



# Illegal immigration: What can be done?

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Illegal Immigration: MW 455

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## Summary

1. The best estimates suggest that there may now be over a million illegal immigrants in the UK. The evidence in this paper points to a gross addition of more than 105,000 overstayers, detected clandestine arrivals and failed asylum seekers who refuse to depart each year.
2. However, from the available figures, just over 35,000 of this estimated illegal inflow is departing the country each year, **meaning a net addition in the illegal population of 70,000 per year**. The number of undetected entrants may mean that the figure is significantly higher. A number of those who remain will be 'regularised' each year, via a number of routes that allow those with no right to be here to stay. This paper suggests that such routes should be closed as they encourage the flouting of UK immigration law. The annual removal of failed asylum seekers has nosedived since 2005, from 16,000 to just over 5,000. Meanwhile, total returns of overstayers (not including returns of foreign criminals) have dropped by a third since 2013, from 31,000 to 21,000 per annum. The 26,700 removals / returns in 2017 was well below the ten-year average of 35,200 per year.
3. A large backlog of unresolved asylum cases, a population of over 50,000 absconders and problems associated with re-documenting overseas nationals have all contributed to a growing strain on the staff and processes of the Home Office. Hence the introduction of measures to create a "compliant" environment (described by some as a hostile environment). It is important to retain and strengthen such measures provided they are administered effectively and fairly. Indeed, such policies are vital for the credibility of UK border controls. They also have the support of nearly 80% of the public. A summary of recommendations is at paragraph 53 (page 18).

## Introduction

4. The Windrush affair has been used to undermine the government's efforts to achieve a compliant environment that deters illegal entry or overstaying. There is already a substantial illegal population in the UK which adds to the pressures on housing and public services while paying little, if any, tax. In the workplace, illegal migrants undercut the wages of British workers. Many are also exploited by unscrupulous employers who get away with ignoring health and safety, the minimum wage and other employment legislation. There are three broad proposed approaches to tackling the problem:

- a) An amnesty, which would be wrong in principle since it rewards illegal behaviour at the same time as being grossly unfair to those who go through the correct channels. This idea has also been tried five or six times in Spain and Italy and almost invariably results in yet more illegal immigration.<sup>1</sup>
- b) Measures to make it more difficult to live in the UK illegally (the so-called 'compliant' or 'hostile' environment')
- c) Stronger efforts to strengthen the border against clandestine entry and to remove those detected.

5. In rejecting a) above and calling for more effective implementation of b) and c), this paper considers the likely scale of the illegal immigration that has been taking place in recent years and illustrates the diminishing impact of the voluntary and enforced removals of immigration offenders and failed asylum seekers. It does not address the issue of foreign national offenders (FNOs) which poses a different set of problems.

## Estimates of the size of the illegal migrant population

6. Illegal immigration is by nature clandestine and thus difficult to quantify. The Home Office (HO) estimated that in 2001 the population of illegal immigrants in the UK was approximately 430,000, excluding the UK-born children of illegal immigrants. In 2009, the London School of Economics (LSE) suggested a central figure of 670,000 using similar methodology. Migration Watch UK estimated the illegal migrant population to be around 1.1 million in 2010.<sup>2</sup> In 2013, the Government pointed to an estimated illegal population in England of 580,000 and estimated the cost of this group in healthcare provision to be £330 million a year.<sup>3</sup> A former head of the UK Border Agency estimated in mid-2016 that there were up to a million illegal migrants in the UK, noting that his calculation was based on the LSE figure, along with an assumption that the number overstaying their visas exceeded the number leaving and that trafficking of illegal immigrants was higher than detections.<sup>4</sup> A former director-general of immigration enforcement later said in evidence to a parliamentary committee that the figure was now likely to be over a million.<sup>5</sup>

7. It is hard to draw a conclusion from such broad-brush estimates but an illegal population of one million would give an order of magnitude and would amount to 1.5% of the total UK population.

8. A report co-authored by former Head of Immigration Enforcement David Wood and former Home Office speechwriter Alasdair Palmer stated in mid-2017 that the HO had estimated that each year 150,000-250,000 foreign nationals either enter the UK illegally or overstay permission to be here. According to the paper, the estimate was derived by the HO as the result of an extrapolation from the number of illegal immigrants that enforcement and other immigration officials encounter each year (rather than just the detected lorry drops mentioned below).<sup>6</sup> However, the former Home Secretary and the Permanent Secretary of the HO subsequently both told parliament that they did not recognise the

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1 Migration Watch UK, 'An amnesty for illegal immigrants?', May 2006, URL: <https://www.migrationwatchuk.org/briefing-paper/131>  
 2 Migration Watch UK, 'The illegal migrant population in the UK', April 2010, URL: <https://www.migrationwatchuk.org/briefing-paper/190>  
 3 Department of Health report, December 2013.  
 4 *The Times*, August 2016.  
 5 *The Times*, October 2017.  
 6 David Palmer and Alasdair Wood, 'The politics of fantasy'. Civitas, June 2017.

estimate, although they did not deny it. In June 2018, the Immigration Minister said the Government did not have an estimate of the current size of the illegal population.<sup>7</sup>

9. In the absence of official figures, it is necessary to undertake a systematic analysis to come to a cautious estimate of the annual addition to the illegal migrant population. One driver of growth is clandestine entry. The number of illegal lorry drop detections was running at 6,429 for the six-month period April-September 2015 (of whom over 90% claimed asylum), according to the Independent Chief Inspector of Borders and Immigration (ICIBI).<sup>8</sup> This totals just over **12,850** detected clandestine entrants per year. Other sources suggest that the average number of detected illegal lorry drops in recent years has been around 15,000 per year.<sup>9</sup> We take the lower figure.

10. However, this does not take account of the number of undetected lorry drops or clandestine arrivals by other means. To give an idea of the scale of efforts, in 2015 there were over 80,000 recorded attempts to illegally enter the UK from Northern France; in 2017 this was reduced to just over 30,000 due to security improvements and camp closures in 2016.<sup>10</sup>

11. However, former officials in the immigration service told *The Times* in mid-2016 'that the number of illegal migrants being found by enforcement teams were only a small proportion of those working in the black economy'.<sup>11</sup> They have also said that forged EU identity cards are being used by non-European migrants to enter the UK and get national insurance numbers, allowing them to work. A May 2018 *BBC News* piece showed how easy it is to obtain a false EU refugee passport in Turkey.<sup>12</sup>

12. The illegal migrant population is also augmented by the annual addition of third country nationals who overstay permission to be in the UK. HO analysis of Exit Checks, published in August 2018, found that, for 1.72 million visa expiries in 2017/18, approximately 97% departed in time (before their visa expired), while 2.6% had expired leave but no departure was initially identified and 0.5% departed after their leave had expired. Data matching issues may have partially been behind failure to capture departures, as well as travel via the Common Travel Area, the latter of which the HO says '*is likely to be low*'.<sup>13</sup> The HO also states that the 97% figure excludes those for whom there is 'evidence of an application (for leave) in progress'. However, taking 2.6% of the total of 1.72 million gives us a potential overstaying estimate of just under **44,800** per year.

13. A caveat in the Exit Checks analysis is that it does not cover a significant number of non-EEA visitors to the UK, including citizens of more than 50 countries who do not normally require a visa to visit the UK for six months (non-visa national visitors) and visa-nationals granted long-term visitor permits, which allow visits of up to six months at a time during periods lasting two, five or ten years. Because such individuals are not included in the analysis, the HO notes that '*any resultant estimates for those whose departure has not been recorded will not therefore capture the full breadth of the potentially resident illegal population, whose number is unknown*'.

14. The number of long-term visitor visas issued has increased by 40% over the past three years, from 500,000 in the year to June 2016, to 700,000 in the year to June 2018. They account for about 30% of

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7 Parliamentary Answer by Immigration Minister, 25 June 2018.

8 ICIBI report on illegal lorry drops, 2016.

9 Policy Exchange, Border Audit, August 2018.

10 Written parliamentary answer by the Immigration Minister, September 2018.

11 *The Times*, 3 August 2016.

12 BBC News, May 2018.

13 HO, Third report on statistics being collected under the exit checks programme, August 2018.

all visit visas issued. Given the major investment of taxpayers' money in both e-borders systems and Exit Checks over the past two decades, the failure to cover such visitors is disappointing. The ICIBI has noted, for instance, that the Exit Checks system is not adequately recording failures of compliance for those on long-term visit visas with the six-month stay requirement.<sup>14</sup> If anything, it is plausible that the overstaying rate for those on long-term visas is higher than that for those granted visit visas. This is because those applying for a long-term visitor visa are likely to already have stronger roots of family and friends in the UK and are also able to consolidate such roots further during the course of regular visits.

15. The HO reported in August 2018 that 2% of just under 1.29 million non-EEA nationals whose regular visitor visas expired in 2017/18 were not known to have departed on time. To come to a minimal estimate of overstaying by those granted long-term visit visas, we apply this 2% share to the 700,000 long-term visit visas that were granted in the year to June 2018. This produces a figure of **14,000** per year. It should be noted that the number of grants in this period is not the same as the number of expiries.

16. Given the fact that over 1.5 million people who were granted permission to visit the UK between 2015 and 2018 are not covered by the Exit Checks, we would welcome further information, including more systematic information of total grants of long-term visit visas, delineated by duration. As the ICIBI has indicated, incorporating long-term visit visa holders into the Exit Checks will require improvement in the matching of data between the HO's Initial Status Analysis system (which matches Advance Passenger Information with HO data) and the Central Reference System (which records information on all visa applications, grants and refusals).

17. The Exit Checks also exclude non-visa national visitors.<sup>15</sup> In 2017, 9.6 million nationals of such countries arrived in the UK for the purpose of a visit. Such arrivals accounted for 73% of all non-EEA visitor admissions. We can estimate the number of potential non-visa visitor overstayers by considering the standard of living in each non-visa country. Using the United Nations' Human Development Index as a reference<sup>16</sup>, we find that 8.35 million such visitors are unlikely to overstay because they are from countries that are considered 'very highly-developed'. This leaves a total of 1.24 million visitor arrivals from countries with lower levels of development, whom it is safe to assume are more likely to overstay (for the figures, see Annex B).

18. The HO Exit Checks analysis referred to above suggests that the share of visitors who had expired leave but were not identified as having departed on time was 2%. If we apply this proportion to the 1.24 million from non-visa countries with medium and lower levels of development, we estimate that around **24,800** non-visa visitors potentially overstay each year. Added to 44,800 and 14,000, we arrive at an estimated **83,600** visa-national and non-visa national overstayers per annum.

19. To calculate the gross addition of illegal immigration to the UK each year, we add the combined total of **83,600** potential overstayers cited above to the annual number of those detected illicitly arriving in the back of trucks (**12,850**) and yearly addition of around **8,500** failed asylum seekers who do not leave the country (see table 2 below). **So the gross estimated increase in the illegal immigrant population stands at 104,950 per year.**

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14 ICIBI inspection of exit checks, March 2018.

15 A citizen of a country where there is no requirement to obtain a visa prior to travelling to the UK as a visitor. Typically, non-visa nationals are granted entry for a period of 6 months.

16 United Nations Human Development Index (HDI) data for 2017. This is a composite index measuring average achievement in three basic dimensions of human development—a long and healthy life, knowledge and a decent standard of living. The HDI is the geometric mean of normalized indices for each of the three dimensions.

20. To come to a net figure, we need to **subtract annual removals / departures of 35,200 per year** for the period 2009-2017. This means a **net addition in the illegal population**, not accounting for regularisation of those with no right to be here, of **69,750 per year** (calculation summarised in table 1 below).

Table 1: Estimate of annual increase in illegal immigrant population.

Visa nationals not recorded as having departed	44,800
Long-term visit visa holders (overstay estimate)	14,000
Non-visa national visitors (overstay estimate)	24,800
Detected clandestine arrivals (illegal lorry drops)	12,850
Failed asylum seekers who fail to depart each year	8,500
<b>Gross inflow</b>	<b>104,950</b>
<b>(Minus) Average annual removals / departures</b>	<b>35,200</b>
<b>Net inflow (not accounting for regularisation)</b>	<b>69,750</b>

21. It should be noted that this figure is a rough estimate that depends upon a range of assumptions. Undetected clandestine entrants will of course only add to it, as will any overstaying by visitors from 'very highly developed' non-visa countries. While Exit Checks were billed by the HO as a tool that would 'help to target those who had overstayed their visas and were in the UK illegally', ICIBI analysis of the outcomes of approximately ten million visa and non-visa nationals whose period of leave expired over a two-year period (April 2015 - March 2017) revealed that the system contained no evidence of departure for over 600,000 people, or **300,000** per year.<sup>17</sup> Some of this may be due to data matching. However, the finding that there was no record of departure for 250,000 non-visa nationals per year may suggest that our own estimate in this regard may be an underestimate. **The ICIBI has warned the HO to be 'more careful about presenting Exit Checks as the answer to managing the illegal migrant population, which for now remained wishful thinking'**. The HO call the latest Exit Checks analysis 'experimental' and note that 'missing departure information for any individuals may result in significantly inaccurate statistical estimates of numbers not departed'.<sup>18</sup>

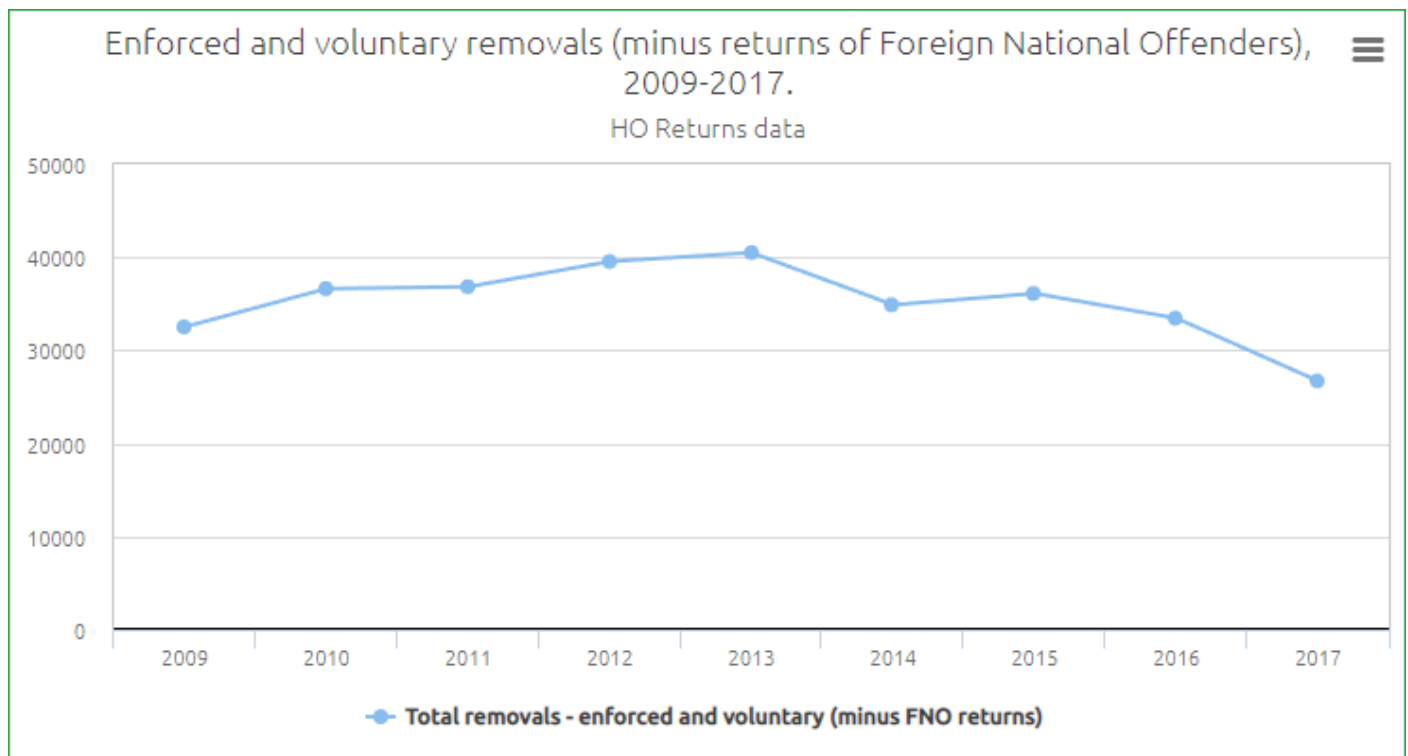
17 Non-visa nationals are recorded in the Initial Status Analysis system but were not included in the HO analysis of Exit Checks. The HO says this latter omission is as a result of the fact that there is 'more confidence in data on visa nationals, because more information is held on them through their visa and therefore the quality of data matching is believed to be higher' (Third Report on Exit Checks, Aug. 2018). However, the ICIBI inspection of Exit Checks did cover non-visa nationals. They accounted for 513,088 of the 601,222 individuals for whom ISA held no evidence of departure over the two-year period. There may be a number of legitimate reasons for the failure to record departure, including departure via the Common Travel Area, flaws in data matching and the use of different documents for arrival and departure. ICIBI inspection of Exit Checks, March 2018.

18 HO, Third report on statistics being collected under the exit checks programme, August 2018.

## Removals of those with no right to be here (asylum and non-asylum)

22. Figure 1 below shows that total annual removals (enforced and voluntary) rose from 2009 to a peak of over 40,000 in 2013 but then fell to 26,700 in 2017.<sup>19</sup> They averaged **35,200 per year**. This recent decline is troubling given there is no evidence that the stock of illegal immigrants has declined in recent years, although there are a number of suggestions that it has grown.

Figure 1: Enforced and voluntary removals (minus returns of Foreign National Offenders), 2009-2017. HO Returns data.

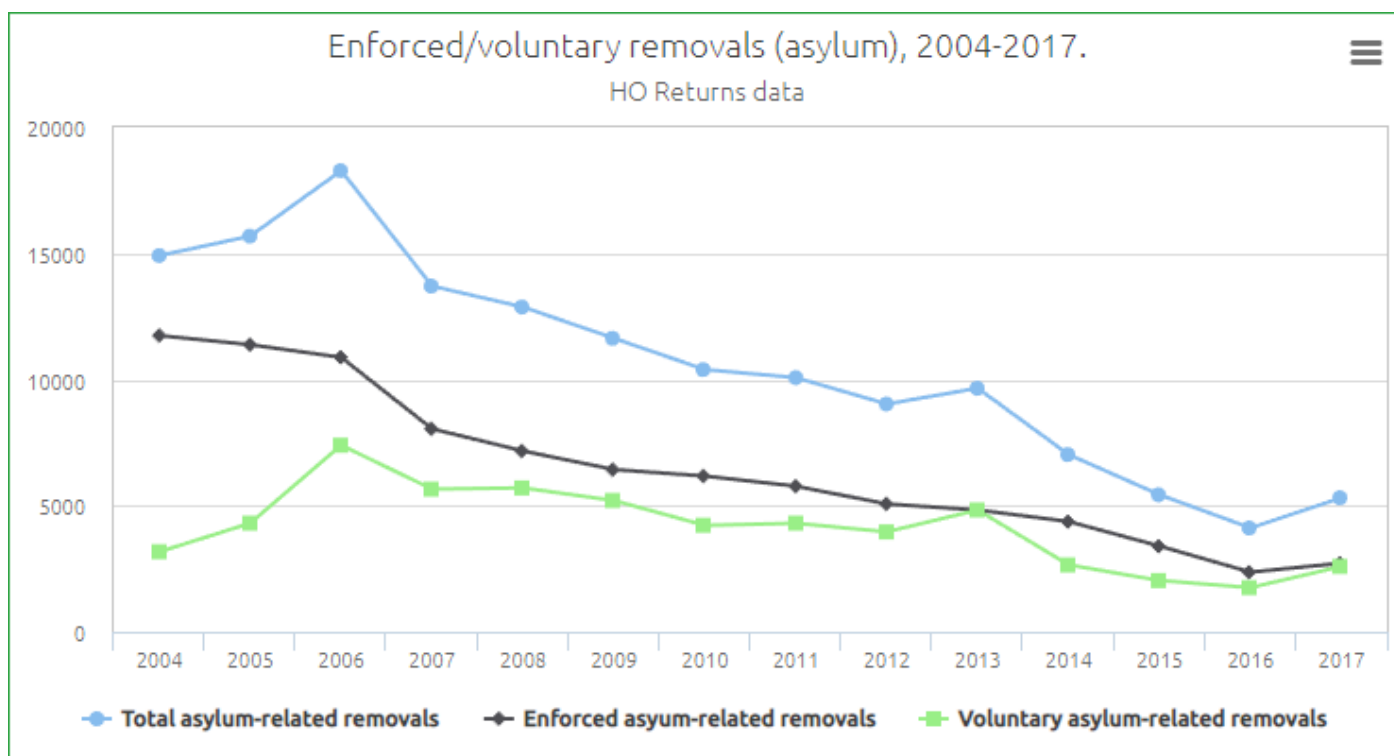


### Failed Asylum Seekers

23. There were an average of 10,600 departures of failed asylum seekers per year between 2004 and 2017. Figure 2 shows that the annual figure has declined significantly over the period. Asylum-related removals peaked at over 18,000 in 2006 but have since fallen to 5,000-6,000 a year. Enforced removals dropped from 11,700 to 2,700 while voluntary removals rose to a high of 7,400 in 2006 but have since dropped to 2,600. There was a slight uptick in both 2017 (for more on the distinction between enforced removals and voluntary returns / removals, see Annex A).

<sup>19</sup> The figures for each year subtract returns of Foreign National Offenders, which averaged 5,400 per annum over the period.

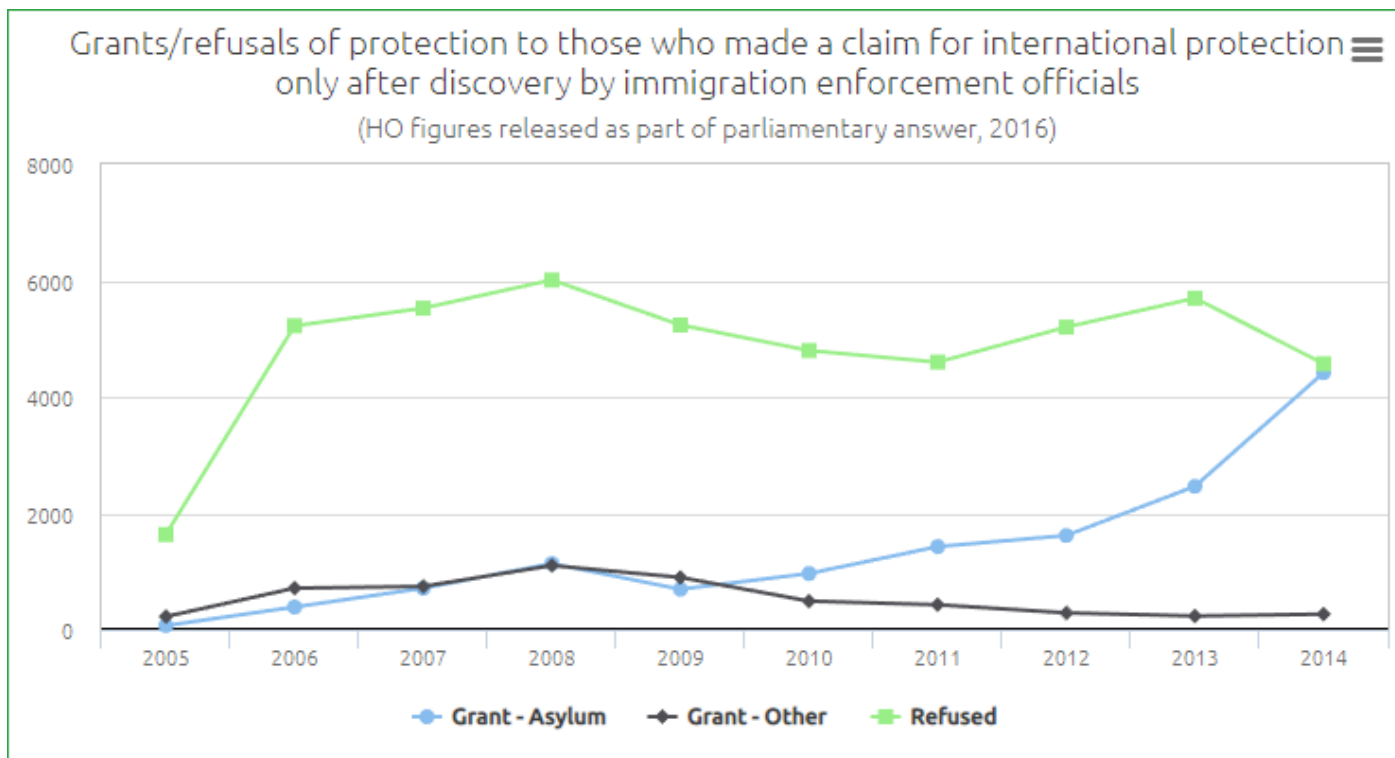
Figure 2: Enforced/voluntary removals (asylum), 2004-2017. HO Returns data.



24. Meanwhile, nearly half of failed asylum seekers who were subject to enforced or voluntary removal between 2009 and 2015 claimed asylum only after their discovery by immigration officials. In the period 2005-2014, 84,000 illegal immigrants claimed asylum only after being detected by enforcement teams. A majority – 57% - of these were refused (of which only 48% were removed), although nearly 20,000 (23% of the total 80,000 cases) were granted asylum.<sup>20</sup> As figure 2 below shows, the number of grants surpassed the number of refusals in 2014.

20 Written answer by government, January 2016, UR: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-01-11/HL4838/>

Figure 3: Grants/refusals of protection to those who made a claim for international protection only after discovery by immigration enforcement officials (HO figures released as part of parliamentary answer, 2016)



25. Table 2 below depicts HO outcome analysis of total applications for international protection by main applicants from 2004 to 2017. It indicates **that, on average, over 60% of those who were refused asylum or some other form of international protection after having applied for it during the period 2004-2017 did not leave the country.** This amounts to nearly 120,000 people over the entire period, or 8,500 people per year. That is just less than the estimate made by former senior HO officials Palmer and Wood, who wrote in 2017 that the number of failed asylum seekers who are believed remain in the country each year illegally 'might very well be larger than 10,000'.<sup>21</sup>

21 Palmer and Wood.



Table 2: Outcome analysis of asylum applications, as at May 2018. HO.<sup>22</sup>

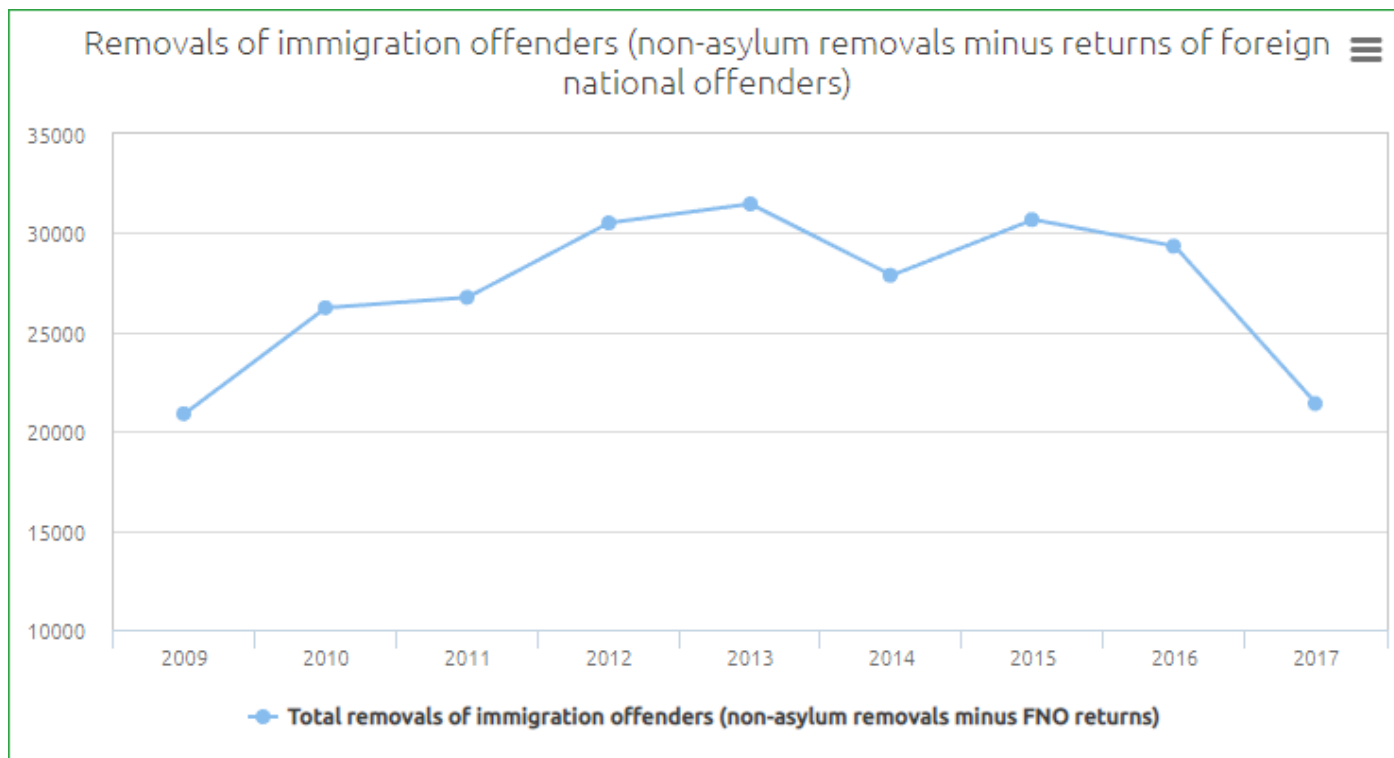
Year	Total applications by main applicants	Refusals (incl. after appeal) of Asylum, Humanitarian Protection (HP) or Discretionary Leave (DL) or application withdrawn	Removals and departures of those who applied for asylum during the period but were refused	Failed asylum seekers who have not departed	% of those refused of Asylum, HP or DL or withdrawn applications who did not leave the UK
2004	33,960	24,365	8,632	15,733	64.6
2005	25,712	17,036	7,132	9,904	58.1
2006	23,608	14,920	6,495	8,425	56.5
2007	23,431	14,236	6,552	7,684	54
2008	25,932	15,202	7,205	7,997	52.6
2009	24,487	14,351	6,627	7,724	53.8
2010	17,916	10,854	5,355	5,499	50.7
2011	19,865	10,930	5,317	5,613	51.4
2012	21,843	11,814	5,551	6,263	53
2013	23,584	12,299	5,854	6,445	52.4
2014	25,033	10,575	4,276	6,299	59.6
2015	32,733	13,877	3,110	10,767	77.6
2016	30,747	14,318	2,499	11,819	82.5
2017	26,547	9,641	1,057	8,584	89
<b>Average</b>	<b>25,400</b>	<b>13,900</b>	<b>5400</b>	<b>8,500</b>	<b>61</b>

### *Immigration offenders*

26. Figure 4 below illustrates that removals of immigration offenders e.g. overstayers, clandestine entrants fell from a peak of 31,500 in 2013 to 21,400 in 2017 (the figure for immigration offenders is calculated by subtracting returns of Foreign National Offenders from total non-asylum removals).

22 Outcome analysis of asylum applications as at May 2018 (HO asylum figures, vol. 2). As the HO notes: 'Data are based on date of application, and the outcomes are as at the point of data extraction in May 2018. The proportion of applications awaiting an outcome (either an initial decision or an appeal) will be lower in earlier years as more time has elapsed for the cases to be processed than those from more recent years.'

Figure 4: Removals of immigration offenders (non-asylum removals minus returns of foreign national offenders)



## The legal background

27. Just over a third of appeals to the First-Tier Tribunal against initial HO asylum refusals were allowed in the year to March 2018. This appeal grant rate is much higher for certain nationalities, including Eritreans (87%), Sudanese (62%) and Afghans (51%). If it so chooses, the HO can then challenge the courts' reversal of officials' original decision in the Upper Tribunal. Nearly three-quarters (73%) of these final appeals by the HO were rejected by immigration judges in the year to March 2018.<sup>23</sup> Outcome analysis by the HO suggests that, when the appeals process is taken into account, just under half of asylum applications since 2004 have resulted in a grant of some form of international protection.

28. Although the Government significantly limited the types of cases that could be covered by free legal aid in April 2013, applicants can still receive government money in order to pursue various asylum claims. In the year to September 2017, 38,500 claims for public funding were submitted in asylum cases, while £36 million worth of taxpayers' money was claimed for legal advice for asylum seekers (over £690,000 per week).<sup>24</sup>

23 *The Guardian*, September 2018, URL: <https://www.theguardian.com/uk-news/2018/sep/03/inhumane-three-quarters-of-home-office-asylum-appeals-fail>

24 Ministry of Justice, Legal aid statistics, June 2018.

## Obstacles to removal

29. Although a range of factors such as human rights legislation, the courts and a number of routes for the regularisation of illegal migrants combine to make removal more difficult, the process is also hampered by deficiencies in the Home Office, as well as a lack of resources.

### a) Gaps in data and people and processes under strain

30. The Independent Chief Inspector of Borders and Immigration has identified a number of problems:

- a) Police station staff are failing to promote voluntary departure, partly due to insufficient training (ICIBI, Dec. 2015).
- b) Limited detention bed-space means that ‘some individuals who have repeatedly failed to abide by the rules’ have not been pursued or detained after being encountered by enforcement teams (ICIBI, December 2015).
- c) Poor communication between different officials responsible for removals mean that, for example, the take-up of Assisted Voluntary Returns had not been ‘maximised’ (ICIBI, December 2015).
- d) There has been a failure by the Police to check the immigration status of foreign nationals after arrest (ICIBI, October 2016).
- e) There has been a failure to deal efficiently with a large backlog of asylum cases in a timely manner. This has made it more likely that barriers to removal of failed claimants will arise (ICIBI, November 2017).
- f) A lack of resources, in addition to failures of follow-through, were identified in the HO’s Reporting and Offender Management (ROM) system, responsible for a reporting population of around 80,000 in September 2016. As of December 2016, there also nearly 60,000 declared absconders.<sup>25</sup> Worryingly, the ICIBI said there was **‘little evidence that effective action was being taken to locate the vast bulk of absconders’** (Nov. 2017).
- g) A number of civil servants – for example in the DWP and HMRC - were reportedly refusing to help the Home Office investigate immigrants suspected of being in the country illegally (ICIBI, January 2018).<sup>26</sup>
- h) Due to unreliability, Exit Checks data appeared to have ‘no material impact’ on the interventions and sanctions functions of the HO. The data also appeared to be of very limited benefit to immigration enforcement generally or to the removals process. For example, of 1,658 individuals identified as probable overstayers via the Exit Checks, 94% were found to be ineligible for enforcement action. Only two people subsequently departed the country (ICIBI, March 2018).
- i) Vulnerabilities at the UK border were acting as an ‘enabler’ for organised immigration crime, modern slavery and human trafficking. Meanwhile, ‘corrupt public and private sector workers’

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25 The Home Office defines an absconder as an individual who “breaches one or more of the conditions imposed as a condition of Temporary Admission (Temporary Release) bail or release on a restriction order served to them on the appropriate notice and, in all cases, whose whereabouts are unknown and all mandatory procedures to re-establish contact with the migrant have failed.” Home Office guidance: ‘Non-compliance and absconder process’; 15 December 2016. URL: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/581034/non-compliance-and-absconder-process.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581034/non-compliance-and-absconder-process.pdf)

26 ICIBI report, An inspection of the review and removal of immigration, refugee and citizenship “status”, January 2018.

were helping gangs to facilitate illegal immigration (National Crime Agency, May 2018).<sup>27</sup>

- j) The National Crime Agency has expressed concern about the vulnerability of small sea-ports. Meanwhile, the ICIBI has found that there is 'no systematic collection of information about any aspect' of non-scheduled arrivals of boats and planes. *"Compliance with reporting details of movement, passengers, or goods was poor. Border Force was also criticised for not collecting data adequately or sharing intelligence effectively."*<sup>28</sup> Nor is there any consistent surveillance of the coastline.
- k) The HO can obtain an emergency travel document (ETD) from a foreign embassy in cases where non-UK nationals have previously destroyed their own passports or have arrived here illegally without them.<sup>29</sup> However, the ICIBI said the HO had no clear strategy in place to tackle delays and non-compliance in the ETD process (March 2014).

31. There are clearly a range of challenges. However, perhaps most serious is the fact that there appears to be a significant disparity between referrals for enforcement action and the numbers being removed. In November 2017, the ICIBI told the Home Affairs Committee: *"I think there is a recognition that the capacity to enforce simply will not deal with the numbers."*<sup>30</sup>

32. Another key problem is the cut in resources for protecting the border in recent years. Spending by the government on border-related functions was reduced by 21% between 2011/12 and 2016/17, from £3 billion to £2.3 billion. Meanwhile, the number of staff employed with directorates that are tasked with protecting and enforcing the border has declined by 17% since 2009/10, from 27,600 to 22,900.<sup>31</sup>

33. A lack of capacity appears to be tightening the bottleneck on removals. As an illustration, the number of outstanding asylum cases involving failed applicants who were subject to removal rose by over 50%, from 20,800 in 2014 to more than 34,000 in 2018.<sup>32</sup>

34. As former HO officials David Palmer and Alasdair Wood have noted:

*"In practice, the Home Office does very little to ensure that all or even a majority failed asylum seekers leave Britain.... There are (approximately) 4,000 places in immigration detention centres, Even if all those places were filled by failed asylum-seekers – which they are not – only a fraction could be detained pending deportation. There is not the capacity to detain all of them."*

27 National Crime Agency, National Strategic Assessment, May 2018.

28 Policy Exchange, Border Audit.

29 As provided for under Section 35 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

30 Home Affairs Committee, Oral evidence session on HO Delivery of Brexit, 29 November 2017.

31 Policy Exchange, Border Audit, August 2018.

32 HO Asylum Transparency Data, May 2018.

35. In order to aid the process of removal, there should be a boost in both the resources available to immigration enforcement and the UK Border Force as well as in the number of staff employed and in the training and support that is offered to them.

## b) Detention

36. A number of those with no right to be in the UK are detained, normally in an Immigration Detention Centre. However, prior to January 2018, a significant proportion were granted Temporary Release, in accordance with the Immigration Act 1971 (as amended).<sup>33</sup> From 15 January 2018 onwards, however, a new single power for the government to grant immigration bail (created under Schedule 10 of the Immigration Act 2016) came into effect.<sup>34</sup>

37. The Immigration Minister has revealed that 95% of visa overstayers are not kept in detention but 'managed in the community'.<sup>35</sup> This may help to explain why, as of September 2016, 80,000 people who did not have permission to stay in the UK were living among the general public while being required to make scheduled visits to an HO Reporting Centre or Police Station (nearly 40,000 such individuals were in London alone). **Worryingly, as of December 2016 there were also nearly 60,000 declared absconders.**

38. Given these problems, it will strike the public as odd that detention is not used more often in order to keep track of those with no right to be here. In fact, the number of people in detention (excluding those in HM Prisons) has fallen from just over 3,000 (year to June 2014) to 1,900 (year to June 2018). This decline may have resulted from a number of factors including the closure of removal centres in Dover and Haslar in 2015 and the Verne in 2018.<sup>36</sup>

39. Another contributory factor is the suspension of the government's previous Detained Fast-Track policy as a result of court rulings. Originally introduced in 2000, this meant that asylum claimants could be detained if a quick decision was likely in their case, for example if an illegal immigrant who had been detected by an enforcement team then applied for asylum. The policy also meant that fast-tracked cases could be completed within 12 working days from the moment of the initial decision until the conclusion of their First-tier Tribunal appeal. In light of a July 2015 High Court ruling, the government announced amended proposals that include a time limit of between 25 and 28 (rather than 12) working days. This now awaits approval by the Tribunal Procedure Committee following ongoing consultation<sup>37</sup> Urgent action on this is needed.

40. The declining trend in the use of detention should be reversed in order to ensure that the HO can tackle absconding by those who are subject to removal action. Schedule 10 should be used by the government only in rare cases, while regularisation routes should be closed. To deal with capacity issues (see paragraph 34 above), there should also be a major increase in the size of the detention estate, with at least 1,000 more places added.

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33 Paragraph 21(1), Schedule 2 states: "A person liable to detention or detained under paragraph 16...may, under the written authority of an immigration officer, be temporarily admitted to the United Kingdom without being detained or be released from detention." The Immigration Act 1971 also permitted release from detention on bail (Paragraph 29, Schedule 2) and release from detention pending deportation (Schedule 3).

34 House of Lords, Hansard, 23 May 2018.

35 House of Commons Hansard, 6 September 2018.

36 Migration Observatory, "Immigration detention in the UK", July 2018.

37 Written answer, July 2018, URL: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-06-29/HL9105/>

41. It is also concerning that the number of people being removed directly from detention has dropped since 2010, from 16,600 to 13,200 in 2017.<sup>38</sup> In 2017, the ICIBI examined a sample of those who were released from detention, despite it being the intention of the government to remove them. In more than a third of cases, the reason for release was that judicial review proceedings had begun. For another third, the process was halted because the person applied for asylum.

42. The Windrush debacle has revealed serious oversights in the process of detention and removal. It is essential to ensure redress for those who have been unjustly affected. However, it is equally vital to pursue efforts, supported by 70-80% of the public, to restore the credibility of immigration control. The essential tools of detention and removal should be made more robust, efficient and transparent. Entry without leave is against the law, as is overstaying.<sup>39</sup> Efforts to 'weaponise' these failures of administration cannot be allowed to undermine immigration control. Allowing this would be wrong in the eyes of the UK public as well as unfair to migrants who take the time and care to go through the proper channels.

### c) Re-documentation and re-admission

43. The process of re-documentation can hamper the removal of those with no right to be here. Many people will not have had documents i.e. a passport, when they arrived, while others will have purposely destroyed them to frustrate the returns process. Some countries, including India and China, will usually not take people back unless they have the relevant paperwork to prove they are genuine nationals.

44. The UK has opted into EU readmissions agreements with Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macau, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. The UK also has bilateral readmission agreements with Algeria, South Korea and Switzerland. Finally, the UK has memoranda of understanding (MoU) for the return of nationals found illegally in the UK with Afghanistan, Angola, Burundi, China, Democratic Republic of Congo, Guinea, Iraq, Kuwait, Malaysia, Nigeria, Rwanda, Sierra Leone, Somaliland, South Sudan and Vietnam.<sup>40</sup> As the HO notes: "The scope of the MoUs varies considerably."<sup>41</sup>

45. In the year to June 2018, less than half (45%) of those leaving detention were returned from the UK, while 55% were either bailed or granted leave to remain. ***Of those from the larger countries of the Indian sub-continent (India, Pakistan, Bangladesh), only between 22% and 28% were returned to their home country upon leaving detention.***<sup>42</sup>

46. One issue hampering the return rate is re-documentation, on which there needs to be greater cooperation between the UK and other countries. The UK has negotiated a returns agreement with India but there is uncertainty about whether this will now be concluded. The urgent need for this is demonstrated by the fact that the number of Indian citizens with no right to remain in the UK who were removed either forcibly or voluntarily from the UK fell by 45 per cent from 7,700 in 2014 to just under 4,300 last year. Similarly, Iran will not normally allow people to return unless they have a passport, while there is currently no returns agreement with Brazil or Bangladesh.

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38 HO detention statistics, August 2018.

39 Under s.24(1) of the Immigration Act 1971. Crown Prosecution Service guidance: <https://www.cps.gov.uk/sites/default/files/documents/publications/Immigration-Offences-Annex.pdf>

40 Parliamentary answer, October 2014.

41 Home Office report, 2010.

42 Home Office returns statistics, May 2018.

47. The effectiveness of the Dublin Regulation, which in theory permits the return of migrants who have passed through a safe EU country on the way to the UK, has declined dramatically from the UK's point of view in recent years. Despite the UK government saying that it takes 'full advantage' of the rule, the number of transfers out of the UK fell from just over 500 in 2015 to just over 300 in 2017.<sup>43</sup> This suggests that it is not worth paying a price for continued participation in the regulation once the UK leaves the EU.

48. However, the government should pursue a host of new full bilateral readmissions agreements, or upgrade its MoUs, especially with those countries whose citizens represent the biggest illegal immigration challenge. These should include, but not be limited to: Albania, Bangladesh, Brazil, China, Guinea, India, Iran, Sri Lanka, Pakistan and Vietnam. The Brexit talks should provide an opportunity to work out new arrangements with countries such as Romania, Poland and Latvia, which have accounted for significant numbers of removals.

49. In 2013, the UK government put plans to impose visitor visa restrictions on Brazilian tourists on hold following protests about its potential impact on efforts to boost business links with the country.<sup>44</sup> This decision should be re-evaluated in light of updated evidence.

50. If necessary the government should encourage cooperation on this issue by source countries by linking it to the possible removal of visa-free access (e.g. in the case of Brazil) – or where applicable, the provision of overseas aid.

## Impact of the “compliant environment”

51. The HO has said that the Immigration Act 2014 has made the deportation of foreign national offenders easier and quicker. Moreover, the ICIBI noted in December 2015 that the measures introduced by the Act had helped to increase the number of voluntary removals between 2014 and 2015. However, the ICIBI also notes that voluntary removals are being hampered by a failure of follow-through by HO enforcement teams. These measures should be maintained and strengthened. Between 74 and 82 per cent of the public support them and think it is only fair that everyone should have to show documents proving their right to be here when renting a place to live, opening a bank account, registering with a GP, or accepting a job.<sup>45</sup>

## The case for ID cards

52. The decision by the Coalition in 2010 to abandon the ID card programme introduced by Labour was a serious mistake. The French are right to point out that the scope for working and living illegally in Britain is greatly increased by the absence of any compulsory ID document. Either a card, or a unique identifying number, linking health, tax and biometric data, would help the government to gain a clearer picture of who is in the country and who is not. Every country in the European Union has a card, save for the UK, Denmark and Ireland. ID cards should not be understood as an alternative to tough measures to tackle illegal immigration but as a way of ensuring a genuinely compliant environment. There would still need to be an effective legal framework in place, as well as the political will, to remove those with no valid reason to be here.

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43 Migration Watch UK, 'Transfers of asylum seekers from the UK under the Dublin system', March 2018, URL: <https://www.migrationwatchuk.org/briefing-paper/444>

44 BBC News, March 2013.

45 YouGov survey, April 2018.

## Summary of recommendations

53. It is vital to the credibility of immigration control that enforcement become more efficient.

Recommendations are below:

- a) There should be more widespread use of Assisted Returns (see Annex A). The use of these has declined significantly since 2005
- b) Funding for immigration enforcement should be boosted by around £100 million. There should also be a major boost in the amount of support and training provided to HO staff (see par. 32 above).
- c) A much larger share of immigration offenders and failed asylum seekers in the 80,000 reporting population (identified in 2016/17 by the ICIBI) should be detained until being removed from the UK. A special operation should be launched to locate (and remove) the 60,000 absconders.
- d) There should be a major increase in the size of the detention estate (up from the current capacity of 4,000 or so places<sup>46</sup>).
- e) The government should establish one-stop shops at detention centres for the speedy processing of the backlog of asylum claims. An important component of this is the re-introduction of the Detained Fast-Track policy (see paragraph 39 above).
- f) The government should encourage cooperation on re-documentation and re-admissions by source countries by linking it to the possible removal of visa-free access (e.g. in the case of Brazil) or where applicable, to the provision/removal of overseas aid. It should also devote new energy to securing a host of new bilateral returns agreements (see Section C above).
- g) The HO should focus applications for emergency travel documents on cases where re-documentation is likely to result in removal. It should also increase the use of detained interview schemes, allowing embassies to interview their nationals in prisons or detention centres (as recommended by CIBI in March 2014) – see paragraph 30(k) above.<sup>47</sup>
- h) In line with ICIBI recommendations (Mar. 2018) that have been rejected by the HO, the government should re-establish the Exit Checks Programme, with appropriate oversight and governance, and extend its regular analysis to cover non-visa nationals and those on long-term visit visas.
- i) Routes that allow regularisation of the status of overstayers and failed asylum seekers, including the 20 year rule and the family life as a partner (10 year route), incentivise the flouting of UK immigration law. **They should be closed.** Similarly, the Metock route, which stems from a 2008 European Court of Justice judgment, allows non-EU nationals who are in the UK illegally to remain if they form a genuine relationship with an EU citizen. This should be closed as soon as possible after Brexit.
- j) ID cards should be introduced. The French are right to point out that their absence in the UK makes it far too easy for migrants to stay on illegally and find work (see par. 52 above).

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46 Migration Observatory, 'Immigration Detention in the UK'.

47 ICIBI, March 2014.



## Conclusion

54. The illegal immigrant population is rising by an estimated gross figure of over 105,000 persons per year, while less than a third of the annual inflow is being removed or leaving voluntarily. A number of those who remain have also been able to regularise their status via a range of routes that should be closed at the earliest opportunity. Meanwhile, attempts to 'weaponise' the Windrush issue in order to destroy sensible border controls should be firmly rejected. Stronger efforts at removal, as outlined in the paper, are essential but they must be reinforced by measures to deter illegal overstaying and the political will to get the job done. There is very strong public support for the necessary measures. Meanwhile, it is time that ID cards were re-visited.

20 September 2018

## Annex A: Types of removal / return

Removals can be divided into those that are enforced and those that are voluntary. The latter are encouraged by the HO through various incentives, including, in the case of Assisted Returns, where the taxpayer shoulders the cost of travel. It is HO policy to encourage voluntary returns from detention rather than enforced returns. Voluntary returns are far cheaper than the £11,000 average cost of removing someone against their will, according to *Policy Exchange*.

- a) **Enforced Removal** occurs where it has been established that a person has breached UK immigration laws and has no valid leave to remain within the United Kingdom.<sup>48</sup> This incorporates enforced removals from detention as well as non-detained enforced removals.
- b) **Voluntary Returns / Removal** – this incorporates three subcategories:
  - i) *“Assisted Returns”*, where financial assistance for return to the country of origin is provided (by the Home Office’s Voluntary Returns Service).
  - ii) *“Notified Returns”* – this is where a person notifies the HO that they have departed, often after enforcement action has begun (a new category of this type, for which data is available only from 2014 onwards, is ‘controlled returns’).
  - iii) *“Other Verified Returns”* which relate to persons who it has been established have left or who have been identified leaving the UK without formally informing the immigration authorities of their departure. These persons can be identified either at embarkation controls or by subsequent data-matching. “Other returns from detention” occur where the person has notified the HO that they wish to make their own arrangements to leave and has provided evidence to this effect (data only available from 2014 onwards).

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48 This is regulated by section 10 of the Immigration and Asylum Act 1999 and covered by paragraphs 395A to 395F of the Immigration Rules.

## Annex B: Non-visa national visitor admissions by overstay risk factor

There were **9,588,555** non-visa national visitor admissions in 2017. Of these, 8.35 million came from countries with **very high** levels of development, while **1,240,760** came from countries with lower levels of development (based on UN Human Development Index metrics). The overstaying estimate is calculated from arrivals from countries listed in in tables B and C below.

A: 'Very high' level of development (2017)	Visitor admissions
Andorra	1,570
Argentina	175,000
Aruba	550
Australia	1,040,000
Brunei	10,800
Canada	1,040,000
Chile	61,900
Hong Kong	222,000
Israel	303,000
Japan	440,000
Korea (South)	406,000
Kuwait	84,500
Monaco	2,020
New Zealand	228,000
Qatar	53,300
San Marino	650
Singapore	174,000
Taiwan	164,000
United Arab Emirates	60,500
United States	3,880,000
Vatican City	5
<b>Total</b>	<b>8,347,795</b>

<b>B: 'High' level of development (2017)</b>	<b>Visitor admissions</b>
Bahamas	4,000
Barbados	9,920
Belize	1,590
Brazil	366,000
Costa Rica	20,400
Dominica	3,620
Grenada	3,070
Malaysia	280,000
Maldives	2,650
Mauritius	35,300
Mexico	205,000
Micronesia	30
Oman	24,900
Panama	7250
Samoa	100
Seychelles	2,110
St. Kitts and Nevis	7,350
St. Lucia	3,260
St. Vincent and the Grenadines	1,880
Tonga	340
Trinidad and Tobago	29,100
Uruguay	13,800
Vanuatu	145
<b>Total</b>	<b>1,021,815</b>

<b>C: 'Medium' level of development (2017)</b>	<b>Visitor Admissions</b>
Botswana	3,040
El Salvador	4,370
Guatemala	9,650
Honduras	4,750
Namibia	2,850
Nicaragua	1,380
Papua New Guinea	510
Paraguay	4,980
Solomon Islands	415
South Africa	187,000
<b>Total</b>	<b>218,945</b>