



## DEBATE PACK

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# TOEIC visa cancellations

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## Summary

A Westminster Hall debate on TOEIC visa cancellations is scheduled to take place on Tuesday 4 September at 4.30pm. The Member leading the debate is Wes Streeting MP.

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

# 1. Background

## 1.1 The introduction of the English language requirement

Applicants for certain visas and for settlement in the UK need to prove their knowledge of English as part of the eligibility requirements.

A “points-based” system for non-EEA national work and study visas was launched in the UK in 2008. An English language competency was introduced as part of that system, as set out by the Home Secretary: “Highly skilled applicants will earn points for their skills and potential for economic success, competence in English language and ability to support themselves and their dependents.”<sup>1</sup>

Visa eligibility is determined by satisfying a set of mandatory criteria, to which a fixed number of points are attached. There are five ‘tiers’ to the points-based system. These tiers cater for high skill/high value migrants; sponsored skilled workers; students; and temporary workers.<sup>2</sup> Each tier contains several different visa categories, with varying associated conditions and mandatory eligibility requirements.

Not all visas require proof of English language skills, but it is a criterion for eligibility for most long-term visas and for settlement. These include most family, Tier 4 student and Tier 1 and 2 work visas, and settlement and citizenship applications. There are exceptions within some categories for specific visas and other exemptions based on circumstances.

Knowledge of English can be shown by passing an approved test. For some visas and for settlement applicants can show their knowledge of English with evidence that they come from an English-speaking country or with an academic qualification taught/researched in English.

## 1.2 English language requirement and fraud

On 10 February 2014 the BBC’s Panorama programme exposed cheating in some colleges which administer the Test of English for International Communication (TOEIC) for non-EEA students. Panorama discovered that exam invigilators in some colleges read the correct answers to students during the test or supplied proxies to sit sections of the test on behalf of the applicants. The Financial Times reported that voice recognition analysis by Educational Testing Services (ETS), the company which administers the test, showed 33,725 test takers used a proxy and that it suspected a further 22,694 instances of fraud.<sup>3</sup> The voice recognition software looked for possible matches which indicated

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<sup>1</sup> [HC Deb 5 December 2007 c72-75WMS](#)

<sup>2</sup> UK Visas & Immigrations, [Secure English Language Testing \(SELT\) Frequently asked questions](#)

<sup>3</sup> [‘Home Office told thousands of foreign students to leave the UK in error’](#), *Financial Times*, 1 May 2018

the same individual took multiple tests, and then used human verification on suspected matches.<sup>4</sup>

In response the Home Office revoked or curtailed the visas of thousands of students it suspected of fraud. The Home Office also removed ETS from its list of approved TOEIC test providers.

The then Home Secretary Theresa May told the BBC that the student visa system 'needs cultural change'.<sup>5</sup>

The Guardian reported on 10 May 2014 that Theresa May stated:

For too long many colleges, particularly private or further education colleges, have been selling visas and not education. It is time for them to face up to their responsibilities as purveyors of education and not abuse.

The student visa regime we inherited was open to widespread abuse. It neither controlled immigration nor protected legitimate students from substandard sponsors. Our reforms have curbed abuse by closing bogus colleges, making the application process more rigorous and imposing more rules on colleges to improve course quality.

However, as Panorama has highlighted, much more needs to be done. This type of abuse is not acceptable and as criminals, bogus colleges and economic migrants seek new ways to exploit the system we will continue to change our methods to clamp down on them.

We have taken action and suspended the two colleges identified in the programme. Applications made by students in the UK using the English Testing Service or associated with the colleges or immigration advisers mentioned in the programme have been put on hold pending the outcome of those investigations.

All further English language tests done through ETS in the UK have been suspended.<sup>6</sup>

Subsequent litigation has brought into question the accuracy of the evidence relied upon by the Home Office when revoking these visas.

The method which ETS used to determine fraudulent test takers was explained in *R (on the application of Gazi) v Secretary of State for the Home Department (ETS – judicial review) IJR* [2015] UKUT 327 (IAC). In this appeal to the Upper Tribunal, a witness for ETS stated:

The basic technology extracts biometric features from an individual's speech to generate voice print (the voice equivalent of a finger print). This voice print can then be run against samples to establish whether the sample is likely a recording of the same person who had generated the voice print or a different person.<sup>7</sup>

Analysis of the evidence through litigation has led critics to claim that the Home Office may have erroneously cancelled a significant number

<sup>4</sup> *R (on the application of Gazi) v Secretary of State for the Home Department (ETS – judicial review) IJR* [2015] UKUT 327 (IAC), Averment of Mr Millington, 15

<sup>5</sup> '[Student visa system fraud exposed in BBC investigation](#)', BBC Panorama, 10 February 2014 [audio clip]

<sup>6</sup> '[Student visa tests suspended over fraud claims](#)', *The Guardian*, 10 February 2014

<sup>7</sup> *R (on the application of Gazi) v Secretary of State for the Home Department (ETS – judicial review) IJR* [2015] UKUT 327 (IAC)

of visas. The Guardian quoted an unnamed immigration lawyer's opinion that 'as many as 4,000 students may have been falsely accused by the Home Office of faking their tests'.<sup>8</sup> The Independent puts the figure of those falsely accused much higher, claiming that 'the government may have mistakenly deported more than 7,000 foreign students'.<sup>9</sup>

Appeal rights arising from the relevant visa decisions were limited. This is because many of the decisions only gave rise to an out-of-country appeal.

In *Ahsan v The Secretary of State for the Home Department (Rev 1)*, Court of Appeal - Civil Division, December 05, 2017, [2017] EWCA Civ 2009 the Court of Appeal ruled in favour of the appellants, finding that an out-of-country appeal was not an adequate legal remedy due to the nature of the allegations.

The Home Affairs Select Committee conducted an inquiry into the Home Office's treatment of alleged fraudulent TOIEC tests which concluded with oral evidence in 2016.<sup>10</sup> Stakeholders and MPs are now calling on the Home Office to deliver outcomes for individuals who may have been falsely accused. The Home Secretary Sajid Javid has stated that this is an important issue which the Immigration Minister is carefully considering and will respond to shortly.<sup>11</sup>

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<sup>8</sup> ['Sajid Javid warned over students forced from UK after language tests'](#), *The Guardian*, 1 May 2018

<sup>9</sup> ['Government 'deported 7,000 foreign students after falsely accusing them of cheating in English language tests'](#), *Independent*, 2 May 2018

<sup>10</sup> Home Affairs Committee, [Oral evidence: English language testing](#), 20 July 2016, HC 137

<sup>11</sup> [HC Topical Questions 16 July 2018 Vol 645](#)

## 2. Statistics

### Statistics on TOEIC visa cancellations

Between August 2014 and February 2017, the Home Office published statistics on its analysis of the results of TOEIC speaking/writing tests carried out by the company ETS, taken at UK test centres from April 2012 onwards. These statistics were published quarterly and reported the *cumulative* total number of tests analysed, the outcome of this analysis, and the number of visa-holders subjected to immigration enforcement as a result.

The last edition of these statistics, from February 2018, shows that **33,725 'invalid' tests results** were identified during the analysis of tests from 96 testing centres. A test result was declared 'invalid' where ETS believed there was clear evidence of cheating on the test.

**An additional 22,694 test results were deemed 'questionable'**, which was where the analysis did not conclusively identify the test as invalid but a high number of invalid tests at the same testing centre call its validity in to question.

The table below shows the immigration enforcement action resulting from this. By the end of September 2016, **more than 35,870 visa-holders had had their visa refused or curtailed** on the basis of the TOEIC test.

More than 3,600 of these had received an enforcement visit and **more than 4,600 had been subjected to removal**. It is implied that this figure excludes those who left voluntary without the Home Office having to carry out any enforcement action.

#### IMMIGRATION ENFORCEMENT ACTION FOLLOWING INVALID OR QUESTIONABLE TOEIC RESULTS

Action taken	Total at end of September 2016
Refusal, curtailment and removal decisions made in respect of ETS-linked cases	More than 35,870
Enforcement visits made	More than 3,600
Individuals served removal notices on and detained	More than 1,400
Individuals removed from those encountered	More than 1,000
Total removals and departures in respect of ETS-linked cases	More than 4,600

Source: UK Visas & Immigration - *Temporary and Permanent Migration Quarter 4 2016*: table SELT\_02

a) Data is as at 30 September 2016.

b) Data is operational management information, has not been quality assured under National Statistics protocols, and is subject to change.

c) An ETS-linked case is one where a person has been matched to an invalid or questionable certificate and we have verified this match and the activity has occurred after 1 March 2014.

Please note that Individuals who have been removed or who have departed voluntarily through one of the types of departure that are

counted in normal "Removals and Voluntary Departures" data in Migration Statistics.

The published statistics also show the number of universities and colleges receiving sanctions on the basis of the testing and these are shown in the table below.

<b>ACTION TAKEN AGAINST UNIVERSITIES AND COLLEGES FOLLOWING INVALID OR QUESTIONABLE TOEIC RESULTS</b>	
Action taken	Total at end of September 2016
Universities with highly trusted sponsor status suspended	0
Universities temporarily unable to sponsor new students	0
Privately-operated further education colleges with licences suspended at some point	104
Suspended colleges, of which licence surrendered	8
Suspended colleges, of which licence revoked	87
Suspended colleges, of which licence reinstated	7
Suspended colleges, of which remain suspended	2

Source: UK Visas & Immigration - *Temporary and Permanent Migration Quarter 4 2016*: table SELT\_02

a) Data is as at 30 September 2016.

b) Data is operational management information, has not been quality assured under National Statistics protocols, and is subject to change.

c) An ETS-linked case is one where a person has been matched to an invalid or questionable certificate and we have verified this match and the activity has occurred after 1 March 2014.

The Home Office has not published any subsequent information on the outcomes of these cases.

## 3. News and blogs

Free Movement

[The ETS English language testing saga is over](#)

25 July 2018

Migrant Voice

[Migrant Voice's campaign update on international students](#)

12 July 2018

The PIE news

[Accused in TOEIC cheating scandal have right to appeal in UK says Court](#)

17 January 2018

### 3.1 Press articles

Financial Times [subscription]

[Home Office under fire after court ruling on exam cheating cases](#)

7 August 2018

Guardian

[Home Office urged to let 'cheating' students resit language tests](#)

10 July 2018

Financial Times [subscription]

[Home Office told thousands of foreign students to leave UK in error](#)

1 May 2018

Guardian

[Sajid Javid warned over students forced from UK after language test](#)

1 May 2018

Independent

[Theresa May 'wrongly deported 48,000 students' after BBC Panorama exposes TOEIC scam](#)

29 March 2018

The Guardian

[English language tests inquiry declares thousands of results invalid](#)

24 June 2014

The Guardian

[Student visa tests suspended over fraud claims](#)

10 February 2014



## 4. Parliamentary material

### 4.1 Parliamentary questions

#### [Topical Questions](#)

**Asked by: Stephen Timms**

I join the Home Secretary in those tributes. I asked the Immigration Minister in the House last week to offer students whose visas were cancelled for allegedly cheating in TOEIC—Test of English for International Communication—English tests a new secure test to see whether they can resume their studies. Her reply was:

“It is, of course, an issue that we are considering very carefully.”—  
[Official Report, 12 July 2018; Vol. 644, c. 1121.]

Will she indicate to the House when she expects to reach a decision?

**Answered by: Sajid Javid | Department: Home Department**

This is an important issue and I am glad that the right hon. Gentleman has raised it with the Immigration Minister. She is looking at it very carefully. She has asked for extra advice and expects to respond very shortly.

**HC Deb 6 Jul 2018 | Topical questions | 645 c18**

#### [Immigrants: English Language](#)

**Asked by: Stephen Timms**

To ask the Secretary of State for the Home Department, whether his Department has received evidence that sessions of Toeic tests administered by ETS before 2014 included both genuine and fraudulent entries.

**Answering member: Caroline Nokes | Department: Home Office**

As previously set out to the Home Affairs Select Committee (HASC), where ETS analysis found no direct evidence of cheating but they could not be confident in the test result because of the large number of confirmed invalid results at the same test centre, a test result would be deemed “questionable”.

Nobody with a questionable test certificate should have action taken against them on this basis without first being given the chance to re-sit a test and attend an interview.

HC Deb 04 Jun 2018 | 146690W

#### [Immigrants: English Language](#)

**Asked by: Stephen Timms**

To ask the Secretary of State for the Home Department, if he will make it his policy that an applicant whose leave to remain has been cancelled

because of an allegation of cheating in a Toeic English language test will be able to submit an appeal in the UK.

**Answering member: Caroline Nokes | Department: Home Office**

Parliament legislated to amend the appeals system in the Immigration Act 2014 so that an appeal only arises where a claim raising asylum, humanitarian protection or human rights is refused. Similar provisions are set out in the Immigration (European Economic Area) Regulations 2016. The Government has no plans to change the appeals system.

**HC Deb 09 May 2018 | 140548W**

[Immigrants; English Language](#)

**Asked by: Keith Vaz**

To ask the Secretary of State for the Home Department, for what reasons independent experts have not been appointed to review Tests of English for International Communication cases.

**Answering member: Brandon Lewis | Department: Home Office**

Evidence given to the Home Affairs Select Committee inquiry into English Language Testing provides details of the methods through which the validity of TOEIC were determined and the subsequent reports into those methods. A link to the evidence given to the inquiry is provided here:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/inquiry3/>

**HC Deb 28 Nov 2017 | 115193W**

[British Nationality: English Language](#)

**Asked by: Ian Lavery**

To ask the Secretary of State for the Home Department, for what reasons her Department has blacklisted citizenship applications from applicants who took the TOEIC test through companies accused of fraudulent activities; when those applicants were defrauded by those companies; and what steps she is taking to ensure that those applicants can still apply with an alternative proof of their level of English being of the required standard to process their application fairly.

**Answering member: Brandon Lewis | Department: Home Office**

It is open to any person to apply for citizenship if they meet the statutory requirements.

Those applying for naturalisation as a British citizen are required to demonstrate a knowledge of English at B1 level or above, and that they are of good character.

As a TOEIC test is no longer a recognised English test qualification, an alternative qualification must be presented to satisfy the knowledge of English requirement.

Where evidence is available which identifies individuals as having obtained an invalid test certificate, additional scrutiny is applied by caseworkers as part of the assessment of good character, as would be applied to any other potential indication of adverse character or deception. The decision reached is based on the facts of the case and the overall assessment of the applicant's suitability for naturalisation in accordance with nationality law and published policy.

Further guidance can be found at:

<https://www.gov.uk/government/collections/nationality-policy-guidance>

**HC Deb 11 Sep 2017 | 7221W**

## 5. Further reading

### **Parliamentary material**

Home Affairs Committee, [English-language testing inquiry](#)

### **Legal cases**

[R \(on the application of Gazi\) v Secretary of State for the Home Department \(ETS – judicial review\) \(IJR\)](#), 27 May 2015

[Khan & Ors v Secretary of State for the Home Department \[2018\] EWCA Civ 1684](#)

[Ahsan v The Secretary of State for the Home Department \(Rev 1\), Court of Appeal - Civil Division, December 05, 2017, \[2017\] EWCA Civ 2009](#)

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