House of Commons
Home Affairs Committee


Fourth Special Report of Session 2014–15

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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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Powers
The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publication
The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom

Committee staff
The current staff of the Committee are Tom Healey (Clerk), John-Paul Flaherty (Second Clerk), Dr Ruth Martin (Committee Specialist), Duma Langton (Committee Specialist), Andy Boyd (Senior Committee Assistant), Iwona Hankin (Committee Assistant) and Alex Paterson (Select Committee Media Officer).

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Fourth Special Report


Appendix

Introduction

The Home Office would like to thank the Committee for its report published in July 2014 on the work of the immigration directorates. We welcome the Committee’s consideration of our ongoing work in the areas of Immigration Enforcement and UK Visas and Immigration.

The Home Office has considered the recommendations of the report and the Government’s response is below.

Sham marriages

Conclusion/Recommendation 1

We agree with the Independent Chief Inspector when he said that sham marriages represent a significant threat to immigration control. The bogus spouse acquires not only the right to reside in the UK, but the right to bring their children, grandchildren, parents and grandparents to live here with them. Thus one sham marriage can provide UK residence rights to an entire extended family who would otherwise have no right to be here.

*Taken with*

Conclusion/Recommendation 2

The fact that the burden is on the Home Office to show that a marriage was a sham when it entered into, regardless of its current state, means that intervening at or before the point of marriage will usually be the most effective way of tackling this growing problem. We would also suggest that early intervention in cases of obvious shams is likely to be more cost-effective, as it reduces the scope for lengthy casework and possibly legal appeals after the event. Effective joint working between the Home Office’s Immigration Enforcement Directorate and local authority registrars is therefore the key to tackling the problem of sham marriages.

*Taken with*

Conclusion/Recommendation 3
We accept that there might be some registration districts where the number of sham marriages is very small indeed, but we find it implausible that there should be sizeable cities in the UK where there are no sham marriages at all. Registrars need to be aware that sham marriages appear to be a growing problem and that they have a duty to report those that they suspect are sham marriages. We recommend that the Home Office provide additional training for registrars, targeted at those registration districts where the number of section 24 reports is unusually low in comparison to similar districts, on how to recognise the signs of a possible sham marriage and the circumstances in which a section 24 report should be made.

*Taken with*

Conclusion/Recommendation 4

We should not under-estimate the duplicity of those involved in organising sham marriages, which has turned into an industry and appears to be increasing at an alarming rate. Given the Home Office’s state strong commitment to enforcement, all those involved in the process must remain vigilant to those individuals trying to exploit loopholes in the system.

Government’s response

Tackling sham marriage is a Home Office priority and we are taking tough action to crack down on those who try to cheat our immigration system through abusing our marriage laws. Legislative changes within the Immigration Act 2014 will strengthen our ability to prevent sham marriages taking place, and we are actively developing our operational response, including through close joint work with registrars.

Alongside the General Register Office (GRO), Senior Registrars and officials in the local registration service, we are delivering training that highlights the statutory duty to report suspicions of sham marriages. The GRO has also issued guidance and a training package for registrars on the new data sharing powers in the Immigration Act, and a programme of training workshops is being organised for early 2015.

Operationally, we work with the National Registration Panel at a strategic level to increase the effectiveness of our operational activity. This includes extra targeted support to registration districts where section 24 reporting is unexpectedly low. At a local level, Immigration Enforcement teams across the UK work closely with their counterparts in register offices to develop effective working relationships and to highlight the value of registrars’ work in identifying suspected sham marriages.

Additionally, regional training workshops are being organised for early 2015 to support implementation of the new referral and investigation scheme, as provided for in the Immigration Act 2014. The workshops will reinforce the e-learning and guidance on section 24 reporting but also provide an in depth overview of the new referral and investigation scheme.

Within the Home Office, we have also strengthened our ability to ensure that anyone who enters into a sham marriage does not gain an immigration advantage as a result, including through:
• piloting a new operational approach to deal with the problem, with three sham marriage hubs in Croydon, Glasgow and Solihull led by our Criminal Investigation officers;

• creating a specialist crime team working in close partnership with the marriage interview team in Liverpool; and

• developing prosecution training for 80 frontline enforcement staff, equipping officers with additional sanctions to tackle the threat of sham marriage.

We also continue to undertake targeted operations to test and refine our tactics to deliver a wide range of sanctions that are flexible and responsive to the changes employed by those seeking to abuse this route. The ongoing activity across the Home Office will continue to drive the intelligence picture from all angles and allow us to identify and disrupt individuals and organised crime groups engaging in sham marriages.

Conclusion/Recommendation 5

The Independent Chief Inspector of Borders and Immigration told us that the Home Office does not appear to know how many people are securing the right to stay in the UK on the basis of sham marriage. Whilst we are aware that publishing data that shows hot-spots of sham marriage activity might give information to organised criminals, we want the Home Office to demonstrate that they have taken the issue seriously. The Home Office should publicise the data that they have on the levels of reporting, the numbers of interventions, the number of arrests, the number of prosecution and the number of removals.

Government’s response

Provisions in the Immigration Act 2014 will substantially strengthen our ability to identify and tackle sham marriage before any immigration application is received. We are developing a detailed communications plan ahead of the implementation of the sham marriage provisions within the Immigration Act 2014. It is expected that the investigation process provided for within the Act will act as a deterrent and consideration will be given to the best way to publicise the data on operational activity in order to maximise the deterrence effects of any announcements. This will also ensure that the public and Parliament are provided with relevant information on this issue. Operationally, Immigration Enforcement has already made some changes to improve performance and to introduce innovations to current processes, including development of three dedicated sham marriage hubs in Scotland, Croydon and the Midlands.

Conclusion/Recommendation 6

The Immigration Act 2014 has extended the minimum time between a couple giving notice of their intent to marry and the ceremony, allowing more time for the Home Office to act on reports sent from registrars. The registrars represent a crucial source of intelligence to the Home Office about potential sham marriages and we expect the Home Office to act upon those reports. We recommend that the law be changed so that if the Home Office enforcement team do not act upon the section 24 report, and the
registrar is confident the wedding is a sham, then the registrar should have the power to not proceed with the wedding.

**Government’s response**

The new referral and investigation scheme, as provided for in the Immigration Act 2014, will provide the Home Office with more time, information and evidence before the marriage takes place. This will help in identifying, and taking effective enforcement or casework action to prevent the non-EEA national gaining an immigration advantage. The scheme will act as a significant deterrent against sham marriages but we will consider the committee’s recommendation as we assess the impact of implementing the measures in the Immigration Act 2014.

**Conclusion/Recommendation 7**

It is clear that there is a blind spot which leads to the under-reporting of sham marriages. The registrars that gave us evidence told us that they received little or no feedback from the Home Office in response to their section 24 reports. Registrars were consistently unable to tell us how many of their reports led to further action or no action, or, more, importantly whether or not they led to a prosecution.

* Taken with

**Conclusion/Recommendation 8**

The Home Office must, as a matter of routine, provide registrars with feedback on every section 24 report: whether it resulted in no action, in an individual being removed from the country, in prosecution, or some other outcome. This will help to reinforce to registrars the importance of reporting potential sham marriages, it will help them over time to develop a better understanding of the nature of the problem, and it will help to foster a spirit of mutual co-operation between registrars and the Home Office. Crucially, it will reassure the public. Similarly, we believe that there should be an opportunity for registrars to provide feedback to the Home Office in cases where they feel their well-founded suspicions were not acted on, and to receive an explanation for the Home Office’s action in the case.

**Government’s response**

We have recently changed our processes to ensure that every section 24 report is properly captured on the Intelligence Management System (IMS). This enables us to track every report to an outcome, which was not previously possible. We will work with local registration service staff locally, as well as with the National Registration Panel to ensure working arrangements are put in place to provide appropriate feedback.

**Conclusion/Recommendation 9**

It is apparent from the reports of the Independent Chief Inspector that the level of resources applied to this problem is critical, and we are not convinced that the current level of resourcing is sufficient compared to the scale of abuse.

**Government’s response**
As a result of the action we are taking to tackle the problem of sham marriage, outlined in response to Recommendations 1 – 4, we anticipate registrars will alert us to a high number of suspected sham marriages. However, we expect that the robust response we have developed will reduce the volume of people seeking to exploit marriage and immigration laws.

**Conclusion/Recommendation 10**

The Home Office was unable to provide the Chief Inspector of Borders and Immigration with management information on the number of prosecutions or removals from the UK as a result of sham marriage. Without any such data it is hard to believe any assurance from the Government that they are prioritising the problem and pursuing those who are attempting to circumvent immigration rules. Successful and well publicised prosecutions would help deter those from considering taking part in a sham marriage and incentivise registrars, and the general public, to report their suspicions. The number of section 24 reports more than doubled between 2010 and 2013. The Home Office should be able to tell the committee what impact that increase had on prosecutions and on removals.

**Government’s response**

A series of documents were provided to the independent Chief Inspector for Borders and Immigration on 17 October 2013, including intelligence activity, operations, arrests and removals. We also provided details of the number of criminal investigations we had undertaken and the outcomes.

In developing the communications plan ahead of the implementation of the sham marriage provisions within the Immigration Act 2014, we will consider the best way to keep Parliament and the public abreast of progress, aligning the deterrence value that strengthened communication can bring.

The Home Office takes enforcement of the immigration rules very seriously and has created dedicated sham marriage hubs to trial new operational interventions and assess on all cases whether prosecution, as well as immigration enforcement action, is appropriate.

**Conclusion/Recommendation 11**

The Home Office should write to the Embassies of those European nationals who are most commonly involved in sham marriages, and encourage them to inform those who pass through their Embassy or Consulate that being involved in a sham marriage can lead to a criminal record and removal from the UK.

**Government’s response**

The Home Office will be delivering a comprehensive communications plan for the Immigration Act 2014, to ensure effective implementation of the sham marriage provisions. The Home Secretary has consistently raised the issue of abuse of free movement rights with European counterparts and the European Commission has finally acknowledged that the abuse of free movement, including through sham marriage, is a serious problem.
Conclusion/Recommendation 12

While we agree with the general principle of respecting marriage ceremonies held in other countries, it seems absurd that two people, both resident in the UK, can be lawfully married for the purpose of British law by means of only a proxy ceremony carried out overseas. At the moment, the burden of proof is on the state to prove the proxy marriage is unlawful. The burden of proof should be on the couple applying for a residence card, based on a proxy marriage, to prove the proxy marriage is lawful.

Government’s response

Under case law, we recognise marriages contracted overseas which are legally valid in the country in which they were conducted and which were properly conducted under the law of that country. To do otherwise would prejudice genuine couples lawfully married under the national law of the country of nationality or residence of one or both of them. Some countries (e.g. Nigeria, Ghana, Brazil) permit a ‘proxy marriage’, which allows a couple to marry in circumstances in which they are physically separated (e.g. because one is on military service, incarcerated or too ill to travel).

In the case of applications under EEA routes, the burden of proof required is initially on the applicant to show that they are the family member of the EEA national and the normal evidence for this is a marriage certificate. Where suspicions exist that the marriage may not be genuine the Secretary of State must show this to be the case.

To be recognised for UK immigration purposes, a proxy marriage must be based on a genuine relationship. It cannot be a sham marriage. The recent Independent Chief Inspector’s report on EEA casework showed that we scrutinise applications based on a proxy marriage very closely: 90% of the applications based on a proxy marriage in the sample reviewed by the ICI were refused, generally because the marriage was found to be invalid or a sham.

UK Visas and Immigration

Conclusion/Recommendation 13

In our last Report we commented on the increase in the number of asylum cases waiting more than six months for an initial decision. This trend has continued for the last eight quarters. We consider this unacceptable, and see no evidence that the government is achieving either its stated aim of making over 90% of initial decisions within six months or Sarah Rapson’s aim of all straightforward cases getting a decision within six months. We agree with Sarah Rapson that there is no reason not to make an initial decision on straightforward cases promptly, and urge the government to take steps to achieve this aim.

Government’s response

Our aim this year is to ensure that for all new claims received since 1st April 2014, a decision is given within the six months service standard. However, asylum cases are often complex and require our full and thorough consideration, meaning some decisions will
take longer than six months. Those cases that do take longer than six months are actively managed to ensure they are concluded as promptly as possible.

Conclusion/Recommendation 14

At the current rate, it will take until 2019 to clear the backlog, an unacceptably long delay and much worse than the Home Office committed to. We were told that reducing the older asylum cases would free up staff to address the new asylum cases and make it more likely that the Government would meet its own aspiration of 90% of initial asylum decisions being made within six months. Progress has been unacceptably slow, and the Home Office’s continued failure to deal with the backlog is jeopardising prompt and fair treatment of new applicants. This must be addressed.

Government’s response

The Home Office’s commitment is to review and communicate a decision on all remaining live legacy cases by the end of 2014, and to conclude cases, by way of a grant of leave or removal from the UK, wherever possible. There are cases where the Home Office completes a review and decides that it is not appropriate to grant leave but will nevertheless be unable to remove the applicant, for example due to fresh legal challenges or difficulties in getting the appropriate travel documents. It is for this reason that we can commit to review and communicate decisions on cases but not guarantee that all will be concluded by the end of 2014. We will not grant leave simply because we cannot remove.

While the Older Live Cases Unit is concentrating on pre-2007 cases, Asylum Casework Directorate is aiming to ensure all claims made before April 2014 receive a decision by 31 March 2015. In March 2014, we cleared all straightforward pre-2011 asylum claims. In June 2014 we cleared all straightforward pre-2012 claims. The achievement of these important milestones show our commitment to clearing the current outstanding caseload.

Immigration Enforcement

Conclusion/Recommendation 15

The recent episode of English Language testing abuse illustrates the need for UKVI and Immigration Enforcement to continue to inspect education providers, and for as many of the visits as possible to be unannounced. We note that the greatest proportion of unannounced follow-up visits is overwhelmingly to Tier 2 employers and that much smaller number is to education sponsors under Tier 4. The Home Office should explain why the number of unannounced visits are so overwhelmingly for Tier 2 employers rather than Tier 4 education providers.

Taken with

Conclusion/Recommendation 16

We have repeatedly called on the Home Office to increase the number of unannounced follow-up visits to visa sponsors and we welcome the dramatic improvement during 2013.
Government’s response

We are making regular inspection visits to the four Secure English Language Test (SELT) providers, including unannounced visits. Over 50 such visits have taken place this year. In addition, our network of compliance officers visit large numbers of businesses and education providers to ensure they are compliant with their sponsor duties and obligations. We have increased the number of unannounced visits to existing sponsors undertaken over the last year, by over 50%; sustaining a growing trend since Q3 2013. Currently 76% of all visits to existing sponsors are unannounced.

The greatest proportion of the total number of unannounced follow-up visits is always likely to be to Tier 2 employers rather than to Tier 4 education sponsors. This is due to the significantly higher number of sponsors that are licensed in Tier 2 (over 26,000) compared to Tier 4 (1,600). Although unannounced Tier 4 follow-up visits represent a small proportion of the overall total of unannounced visits, 85% of all follow up visits to Tier 4 sponsors are currently unannounced.

Conclusion/Recommendation 17

While we entirely support the government’s aim to crack down on bogus colleges and any organisations that have wilfully helped people to evade immigration controls, it is not appropriate to punish institutions where there is no evidence to support allegations of wrongdoing. The Home Office should act promptly to tell suspended organisations exactly what they are accused of, and to immediately end suspensions unless there is clear evidence.

Government’s response

The Tier 4 published policy and guidance allows us to suspend immediately a sponsor’s licence, whilst we make further enquiries, if we have reason to believe that they are breaching their sponsorship duties and/or are a threat to immigration control. If, after an investigation, we decide not to revoke the sponsor’s licence then we lift the suspension and reinstate the entry on the register of sponsors on our website. If we decide to continue suspension, we write to confirm this decision. The sponsor then has 20 working days from the date of that written notification to respond to us. We then consider the information provided and have 20 working days to respond to the sponsor with our decision.

Where we are satisfied that we have enough evidence to suspend a licence without the need for further investigation, we write to the sponsor giving detailed reasons for suspending their licence and give them 20 working days to respond. We then consider the information provided and have 20 working days to respond to the sponsor with our decision.

Conclusion/Recommendation 18

We welcome the audit of Rule 35 casework and look forward to seeing the results, and what action the Home Office will take in light of the audit. We are still concerned that such a small percentage of Rule 35 Reports lead to release. We will continue to look at this subject as part of our ongoing work into Immigration Removal Centres.

Government’s response
The low numbers of releases that follow from Rule 35 reports are not indicative of poor performance or an ineffective system, but reflect the very low threshold for Rule 35 reports to be made, especially in relation to torture concerns, which make up the majority of reports. As a result, the majority of Rule 35 reports are unlikely to constitute independent evidence of torture. In many cases, the issues raised in Rule 35 Reports will have been considered previously in the disposal of an asylum claim, including at appeal, and taken into account as part of the detention decision.

Even where a report does constitute such evidence, consideration is given to whether very exceptional circumstances apply (including protecting the public), which may mean that ongoing detention remains appropriate. We will consider how to share the findings of the audit when it has been completed.

Conclusion/Recommendation 19

Foreign National Offenders currently make up about 13% of the prison population. As the Prime Minister said, having all these people in our prisons is an enormous waste of money. Reducing the number of Foreign National Offenders in our prisons is in all our interests, and finding ways to identify these criminals who could be deported before they enter prison would be an enormous help. The Home Office should publicise any positive impact that Operation Nexus has had and, in particular, the number of foreign nationals identified as foreign nationals and deported as a result. We note the positive steps taken towards starting the deportation process early as part of Operation Nexus. We recommend that the Government go further and compel offenders to prove their nationality at the point of sentencing or face penal sanctions. This would enable the Home Office to start the process of deportation of offenders more quickly and to ensure it runs more smoothly.

Government’s response

We are starting the deportation process earlier and removing foreign criminals quicker than ever, saving the tax payer money, freeing up prisons and removing the opportunity for re-offending. However, we agree that the FNO prison population is too high and there is more we can do.

We look constantly at ways of removing FNOs at the earliest opportunity. The number of FNOs deported under the Early Removal Scheme (ERS) has increased under this government. In 2013, we removed nearly 2,000 FNOs under ERS.

We have ongoing cross Government work to overcome issues affecting FNO removals. We are focusing on improving performance, removing barriers to documentation and addressing legal issues through the Immigration Act.

We welcome the Committee’s recognition of the positive impact that Operation Nexus has had, which includes contributing to more than 2,000 FNO removals. Nexus currently operates in 4 major police force areas (the Metropolitan Police area, West Midlands, Manchester and Scotland) and is being actively rolled out to other areas, including Kent, Merseyside, Cleveland, Wales and Lancashire.
We promote the successes achieved by Operation Nexus through press releases, in conjunction with the relevant police force. A key aim of Operation Nexus is to establish offenders’ true identities at the point of arrest. To this end we are working closely with the police to ensure our IT systems are used as effectively as possible by both organisations.

**Conclusion/Recommendation 20**

The case detailed in the Parliamentary Ombudsman’s report clearly shows the importance of constantly updating and monitoring the watchlist. The Home Office must act upon the Ombudsman’s report and ensure that cases similar to that of Mrs A’s family are not repeated.

**Government’s response**

When reporting immigration or customs crime on www.gov.uk the public are instructed to call 999 if reporting a crime that is in progress or that someone is in imminent danger.

Internally, Border Force Intelligence revised their operating procedures specifically to cover dealing promptly with urgent or high risk cases. In these situations, BF Officers must check the subject is on the Warnings Index. If they are not, the receiving port must be notified by telephone and WICU must be contacted immediately. If the Border Force Officer fails to do so, disciplinary procedures may be appropriate.

Border Force is committed to ensure the watchlist is continually updated and monitored. The Border Force Operational Assurance Directorate has developed a new assurance framework that will check that suspects and persons of interest are being added to the Warnings Index within agreed timescales.

**Border Agency backlogs**

**Conclusion/Recommendation 21**

Although the total number of accumulating Home Office backlogs has decreased, we are concerned by the huge increase in the number of in country applications where the application has been received and is awaiting input onto the Home Office computer system (CID). We repeat our concern that the total number in the migration refusal pool has not gone down by an appreciable amount from when the Home Office had contracted Capita to address this matter. The total backlog remains at 332,169 and does not appear to be reducing at an appreciable rate. The Committee reiterates its previous recommendation that the backlogs must be cleared as a matter of priority.

**Government’s response**

The 332,169 number quoted goes beyond the Migration Refusal Pool and reflects case working across the Home Office. The number of people in the Migration Refusal Pool itself has consistently been shrinking over the past few quarters. This is not a static backlog of cases awaiting removal; Capita manages the flow of cases into the pool as well as clearing older cases. Without their work, the pool would stand at approximately 315,000 rather than just below 176,000 as at the end of March 2014. This work will continue to be a priority.