot replace [the chefs]…you are not going to produce high-quality Indian or Chinese chefs out of British soil”.209 Jabez Lam of the Chinese Immigration Concern Committee agreed, saying that one restaurant had “stated to us that the directors of the Board have made the decision not to invest in any further expansion in this country because of the problem of the labour shortage”.210 The CICC warned of

A real danger of a meltdown in the Chinese catering industry—a collapse in British Chinese catering industry will have negative impacts on the mainstream catering and tourist industry, and have serious knock on effects on the wellbeing of the Chinese community. Businesses and families who have lost their livelihood will have to rely on state benefits instead of making a positive contribution to the economy.211

**Low-skilled workers**

176. Under the previous system, caterers and restaurants were able to recruit low-skilled staff from overseas through the Sectors Based Scheme, which allowed people to enter the UK to take short-term or casual jobs on a quota basis. The Sectors Based Scheme has been phased out with the introduction of the Points Based System. Since the Government anticipates that all low-skilled labour shortages can be filled by EEA nationals, Tier 3 (low skilled workers for temporary labour shortages) of the Points Based System has been suspended indefinitely.

177. The sector was concerned that the low-skilled workers on which restaurants relied would not be eligible to enter the UK under the Points Based System, and that EEA nationals would not be willing to fill these vacancies. Bangloor Rashid of the Bangladeshi Caterers’ Association told us that Bangladeshi workers were keen to work in the industry and were willing to work under poorer conditions and lower wages than their European counterparts. He argued that a significant improvement in wages and working conditions would be needed in order to attract Europeans to these roles.212 London Assembly Member Murad Qureshi agreed that wages in the catering industry were typically low:

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208 Q 99
209 Q 103
210 Q103
211 Ev 87
212 Presentation given to the Home Affairs Committee seminar on the Points Based System in North Kensington by Bangloor Rashid, President of the Bangladeshi Caterers’ Association, on 23 June 2008.
The average national hourly wage in restaurants is 40 per cent less than the national average wage. Although staff in London earn more than their counterparts outside the capital, and skilled groups like chefs and cooks attract better wages than porters or waiters, they still only earn about £8 per hour to work unsociable hours and often late into the night to satisfy demanding and frequently difficult customers.213

178. However, in oral evidence our witnesses were insistent that caterers and restaurants offered fair wages. Jabez Lam told us that “all workers in Chinese catering, whether restaurants or takeaway, earn above the minimum wage”.214 Ranjit Mathrani concurred: “to our knowledge, we have no evidence whatsoever that people are actually getting less than the minimum wage”.215 In terms of specialised chef positions, Mr Mathrani reported that “the average salary of a chef from India is £20,000 a year…apart from our head chefs and manager chefs who get between £30,000 and £45,000 a year. We pay our staff exactly the same as Gordon Ramsey pays his, if not more”.216

179. The Chinese Immigration Concern Committee argued that jobs in the international catering and restaurant sector should be placed on the Shortage Occupation Lists to ensure that restaurants could continue to recruit from overseas:

CICC recommends that Chinese catering occupations [be included] on the Shortage Occupation List to enable Chinese catering to recruit from overseas. This will be the medium solution to find suitable skill workers to replace illegal workers eventually removed.217

However, Professor Metcalf, Chair of the Migration Committee, considered that:

Many in the restaurant sector would wish for a de facto Tier 3 scheme for less skilled workers to be able to come in. The skilled components of chefs, as it were, are on the shortage list subject to a certain earnings threshold and the profession is able to bring them in.218

Skilled chefs

180. Ranjit Mathrani of Masala World drew a distinction between the British Asian catering industry, and high level Indian restaurants: “the catering industry is totally different from Indian cuisines”.219 He argued that skilled chefs specialising in international cuisines—who would be considered skilled workers under Tier 2 as opposed to other workers in the catering and restaurant industry who would be considered low-skilled labour—would struggle to meet points for certain attributes. He identified two barriers in particular:

213 Ev 86
214 Q 81
215 Q 83
216 Qq77–78
217 Ev 91
218 Q 391
219 Q 87
One is the language, the requirement that people should have a certain level of English before they come to this country... The other is the fact that they set the level of salary where someone does not have qualifications, which most of them do not have, at £24,000 a year which actually is equal to a sous-chef in a French restaurant, and which would make things quite difficult in economic terms.220

Mr Mathrani reported that his restaurant chain currently employed 42 Indian chefs on work permits. He asserted that, had the English language requirement introduced under the Points Based System been in existence previously, only five of those 42 chefs would have gained a visa.221

181. It was also argued that skilled chefs would struggle to meet the qualifications requirement, set at a minimum of NVQ level 3 training. The Chinese Immigration Concern Committee concluded that “Chinese catering will not be able to meet the NVQ3 qualification”.222 This was reflected also in discussions during the Committee’s visit to Bangladesh, in which participants in our community roundtable said that most Bangladeshi chefs had on-the-job training rather than formal training or qualifications.223

182. Both the Migration Advisory Committee and the Government drew a distinction between lower-skilled labour in the international catering industries and the case of highly-skilled chefs. The Minister for Borders and Immigration, Phil Woolas MP, broadly agreed with this analysis, and told the Committee that the Government had included the specific role of ‘skilled chef’ on the latest Shortage Occupation List:

The Shortage Occupation List contains skilled occupations in ethnic hospitality and catering, and the MAC took evidence from a number of organisations—the Academy of Oriental Cuisine, the Chinese Takeaway Association, Itihaas, which is the Bangladeshi and Indian restaurant, and a number of other organisations—and we did put that on the skill shortage list as a result of the advice from MAC, and indeed from this committee.224

‘Skilled chef’ is subject to the requirement that the individual is earning at least £8.45 per hour after deductions for accommodation, meals etc.225

Training

183. We asked whether a shortage in low-skilled labour could be filled by recruitment within British communities. Given the high levels of unemployment within, for instance, the British Bangladeshi community, it seemed logical to turn to those communities before migrant labour. London Assembly Member Murad Qureshi stated that “these groups [Bangladeshi and Chinese communities in the UK] already suffer from higher levels of...

220 Q 95
221 Q 75
222 Ev 89
223 Ref
224 Q 432
225 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.131
unemployment than the London average (a worrying 20.5 per cent in the Bangladeshi community against a London average of 6.7 per cent)”.226

184. Our witnesses considered that better training provision could be made for British residents, although were wary about whether high-level skills required for skilled chefs could be incubated in this country. Ranjit Mathrani of Masala World told us:

> We would be quite happy to participate in the establishment of training schools to enable the instruction of an intermediate-based level of skills. The trouble with Indian cuisine is that actually, even in India, craft schools do not exist which are teaching cooking to chefs in restaurants, but it is learnt with people mastering an apprentice skills-type of approach to life.227

Jabez Lam agreed that there was a distinction to be drawn between low and highly skilled workers, saying he believed that training the local labour force would “help in alleviating the lower-level skill requirement, but the higher-level, specialist level, we believe is still filled by more expert migrant workers”.228

185. In Sylhet, Bangladesh, we heard of proposals to establish a catering college there, which would assist Bangladeshi chefs to gain the requisite level of skills qualifications. During a visit by the Committee to the Chief Adviser—the head of the Bangladeshi caretaker government—the Chief Advisor expressed his support for the establishment of such a catering trades training institute in Sylhet, and emphasised that his Government attached priority to raising the skills levels of Bangladeshis seeking employment abroad.229

186. 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.

187. 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.

188. 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

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226 Ev 86 [Citing Source: 2001 Census Standard Table ST108]
227 Q 94
228 Q 90
229 Annex A [India and Bangladesh visit notes]
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.

189. 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.

190. 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.

191. 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.

**Health and social care**

192. We took oral evidence from Alastair Henderson of NHS Employers and Mandy Thorn of the National Care Association. In addition we received written evidence from Together Creating Communities, Welsh Assembly Member Janet Ryder, Welsh Assembly Member Mark Isherwood, Chris Ruane MP, the English Community Care Association, the British Medical Association, the Royal College of Nursing, and Nia Higginbotham.

**Care workers**

193. Many of the representations we received concerning the care sector expressed anxiety that Senior Care Workers from overseas would become ineligible under the Points Based System, causing a staffing crisis in care homes and associations. The English Community Care Association warned that “if non EEA staff are prevented from working in care homes there could be a crisis in terms of care home closures and reduced capacity in some areas of the country”.

194. The independent care sector is large and diverse. English Community Care Association estimated that it employed over a million workers, and that there were 27,000 organisations providing over 420,000 care beds and 800,000 recipients of community based services. Independent care homes provide care for over 400,000 people and 70 per cent of care in those care homes is funded through local authorities and the NHS, therefore provided by the state.
195. More than 100,000 care assistant and home care workers—some 16 per cent of the registered workforce—were born overseas. Data from the 2006 Office for National Statistics annual population survey suggests that 68 per cent of care workers in London were born overseas. The same survey shows that Zimbabwe provides the highest percentage of the non-UK born social care workforce (12 per cent), followed by the Philippines (10 per cent), Ghana (7 per cent), Poland (7 per cent), Germany (6 per cent), Nigeria (6 per cent), India (5 per cent), Jamaica (3 per cent) and the Irish Republic (3 per cent). Mandy Thorn of the National Care Association told us that “Skills for Care estimate that 12 per cent of the social care English workforce—so we are talking about non professionals, not nurses—is from outside of the EEA countries”. She added that the Commission for Social Care Inspection estimated that “we are going to see the workforce increasing by 50-80 per cent between now and 2025”.235

196. Representatives told us that they experienced great difficulty recruiting from the resident population. Mandy Thorn of the National Care Association reported that the three month moving average of notified vacancies for care assistants almost doubled between December 2006 and December 2008. The English Community Care Association told us that:

Some providers have reported that during repeated adverts through Job Centre Plus, they have had no response whatsoever from EEA sources. Others report that whilst some jobs have been able to be supported by EEA immigrants there is not sufficient supply of EEA workers that are suitably qualified to undertake carer roles.237

The sector has instituted many recruitment and retention initiatives which include widespread advertising including in Europe, the care ambassadors scheme, close working with local authorities, and supporting people back into the care workforce.238

Labour market data analysed by the Migration Advisory Committee in April 2009 found that, for senior care workers:

JobCentre Plus data show that the vacancy-to-unemployment ratio for the period February 2008 to January 2009 is much higher than the ratio for all occupations (1.88 compared with 0.38).239

197. Our witnesses insisted that the roles of care worker and senior care worker were skilled jobs, as well as in shortage, though they did not meet the points requirements for qualifications, or earnings, for Tier 2. Many of our submissions judged that the requirement for a minimum qualification at NVQ level 3 was prohibitive and unfair to care workers.

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234 “Portraits of Respect”, The Guardian, 26 March 2009 (citing figures from the Office for National Statistics)
235 Q 190
236 Q 192
237 Ev 145
238 Ev 145
239 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.95
workers, citing other skills and on-the-job experience as more relevant. The English Community Care Association told us:

Carers and senior carers have many other skills over and above NVQ2. They must adapt and learn to provide care meeting new and changing policy requirements for example around dignity, nutrition, infection control and Mental Capacity Act requirements…the MAC [Migration Advisory Committee] should be required to consider carer skills in the round rather than simply rule out access to Tier 2 because of a national minimum standards framework set out by government.240

198. Together Creating Communities (TCC), Janet Ryder AM, Mark Isherwood AM and Chris Ruane MP pointed to the Filipino community as being particularly hard hit. TCC stated:

Care homes have relied on this quiet, compliant and dedicated workforce for years and vulnerable older people know, love and are used to them. Anecdotal evidence given to us is that when these Senior Care Workers are replaced by others from eg. the EU there is a huge turnover in staff as the new workers do not remain in post for long.241

199. In terms of the salary requirement, the English Community Care Association pointed to long and unsociable hours and low wages as a deterrent to UK residents taking up care posts, but argued that these conditions were simply unavoidable since the sector as a whole was under-funded:

Independent evidence around the country shows that care homes are seriously under-funded by council and NHS commissioners. The majority of care home costs relate to staff and the shortfall in funding forces the sector to pay low wages. The result is that UK and to a lesser extent EEA staff are sometimes reluctant to take jobs in care homes… the trade associations accept that higher wages could possibly ensure more UK and EEA recruits, but while state funding remains inadequate then this solution is simply not feasible.242

The Migration Advisory Committee, in its April 2009 report, concurred that it was difficult to recruit locally to this occupation:

COMPAS told us that they had surveyed employers and found that nearly half consider it difficult to recruit UK-born care workers, despite 9 in 10 home care organisations undertaking at least some actions to recruit from the local labour market.243

200. During the course of our inquiry the Government included Skilled Senior Care Workers on its November 2008 UK shortage occupation list. Inclusion is, however, subject to a minimum wage earning of £8.80 per hour after deductions for accommodation and

240  Ev 142
241  Ev 102
242  Ev 142 and 144
243  Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.96
meals etc. The current statutory minimum wage for UK residents is £5.73 an hour.\footnote{For people aged 22 years and over} Together Creating Communities and Janet Ryder AM pointed out that the £8.80 minimum wage requirement created the danger of a two-tier pay scale within the sector which would make it less likely for homes to pay it:

While supporting the principle of a living wage for all workers, it seems anomalous of the UK Government to introduce this piecemeal for foreign workers. This is considerably higher than the minimum wage for workers from the UK and EU, and it places care homes in a very difficult position. They cannot give one rate of pay to some workers and not others.\footnote{Ev 91 [Janet Ryder AM]}

The MAC therefore retained the occupation of Senior Care Worker on its April 2009 UK shortage occupation list, but reduced the salary requirement to £7.80 per hour, and the qualification requirement to ‘a relevant NQF [National Qualification Framework] level 2+ or equivalent qualification’, plus at least two years’ relevant experience, plus supervisory responsibility in the role to which they are being recruited.\footnote{Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.97} With respect to these new criteria, it noted that:

One-fifth of workers in the occupation [senior care worker] in the Labour Force Survey earn £7.80 per hour, have an NQF level 2+ qualification and have two years’ or more experience.\footnote{Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.97}

**Nurses**

In order to practice in the UK, nurses must register with, and be approved by, the Nursing and Midwifery Council (NMC). NHS Employers told us that “the current number of effective practitioners from overseas (non EEA) is 73,900. This is 11 per cent of the total Nursing and Midwifery Council registrants (663,078)”\footnote{Ev 250} The figure covers nursing homes and the residential sector as well as the NHS. Alastair Henderson of NHS Employers noted that:
There has been a fairly significant decline in the number of nurses outside the EEA that the NMC has registered. In 2004 they registered 14,000 which was roughly the same number as UK registrants. Last year they registered 4,800 which was only a third of the number of UK people they were registering.\textsuperscript{250}

He suggested that this decline in international recruitment was due to increased training and recruitment initiatives by the NHS whereby it had “increased the number of qualified nurses that it has very significantly”.\textsuperscript{251}

203. The Migration Advisory Committee came to a similar conclusion in its April 2009 UK shortage occupation list, stating that “overall, recruitment to the nursing profession remains buoyant and vacancy rates have decreased significantly since 2003. There is not strong evidence to support nurses going on the shortage list for the UK”.\textsuperscript{252} It therefore included only two nursing specialties—theatre nurse and critical care nurse—on the list.\textsuperscript{253}

204. Alastair Henderson did not consider that the minimum salary requirement under Tier 2—set at £17,000—would prove a problem for nurses, noting that “the basic pay for a qualified nurse now begins at £20,225. If you are in London you will get an additional £4,000”.\textsuperscript{254}

205. The Royal College of Nursing had a specific concern, that nursing qualifications were not adequately recognised under the Points Based System—including nursing diplomas taken in the UK, and both nursing degrees and nursing diplomas taken overseas:

\begin{quote}
The Diploma in Nursing is not recognised under the points-based system and appears to achieve no points.\textsuperscript{255}

Under Tier 2 of the Points Based System neither nursing degrees nor nursing diplomas awarded overseas attract any points according to the UK Border Agency’s points-based calculator.\textsuperscript{256}
\end{quote}

206. The Royal College of Nursing pointed out that access to professional nursing posts in the UK was only available following acceptance onto the Nursing and Midwifery Council (NMC) Register of Nurses, and that this tested the professional skill of a nurse, not whether they held a degree as opposed to a diploma.\textsuperscript{257} It reported that, although the points calculator on the UK Border Agency website “appears to award NMC registration ten
points…the UKBA has confirmed to the Royal College of Nursing via the Department of Health that they do not award points for registration with the NMC.”

207. We put these points to the Minister of State for Borders and Immigration, who told us that:

Points are awarded for any qualification at NVQ3 and above and this includes nursing diplomas and degrees. However nursing salaries differ around the UK and in some regions the points attributed for those salaries combined with the points attributed to a diploma (rather than a degree) do not suffice to meet the points requirements of Tier 2. This is clearly an issue that bears closer scrutiny and my officials are working with the Department of Health to assess the impact it has regionally and what, if anything, should be done to address it.

Doctors: age requirement

208. The British Medical Association wrote to us that doctors would lose out on the age criteria under Tier 1, which only awards points on a sliding scale for a narrow age range between 28 and 32:

The fact that points are not awarded to anyone over the age of 31 does not take into account the lengthy training doctors go through. Those starting medical school at the earliest opportunity (age 18) will not complete the Foundation Programme until age 25. Those who have undertaken another degree before applying to medical school will not complete the Foundation Programme until at least the age of 28 at which point their points allocation for age decreases.

However, when we put this to Alastair Henderson of NHS Employers in oral evidence, he did not feel that the age requirement presented a significant barrier:

It strikes me that certainly for doctors coming in there are likely to be other factors in terms of earnings that may well give them compensatory points, and certainly there are other doctors who can come in on Tier 2 for specific posts where they will get the required number of points.

209. 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.
210. 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.

211. 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.

**Information and communications technology**

212. We received written evidence from the Indian National Association of Services and Software Companies (NASSCOM). In addition we held roundtable discussions whilst in India with representatives of global IT and telecommunications businesses, including: Tata Consultancy Services, NASSCOM, Perot Systems, Genpact, Expertus, and HCL Technologies.

213. Investment by, and trade with, the Indian IT sector is clearly very profitable to the UK. The British High Commission in Delhi estimated that the Indian IT sector in the UK was worth approximately £3-4 billion annually. Last year 18 per cent of the business of NASSCOM members was conducted in the UK, representing £7.2 billion annually. In 2007, 29,000 UK work permits were issued in India, predominantly for the IT sector. Tata Consultancy Services and others told us that the impact on their business of a reduction in the number of UK work permits issued annually would be severe. Som Mittal of NASSCOM said that Indian business in the UK would be seriously reduced and that most probably companies would seek to move instead into Eastern European countries or to carry out work remotely from India. He considered that there would be a particularly significant impact on medium-sized companies who could not afford to set up offshore centres.262

**Shortage areas**

214. Sector representatives told us that, although they sought employees within the local labour market first, their companies frequently required specialist ICT skills which they could not find within the UK workforce. Thomas Simon of Tata Consultancy Services gave the example of specialists such as experts in actuary insurance, or in Bluetooth technology.263 However, Professor Metcalf of the Migration Advisory Committee presented a slightly different picture of skills shortages. He reported that the Sector Skills Council for

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262 Annex A [India and Bangladesh visit notes]
263 Annex A [India and Bangladesh visit notes]
IT had argued not to be included on the Shortage Occupation List because “they thought that many of the jobs could indeed be filled from the UK. So the IT occupations are not on the shortage list”.264

215. We asked witnesses what initiatives existed to increase the skills of the resident population. Mr Simon told us that Tata Consultancy Services had developed bilateral initiatives with several British universities to develop skills currently lacking amongst British engineering and ICT graduates, but noted that there was no wider framework for engaging British higher education on skills development.265

**Intra-Company Transfers**

216. International firms can bring company workers into the UK for temporary periods under the Intra Company Transfer scheme under Tier 2 of the Points Based System. The Professional Contractors Group described the purpose of the scheme:

ICT work permits were intended to allow a company to bring into the UK an employee based outside the European Economic Area, without having to go through the time consuming hoops of advertising, when that employee has company-specific skills not available in the UK.266

217. The number of approved applications for intra-company transfers increased by 47 per cent between 2004 and 2008. Of the total number applied for over those five years, 97 per cent were granted, as set out in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications made</th>
<th>Applications approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>32,770</td>
<td>33,645</td>
</tr>
<tr>
<td>2005</td>
<td>33,745</td>
<td>34,680</td>
</tr>
<tr>
<td>2006</td>
<td>43,050</td>
<td>43,950</td>
</tr>
<tr>
<td>2007</td>
<td>48,735</td>
<td>50,230</td>
</tr>
<tr>
<td>2008</td>
<td>48,010</td>
<td>49,710</td>
</tr>
<tr>
<td>Total</td>
<td>206,305</td>
<td>212,215</td>
</tr>
</tbody>
</table>

**Figure 9: Number of individual work permit intra-company transfer applications made and approved for the period 1 January 2004 to 31 December 2008.**267

218. Six industry sectors have consistently had the highest number of companies who obtained an approval for an intra-company transfer over the last five years. These are administrative, business and management services; computer services; financial services; manufacturing; retail and related services; and telecommunications.268 International IT firms account for a large proportion of intra-company transfers. Professor Metcalf of the Migration Advisory Committee told us that, for instance, Tata Consultancy Services brought in about 3,000 workers under ICT in 2008.269

264 Q 376
265 Annex A [India and Bangladesh visit notes]
266 Ev 82
267 HC Deb, 11 February 2009, col 2057W
268 C Deb, 11 February 2009, col 2058W
269 Q 376
219. We heard some evidence that the intra-company transfer route might be subject to abuse. Professor Metcalf told us that:

People coming in to do IT jobs are disproportionately coming in under the intra company transfer route...I am sure it is legitimate for people to be brought in to do the IT projects under the intra company transfer but it is possible that the original intention for that was more like Honda bringing people in from Japan to work at Swindon for a bit, and so we will have a proper look at that route. Clearly, to the extent if there were some real elements for example of displacement or levels of undercutting, then we will report on this.270

This view was echoed in written evidence from the Professional Contractors Group (PCG), who argued:

The intra-company transfer work permits are being used to facilitate the offshoring of work from the UK…the provision of ICT work permits must therefore be kept under careful control, and ICTs should only be available in sectors where there are actual shortages in the UK’s workforce.

As entry-level jobs in sectors such as IT are offshored, the bottom rung of the career ladder is removed from the reach of the UK’s IT graduates.271

220. The latest report from the Migration Advisory Committee (April 2009) noted that in the second quarter of 2008, over half of non-EEA migrants reported having a job offer before coming to the UK, and for around half of these, the job was with their current employer: an intra-corporate transfer.272 That means that about one quarter of all non-EEA migrants interviewed in that period entered the UK on an intra-company transfer.

221. Professor Metcalf told us that the Migration Advisory Committee had been asked by the Home Secretary to review the case for the continuing existence of the intra-corporate transfer route, on which he expected to report by July 2009. He told us that, if the Migration Advisory Committee were to recommend closure of the route the impact would be substantial:

If the committee were to decide, for example, that there was less of a case for intra-company transfers, and by definition those using them presently are people in information technology—we have referred to Tata, for example—then it would be very much more difficult for Tata to bring people in.273

222. The Professional Contractors’ Group recommended that “the Government [should] alter its current policy, to ensure that ICT workers coming to the UK do indeed have relevant company-specific knowledge. Above all, the number of points needed to obtain an

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270 Qq 368–370
271 Ev 80 and 83
272 Migration Advisory Committee, Skilled, Shortage, Sensible: First review of the recommended shortage occupation lists for the UK and Scotland: Spring 2009, April 2009, p.30
273 Q 395
ICT permit under the Points Based System should be revised if it becomes apparent that the current level of provision of ICTs is not in the best interests of the UK economy”.274

223. 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.

224. 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.

225. 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.

Legal services

226. We took oral evidence from Des Hudson of The Law Society and Sarah Lee of Slaughter and May, Solicitors. In addition we received written evidence from The Law Society. Witnesses reported difficulties with two specific aspects of the new scheme: the ability to take on short-term secondees from international law firms, and the way in which international graduate exchanges would operate under Tier 5.

Government Authorised Exchange Schemes

227. Des Hudson of the Law Society described the way in which the legal and financial sectors frequently required specialist lawyers to move between international firms:
The transaction of international law means that law firms in England and Wales must have a wide range of connections if they are to operate in a highly competitive global market and deliver cross-border international transactions. They will do that either because they have employees in their office in another city and jurisdiction or—it is very important and so I stress it—because they have a relationship with, say, a firm of lawyers in Shanghai and want to bring people from that office to spend some time in London because the interchange and flow of ideas is critical to their ability to provide a seamless service across all of those markets.275

Sarah Lee of Slaughter and May agreed:

We operate the “best friends” model whereby we have close relationships with law firms in different jurisdictions where we need to develop very close relationships with them because the kind of advice we give is often concerned with cross-border deals where legal advice is required from many different jurisdictions. We are English lawyers and we cannot provide that advice on our own and therefore we need relationships with other law firms so we have access to their legal services.276

228. The Law Society noted the value of the legal sector to the UK and the impact that reducing the competitiveness of law firms could have on its economy:

The legal services sector contributes £18 billion (nearly 2 per cent) of UK GDP, with annual international earnings of £4 billion. Much of these earnings are generated by large City firms that operate in a global marketplace. London has 20 per cent of the global legal market and is home to four of the world’s top six law firms.277

229. Tier 5 of the Points Based System contains the Temporary Worker category which allows people to travel to the UK to satisfy primarily non-economic objectives. One of the five subcategories of the Tier is Government Authorised Exchange Schemes, which are intended for migrants coming through approved schemes aimed at sharing knowledge, experience and best practice. Migrants entering under this category are granted a maximum of 24 months’ leave. Individual employers are not allowed to act as a sponsor under this scheme. Instead, there must be an overarching body that runs and administers the exchange scheme. This overarching body acts as the sponsor. The scheme and the overarching body must have the support of a UK Government department.

230. Des Hudson described the benefit of graduate lawyer exchange programmes:

We run something called International Lawyers for Africa. Every year about 30 or so lawyers from Africa come over here and spend about three months with firms in England and Wales. That interchange has two benefits. First, it is a jolly good thing that we help lawyers in those countries to gain experience of international law in leading global firms, but, second, we are also socialising them to choose to use English law and firms in international activity.278
231. The Law Society reported problems with designating and getting approval to be an overarching sponsor body for such exchange schemes. In written evidence it stated:

Tier 5 offers a mechanism for firms which move secondees between firms in a network of partnerships. This model has not been well understood by UKBA which had focused on intra-company transferees between offices of a PLC operating in several countries...Previously, UKBA policy required a “direct link by common ownership or control”, which does not apply to such networks. Following representations, UKBA has indicated that international networks of partner organisations operated by law firms will be recognised as linked companies for the purposes of intra-company transfers.279

232. Des Hudson expanded on this in oral evidence, saying that the process for registering as an overarching sponsor was “very problematic”. He knew of only one other organisation which had been able to achieve overarching body status: the British Council, and expressed “doubts about whether professional bodies in [other] areas would want to go through the hassle we have experienced”.280

233. However, giving oral evidence, the Minister for Borders and Immigration, Phil Woolas MP, later told us that the UK Border Agency was in discussion with the legal sector to solve the problems it was encountering with registering as a Tier 5 sponsor. He told us “we are listening carefully to those concerns, have potentially got a way forward and are waiting for them to make further representations about how they would want to”.281 The Law Society subsequently confirmed to us that the difficulties with registration had been mitigated through negotiation with the UK Border Agency.

234. 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.

Higher education and students

235. We took oral evidence from Professor Wellings of Universities UK and Simeon Underwood of the London School for Economics and Political Science (LSE). In addition we received written evidence from the University of Oxford, Universities UK, the LSE, the National Union of Students, and the University and College Union. The Higher Education sector had concerns about the system of sponsoring short-term academic researchers, and several other areas on which they agreed concessions with the UK Border Agency during the course of our inquiry.

236. Phased implementation of Tier 4 (students) of the Points Based System began in March 2009, and is due to be completed by February 2010. Non-EU students wishing to study at a UK higher education institution will have to be enrolled on a course at Level 3 or above on the National Qualifications Framework (NQF) or its equivalent. Under the
sponsorship arrangements, international students will only be able to apply for a visa if they are sponsored by an accredited further or higher education institution, and issued by them with a Certificate of Sponsorship.

237. In order to sponsor students, institutions must register with the UK Border Agency, and be approved as a legitimate institution. In addition they must prove that they hold valid accreditation from one of the UK Border Agency approved accreditation bodies. As with the system of sponsorship under the other tiers, educational institutions are asked to take on greater responsibility for the students they sponsor, including reporting failure of students to enrol or attend courses, and keeping personal details updated. Institutions will issue prospective students with a Confirmation of Acceptance for Studies certificate, via the Sponsorship Management System. This is a database run by the UK Border Agency. Students are awarded 30 points for a visa letter/Confirmation of Acceptance for Studies, and must score 10 points for maintenance (fees and living expenses) to pass the points-based assessment and be able to apply for a visa.

238. As of 27 April 2009 just under 1,600 educational establishments had been accepted onto the Tier 4 register of sponsors. Around 30 applications from educational establishments to become sponsors had been unsuccessful.282

**International students in the UK**

239. There are 240,000 international students registered at UK universities.283 At the LSE, 30 per cent of students are from the UK, 20 per cent from other EU countries, and 50 per cent from non-EU countries. The LSE gets graduate applications from 177 countries; 67 per cent of which are from non-EU countries.284

240. International students provide a major income source for British universities. Simeon Underwood told us that, for the LSE:

> In the financial year 2007-08 we have £60 million in tuition fees from international students, compared for example to £29 million from the Funding Council in our block grant. The tuition fees that we receive from international students amounts to about one-third of our income.285

He explained that:

> Universities only have a limited number of sources, other than direct government funding, to look at. At a time of recession those sources become even more difficult to access…industry is a willing partner but not in a position to give us much help at the moment. So, in this context, the income we get from international students is critical to us, but I do not think it would be true to say that we have prioritised this over our responsibilities to home students.286

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282 HC Dec, 18 June 2009, col 456W
283 Q 295
284 Q 290
285 Q 290
286 Q 291
Tier 5 Sponsored Researchers

241. Under the Points Based System, researchers visiting UK universities to take part in formal research projects but who are not contracted employees of the host organisation have to enter under the Government Authorised Exchange scheme of Tier 5. This requires them to be sponsored by an overarching body which is not the individual educational institution. Several universities criticised the illogicality of this position. The University of Oxford pointed out that sponsored researchers made up a large proportion of their work permit holders: in 2007 76 of 216 initial work permits obtained were for sponsored researchers.287 The University wrote that:

We are very concerned about the requirement that individuals entering the UK under the Tier 5 “Government Authorised Exchange” category must have a single UK-wide sponsor…Giving responsibility for these researchers to a third party rather than their host institution seems to work against Home Office policy to make institutions responsible for migrants in other categories.288

Universities UK added that “there are no existing national third party organisations that would be able to act as sponsors for this group of migrants”.289

242. The University of Oxford recommended that higher education institutions themselves, rather than an overarching body, should be able to act as sponsors for sponsored researchers under Tier 5.290 Universities UK agreed,291 as did the LSE.292

243. 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.

Visa length; Certificates of Acceptance for Study; visiting academics

244. We had representations from the sector that the maximum visa length under Tier 4, four years, was less than the length of some courses, such as those in medicine or veterinary science. However, Professor Wellings and Simeon Underwood were able to confirm in oral evidence that they were “very pleased to receive notice last week from the Minister for Immigration who has now accepted our representations on issues to do with students who

287 Ev 104
288 Ev 104
289 Ev 118
290 Ev 104
291 Ev 118
292 Ev 210
are studying on courses for periods of time longer than four years”. 293 The Minister for Borders and Immigration, Phil Woolas MP, confirmed to us that “we have been able to give that decision to them precisely because the points based system gives us better assurances about genuine student attendance, about genuine colleges etc”. 294

245. Similarly, the sector was initially critical that only one institution could issue the Certificate of Acceptance for Studies—needed to apply for a visa—to each student. The LSE remarked that this was at odds with the practice of student recruitment, whereby students applied to several different institutions and very often considered several offers before deciding which one to accept. The LSE stated that:

The first Learning Provider to issue a CAS [Certificate of Acceptance for Studies] blocks all other Learning Providers from issuing a CAS for the same or any overlapping period…the student visa is Learning Provider specific so students can only enrol at the Learning Provider that has issued them with a CAS.295

However, in oral evidence Simeon Underwood reported that the UK Border Agency had responded to universities by allowing multiple certificates to be issued to one student. He considered that this was “certainly better than the original proposal” and they could “certainly live with the compromise we have”.296 The LSE also wrote to us to say that:

UKBA have, in response to concerns raised by us and others in the HE sector, amended several elements…in particular we welcome the move to a phased implementation, development of functionality to upload student data into the Sponsor Management System, the system of attendance monitoring based around points of contact and acceptance of the principle of multiple CASs.297

246. The University of Oxford reported that some academics visiting for short periods had experienced difficulties in obtaining visas, for example:

One group of senior academics, invited to a 2-day workshop in Oxford, were asked by the visa post to provide, as well as their letters of invitation, their marriage certificates, certificates of employment and salary, plus bank statements and payslips for the previous 3 months, all translated into English, and to supply both the original documents and photocopies. This level of bureaucracy is wholly disproportionate for a 2-day visit to attend a well-documented meeting.298

In oral evidence, Professor Wellings noted that he had heard of isolated incidents where academic visitors had been refused, but said that the sector would have difficulties if such refusals proved to be more widespread.299
247. 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.

**Arts and entertainment**

248. We took oral evidence from Ruth Jarrett of the Royal Opera House, Louise De Winter of the National Campaign for the Arts and Malcolm Clay of the Association of Circus Proprietors of Great Britain. In addition we received written evidence from the Royal Opera House, the Arts Council England, the Association of British Orchestras, the First Contact Agency, the National Campaign for the Arts, the Association of Circus Proprietors of Great Britain, and Asgard. We also visited the Royal Opera House in Covent Garden to discuss their experience of the Points Based System in relation to international ballet dancers, singers, and other artists.

249. International performers and artists are a vital part of the success of the internationally recognised UK arts scene. In a recent survey of its 550 members, the National Campaign for the Arts found that 76 per cent of respondents had hosted artists from outside the EEA in the past two years; 55 per cent considered it vital to their business; and that only 2 per cent of respondents stated that they would work with fewer non-EEA artists in the future. The Association of Circus Proprietors (ACP) stated that:

> Certain countries have traditionally been the source of particular circus acts e.g. flying trapeze acts are often from Mexico or occasionally from the USA, acrobatic troupes are often from Russia or other former Soviet countries because there has been a long tradition of circus training schools, high wire walkers are often from Colombia, Kenya produces a very distinctive acrobatic tumbling act which incorporates traditional dance and China has its own culture of acrobatics.

> These performers are usually on an international circuit in that they will work within Europe for several years taking contracts with different circuses for summer and winter seasons which may involve moving countries.

250. Under the Points Based System artists and performers can enter either via Tier 2 (skilled migrants with a job offer) or Tier 5 Creative and Sporting. Louise De Winter of the National Campaign for the Arts considered that “the vast majority of artists will come in under Tier 5. Those would probably only be coming in for a tour or a gig or to attend a festival or event”.

300 Ev 176–177
301 Ev 204
302 Q 319
251. Our witnesses highlighted a number of problems with the new system, including difficulty for certain groups of artists in meeting the qualifications requirement, and the need to get emergency visas for replacement performers at short notice.

**Ballet dancers**

252. The Royal Opera House and others argued the case for a special exemption for international ballet dancers, who, they argued, would fail to meet the points requirement for Tier 2 since they did not possess formal qualifications. The Arts Council England stated in written evidence that:

> There are few dancers in the UK qualified to be engaged by our flagship companies, such as The Royal Ballet and the Birmingham Royal Ballet as Principal Dancers, and it is common practice for dancers to be engaged from abroad. At present only one of The Royal Ballet’s 19 Principal Dancers comes from the UK. Across the rest of Arts Council England’s regularly funded touring companies, 23 per cent of dancers come from outside of Europe. Most have trained professionally to conservatoire level, but do not always hold degrees.  

253. We discuss the broader issue of measuring skill by professional experience and training as opposed simply to qualifications above, in Chapter 6. However, we note that the Migration Advisory Committee included ‘skilled ballet dancers’—who must be trained to the standard required by internationally recognised UK ballet companies—on the UK shortage occupation list for November 2008, and in the April 2009 list added ‘skilled contemporary dancer’. This was welcomed by the sector. Ruth Jarratt told us “we think it is the simplest, cleanest and most appropriate solution. We are very pleased”.  

254. Industry representatives remained concerned that similar problems with gaining recognition for training or professional skill where a performer did not possess formal qualifications also applied to other artists. Louise De Winter of the NCA acknowledged that the UK Border Agency had indicated it might take levels of training or a record of performance into account, but remained anxious that “we do not entirely know yet how many points they will allocate for those”. The April 2009 UK shortage occupation list also included ‘skilled orchestral musician’.

255. 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.
**Emergency visas**

256. Arts organisations argued that they frequently had to replace leading artists at short notice, such as when an opera lead was taken ill and a replacement had to be found, sometimes with under 24 hours’ notice. The National Campaign for the Arts (NCA) argued that the requirement to make a visa application in person and in the applicant’s normal country of residence was prohibitive to finding replacement artists in such cases:

In February 2008 when Anna Netrebko feared she would be unable to perform the lead role in *Traviata* the next day the ROH were faced with having to find a replacement for one of the greatest opera stars. Netrebko had received outstanding reviews and the replacement needed to deliver a performance which would not disappoint an audience who had in large part booked specifically to hear her. The Albanian Ermonela Jaho had the right artistic credentials and was reported by her agent to have an Italian passport but it transpired that she merely had Italian residency. Again, high level Home Office help made it possible to resolve the issue, otherwise the performance would have had to be cancelled and around £200,000 worth of tickets refunded. This pragmatic action would not be possible under the new system. 307

257. The Royal Opera House agreed, explaining that:

Singers of international standing are booked for leading roles in each production (a run of around 4-10 performances). Each opera singer has a collection of roles in their repertoire; some roles are quite specialist due to technical difficulty or rarity of performance. A significant proportion of the singers we book are visa nationals. It is a risk with live opera performance however that singers get sick, notably with sore throats, and have to cancel at the last minute. This happens at The Royal Opera on almost a weekly basis.

In the event that this occurs to one of the lead singers, we have to scout the world for a top-calibre singer who knows the role and is free to fly immediately to London. Sometimes we find a European or non-visa national. Sometimes however the only person or persons available are visa nationals. In this situation in the past the singer has been able to enter the country as a visitor and with Home Office help a work permit has been organised in time for their entrance on stage. However under the new arrangements a singer will not be able to board the plane until full clearance has been arranged. The problem here is the quick turnaround that The Royal Opera needs on these occasions - usually hours, certainly less than 24 hours in most cases, and often at weekends. We have to get the singer straight to the airport but the new system will require a visa national to apply for a biometric visa before they leave the country they are in and this could take days and may require them to travel to a city some considerable distance from where they are at the time. 308

258. The Royal Opera House noted that “the alternative would be to cancel performances with all the loss of revenue (up to £225,000 in refunded tickets for a single performance)
and damage to our reputation which would go along with that”. The Association of British Orchestras (ABO) and the Barbican in written evidence expressed very similar concerns regarding the need to obtain visas for replacement of lead performers at short notice.

259. The Minister for Borders and Immigration, Phil Woolas MP, felt that the number of cases in which this would be a problem “would be, in my view, extremely limited”. He considered that “the concerns of the arts sector are exaggerated” and argued that, in the event of a major international tournament or performance being jeopardised, “the Minister would be able to exercise discretion”.

260. 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.

Agriculture and horticulture

261. We took oral evidence from Paul Temple of the National Farmers’ Union and James Davies of HOPS Labour Solutions. In addition we received written evidence from the National Farmers’ Union and HOPS Labour Solutions. We took evidence from representatives of the agriculture and horticulture industries about their ability to recruit seasonal low-skilled labour, and on recruiting skilled workers under other tiers.

Low skilled labour

262. At present, Tier 3 (low skilled labour) is suspended indefinitely, since the Government believes it can meet the UK’s low skilled labour needs from within the EEA workforce. Witnesses reported a shortfall in seasonal labour, despite an increase in the quota for SAWS. James Davies of HOPS Labour Solutions told us “we are currently looking at about a 5,000 shortfall. We have had an increase in our SAWS quote for this year of 5,000 but that has only gone part of the way”. He attributed this to the economic downturn, which was driving workers to other EU countries or back to their home country. The National Farmers’ Union noted that the Home Office had reported “declining A2 applications to work in the UK from 10,420 in Q1 2007, to 8,205 in Q1 2008”.

263. Both the National Farmers’ Union and HOPS Labour Solutions argued for the implementation of a circular migration scheme to replace the Seasonal Agricultural

309 Ev 112
310 Ev 146–147
311 Q 450
312 Q 194
313 Q 207
314 Ev 161
Workers’ Scheme, 315 which they argued could fall under either Tier 3, or under Tier 5. HOPS Labour Solutions recommended that:

The continuation of the SAWS or its replacement would best fit in Tier 5 of the Points Based System. This returns SAWS, or a replacement, to its origin of being a circular migration cultural exchange scheme which in turn helped to meet the unmet demand for seasonal labour.316

**Skilled labour**

264. The Youth Mobility Scheme under Tier 5 allows young people to work in the UK for up to 24 months. Individual countries must qualify and register for the scheme by demonstrating that they meet a number of criteria including having acceptable levels of immigration risk, having effective returns agreements with the UK, and providing reciprocal youth mobility arrangements for UK nationals. Migrants require 50 points to qualify under the YMS, including 30 points for a certificate of sponsorship (issued by their national government), 10 points for being between the ages of 18 and 30, and 10 points for demonstrating that they have £1,600 to maintain themselves for the first two months following arrival in the UK.317 As of 19 June 2009, only Australia, Canada, Japan and New Zealand had registered under the scheme.

265. The National Farmers’ Union considered that the Youth Mobility Scheme under Tier 5—which replaces the Working Holidaymaker Scheme—could also facilitate skilled and semi-skilled workers, such as skilled sheep shearers and experienced arable harvest workers, in particular those from Australia, New Zealand and South Africa.318 HOPS Labour Solutions agreed:

Historically our client employers have utilised the Working Holidaymaker Scheme as a source for more senior supervisory/lower management personnel and higher skilled positions such as machinery operation…The removal of the Working Holidaymaker Scheme and the introduction of the Youth Mobility Scheme…will assist to meet the demand for more highly skilled positions.319

However, Paul Temple of the National Farmers’ Union argued that the £1,600 maintenance requirement for Tier 5 was proving a deterrent to international students taking up this route.320 He suggested that a better figure would be £500, “as a figure higher than this would be prohibitive to many young people”.321

266. The National Farmers’ Union reported that it also expected to recruit skilled labour under Tier 2, stating that the skill level and salary thresholds for Tier 2 were “set at a level

315 Ev 161 [NFU]  
316 Ev 229  
317 UK Border Agency, *Tier 5 (Youth Mobility Scheme) of the Points Based System Policy Guidance*, March 2009, pp.12–16  
318 Ev 159  
319 Ev 230  
320 Q 210–211  
321 Ev 232
which allowed small numbers of skilled agricultural and horticultural workers to be recruited”.

267. 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.

268. 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.
12 MPs’ representations

269. As part of our inquiry we considered a related concern: the process by which Members of Parliament can make representations about visa and asylum applications to the UK Border Agency, and the response of the UKBA. We took evidence from the Parliamentary Under-Secretary of State for Identity, Meg Hillier MP, on 3 March 2009. We also conducted a survey of all 646 MPs asking for feedback on their experience of making representations in immigration and asylum cases. In addition, we visited the MPs’ hotline in Croydon.

Backlog and delays in processing applications

270. In 2006 it emerged that the Home Office had a backlog of between 400,000 and 450,000 undecided asylum application cases. The Minister for Identity acknowledged that “there has been an historic backlog which we are well under way to resolving. We are very clear that we will have it resolved certainly by 2011”. The Chief Executive of the UK Border Agency, Lin Homer, updates us at regular intervals with progress on clearing this backlog. Her latest letter, dated 7 July 2009, reported that 197,500 cases had been concluded to date.

271. The existence of this backlog means that many of our constituents routinely receive letters advising them that, in line with the UK Border Agency’s target for clearing the backlog, they can expect their case to be resolved by 2011. The fact that many of them must wait for anything up to two years more for a decision on their case, especially when they may have been waiting years already, is unacceptable, and is often the reason that MPs make representations to the UK Border Agency.

Options for representation

272. MPs wishing to make representation on an immigration or asylum case have three possible avenues. First, they can write to Visa Customer Services, which is part of the Home Office International Group. They can do this by writing directly, or by writing via the MPs’ Liaison Unit based in Croydon, which acts as an interface with Visa Customer Services. Second, they can phone the UK Border Agency-run MPs’ hotline in Croydon, and speak to a dedicated hotline officer. Third, they can contact the Home Office Minister’s office directly—replies to letters received by the Minister’s office are drafted by Visa Customer Services.

273. For routine enquiries the UK Border Agency advises MPs to contact Visa Customer Services, which aims to respond to 95 per cent of all correspondence within 20 working days. The Minister for Identity, Meg Hillier MP, encouraged Members to use this avenue for routine enquiries. For urgent enquiries, primarily those regarding compassionate
leave, MPs are advised to use the MPs’ Hotline. The Hotline receives around 22,500 enquiries per year. It also provides an email service. It aims to reply to 95 per cent of all correspondence within 10 working days and 100 per cent within 20 working days. MPs can also appeal in urgent cases directly to the relevant Home Office Minister. Meg Hillier MP told us that, where there is a “sticking point”, Members should contact Ministers.

The Home Secretary has a wide discretion when it comes to immigration and asylum matters, and in some aspects of nationality applications. The immigration rules provide that the Secretary of State may grant leave to enter or remain but, equally, leave to enter or remain may still be refused if any of the general grounds for refusal contained within Part 9 of the Immigration Rules apply. In most instances, the discretion is exercised within the Immigration Rules—generally by waiving some part of the relevant rule or rules so that leave to remain may be granted.

It is therefore open to MPs to raise cases with Ministers if they wish them to review the initial decision and/or step outside the rules to make a decision in a constituent’s favour. However, it is rare for a decision to depart entirely from the rules set out in the Immigration Rules and published policy documents—the most exceptional compassionate circumstances would usually have to be shown. Moreover, Ministers would not normally intervene if an appeal was outstanding, and would be unlikely to reverse a decision which had been through the appeals process unless new and compelling information had become available.

Survey of MPs

114 out of 646 MPs completed our questionnaire, and a further five submitted comments only. A summary of the results is annexed to this Report. Overwhelmingly, MPs felt that the level of information they received from UK Visas—via Visa Customer Services—was poor. Of 112 respondents, 63 per cent rated the way their representations were dealt with as 5 or lower on a scale of 1-10 where 1 is poor and 10 excellent. Specific and repeated criticism centred on the length of time taken to receive a response to representations, poor initial decision-making by UK Border Agency staff, the use of standardised paragraphs in responses, and the difficulty in getting hold of UK Border Agency officials to discuss cases.

Speed of response

Glyn Williams of the UK Border Agency admitted that it was “fair to say in terms of handing MPs’ correspondence that the performance of International Group has dipped in the last 12 months. That sort of coincided with the move from UK Visas into International Group.” He thought the Agency had been “slightly caught off guard” and it was not...
hitting the 20-day target for 95 per cent of replies—in fact, it was averaging 60 per cent in 20 days and 77 per cent in 30 days. He did “not see why we cannot do much better than that”.332

278. The Minister for Identity, Meg Hillier MP, told us that Visa Services receives 48,000 letters a year on visa cases, of which around two-thirds are from MPs.333 Between them, she and the Minister of State for Borders and Immigration dealt personally with 12,000 letters a year.334 She thought that she alone probably signed 30 to 40 letters a day. The Minister was insistent that she personally read the accompanying documentation and case put forward by an MP when she received a letter.335

279. The Minister noted that, amongst other measures, the UK Border Agency was implementing an online tracking process so that MPs could find out where their letters were in the system.336 Glyn Williams noted that “we have established two visa sections in King Charles Street [London]: one to handle work from Algiers; and the other, which started a month ago, to handle some settlement work from Pakistan. We are trialling the concept of whether we can effectively decide cases in the UK as opposed to in locations”.337

Quality of response

280. Many MPs responding to our survey complained that Refusal Notices were answered with standard word processed paragraphs and that frequently specific individual or meritorious circumstances were overlooked or disregarded. In fact, we have regularly expressed concern about the lack of clarity in visa Refusal Notices. In our recent Report, Monitoring of the UK Border Agency, published on 12 January 2009, we concluded:

Based on our experiences as constituency MPs, and from recent visits, including to visas offices in India and Bangladesh, we have ourselves expressed concern about the length and unintelligibility of visa refusal notices. We were pleased to learn that the Independent Monitor has made similar criticisms about the indiscriminate use of standardised paragraphs, and of unintelligible or obscure legal jargon.338

Meg Hillier MP told us that “we do use standard wording and there is a good reason for that—there are 220 drafters in the immigration team and about 16 in Glyn Williams’ team”.339

332 Qq 12–13 (03/03/09)
333 Qq 19–20 (03/03/09)
334 Q 20 (03/03/09)
335 Qq 26–31 (03/03/09)
336 Q 2 (03/03/09)
337 Q 10 (03/03/09)
338 Home Affairs Committee, First Report of Session 2008–09, Monitoring of the UK Border Agency, HC 77, para 11
339 Q32 (03/03/09)
Decisions by Ministers

281. The Minister for Identity, Meg Hillier MP, noted that not all MPs used direct appeal to a Minister as an emergency last resort, as it was intended:

I am often approached by MPs who are approached by the constituents with an issue around a visa where actually there has never even been an appeal on the original application...we have to get a balance between taking MPs’ representations as seriously as they deserve, without allowing everybody to circumvent the appeals system.\(^{340}\)

She considered that there were “very few cases where there is a reason for ministerial discretion and that would be those difficult cases that were outside the rules”\(^{341}\) and observed: “I would not think it appropriate for Ministers to become an alternative appeal approach”.\(^{342}\) She later wrote to us that Ministerial interventions resulting in overturn of a decision had happened on only two occasions recently, both in January 2009.\(^{343}\)

282. We were concerned that, where MPs appealed directly to Ministers, the information they provided was not always passed on to officials elsewhere in the system. One example was of a case of a disabled single mother and three daughters, who were taken to an immigration detention centre even whilst the case was under consideration by Home Office ministers following representations from an MP.\(^{344}\)

Potential increase in representations under the Points Based System

283. Given that the right of appeal will be replaced by a paper-based administrative review under the Points Based System, we asked the Minister for Identity, Meg Hillier MP, whether she expected to see an increase in MPs’ representations as a result of the removal of appeal. She simply considered that “it would be interesting to see how many people do try and then go to their MP”.\(^{345}\) We consider that response a little complacent.

284. We were also concerned that the Minister’s absence on maternity leave would render the Home Office temporarily short-staffed in responding to MPs, particularly in the context of a likely increase in representations under the Points Based System. Accordingly we wrote to the then Home Secretary, Jacqui Smith MP, to enquire about cover arrangements. The then Home Secretary informed us that Shahid Malik MP would pick up Meg Hillier’s immigration correspondence caseload, although Alan Campbell MP would take on the role of correspondence champion. However shortly after this Mr Malik stood down from his post with no person appointed to cover his temporary absence.

285. We note the introduction of an online case tracking system and dedicated account managers to respond to MPs’ representations in immigration and asylum cases.

\(^{340}\) Q 12 (03/03/09)
\(^{341}\) Q 39 (03/03/09)
\(^{342}\) Q 12 (03/03/09)
\(^{343}\) Ev 252
\(^{344}\) Q 38 (03/03/09)
\(^{345}\) Q 25 (03/03/09)
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.

286. 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.

287. 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.

288. 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.

289. 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.

290. 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.
Conclusions and recommendations

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)

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)

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)

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)

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)

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)
Points criteria: fair, transparent, flexible?

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)

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)

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)

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)
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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)
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)

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)

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)

**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)

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)

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)

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)

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)

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)
Annex A: India and Bangladesh visit notes

A delegation from the Home Affairs Committee visited New Delhi (India), Dhaka and Sylhet (Bangladesh) between 2-9 October 2008, in relation to the Committee’s inquiry into the UK Government’s points-based immigration system.

Friday 3 October (New Delhi)

Visit to VFS Global Visa Application Centre, New Delhi

UK Border Agency Visa Services, the British High Commission and Deputy High Commissions work in partnership with a commercial organisation, VFS Global Ltd, to deliver visa services in India. VFS Global manages Visa Application Centres, where applicants submit their applications and biometric fingerprints, and pay application fees. VFS Global staff cannot give advice on how to complete applications or the type of visa for which an applicant should apply. UK Border Agency entry clearance staff consider applications and decide whether to issue or refuse visas, in accordance with the Immigration Rules and Home Office Immigration Policy.

Members of the Committee spoke to staff and applicants about the application process, timings and reasons for visa applications. They saw the biometric suites and applications being processed.

The busiest period for visa applications is in April and May, since there are many family visits to the UK over the summer.

VFS Global gives each application a unique bar code which allows the applicant to track the status of their application online.

VFS Global takes biometric data from applicants. Due to restrictions imposed by Indian data law, these biometrics are transferred onto a memory pen and taken to the UK for checking. The need to use memory pens slightly delays the verification process and means that biometric data have to be captured afresh for each new type of visa application.

Since applicants under the PBS now complete an online self-assessment, the processes and paperwork have remained much the same for VFS Global staff. There has been little change in numbers of visa applicants since the PBS started.

Call on Shri Vyalar Ravi, Minister for Overseas Indian Affairs

A new generation of Indian professionals, especially doctors and nurses, are emigrating to the UK and the US.

Members noted that the positive messages about migration to the UK which are given out by successful migrants exert a powerful influence on others to migrate, but that the
stories of failure remain hidden. How was the Indian Government promoting the ‘failure’ stories? The Minister reported that a film was being shown highlighting the dangers and failures of illegal migration.

Members asked how the UK could help prevent illegal migration. The Minister said that, for nurses and doctors, travel should be made easier and a period of appointment finite and clear. He considered that the demography of India was considerably younger than that of Europe, and Europe could benefit from young Indian labour, if only on short-term contracts.

Tour of Visa Operation, British High Commission
UKBA Entry Clearance Officers and Entry Clearance Managers based in the British High Commission receive visa applications from VFS Global and make decisions on entry clearance based on the application and paperwork. Under the PBS, an applicant is no longer able to appeal a visa refusal, but can ask for an Administrative Review. A Review is carried out by an independent Entry Clearance Manager (one who was not involved in the initial assessment and decision) and is done on administrative grounds – ie. the refusal can only be overturned if there was an administrative error in the initial decision.

The majority of visa applications are refused on the grounds of incomplete documentation. However, there is no automatic refusal on these grounds. This is because applicants are sometimes able to provide acceptable alternative paperwork.

India is a major source of visa applications to the UK and accordingly the PBS (Tier 1) was piloted in India. Since 1 April 2008 India has processed new applications under the PBS and transitional arrangements between the Highly Skilled Migrant Programme and Tier 1 of the PBS (Highly Skilled Migrants). The British High Commission in Delhi was involved in drawing up guidance for the implementation of PBS and reporting on lessons learnt through the pilot. Tier 1 of the PBS went ‘live’ worldwide on 30 June 2008. The quality of migrants and of application under Tier 1 in India has been very high.

The PBS has been running smoothly so far – this could be in part because forgers have not yet caught up with the new documents and processes. However, UKBA staff have seen some glitches in the design and implementation of the system. These include:

- Paperwork relating to salary in countries such as India and China. It is not standard practice in some countries, including India, routinely to pay salaries directly into employees’ bank accounts. This means that some applicants do not have the bank slips needed for a visa application. UKBA has in these cases accepted alternative paperwork, such as self-declared income tax returns, but notes that these are not as secure.

- The maintenance requirement (which is £2,800 per person under Tier 1) may be too high. 65 per cent of refusals under Tier 1 have been based on not meeting the maintenance requirement. There have typically been two reasons for this –
insufficient savings by the applicant, and/or poor documentation. Professional
salaries in India tend not to be as high as their UK equivalents, making it hard
for even highly skilled migrants to meet this criterion.

Right of appeal has been replaced by an administrative review by an ‘independent’ entry
clearance manager. UKBA defines ‘independent’ as an ECM who was not connected to
the initial decision. This could include an ECM based at the same Post as the individual
making the initial decision. Around 15 per cent of refusals are overturned at
administrative review.

It is not possible to provide additional documents at the review stage: the review is
carried out only with the paperwork submitted at the initial application. The review is
carried out purely on point of fact, giving the reviewer little to no discretion on the
outcome. Guidance on the PBS sets out the process of administrative review.

Tier 2 General replaces previous work permit schemes. Tier 2 will include multiple entry
work permits. Tier 2 also contains special provisions for categories including
Sportspeople, Entertainers and Intra-Company Transfers.

Call on Shri Shivraj Patil, Minister for Home Affairs
Members discussed the reporting of the points-based system by the Indian media.

Saturday 4 October (New Delhi)

Meeting with Thomas Simon, Vice President of Tata Consultancy Services (TCS)
TCS in the UK

TCS is a rapidly growing business group based in India with significant international
operations. Revenues in 2007–08 are estimated at $62.5 billion of which 61 per cent was
from businesses outside India. The Group employs around 350,000 people worldwide.

The business operations of TCS currently encompass seven business sectors:
communications and information technology, engineering, materials, services, energy,
consumer products and chemicals. The Group’s 27 publicly-listed enterprises have a
combined market capitalisation of some $60 billion, among the highest among Indian
business houses, and a shareholder base of 3.2 million. The major companies in the Group
include Tata Steel, Tata Motors, Tata Consultancy Services (TCS), Tata Power, Tata
Chemicals, Tata Tea, Indian Hotels and Tata Communications.

Tata Consultancy Services (TCS) has been operating in the UK for over 30 years, currently
with 4,800 employees working at over 65 locations. 24 of the FTSE 100 are customers of
TCS UK. TCS UK revenues as at March 3 2008 stood at over $1 billion.

Understanding the PBS

In preparation for implementation of Tier 2, Tata has held discussions between its human
resources department and its business heads. It has run an internal communications
campaign within the organisation, including questions and answers (Q&A) on various aspects of the new system. UKBA wrote to Tata (and other companies) and sent out useful informational material, including in a Q&A format. UKBA also told us that it holds regular outreach events in India, routinely writes to major business partners and has comprehensive guidance on its website.

**UK vs other national systems**

Each year over 3,000 UK work permits are issued to Tata employees. Tata Consultancy Services (TCS) is one of around 100 companies in the special “Business Express” visa service.

The UK is Tata’s second largest destination country for employee transfers, after the US. Annually 3,000 UK work permits are issued for Tata employees. 7,000 US work permits are issued annually for Tata employees. Mr Simon explained that the UK visa system compares favourably to those of other European countries. For example, the Italian and Dutch systems are harder to navigate, requiring more paperwork and taking longer to verify documentation.

From Tata’s point of view the UK online application system is clear and works well. The US has a similarly clear online system. However, Mr Simon said that the US imposes an annual quota for work permits, which is instantly filled as soon as it is opened for applications. He considered this quota system to discourage good business, since it prevents companies from expanding or recruiting the skilled labour they require.

**Skills shortages in the UK market**

Of around 5,000 Tata employees in the UK, around 900 are British nationals. Mr Simon said that Tata advertises vacancies in the local (in this case UK) labour market first. Where the skilled labour required by Tata can be recruited within the UK, the company will employ locally. However, in other cases the skills required by customers and the business cannot be found within the UK workforce and it is necessary to recruit quickly from overseas. Tata pays local market salaries to all its employees.

Members asked which specific skills shortages Tata encounters in the UK. Mr Simon explained that Tata requires certain key specialists in project teams – such as experts in actuary insurance or Bluetooth technology. He said that these skills could not always be found within the UK engineering and ICT labour force.

Tata has bilateral initiatives with several British universities to develop skills currently lacking in British engineering and ICT graduates, but there is no wider framework for engaging British higher education on skills development.

Mr Simon noted that the technical ability of Indian engineering graduates is ‘supreme’. However, their English language skills are not always at the highest level. He therefore welcomed the three year suspension of the English language requirement for intra-company transfers under the PBS.
Round table meeting with industry stakeholders
Attendees included: National Association of Services and Software Companies - NASSCOM; Tata Consultancy Services; HCL Technologies; Federation of Indian Chambers of Commerce and Industry (FICCI); Perot Systems; Genpact; Expertus.

NASSCOM is a global trade body with over 1200 members, of which over 250 are global companies from the US, UK, EU, Japan and China. NASSCOM's member companies are in the business of software development, software services, software products, IT-enabled/BPO (business process outsourcing) services and e-commerce.

NASSCOM acts as an adviser, consultant and co-ordinating body for the IT-BPO industry in India. NASSCOM has been a proponent of free trade, arguing for zero tariff protection, strong intellectual property and data protection laws, deregulation of the telecoms market and the creation of software technology parks and private sector participation in the education system.

NASSCOM in the UK

The UK is a significant partner for NASSCOM, accounting for 18 per cent of all its global operations. This figure is growing 30 per cent per annum. It is the second largest global partner after the US. Based on a study carried out in 2007, NASSCOM found that the average stay of employees of its member companies in the UK was 18 months – the pattern of migration is therefore short-term working rather than longer-term settlement.

On the whole NASSCOM members were positive about the design and operation of the PBS. However there were some specific concerns.

Home Office capacity to process sponsor registrations

All companies must register as sponsors under Tier 2 by 30 November 2008, including the 16,000 Indian companies currently using intra-company transfers. NASSCOM has concerns about whether the Home Office has the capacity to process this number of applications before the 30 November deadline. NASSCOM members are in discussion with the Home Office on this point. It was felt that extending the deadline would not help, but more publicity leading up to the deadline would.

Requirement that staff are employed by the company for 6 months prior to transfer

The intra-company transfer scheme requires an employee to have been working for the company for at least 6 months prior to application for a UK work permit. NASSCOM members felt that this was not always practical, especially where skilled workers were employed for specific projects required by UK customers. NASSCOM is lobbying the Home Office for a waiver to this 6 month rule.
**UK system vs other countries**

The USA. NASSCOM noted that the US quota system issues 65,000 work permit visas annually. The quota opens on 1 April, and by around 6 April about 150,000 applications have been submitted. A lottery system is then used to allocate the available permits. Mr Mittal and colleagues considered this system to be inflexible for global companies, but particularly for US companies which were unable to recruit the necessary skills and labour. Companies had to anticipate 18 months in advance what their business needs would be.

European countries. Schengen countries’ visa requirements could be hard to meet, since they require specific documentation, such as birth certificates, which can be hard to obtain. There is no guarantee of the timescale within which a visa will be issued, which can make it hard to meet the needs of business clients. By contrast the UK system was “user-friendly”, taking 4-6 weeks to process a work permit, within a well-defined process.

Overall, the value of bilateral UK-India trade is £9 billion annually. Emphasising that it was a very approximate estimation, UKBA officials considered the Indian IT sector in the UK to be worth £3-4 billion annually. Last year Tata Consulting Services alone made $1 billion in the UK. 18 per cent of the business of NASSCOM members is in the UK, representing £7.2 billion annually.

Last year 29,000 UK work permits were issued in India, predominantly for the IT sector. Members asked the industry stakeholders what, hypothetically, the impact would be of a reduction in the number of annual UK work permits issued to Indian business, from 29,000 to 5,000. Mr Mittal said that Indian business in the UK would be seriously reduced. Most probably Indian business would seek to move instead into East European countries, or to carry out work remotely from India. With this latter option the quality of work would certainly be affected. He considered that there would be a particularly significant impact on medium-sized companies, which couldn’t afford to set up offshore centres.

**Switching between permit routes**

Genpact noted that some staff, having arrived in the UK on work permits, wished to apply to switch to the Tier 1 Highly Skilled Migrant Programme. Currently migrants are able to apply to join Tier 1 HSMP shortly after arrival in the UK, without their employer being aware of the application. Genpact noted that it is lobbying for changes to the rules on switching between tiers, to include a longer initial period during which employees are not allowed to switch tiers, and that employers be informed when an employee makes an application to switch tiers.

NASSCOM was concerned about the increased compliance responsibility for employers. In particular, that sponsors are now required to inform the Home Office of any changes
in their employees’ conditions. This was of concern in cases where the employee had applied to switch to the Tier 1 HSMP without the knowledge of their employer. NASSCOM questioned how the employer could then be held responsible when they did not know about the possible change in circumstance.

UKBA officials noted, however, that the onus was only on companies to report to the Home Office if the employee left the UK. They also raised concerns about data protection if UKBA was asked to inform companies about the applications of their employees to switch tiers.

**Tuesday 7 October (Sylhet)**

Visit to VFS Global Visa Application Centre, Sylhet

*The UK Border Agency and the British High Commission Bangladesh work in partnership with a commercial organisation, UK Visa Application Centre, which is run by VFS Global. VFS Global hosts a website and an email and telephone enquiry service which provide information supplied and approved by the UK Border Agency.*

VFS Global manages Centres in Dhaka, Sylhet and Chittagong, where applications and biometric fingerscans are submitted, and application fees are paid. VFS Global staff cannot give advice on how to complete applications, or the type of visa for which an applicant should apply. UK Border Agency entry clearance staff in Dhaka process and decide the outcome of visa applications.

Members met and spoke to applicants and staff about the process of, and reasons for, applications.

Tour of British High Commission Sylhet Office

Currently visa applications are made in Sylhet, but the paperwork is sent to Dhaka for a decision by Entry Clearance Officers. Visa and passport issuing takes place in Dhaka.

Members suggested that the Sylhet office ought to be authorised to issue passports. BHC staff agreed that this could be possible, since staff already come from Dhaka once a week to conduct interviews.

Members raised concerns about the high instance of forced marriage of UK citizens in Bangladesh. The BHC receives around 20-30 calls in person each month, as well as lots of emergency telephone calls in relation to forced marriage. Members suggested that an entry clearance officer ought to be based in Sylhet to conduct interviews in suspected cases of forced marriage. The High Commission is preparing to run an information campaign on forced marriage in Bangladesh, to be displayed in such places as beauty parlours—popular with brides-to-be.

Roundtable conference with stakeholders of Sylhet

*Members of the Committee held an open community roundtable discussion in Sylhet with key local stakeholders from the education, university, training, catering and cultural*
relations communities. The Committee welcomed views and discussion from participants on the new points-based system and implications for Bangladesh. After introductory remarks by Committee members, the local participants stated their views.

A participating academic noted that over 90 per cent of the British Bangladeshi diaspora comes from the Sylhet region. He queried whether the PBS would increase processing times for visa applications, especially as the system is being implemented in stages.

He also expressed concern over removal of the right of appeal, and requested assurances about how appeals would be dealt with under the new system.

A participant working in the health sector felt that illegal immigration could be dealt with by liberalising and simplifying immigration processes rather than tightening rules.

- A Committee member responded that the alternative argument to ‘liberalising’ the immigration process or declaring an amnesty on illegal working, was that those employing illegal workers were knowingly engaging in criminal activity and should be held to account.

A participant noted that Bangladesh could meet current UK skills shortages in several areas, including: nursing; health technicians; paramedics; teachers (especially for the British Bangladeshi diaspora) and catering. He thought that points should be more directly linked to the skills required for specific jobs, and that a way of measuring the skills in specific jobs should be developed.

He thought that media-based simple messages and/or round table advice centres with immigration staff would help to clarify the changes under the new system.

A participant thought that the English language requirement for kitchen workers should be relaxed, since English was not the language of the kitchen and therefore not necessary for them to carry out their job. He argued that the requirement for skilled workers under Tier 2 to have an official qualification at NVQ 3 level should be relaxed for experienced workers, not all of whom (particularly in Bangladesh) would have official qualifications. He also recommended that the NVQ3 requirement be explained to workers and sponsors through informational workshops.

- Another Committee member noted that, in order to implement a fair points-based system, it was necessary to quantify skills. She asked how the UK could come up with better skills-based criteria for kitchen staff and chefs. Was the English language requirement the only problem, or did we need to be better able to measure skills in the kitchen?

The participant responded that often chefs do not have ‘academic’ qualifications or certificates of training, but rather had on-the-job experience. The system needed to recognise this experience, not only formal qualifications.
A participant (a Bangladeshi teacher who had previously taught in the UK) expressed concern about the appeal system being replaced with administrative review. An administrative review, carried out in the same organisation, and possibly the same department, as the initial decision would compromise the impartiality of the review. She suggested that there might be an interim arrangement, whereby the previous appeals system could run for a time alongside the new PBS.

She also noted that Bangladesh does not have a system for training and accrediting chefs. She recommended that the UKBA should decide upon and publish a list of acceptable NVQ3 ‘equivalent’ qualifications.

- UKBA officials noted that a list of accredited qualifications would be made available online for applicants to check.

The participant also questioned the English language requirement for skilled workers, noting that the basic education of many chefs from Bangladesh was only at primary school level. She could not therefore see how chefs could be expected to possess the necessary language skills.

- A Committee member noted the suggestion that English was not always necessary for workers in Bangladeshi kitchens, but suggested that knowledge of English was necessary for living in and integrating into British society. He asked whether should be no English requirement at all, or whether it could be temporarily suspended for entry into the UK and then taught to workers once in the country.

The participant considered that there could be a lower level of English required for entry.

- Another Committee member asked how changes to the immigration process under the PBS could be communicated better.

The participant thought that informational seminars would be useful.

A participant who worked with Bangladeshi students wishing to travel to the UK asked whether students who had been refused a visa under Tier 4 would be barred from re-applying several years later. He noted that his agency had seen cases in which a student visa had been refused, and the student subsequently changed their name and passport in order to reapply, since they were terrified their name would come up on some kind of refusal list.

- UKBA officials noted that, since the introduction of biometric identifiers, the ability for an applicant to change their identity in this way was largely a thing of the past. They explained that a visa refusal letter set out the reasons for refusal,
and that if these reasons were addressed an applicant could reapply. There is no time limit before which applicants cannot reapply, nor is there a limit on the number of applications.

A participant (from the Immigration Advisory Service) noted that an administrative review could only be carried out on the basis of a 'factual error'. He was concerned that no good guidance has yet been published on what a 'factual error' is. He was further concerned about the replacement of an independent appeal judge with administrative review by UKBA staff. He felt that this would constitute a conflict of interest, since the reviewer would be a colleague of the individual who made the initial decision.

- Another member thought that the Government view was that the PBS was based on such specific criteria as to make a solely administrative review possible.

- UKBA officials noted that this understanding of the Government’s position on administrative review was correct. The Government envisaged the number of administrative reviews to be small, since a review would only be based on an error of fact. They explained that the review would be carried out by UKBA staff (in the guise of an entry clearance manager), but that the reviews would be entirely unconnected with the initial application decision.

A participant explained that the curry industry saw the PBS as impacting unfairly on their industry.

- Another member suggested that there was a feeling that the PBS may inadvertently discriminate against those individuals who do not have formal accredited qualifications, and that this might impact disproportionately on certain countries or areas.

**Summary**

Committee members summed up the discussion. They noted that it was an unusual and very useful step for a Committee to gather views directly from stakeholders at such a meeting.

In particular they noted that specific concerns had been raised on the issues of: information and clarity (or lack of it) about the operation of the new system; administrative review; official qualifications and training; the English language requirement; and the clarity and wording of refusal notices.

**Wednesday 8 October (Dhaka)**

**Tour of Visa Section, British High Commission Dhaka**

Members spoke to UKBA staff about how visa decisions were taken, and put in a plea for better use of plain English in visa refusal notices.
Call on Bangladeshi Government Foreign Adviser
The Foreign Adviser noted that the UK is a key partner for Bangladesh on many issues, including climate change and immigration.

Members noted that it is important that UK immigration policy be clear and transparent, including about when and why visa applications are refused. They emphasised the importance of giving Bangladeshi catering workers in the UK fair pay and conditions.

Members also discussed with the Foreign Adviser the idea of an immigration quota, negative reporting of the PBS by the Bangladeshi media, and the proposal for a catering training college in Sylhet.

Call on Bangladeshi Caretaker Government Chief Adviser
The Select Committee called on the Chief Adviser, Fakhruddin Ahmed, on 8 October.

Mr Ahmed said that his government attached priority to raising the skills levels of those seeking employment abroad, including in the United Kingdom. He hoped to see the establishment in Sylhet of a catering trades training institute. Members of the Committee indicated their support for this proposal.

Mr Ahmed added that the Caretaker Government had had some success in carrying out institutional reforms. The Election Commission had been reconstituted and was now completely independent. The Anti-Corruption Commission had been overhauled, a National Human Rights Commission established and a Right to Information Ordinance passed.

Call on Bangladeshi Government Home Adviser

Extremism

There is some home-grown fundamentalism in Bangladesh. The Government has allowed the police and border security forces to operate freely without interference from Government or other authorities. It considers this to have helped in tackling extremism. The Government has also made changes to the legal infrastructure, including the introduction of a Money Laundering Act and a Terrorism Act.

Points-Based System

The Home Adviser noted that remittances from the UK are very important to the Bangladeshi economy. He also noted that the majority of Bangladeshi labour in the UK is unskilled and therefore likely to be affected by the suspension of low-skilled labour under Tier 3 of the PBS.
Members noted that the Committee had been told about a scheme in Sylhet to train and accredit Bangladeshi chefs wanting to work in the UK catering industry, and urged the Home Advisor to pursue and support this initiative as far as possible.

Forced Marriage

Members noted that there are many cases of the forced marriage of UK nationals in Bangladesh, especially in the Sylhet region. They reported that the delegation had heard of a lack of action by some Bangladeshi authorities, who seem to view forced marriage as a private ‘family matter’.

The British High Commissioner noted that there is generally good co-operation from the Bangladeshi police, but that problems can arise over prosecuting families.

The Home Adviser noted that forced marriage is illegal under Bangladeshi law and promised to “take immediate action” on the issue.
Annex B: Summary of MP survey responses

To inform an oral evidence session on this subject with the Minister for Identity on 3 March 2009, the Committee surveyed all 646 MPs about their levels of satisfaction with the way their representations to the Home Office in immigration cases were dealt with. The survey consisted of 7 questions, 5 of which requested a rating on a numerical scale and 2 of which requested a yes/no answer. In addition, MPs were asked to make any further comments in writing.

114 MPs returned the completed questionnaire and comments, and a further 5 submitted comments only. A summary of the key responses and comments is outlined below.

Question 1: How effectively do you feel MPs’ representations on immigration cases are dealt with by the Home Office? On a scale of 1-10, 1 being poor and 10 being excellent.

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- 63% (70 out of 112 respondents) rated the effectiveness of the Home Office in dealing with MPs’ representations on immigration cases as 5 or lower on a scale of 1-10, where 1 is poor and 10 excellent.
- 10% (11 respondents) gave a score of 1 (poor). No respondents gave a score of 10 (excellent).
- The most frequent rating was 5 at 21% (24 out of 112 respondents), followed by 6 at 13% (15 out of 112 respondents).

MPs comments included:

(Numbers in brackets are the ID number assigned to each individual survey response). Restructuring of the Case Resolution Directorate and reallocation of cases to one caseowner has led to massive improvements in the quality of replies to representations on CRD cases. It would be helpful to do something similar for the Liverpool Charged Casework section of UKBA. For example, we would really value the opportunity to meet with one of their team leaders to understand the way they work and be able to have a contact number or email (8).

The UKBA now responds fairly promptly to enquiries, generally within four weeks. However, it is extremely frustrating to receive a standard letter from the UKBA which does not address the points raised in my letter. This frequently occurs with asylum cases under the Case Resolution Directorate when they receive the standard letter saying that the case will be considered before 2011 (17).
I did try to fill this in but simply couldn’t represent the range of cases and outcomes. Some are good and some simply appalling (25).

I feel that Home Office and UKBA officials go through the motions in answering MPs’ representations. Letters are answered with standard word processed paragraphs and frequently specific meritorious issues are overlooked or disregarded….the 2011 deadline is trotted out without any proper consideration of the points made (28).

The MPs hotline is excellent. Telephone agents are unfailingly helpful and well-informed and the management appears to be very effective. It deals with enquiries very promptly and thoroughly. Response times to letters are much better than they used to be. Information is very rarely inaccurate (33).

The MPs’ hotline tends to vary considerably in terms of usefulness. Several of the operators are of little help and do not seem well informed. Home Office correspondence can be basic and generalised and sometimes it takes repeat enquiries to elicit a satisfactory response (35).

Speedier responses would be helpful! (52).

I believe it is essential that more staff are employed by UKBA to help clear the backlog. It is totally unacceptable that someone can wait for many years for their case to be determined (54).

Home Office replies are now reasonably prompt, but still often disappointing and can still take several months sometimes (62).

The speed of responses is much better than it has been in the past (82).

Very often letters do not address specific questions I have asked. Other times they appear to be ‘standard’ replies which are not helpful. Letters often refer to the UKBA website for information when I have specifically asked for advice: this is of no use as the website is not user-friendly (118).

My main complaint is the time it takes for the UKBA to respond, beyond the initial acknowledgement. We often have to wait months for a full reply, without even an interim letter explaining the delay (116).

The most disappointing aspect of the way cases are dealt with is still, as it has been for a long time, how slow the decision making process can be (115).

I am satisfied at the excellent service from immigration officials (119).
Question 2: How well do you think UKvisas operates as the interface between MPs and constituents? *On a scale of 1-10, 1 being poor and 10 being excellent.*

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- **62%** (70 out of 113 respondents) rated the performance of UKvisas as the interface between MPs and constituents as 5 or lower on a scale of 1-10, where 1 is poor and 10 excellent.
- **12.3%** (14 respondents) gave a score of 1 (poor). **4%** (4 respondents) gave a score of 10 (excellent).
- The most frequent rating was 3 at 16% (18 out of 113 respondents), followed by 5 at 14% (16 out of 113 respondents).

MPs comments included:
*(Numbers in brackets are the ID number assigned to each individual survey response).*

Depends on the individual – some are good (2).

The responses and general service provided by UKvisas has deteriorated significantly since the visa section has become part of the UK Border Agency. We used to receive considered replied to representations that addressed all the issues raised. We now receive template letters which either explain that the information we have requested cannot be provided because the constituent is the sponsor and therefore third party…or which explain that a visa has been refused and that the decision lies with the AIT.(8).

I understand that Visa Services are now restricted in the information that they can provide owing to the Data Protection Act. This frequently means that they are unable to provide the information requested by constituents. My office have been impressed with the work of Clive Garnham at the MPs’ hotline who responds promptly and as thoroughly as possible (17).

I don’t consider that UKvisas operates in this fashion (24).

UKvisas are difficult to contact. You can end up ringing 5 or 6 different numbers chasing one case. They are slow to respond and can be quite rude if their delay is challenged (28).

We always ring the MP Hotline for general immigration enquiries and visa progress/delays and the staff are always helpful (31).

Has markedly deteriorated since summer 2008 (32).
UKvisas is not an interface between MPs and constituents. Desk officers and assistant desk officers often do not answer their phones and do not always return calls or respond to messages. Staff seem unwilling to liaise with other agencies about cases (33).

It is not clear where the division is between UKvisas and the UKBA – even having been to a seminar to help caseworkers deal with immigration problems I am still at a loss to understand it (54).

Always slow – sometimes several weeks to answer an email (62).

Previously good when could speak to desk officers, but now very poor (70).

Desk Officers at UKvisas are almost impossible to reach by telephone. The MPs’ hotline at UKvisas is helpful but not as knowledgeable as the Desk Officers. I would say that the general attitude of UKvisas is one of obstruction rather than cooperation although there are exceptions (118).

Question 3: How satisfied are you or your constituents with information given by UKvisas? On a scale of 1-10, 1 being poor and 10 being excellent.

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- 59% (70 out of 119 respondents) rated their satisfaction with information given by UKvisas at 5 or less on a scale of 1-10, where 1 is poor and 10 excellent. 41% rated 6 or higher.
- 16% (19 out of 119 respondents) gave a score of 1.
- 5% (6 out of 119 respondents) gave a score of 10.
- The most frequent rating was 1 at 16% (19 out of 119 respondents), followed by 3 at 14% (17 out of 119 respondents).

MPs comments included:
(Numbers in brackets are the ID number assigned to each individual survey response). The UK Border Agency remains generally unable to deal with urgent representations, even when decisions are very straightforward. Every letter we receive from the Border Agency states that it retains the capability to consider a case out of turn if circumstances are truly exceptional...However, it is very rare that the Home Office can make a decision within two weeks or even two months of being asked to expedite a case...a system must be put in place which will allow any part of the Border Agency to deal with cases urgently. A decision on every case should be possible within two weeks of the request and many such decisions could or should be taken, and communicated, within a week (8).
My staff tell me that representations to UKvisas have to be chased by many calls (often five or six telephone numbers having to be rung before getting a human being who is in the office and able to deal with the call), that UKvisas frequently mislay papers and cannot say whether representations have been sent to the Post, and there is unacceptable delay before any decision is passed back by or from the Post following any reconsideration (28).

I question the adequacy of reconsideration at Post level by an ECM and believe there may well be a role for an independent reviewer in the UK who can look at cases referred by MPs (28).

Template letters are over-used and not always used appropriately…The most common scenario is that the FCO has overlooked or misunderstood supporting documentation…A template letter explaining appeal rights is not an acceptable response to a letter of mine which identifies a faulty decision or due process not being followed. Letters to MPs should be signed by a named individual…and addressed to the sender of the original letter (33).

Visa Services (formerly UKvisas) have a less structured MPs’ liaison service and often take two months or more to respond to letters…the service from Visa Services needs to be more responsive to MPs’ needs (34).

Correspondence from UKvisas can take a long time to receive a response to and on several occasions we have had to chase. But over the phone, staff are generally helpful and informed (35).

The desk officer service at UKvisas was excellent. The MPs’ hotline officer is not always available and responses are not as rapid as previously from desk officers (51).

Many of the replies to my representations are unsatisfactory when they do arrive. I have encountered people in my constituency who have been awaiting a decision from the Home Office for years (67).

Question 4: When you have made representation to a Home Office Minister, have you been satisfied with the response you have received? Yes/No.

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<th>Number of respondents answering this question</th>
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<td>44</td>
<td>51</td>
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• 46% (44 out of 95 respondents) replied that yes, they were satisfied with the response received to their representations to a Home Office Minister, and 54% (51 out of 95 respondents) replied that no, they weren’t satisfied.
**MPs comments included:**

*(Numbers in brackets are the ID number assigned to each individual survey response).*

I approach officials for a decision within ministerial discretion very rarely and ministers only in the most exceptional circumstances. In spite of promises to the contrary, decision by the Minister in these exceptional cases often takes weeks or months and a huge amount of chasing. This is unacceptable. The Minister needs one or more dedicated members of staff to make sure these cases are dealt with properly, compassionately and speedily - but which also ensures that these decisions are really ministerial decisions and not delegated decisions. (8).

When a constituent is facing removal or a case has been seriously mishandled, I will direct my correspondence to the Minister. This is often passed to another officer within the UKBA and receives a standard response….I would be grateful for assurances that when correspondence is addressed to the Minister, it is considered by the Ministerial office (17).

Only urgent cases like deportation are referred to a Minister (31).

The only (rare) unsatisfactory replies have been those signed by officers (33).

Sometimes [the MP] writes to the Home Secretary in order to try and get something looked at properly – the turn around time is usually months rather than weeks and even then the answer is anodyne and rarely answers the question (54).

No. While understanding the Minister has to work within the law, very rarely satisfied with the response from a Minister because appeals for compassion, even in complex and special cases (e.g. brain damage, HIV) are inevitably turned down (62).

Sometimes – delay is a major problem (68).

I do this fairly regularly, about 2/3 times a month: responses vary in quality. I’ve had too many cases where immigration minister has agreed to expedite consideration but then taken significant amount of time to deliver a decision – this has meant constituents being unable to attend family funerals and immense distress caused. In cases where expediting has been agreed it may be helpful for MPs’ staff to be able to speak directly with caseworkers as circumstances can often develop quickly (98).

Responses from Home Office Ministers are generally negative. I write to a Minister only in exceptional cases and would expect my representations to be viewed in that light (118).

I do not believe that it is appropriate to make representations to Ministers on cases which are routine, but rather that it should be done when there is something exceptional or especially urgent about the case. IN those circumstances it is particularly frustrating to receive a reply which does not address the points I have made (115).
Question 5: Are you aware of the role of John Vine, the Chief Inspector of the UK Border Agency? Yes/No.

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<th>Number of respondents answering this question</th>
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<td>110</td>
<td>17</td>
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- 15% (17 out of 110 respondents) replied that yes, they had heard of the role of John Vine, the Chief Inspector of the UK Border Agency, and 85% (93 out of 110 respondents) replied that no, they had not.

MPs comments included:
(Numbers in brackets are the ID number assigned to each individual survey response).
Yes, but we understand he will not intervene in individual cases or complaints which we think is unhelpful (28).

Question 6: Have you had to contact an Entry Clearance Manager at a post abroad and if so, how effective have you found them? On a scale of 1-10, 1 being poor and 10 being excellent.

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<th>Number of respondents answering this question</th>
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- 69% (37 out of 54 respondents) of those who had contacted an Entry Clearance Manager at a post abroad rated their effectiveness at 5 or lower on a scale of 1-10, where 1 is poor and 10 excellent. 31% (17 out of 54 respondents) rated their effectiveness at 6 or higher.
- The most frequent rating was 3 at 19% (10 out of 54 respondents), followed by 1 at 17% (9 out of 54 respondents).

MPs comments included:
(Numbers in brackets are the ID number assigned to each individual survey response).
Depends on individual (2).
Quite slow to respond (15).
On the rare occasions we have written specifically to the ECO, responses are not usually forthcoming (54).
I have always been told not to do this, to go through UKvisas instead (55).
Only once or twice in 11 years contacted missions abroad but that was very helpful. MPs are specifically instructed not to contact missions abroad, but to use UKvisas email contact instead (62).

Always advised to go through UKvisas and not contact the post (114).

**Question 7: Please indicate your satisfaction with posts abroad.** On a scale of A-E, A being excellent and E poor. New Delhi, Dhaka, Islamabad, Mumbai, Karachi (members were invited to list any other relevant posts).

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<th>Respondents</th>
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Most respondents rated the 5 posts listed on the questionnaire as C – the middle ranking on the scale of A-E, where A is excellent and E poor. This indicates that they were neither very satisfied nor very dissatisfied with these posts.

43% (13 out of 30 respondents) rated New Delhi as C. This was the most frequent rating.

57% (8 out of 14 respondents) rated Dhaka as C. This was the most frequent rating.

40% (6 out of 15 respondents) rated Karachi as C. This was the most frequent rating.

75% (15 out of 20 respondents) rated Mumbai as C or lower, on a scale of A-E, where A is excellent and E poor.

Islamabad attracted the lowest ratings, with 59% (16 out of 27 respondents) rating Islamabad as E (poor).

Single respondents rated a number of other posts as E (poor). These were: Lagos, Accra, Manila, Addis Abbaba, Amman, New York, Abuja, Chennai (the only post with 2 respondents), Chisinau, Astana, Bangkok, Istanbul, Harare, Baghdad, Tripoli and Rabat.

Single respondents rated a number of other posts as A (excellent). These were: Lagos, Astana, Dusseldorf, Tehran, Tashkent, Nairobi and Tel Aviv. Two respondents rated Nairobi as A.

There was some inconsistency in the results, since some posts were rated A (excellent) by one respondent, and E (poor) by another. This is true of: Lagos and Astana.

**MPs comments included:**
(Numbers in brackets are the ID number assigned to each individual survey response).
It does seem to take a long time to get information from overseas posts. Response times to letters are often very long – in excess of 2 months (33).

Whilst often the information given by the Entry Clearance Manager is helpful, there is often a delay in responding promptly to correspondence. This appears to be due to the volume of work being undertaken at post, particularly in Islamabad (85).
Formal Minutes

Wednesday 15 July 2009

Members present:

Mr Keith Vaz, in the Chair

Tom Brake
Ms Karen Buck
Mr James Clappison
David T. C. Davies

Gwyn Prosser
Martin Salter
Mr David Winnick

Draft Report (Managing Migration: The Points Based System), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Paragraph 13 read, amended and agreed to.

Paragraph 14 read and agreed to.

Paragraph 15 read, amended and agreed to.

Paragraph 16 read and agreed to.

Paragraph 17 read, amended and agreed to.

Paragraphs 18 to 49 read and agreed to.

Paragraph 50 read.

Amendment proposed in line 7 to leave out from “market” to end. —(Mr James Clappison.)

Ayes, 2
Mr James Clappison
David T. C. Davies

Noes, 5
Tom Brake
Ms Karen Buck
Gwyn Prosser
Martin Salter
Mr David Winnick

Paragraphs 51 to 66 read and agreed to.

Paragraph 67 read, amended and agreed to.

Paragraphs 68 to 79 read and agreed to.

Paragraph 80 read, amended and agreed to.

Paragraphs 81 to 113 read and agreed to.

Paragraph 114 read, amended and agreed to.
Paragraphs 115 and 116 read and agreed to.

Paragraphs 117 and 118 read, amended and agreed to.

Paragraphs 119 to 149 read and agreed to.

Paragraph 150 read, amended and agreed to.

Paragraphs 151 to paragraph 186 read and agreed to.

Paragraph 187 read.

Amendment proposed, to leave out lines 1 to 8—(Mr James Clappison.)

Question proposed, That the Amendment be made:—Amendment, by leave, withdrawn.

Paragraphs 188 and paragraph 189 read, amended and agreed to.

Paragraphs 190 to paragraph 208 read and agreed to.

Paragraphs 209 to paragraph 222 read and agreed to.

Paragraph 223 read, amended and agreed to.

Paragraphs 224 to paragraph 232 read and agreed to.

Paragraph 233 read, amended and agreed to.

Paragraphs 234 to paragraph 285 read and agreed to.

Paragraph 286 read, amended and agreed to.

Paragraph 287 read and agreed to.

Paragraph 288 read, amended and agreed to.

Paragraph 289 read and agreed to.

Summary read and agreed to.

Annexes read and agreed to.

Resolved, That the Report, as amended, be the Thirteenth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 21 July at 10.15 am]
# Witnesses

**Tuesday 8 July 2008**

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<td>Sir Andrew Green</td>
<td>Chairman, Migration Watch</td>
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<td>Sophie Barrett-Brown</td>
<td>Chair, Immigration Law Practitioners’ Association</td>
<td>Ev 6</td>
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<td>Ranjit Mathrani, Jabez Lam</td>
<td>Director, Masala World, Co-ordinator, Chinese Immigration Concern Committee</td>
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<td>John Cridland</td>
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<td>Alastair Henderson, Mandy Thorn</td>
<td>Joint Director, NHS Employers, Vice Chairman, National Care Association</td>
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<td>Paul Temple, James Davies</td>
<td>Vice President, National Farmers’ Union (NFU), General Manager</td>
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<td>Des Hudson, Sarah Lee</td>
<td>Chief Executive, The Law Society, Partner, Slaughter and May</td>
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<td>Louise de Winter, Malcolm Clay, Ruth Jarratt</td>
<td>Director, National Campaign for the Arts, Secretary, Association of</td>
<td>Ev 45</td>
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<tr>
<td>Professor David Metcalf CBE, Matthew Coats, Neil Hughes</td>
<td>Chair, Migration Advisory Service, Director of Immigration Group,</td>
<td>Ev 50</td>
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<tr>
<td>Phil Woolas MP, Matthew Coats, Neil Hughes</td>
<td>Minister of State for Borders and Immigration, Home Office, Director of</td>
<td>Ev 56</td>
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Tuesday 3 March 2009

Meg Hillier MP, Parliamentary Under-Secretary of State for Identity, and Glyn Williams, Visa Services Directorate, UK Border Agency International Group

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