



Travel document interview process and prosecution under section 35

This guidance is based on section 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act, 2004

Travel document interview process and prosecution under section 35

About this guidance

<p>Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This guidance tells UK Home Office staff, involved in the travel document interview process and criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams, how to refer a case for criminal prosecution under section 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act, 2004.</p> <p>You must use this guidance if you are working in:</p> <ul style="list-style-type: none">• a unit responsible for conducting travel document interviews including immigration contact management teams working in immigration removal centres• criminal casework• a criminal and financial investigation (CFI) team in Immigration Enforcement• an Immigration, Compliance and Engagement (ICE) team with a level 1 prosecution capability <p>A section 35 case is when a person does not comply with specified action they are required to take in the travel document interview process.</p> <p>This guidance explains:</p> <ul style="list-style-type: none">• what the Home Office considers to be:<ul style="list-style-type: none">○ non-compliance○ a 'reasonable excuse'• the process you must follow when dealing with a potential section 35 case - it tells you the different processes for:<ul style="list-style-type: none">○ England, Wales, Northern Ireland○ Scotland <p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p> <p>Contacts – This page tells you who to contact for help if your senior caseworker or line manager cannot answer your question.</p>	<p>Related links Changes to this guidance</p> <p>Contact</p> <p>Information owner</p> <p>Links to staff intranet removed</p> <p>External links Asylum and Immigration (Treatment of Claimants, etc.) Act 2004</p>
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	<p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find out more.</p>	
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Travel document interview process and prosecution under section 35

Travel document interview process and prosecution under section 35: Changes to this guidance

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page lists changes to the 'Travel document interview process and prosecution under section 35' guidance, with the most recent at the top.</p> <table border="1"> <thead> <tr> <th data-bbox="528 357 869 395">Date of the change</th> <th data-bbox="869 357 1570 395">Details of the change</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 395 869 624">09 October 2015</td> <td data-bbox="869 395 1570 624"> Change request: <ul style="list-style-type: none"> • changes made to the non-compliance with the travel document interview process page • minor style changes </td> </tr> <tr> <td data-bbox="528 624 869 1262">5 September 2014</td> <td data-bbox="869 624 1570 1262"> Change request: <ul style="list-style-type: none"> • Travel document interview process and prosecution under section 35: <ul style="list-style-type: none"> ○ Content added to first bullet point. • Section 35 process: England, Wales and Northern Ireland: <ul style="list-style-type: none"> ○ first paragraph after first set of bullet points 'case owners' changed to 'interviewers'. • Travel document interview: England, Wales and Northern Ireland: <ul style="list-style-type: none"> ○ third bullet point added. • Travel document interview in Scotland: <ul style="list-style-type: none"> ○ third bullet point added. • Recording Section 35 activities: <ul style="list-style-type: none"> ○ first heading in restricted box amended. </td> </tr> <tr> <td data-bbox="528 1262 869 1337">12 September 2013</td> <td data-bbox="869 1262 1570 1337">Completely revised by the guidance, rules and forms team</td> </tr> </tbody> </table>	Date of the change	Details of the change	09 October 2015	Change request: <ul style="list-style-type: none"> • changes made to the non-compliance with the travel document interview process page • minor style changes 	5 September 2014	Change request: <ul style="list-style-type: none"> • Travel document interview process and prosecution under section 35: <ul style="list-style-type: none"> ○ Content added to first bullet point. • Section 35 process: England, Wales and Northern Ireland: <ul style="list-style-type: none"> ○ first paragraph after first set of bullet points 'case owners' changed to 'interviewers'. • Travel document interview: England, Wales and Northern Ireland: <ul style="list-style-type: none"> ○ third bullet point added. • Travel document interview in Scotland: <ul style="list-style-type: none"> ○ third bullet point added. • Recording Section 35 activities: <ul style="list-style-type: none"> ○ first heading in restricted box amended. 	12 September 2013	Completely revised by the guidance, rules and forms team	<p>Related links</p> <p>See also Contact Information owner</p>
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Travel document interview process and prosecution under section 35

Section 35 of the Asylum and Immigration Act 2004: the offence

<p>About this guidance Section 35 process: England, Wales and Northern Ireland Section 35 process in Scotland Recording section 35 activities</p>	<p>This section tells you about the offence under section 35 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 and when you must consider referring a potential section 35 case for criminal prosecution.</p> <p>What the legislation states</p> <p>Under section 35 of the act a person can be required to take specified action if the Secretary of State thinks:</p> <ul style="list-style-type: none">• this will, or may, help in getting a travel document for, or by that person• the possession of that travel document will help remove them from the UK <p>A person commits an offence under section 35 of the act if they fail, without a reasonable excuse, to comply with any specified actions they are given under this section.</p> <p>If found guilty, the maximum sentence is two years imprisonment and/or a fine. For more information on the act, see the related link.</p>	<p>In this section</p> <p>Section 35 requirements specified by the Secretary of State</p> <p>Non compliance with the travel document interview process</p> <p>When to make a section 35 referral</p> <p>When not to make a section 35 referral</p> <p>External links</p> <p>Asylum and Immigration (Treatment of Claimants, etc.) Act 2004</p>
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Travel document interview process and prosecution under section 35

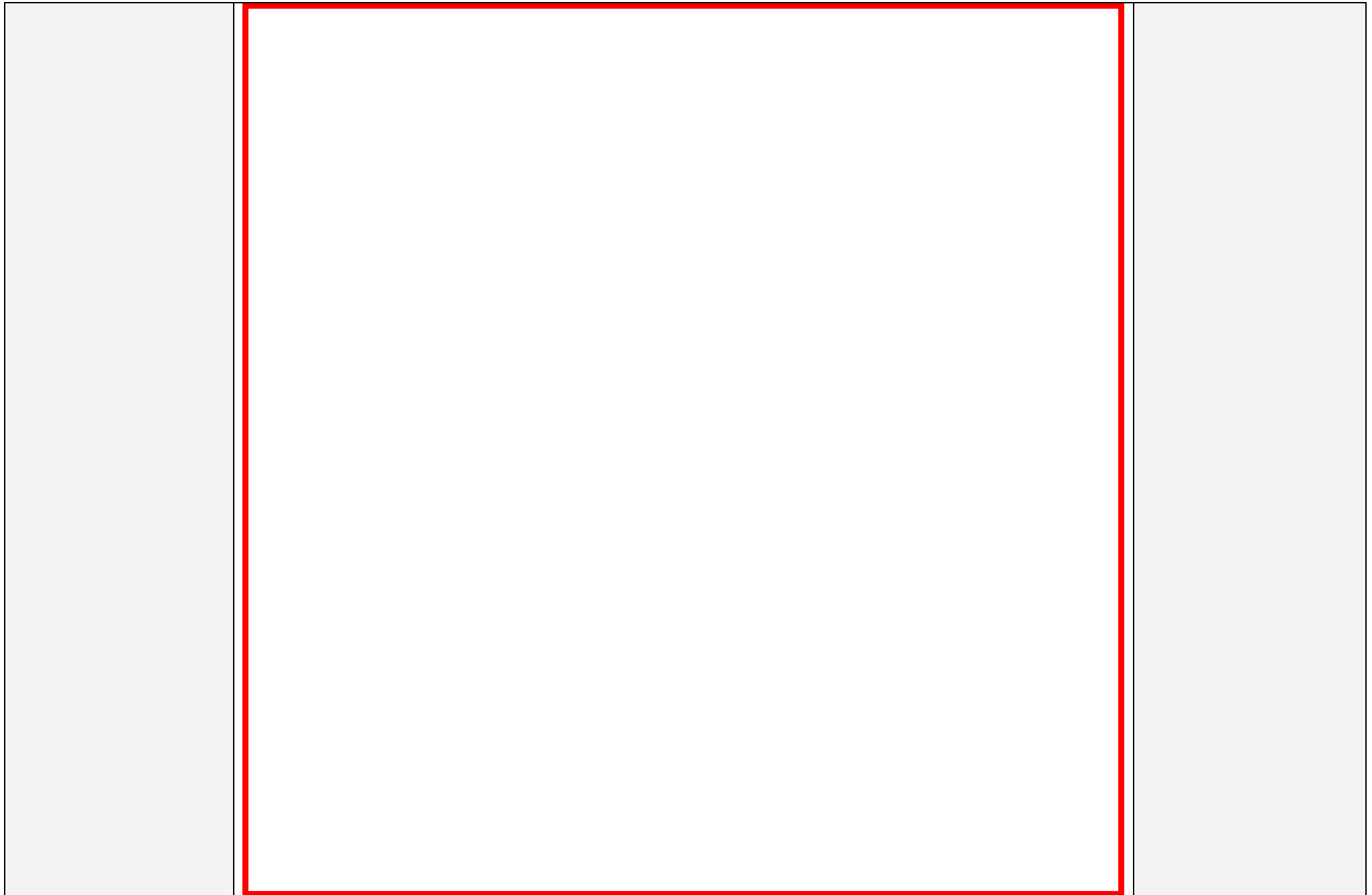
Section 35 requirements specified by the Secretary of State

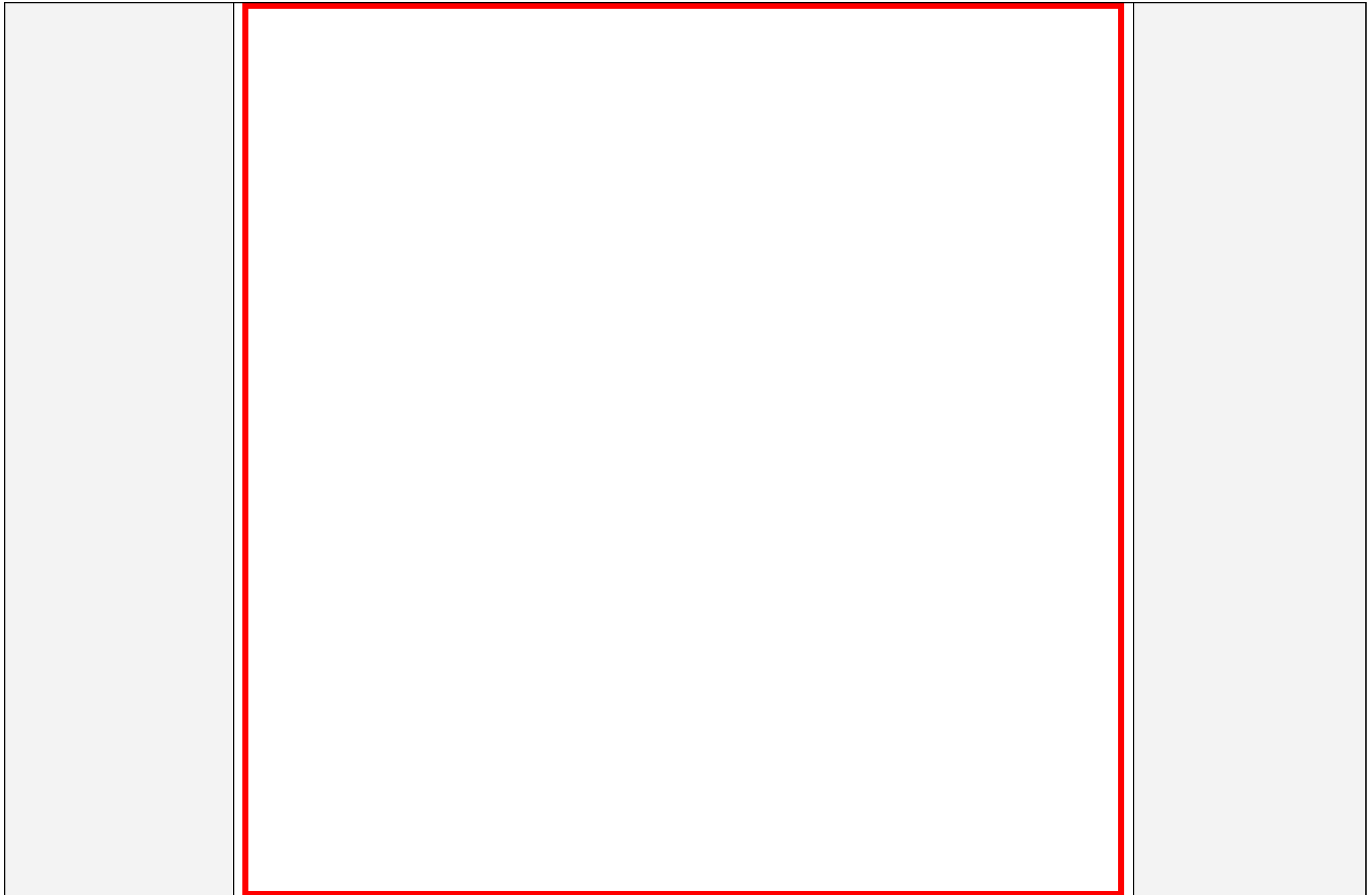
<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what specific requirements the Secretary of State may ask an individual to comply with under section 35 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.</p> <p>The requirements can include:</p> <ul style="list-style-type: none">• to attend a travel document interview (including telephone interviews)• to attend or answer questions at an embassy or high commission, either:<ul style="list-style-type: none">○ face to face○ telephone interview• to provide:<ul style="list-style-type: none">○ information to an embassy or high commission in an application for a travel document○ fingerprints• having a photograph taken <p>This is not an exhaustive list and you may also identify other examples of such requirements.</p>	<p>In this section Non Compliance with the travel document interview process</p> <p>When to make a section 35 referral</p> <p>When not to make a section 35 referral</p> <p>External links Asylum and Immigration (Treatment of Claimants, etc.) Act 2004</p>
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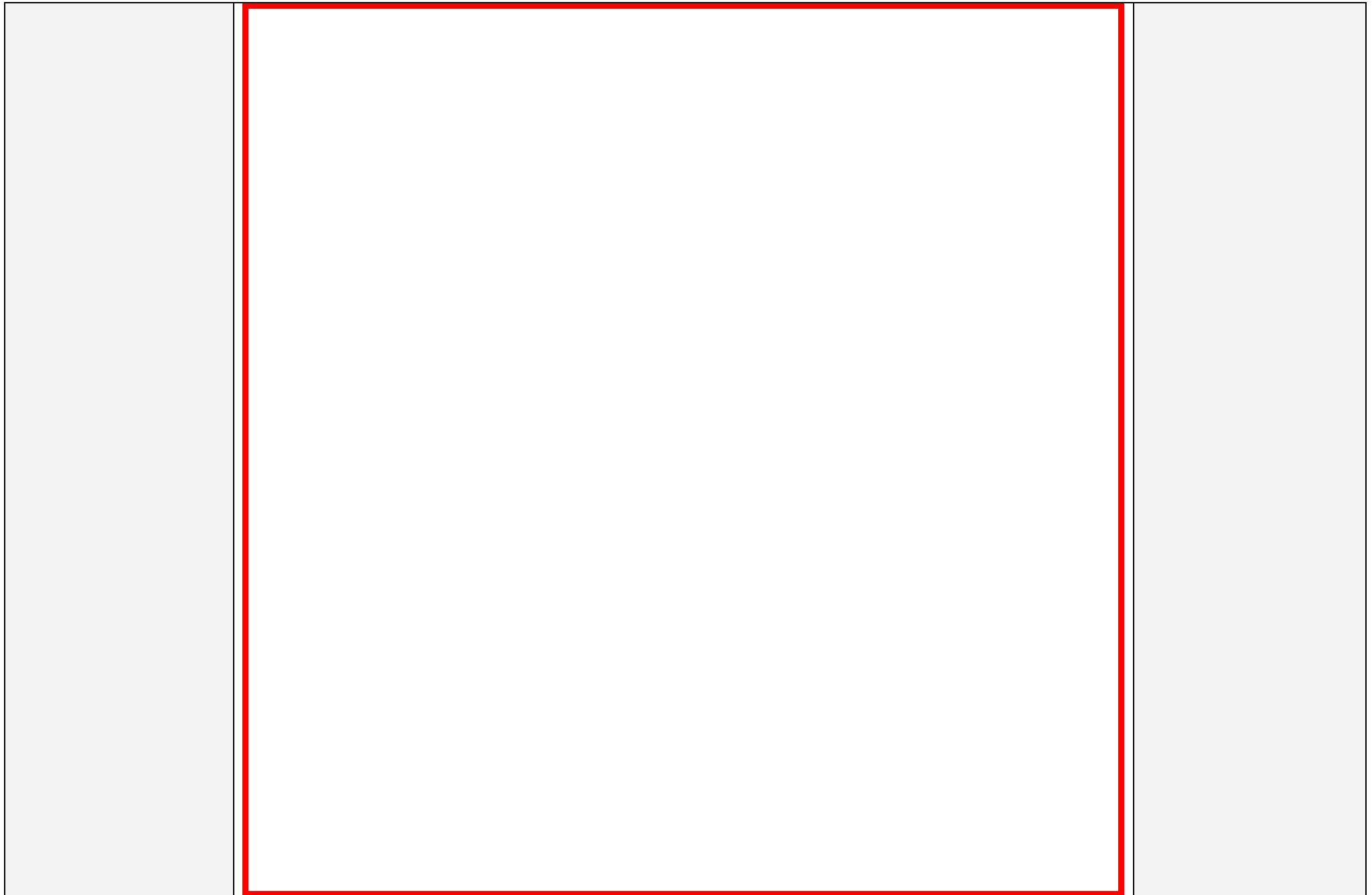
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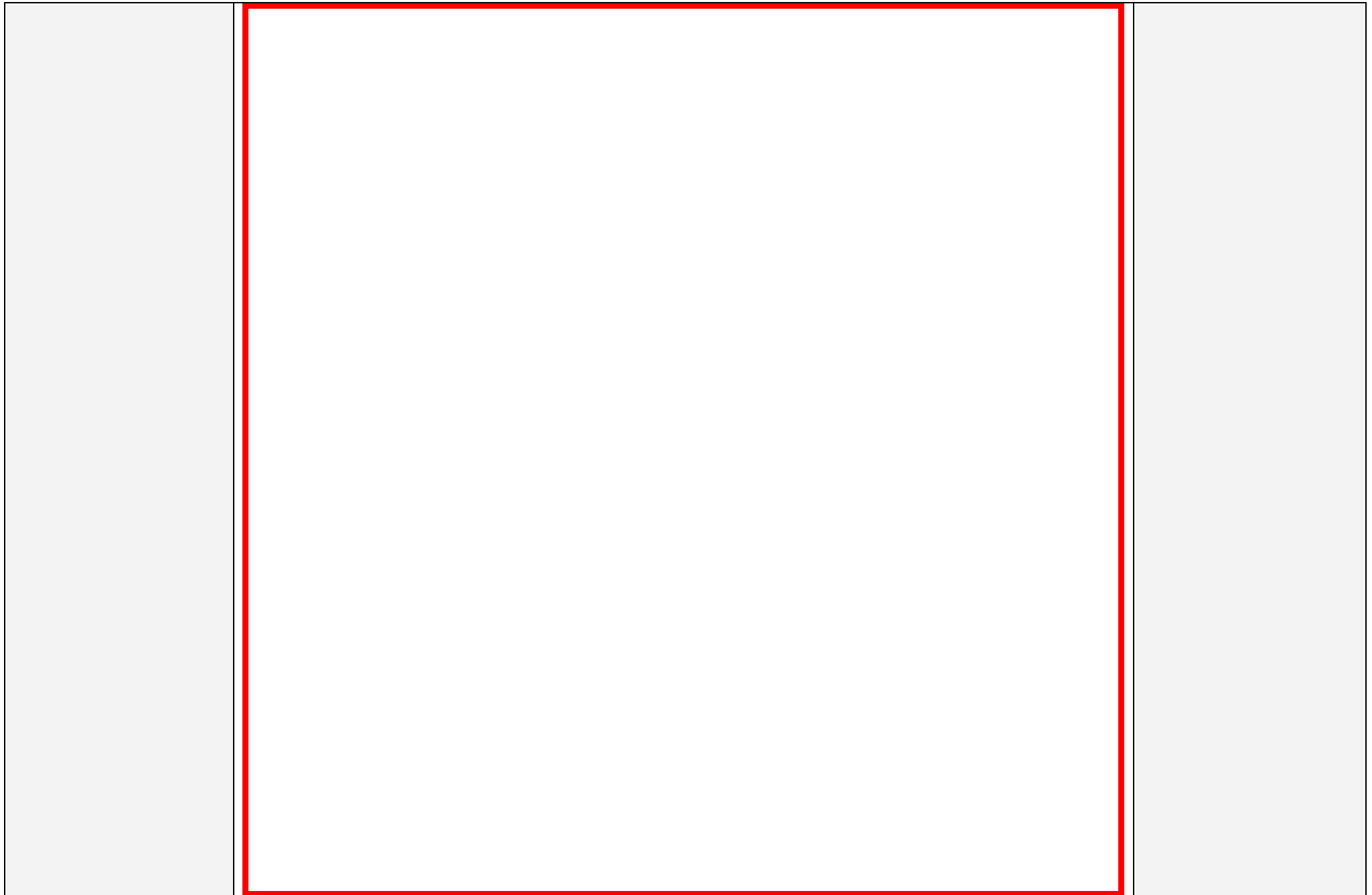
Non-compliance with the travel document interview process

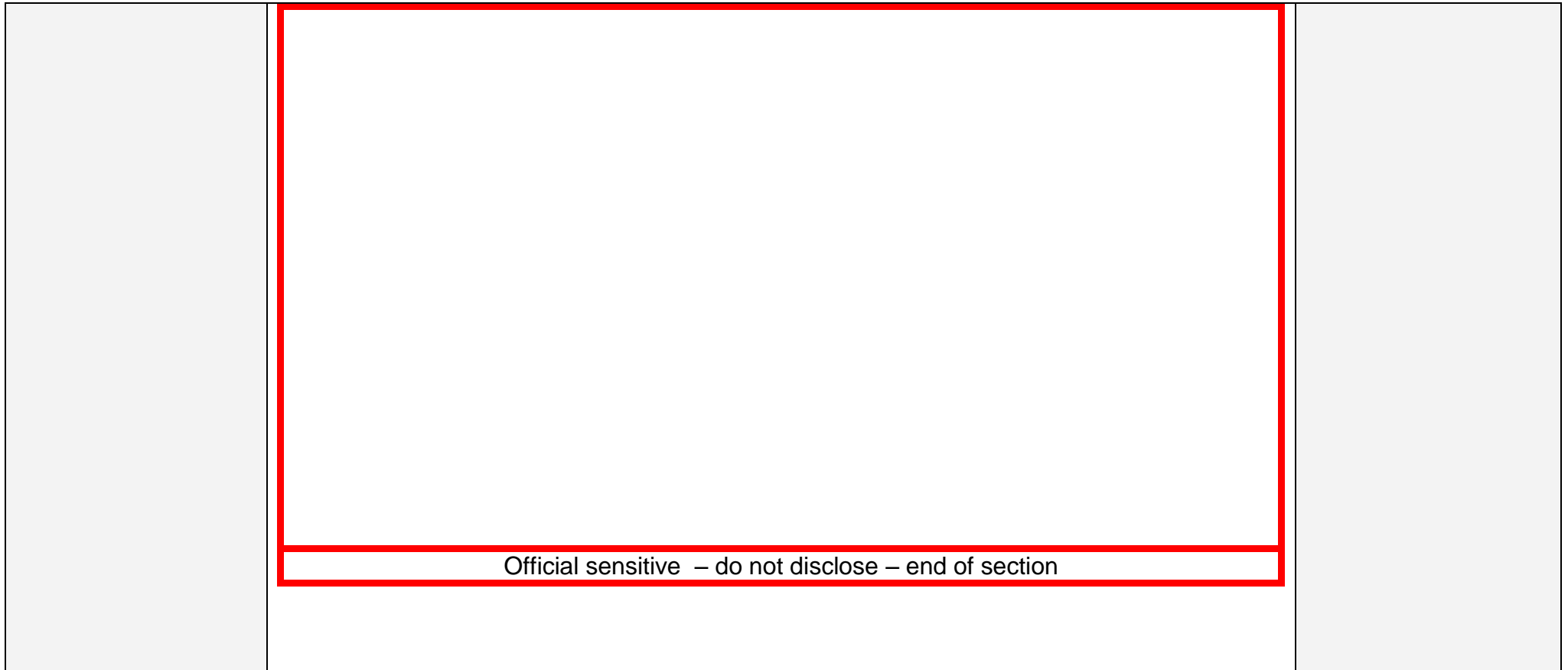
<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This section tells you what you can consider as non-compliance in the travel document interview process.</p> <div style="border: 2px solid red; padding: 10px;"><p style="text-align: center;">Official sensitive – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p></div>	<p>In this section Section 35 requirements specified by the Secretary of State</p> <p>When to make a section 35 referral</p> <p>When not to make a section 35 referral</p> <p>Related links Links to staff intranet removed</p> <p>Download</p>
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Travel document interview process and prosecution under section 35

When to make a section 35 referral

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you when to refer a case for prosecution under section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004, if a person has not complied with the travel document interview process.</p> <p>You must only consider referring a section 35 case for criminal prosecution when the:</p> <ul style="list-style-type: none">• individual is eligible for removal from the UK• individual's non-compliance has prevented the Home Office from getting a travel document• individual has met one or more of the non-compliance criteria <p>For more information on non-compliance, see the related link.</p> <p>It is not normally appropriate to use section 35 action if the individual's Home Office or port file has:</p> <ul style="list-style-type: none">• biometric information• documentary evidence of the individual's nationality, see related link: When not to make a section 35 referral <p>However, if the information on the file cannot be used to help get a travel document, for example because part of it is inaccurate or you believe it is a forgery, then you can consider if section 35 action is appropriate.</p> <p>To help you assess if a section 35 case is suitable for investigation and possible prosecution, you must refer it for advice, to either:</p> <ul style="list-style-type: none">• an immigration criminal and financial investigation (CFI) team, or• a local immigration, compliance and engagement (ICE) team with level 1 prosecution capability - this means an ICE team which has officers trained in conducting criminal investigations to the PIP 1 standard	<p>In this section Non compliance with the travel document interview process</p> <p>Section 35 requirements specified by the Secretary of State</p> <p>When not to make a section 35 referral</p> <p>Related links Links to staff intranet removed</p> <p>External links Immigration and Asylum Act 1999 section 4 Immigration and Asylum Act 1999 section 95</p>
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When to refer an individual for a section 35 offence

You can only refer an individual for a section 35 offence when:

- they have exhausted all their appeal rights
- there are no extant (existing or outstanding) time limits within which they might appeal
- the only barrier to removal is the lack of travel documents

However, this does not prevent a documentation unit from requiring an individual to comply with a request to get travel documents after the first adverse immigration decision. This can be a decision to refuse an asylum application or applications in any other immigration category for leave to remain in the UK.

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Travel document interview process and prosecution under section 35

When not to make a section 35 referral

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you when it is not appropriate to refer a case for prosecution under section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004.</p> <p>There may be some circumstances where referral for section 35 prosecution is not appropriate, for example:</p> <table border="1"> <thead> <tr> <th data-bbox="506 459 1093 497">Circumstance</th> <th data-bbox="1104 459 1794 497">Why prosecution is not appropriate</th> </tr> </thead> <tbody> <tr> <td data-bbox="506 505 1093 1050"> <p>An individual has previously complied with a specified requirement to get a travel document but refuses to comply with any further requirement to get travel documents.</p> </td> <td data-bbox="1104 505 1794 1050"> <p>It is not appropriate when the individual has previously complied but a travel document was not issued:</p> <ul style="list-style-type: none"> through no fault of their own due to circumstances beyond their control <p style="border: 2px solid red; padding: 5px; text-align: center;">Official sensitive – do not disclose – start of section</p> <p style="border: 2px solid red; padding: 5px; text-align: center;">The information in this page has been removed as it is restricted for internal Home Office use only.</p> <p style="border: 2px solid red; padding: 5px; text-align: center;">Official sensitive – do not disclose – end of section</p> </td> </tr> <tr> <td data-bbox="506 1058 1093 1201"> <p>There is biometric information and/or documentary evidence of nationality on the Home Office or port files.</p> </td> <td data-bbox="1104 1058 1794 1201"> <p>If you can get a travel document using documents already available on files you must not refer the case for prosecution under section 35.</p> </td> </tr> <tr> <td data-bbox="506 1209 1093 1455"> <p>Country policy or instructions prevent the removal of an individual even if you could get a travel document.</p> </td> <td data-bbox="1104 1209 1794 1455"> <p>You must check the country policy or current instructions when you consider a section 35 prosecution.</p> <p>If there are current country specific instructions or policies that prevent the removal of an individual, you must not prosecute. See below</p> </td> </tr> </tbody> </table>	Circumstance	Why prosecution is not appropriate	<p>An individual has previously complied with a specified requirement to get a travel document but refuses to comply with any further requirement to get travel documents.</p>	<p>It is not appropriate when the individual has previously complied but a travel document was not issued:</p> <ul style="list-style-type: none"> through no fault of their own due to circumstances beyond their control <p style="border: 2px solid red; padding: 5px; text-align: center;">Official sensitive – do not disclose – start of section</p> <p style="border: 2px solid red; padding: 5px; text-align: center;">The information in this page has been removed as it is restricted for internal Home Office use only.</p> <p style="border: 2px solid red; padding: 5px; text-align: center;">Official sensitive – do not disclose – end of section</p>	<p>There is biometric information and/or documentary evidence of nationality on the Home Office or port files.</p>	<p>If you can get a travel document using documents already available on files you must not refer the case for prosecution under section 35.</p>	<p>Country policy or instructions prevent the removal of an individual even if you could get a travel document.</p>	<p>You must check the country policy or current instructions when you consider a section 35 prosecution.</p> <p>If there are current country specific instructions or policies that prevent the removal of an individual, you must not prosecute. See below</p>	<p>In this section Section 35 requirements specified by the Secretary of State</p> <p>Non compliance with the travel document interview process</p> <p>When to make a section 35 referral</p>
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	<p data-bbox="1099 119 1339 153">for more details.</p> <p data-bbox="779 204 1518 237">Official sensitive – do not disclose – start of section</p> <p data-bbox="517 248 1778 320">The information in this page has been removed as it is restricted for internal Home Office use only.</p> <p data-bbox="779 552 1518 585">Official sensitive – do not disclose – end of section</p>	
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Travel document interview process and prosecution under section 35

Section 35 process: England, Wales and Northern Ireland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process in Scotland Recording section 35 activities</p>	<p>This section tells you what you must do at each stage of the section 35 process in England, Wales and Northern Ireland, when a person has not complied with the travel document interview process.</p> <p>For the process in Scotland, see link on left: The section 35 process in Scotland.</p> <p>There are 4 stages in the process:</p> <ol style="list-style-type: none">1. Issuing the IS35 form.2. The documentation interview in England, Wales and Northern Ireland.3. Referring a case for criminal prosecution under section 35 in England, Wales and Northern Ireland.4. Criminal interview and seeking charging advice in England, Wales and Northern Ireland. <p>These are the stages you must follow if you are considering prosecution. There may already be several attempts to conduct a travel document interview recorded on file where interviewers have attempted to document an individual before considering prosecution.</p> <p>These will form part of the supporting evidence in the case but they cannot be used as one of the interviews referred to in this guidance.</p> <p>For more information on each stage, see related links.</p> <p>For an overview of the whole process, see related links:</p> <ul style="list-style-type: none">• Annex A process map England, Wales and N Ireland• FNO process map	<p>In this section Issuing the IS35</p> <p>Travel document interview: England, Wales and Northern Ireland</p> <p>Referring a case for criminal prosecution under section 35 in England, Wales and Northern Ireland</p> <p>Criminal Interview and charging: England, Wales and Northern Ireland</p> <p>Downloads Links to staff intranet removed</p>
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Travel document interview process and prosecution under section 35

Issuing the IS35: England, Wales and Northern Ireland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland Section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you about the IS35 in England, Wales and Northern Ireland, what it contains and when to issue it.</p> <p>What is an IS35? An IS35 is a computer generated form you use to request an individual to cooperate with the travel document interview process. It contains a list of specified actions the individual is required to perform by a specified date and time, that the Secretary of State thinks will, or may, help the individual get a travel document.</p> <p>The IS35 also records that getting the travel document will allow the individual's deportation or removal from the UK.</p> <p>Issuing an IS35 You issue an IS35 when you are requesting an individual to do something that will, or may, help them get a travel document. You:</p> <ul style="list-style-type: none">• cannot make a request unless a decision has already been made to remove the individual• can serve an IS35 on the individual at a relevant reporting centre, detention centre or prison and you must get its service witnessed and corroborated (confirmed)• must only post an IS35 to an individual's home address if:<ul style="list-style-type: none">○ they are not subject to detention○ there are no reporting restrictions imposed on them• must keep a photocopy of the IS35 as you issued it - unsigned computer generated copies are not acceptable	<p>In this section Travel document interview: England, Wales and Northern Ireland</p> <p>Referring a case for criminal prosecution under section 35 in England, Wales and Northern Ireland</p> <p>Criminal Interview and charging: England, Wales and Northern Ireland</p>
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Travel document interview process and prosecution under section 35

Travel document interview: England, Wales and Northern Ireland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland Section 35 process in Scotland Recording section 35 activities</p>	<p>This section tells you about the travel document interview in England, Wales and Northern Ireland and how to conduct it.</p> <p>For information on the documentation interview in Scotland, see link on left: The section 35 process in Scotland.</p> <p>The travel document interview is for you to find out the information you need to get a travel document. You can do this interview if you are a caseworker, case owner or an officer working in:</p> <ul style="list-style-type: none">• criminal casework dealing with foreign national offenders (FNOs)• a documentation unit in England, Wales or Northern Ireland• an immigration contact management team in an immigration removal centre <p>As this interview is administrative and not a criminal investigation, you do not need to:</p> <ul style="list-style-type: none">• conduct the interview with a solicitor present• provide access to a solicitor for legal advice <p>You must use Annex B to record details of the interview. See related link.</p> <p>But, if any evidence of an offence comes to light during the interview, you must:</p> <ul style="list-style-type: none">• not question the individual any further• conclude the interview and record this on Annex B• refer the case to the duty higher executive officer (HEO) or chief immigration officer (CIO) <div style="border: 2px solid red; padding: 5px; text-align: center;"><p>Official sensitive – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p></div>	<p>In this section</p> <p>What to do after the first travel document interview</p> <p>Considering a reasonable excuse</p> <p>Individual fails to attend a documentation interview</p> <p>Downloads Links to staff intranet removed</p>
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Conducting the interview

When you conduct the travel document interview, you must:

- complete the details at the top of the Annex B form
- confirm the individual understands the interpreter if you are using one, and:
 - they are happy to proceed with that interpreter
 - if they are not happy, find a replacement
- take two copies of the IS35 to the interview, and:
 - give one to the individual
 - read the second copy to them
 - explain what the IS35 is asking them to do
 - confirm they have understood it
- answer any questions from the individual, recording them:
 - verbatim (word for word)
 - in a question and answer format
- record all answers given during the travel document interview on the biometric information and application forms exactly as the individual said it (in the first person):
 - without paraphrasing
 - do not abbreviate
 - do not add your own words because the interview record might become an exhibit in subsequent criminal proceedings if the individual fails to comply
- record any instances when the individual fails to answer on the biometrics information and application forms

	<ul style="list-style-type: none">• ask questions 3, 4 and 5 on form Annex B if the individual does not comply with any of the specified requirements and record the answers they give on the form - the questions are:<ul style="list-style-type: none">○ 'I have interviewed you following a request for your compliance with the documentation process - are you willing to comply with the documentation process?'○ 'why will you not comply?'○ 'have you understood the requirements of the form and procedures (IS35)?'• read out the record of the interview to the individual• read out the statement 'I confirm that this is a true and accurate record of the interview' to the individual• ask the individual to:<ul style="list-style-type: none">○ sign the form○ print their name○ date form Annex B in the space provided at the bottom• write 'refuses to sign' in the space for their signature if they refuse to sign• sign and print your name in the spaces provided along with the date:<ul style="list-style-type: none">○ if there is an interpreter present, they must also sign and date the form in the spaces provided	
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Travel document interview process and prosecution under section 35

What to do after the first travel document interview

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what you must consider and what referrals you must make after the first travel document interview.</p> <table border="1"> <thead> <tr> <th data-bbox="495 347 1128 387">If</th> <th data-bbox="1128 347 1751 387">What to do</th> </tr> </thead> <tbody> <tr> <td data-bbox="495 387 1128 464">The individual complies with the requirements.</td> <td data-bbox="1128 387 1751 464">You must progress and conclude the travel document interview process.</td> </tr> <tr> <td data-bbox="495 464 1128 687">The individual does not comply with the requirements.</td> <td data-bbox="1128 464 1751 687">You must refer the case to the duty higher executive officer (HEO) or chief immigration officer (CIO) for advice on whether they consider any excuse given at the time of the interview for non-compliance is a reasonable one.</td> </tr> <tr> <td data-bbox="495 687 1128 764">The HEO or CIO decides their excuse is reasonable.</td> <td data-bbox="1128 687 1751 764">You must give the individual a further opportunity to comply.</td> </tr> <tr> <td data-bbox="495 764 1128 841">The individual decides to comply on the second occasion.</td> <td data-bbox="1128 764 1751 841">You can restart the travel document interview.</td> </tr> <tr> <td data-bbox="495 841 1128 1064">The individual repeatedly does not comply with the requirements.</td> <td data-bbox="1128 841 1751 1064">There is no limit on the number of opportunities you can give an individual to comply, but the HEO or CIO must consider whether, despite reasonable excuses, the repeated failure to comply is in itself non-compliance.</td> </tr> <tr> <td data-bbox="495 1064 1128 1141">The HEO or CIO decides the individual has not offered a reasonable excuse.</td> <td data-bbox="1128 1064 1751 1141">You can refer the case for criminal prosecution under section 35.</td> </tr> </tbody> </table> <p>For more information on what a 'reasonable excuse' is, see related link: Considering a reasonable excuse.</p>	If	What to do	The individual complies with the requirements.	You must progress and conclude the travel document interview process.	The individual does not comply with the requirements.	You must refer the case to the duty higher executive officer (HEO) or chief immigration officer (CIO) for advice on whether they consider any excuse given at the time of the interview for non-compliance is a reasonable one.	The HEO or CIO decides their excuse is reasonable.	You must give the individual a further opportunity to comply.	The individual decides to comply on the second occasion.	You can restart the travel document interview.	The individual repeatedly does not comply with the requirements.	There is no limit on the number of opportunities you can give an individual to comply, but the HEO or CIO must consider whether, despite reasonable excuses, the repeated failure to comply is in itself non-compliance.	The HEO or CIO decides the individual has not offered a reasonable excuse.	You can refer the case for criminal prosecution under section 35.	<p>In this section Considering a reasonable excuse Individual fails to attend a documentation interview</p>
If	What to do															
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The individual does not comply with the requirements.	You must refer the case to the duty higher executive officer (HEO) or chief immigration officer (CIO) for advice on whether they consider any excuse given at the time of the interview for non-compliance is a reasonable one.															
The HEO or CIO decides their excuse is reasonable.	You must give the individual a further opportunity to comply.															
The individual decides to comply on the second occasion.	You can restart the travel document interview.															
The individual repeatedly does not comply with the requirements.	There is no limit on the number of opportunities you can give an individual to comply, but the HEO or CIO must consider whether, despite reasonable excuses, the repeated failure to comply is in itself non-compliance.															
The HEO or CIO decides the individual has not offered a reasonable excuse.	You can refer the case for criminal prosecution under section 35.															

Travel document interview process and prosecution under section 35

Considering a reasonable excuse

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what might be considered a reasonable excuse when an individual fails to comply with the travel document process.</p> <p>Defining reasonable excuse The legislation does not specify what a reasonable excuse is.</p> <p>In Regina v Masoud Tabnak [2007], the court of appeal (criminal division):</p> <ul style="list-style-type: none">• found: ‘failure to cooperate, based on a fear of persecution or serious harm under the Refugee Convention and article 3 of the European Convention on Human Rights, could not amount to a ‘reasonable excuse’ for the purpose of section 35’• confirmed:<ul style="list-style-type: none">○ to allow fear of persecution to amount to a reasonable excuse would frustrate the intended aims and objectives of Parliament○ the defence of reasonable excuse is only concerned with an inability, as opposed to an unwillingness, to comply with the specified requirements <p>For more information, see related links:</p> <ul style="list-style-type: none">• Human Rights Act 1998• Regina v Masoud Tabnak <p>An individual must raise the issue of having a reasonable excuse. Examples of what you might consider a reasonable excuse include a failure to attend an interview because of:</p> <ul style="list-style-type: none">• a medical appointment• genuine difficulties with transport• needing time to get further information <p>If an individual relies on any excuse during criminal proceedings the prosecution will need to prove, to the criminal standard, that either:</p>	<p>In this section What to do after the first travel document interview</p> <p>Individual fails to attend a documentation interview</p> <p>Downloads Links to staff intranet removed</p> <p>External links Human Rights Act 1998</p>
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This section is based on section 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act, 2004

	<ul style="list-style-type: none">• the excuse does not exist• it is not a reasonable excuse	
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Travel document interview process and prosecution under section 35

Individual fails to attend a travel document interview

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what to do if an individual does not attend a travel document interview in England, Wales, Northern Ireland and Scotland.</p> <p>The individual does not attend the first interview</p> <p>If an individual does not attend the first interview, regardless of whether a reasonable excuse has been offered, you must:</p> <ul style="list-style-type: none">• invite the person for another interview as soon as possible• issue the IS35 form with the invitation letter, ticking all the things the individual needs to do on the form• place copies of these documents, as you issued them, on file <p>The individual does not attend the second interview</p> <p>If the individual does not attend the second interview, and has not offered a reasonable excuse for not attending, you must follow the next stage of the process. You must consider whether it is appropriate to:</p> <ul style="list-style-type: none">• refer for criminal prosecution• take enforcement absconder action	<p>In this section</p> <p>What to do after the first travel document interview</p> <p>Considering a reasonable excuse</p>
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Travel document interview process and prosecution under section 35

Referring a section 35 case in England, Wales and Northern Ireland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells officers conducting travel document interviews in England, Wales and Northern Ireland the process to follow if an individual does not comply and they need to refer a case for prosecution.</p> <p>If an individual does not comply in the first or subsequent travel document interview without a reasonable excuse, you must follow these procedures.</p> <p>If the individual in the case being referred is a foreign national offender (FNO) You must complete an FNO referral form, see related link. Send it, with any witness statements and exhibits, to the designated Chief Immigration Officer (CIO) at the local Immigration, Compliance and Engagement (ICE) team with a level 1 prosecution capability. You must do this within 4 weeks of the suspected offence (date of the travel document interview).</p> <p>The ICE tasking and coordination group (TCG) decides whether to accept the referral within 2 weeks of the date they receive the referral.</p> <p>If the TCG accept the case it is allocated to a Level 1 investigator who starts an investigation within 2 weeks of being allocated the case.</p> <p>If the individual in the case being referred is not a FNO You must:</p> <ul style="list-style-type: none">• complete an Annex E check list• refer the case to your local immigration Criminal Investigation team for consideration with any witness statements and exhibits (see below) <p>Supporting witness statements and exhibits you must have You must make sure you have the following witness statements and exhibits before you refer the case:</p> <ul style="list-style-type: none">• the person who sent out the IS35 with a copy of the IS35 as an exhibit, see related link: Witness statement C1 England, Wales and N Ireland	<p>In this section Issuing the IS35: England, Wales and Northern Ireland</p> <p>Travel document interview: England, Wales and Northern Ireland</p> <p>Criminal Interview and charging: England, Wales and Northern Ireland</p> <p>Downloads Links to staff intranet removed</p>
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	<ul style="list-style-type: none">• the interviewing officer or officers with the Annex B and the original record of the interview as exhibits, see related link: Witness statement C2 England, Wales and N Ireland• the interpreter, if one was used, see related link: Witness statement C3 England, Wales and N Ireland• statement exhibiting the records from the individual's Home Office or port file, see related link: Witness statement C4 England, Wales and N Ireland - you may consider including in this:<ul style="list-style-type: none">○ documents or processes which are unfamiliar to the criminal courts○ a short explanation of the purpose of such a document or process <p>When completing witness statements you must:</p> <ul style="list-style-type: none">• make sure you use the correct witness statement template for England, Wales and Northern Ireland• complete all the witness statements as soon as possible after non-compliance occurs to make sure the statements contain a full and accurate recollection of what happened <p>As the interviewing officer, you may wish to discuss with the Criminal and Financial Investigation (CFI) team to make sure the statements contain all the required information.</p> <p>You must pass all documents and information to the Criminal and Financial Investigation team when you refer a section 35 case. Before the criminal interview takes place, the Criminal and Financial Investigation (CFI) team will discuss any necessary evidential requirements with you, or the person making the referral.</p>	
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Travel document interview process and prosecution under section 35

Criminal interview and charging: England, Wales and Northern Ireland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you how to conduct the criminal interview and ask for charging advice in England, Wales and Northern Ireland.</p> <p>You can only carry out a criminal interview if you are a trained criminal investigator.</p> <p>Before the criminal interview takes place you must arrest the individual for the offence under section 35.</p> <div style="border: 2px solid red; padding: 5px; text-align: center;"><p>Official sensitive – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p>Official sensitive – do not disclose – end of section</p></div> <p>The criminal interview process</p> <p>You must only conduct further interviews once the individual has been arrested and it must be:</p> <ul style="list-style-type: none">• under caution• at a police station• on tape• after the individual has taken or been given access to free and independent legal advice• in line with the codes of practice specified under the Police and Criminal Evidence Act (PACE) 1984 <p>For more information, see related links.</p> <p>At the start of the criminal interview, you, as the interviewing officer, must:</p> <ul style="list-style-type: none">• ask the individual again if they are prepared to comply with the travel document	<p>In this section</p> <p>Issuing the IS35 Travel document interview: England, Wales and Northern Ireland</p> <p>Referring a case for criminal prosecution under section 35 in England, Wales and Northern Ireland</p> <p>Criminal Interview and charging: England, Wales and Northern Ireland</p> <p>Related link</p> <p>Links to staff intranet removed</p> <p>External links</p> <p>Police and Criminal Evidence Act, 1984</p> <p>PACE Codes of Practice</p> <p>Police and Criminal Evidence Act 1984 (Application to immigration officers and</p>
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	<p>interview process</p> <ul style="list-style-type: none">• record these questions and answers on the Annex B form, see related link <p>If the individual continues to be non-compliant</p> <p>In England and Wales you must refer the case to the Crown Prosecution Service (CPS) to get a charging decision.</p> <p>In Northern Ireland:</p> <ul style="list-style-type: none">• you, the criminal investigator, make the decision to charge after referring the case to a criminal investigation trained chief immigration officer• a police officer must actually charge the individual following that decision <p>Before the initial court appearance, the PPS (Public Prosecution Service) in Northern Ireland will review the charge to make sure there is sufficient evidence at this stage for the defendant to be prosecuted.</p> <p>For more information, see related link: The Police and Criminal Evidence (Northern Ireland) Order 1989.</p> <p>If the individual decides to comply at this stage you can restart the documentation interview. For more information on how to conduct the interview, see related link: Travel document interview: England, Wales and Northern Ireland.</p>	<p>designated customs officials in England and Wales) Order 2013</p> <p>The Police and Criminal Evidence (Northern Ireland) Order 1989</p>
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Travel document interview process and prosecution under section 35

The section 35 process in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland Recording section 35 activities</p>	<p>This section tells you what you must do at each stage of the section 35 process in Scotland when a person has not complied with the travel documentation process.</p> <p>There are four stages in the process:</p> <ul style="list-style-type: none">• issuing the IS35 in Scotland• the travel document interview in Scotland• referring a section 35 offence for criminal prosecution in Scotland• reporting a section 35 offence to the Procurator Fiscal in Scotland <p>For more information on each stage, see related links.</p> <p>For an overview of the whole process, see related links:</p> <ul style="list-style-type: none">• Annex A process map Scotland• FNO process map <p>For the process in England, Wales and Northern Ireland see link on left: Section 35 process: England, Wales and Northern Ireland.</p>	<p>In this section</p> <p>Issuing the IS35 in Scotland</p> <p>Travel document interview in Scotland</p> <p>Referring a section 35 offence for criminal prosecution in Scotland</p> <p>Reporting a section 35 offence to the Procurator Fiscal in Scotland</p> <p>Related Links</p> <p>Links to staff intranet removed</p>
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Travel document interview process and prosecution under section 35

Issuing the IS35 in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you about the IS35, what it contains and when to issue it if a person has not complied with the travel documentation process.</p> <p>This part of the process is exactly the same as for England, Wales and Northern Ireland, follow the guidance at related link: Issuing the IS35: England, Wales and Northern Ireland.</p>	<p>In this section Travel document interview in Scotland</p> <p>Referring a section 35 offence for criminal prosecution in Scotland</p> <p>Reporting a section 35 offence to the Procurator Fiscal in Scotland</p> <p>Related links Issuing the IS35: England, Wales and Northern Ireland</p>
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Travel document interview process and prosecution under section 35

Travel document interview in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This section tells you about the travel document interview and how to conduct one in Scotland.</p> <p>You must only use the guidance on this page if you are an officer involved in the travel document interview process and immigration criminal investigations in Scotland.</p> <p>The travel document interview is for you to find out the information needed to get a travel document. You can do this interview if you are a caseworker, case owner or an officer working in:</p> <ul style="list-style-type: none">• criminal casework dealing with foreign national offenders (FNOs)• a documentation unit in Scotland• an immigration contact management team in an immigration removal centre <p>Most of this stage of the process is exactly the same as for England, Wales and Northern Ireland, see related link: Travel document interview: England, Wales and Northern Ireland. But in Scotland:</p> <ul style="list-style-type: none">• there must be 2 people present to:<ul style="list-style-type: none">○ conduct the documentation interview (excluding any interpreter who may be present)○ make sure essential facts are corroborated (confirmed)	<p>In this section Considering a reasonable excuse in Scotland</p> <p>Individual fails to attend a travel document interview in Scotland</p> <p>Related links Travel document interview: England, Wales and Northern Ireland</p>
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Travel document interview process and prosecution under section 35

Considering a reasonable excuse in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what might be considered a reasonable excuse when an individual fails to comply with the travel document process in Scotland.</p> <p>This part of the process is exactly the same as for England, Wales and Northern Ireland, follow the guidance at related link: Considering a reasonable excuse.</p> <p>Although the case of Regina v Masoud Tabnak, mentioned in the above link, is not binding in the Scottish courts, it could be used as a persuasive argument to refer a case for criminal prosecution if an individual offers this excuse.</p>	<p>In this section Individual fails to attend a travel document interview in Scotland</p> <p>Related links Considering a reasonable excuse</p>
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Travel document interview process and prosecution under section 35

Individual fails to attend a travel document interview in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you what to do if an individual does not attend a travel document interview in Scotland.</p> <p>This part of the process is exactly the same as for England, Wales and Northern Ireland, follow the guidance at related link: Individual fails to attend a travel document interview.</p>	<p>In this section Considering a reasonable excuse in Scotland</p> <p>Related links Individual fails to attend a travel document interview</p>
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Travel document interview process and prosecution under section 35

Referring a section 35 case for criminal prosecution in Scotland

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004: the offence Section 35 process: England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells officers conducting travel document interviews in Scotland the process to follow if an individual does not comply and they need to refer a case for prosecution.</p> <p>Arranging a second interview</p> <p>If an individual has not complied in the first travel document interview without reasonable excuse and has had the IS35 letter served and the consequences explained to them, you need to arrange a second interview for them to confirm:</p> <ul style="list-style-type: none">• the reasons for their non-compliance• if they will comply with the travel document interview process <p>Two people must be present to:</p> <ul style="list-style-type: none">• conduct the documentation interview (excluding any interpreter who may be present)• make sure essential facts are corroborated (confirmed) <p>Before you conduct the second interview, you must:</p> <ul style="list-style-type: none">• issue a fresh IS35 in the same way as the first one, for more information, see related link: Issuing the IS35: England, Wales and Northern Ireland• complete either the:<ul style="list-style-type: none">○ Annex E checklist○ foreign national offender (FNO) referral form• make sure you have all the necessary completed witness statements <p>At the start of the interview, as the interviewing officer, you must:</p> <ul style="list-style-type: none">• ask the individual again if they are prepared to comply with the documentation process• record these questions and answers on the Annex B form, see related link	<p>In this section</p> <p>Issuing the IS35 in Scotland</p> <p>Travel document interview in Scotland</p> <p>Reporting a section 35 offence to the Procurator Fiscal in Scotland</p> <p>Related links</p> <p>Issuing the IS35: England, Wales and Northern Ireland</p> <p>Links to staff intranet removed</p> <p>Downloads</p> <p>External Links</p> <p>Criminal Procedure (Scotland) Act 1995</p>
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if the individual complies at this stage, you must continue with the interview and complete the travel document interview process.

If the individual does not comply at this stage, you must refer the case for prosecution.

Referring a case for prosecution

If the individual in the case being referred is a FNO:

- you must send the completed FNO referral form:
 - to the designated Chief Immigration Officer at the local Immigration, Compliance and Engagement (ICE) team with a level 1 prosecution capability
 - within 4 weeks of the suspected offence (date of the travel document interview)
 - with the package of statements and productions (a document or article produced as evidence in court, otherwise in English law, known as an exhibit)
- the ICE team tasking and coordination group (TCG) will make a decision on whether to accept the referral within 2 weeks of the date of the receipt of the referral

If the individual in the case being referred is not a FNO

You must refer the case to your local Immigration Enforcement Criminal and Financial Investigation team with the package of statements and productions.

Supporting witness statements and productions you must have

Before you refer the case to the ICE or Immigration Enforcement Criminal and Financial Investigation team you must make sure you have the following witness statements:

- officer or officers who sent out the IS35 with a copy of the IS35 as a production, see related link: Witness statement C1 (Scotland)
- interviewing officer(s) with the Annex B and the original record of the interview(s), see related link: Witness statement C2 (Scotland)
- corroborating (second) interviewing officer, see related link: Witness statement C5 (Scotland)
- interpreter, if one was used, see related link: Witness statement C3 (Scotland)
- officer producing the records from the individuals Home Office or port file, see related link: Witness statement C4 (Scotland)

The witness statement producing the Home Office records may include documents or

mention processes unfamiliar to the criminal courts. If you are completing one of these statements you must include a short explanation of the purpose of these documents or processes.

Any documents which will be required as productions in the case need to be appropriately certified in terms of Schedule 8 of the Criminal Procedure (Scotland) Act 1995.

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The information in this page has been removed as it is restricted for internal Home Office use only.

Official sensitive – do not disclose – end of section

You must complete witness statements as soon as possible after non-compliance occurs to make sure the statements contain a full and accurate recollection of what happened.

As the interviewing officer, you may wish to discuss with the ICE or Immigration Enforcement Criminal and Financial Investigation team to make sure the statements contain all the required information.

Travel document interview process and prosecution under section 35

Reporting a section 35 offence to the Procurator Fiscal in Scotland

[About this guidance](#)
[Section 35 of the Asylum and Immigration Act 2004: the offence](#)
[Section 35 process: England, Wales and Northern Ireland](#)
[The section 35 process in Scotland](#)
[Recording section 35 activities](#)

This page tells officers working in Immigration, Compliance and Engagement (ICE) teams with a level 1 capability and Immigration Enforcement Criminal and Financial Investigation teams in Scotland about reporting section 35 offences to the Procurator Fiscal.

When the ICE or Immigration Enforcement Criminal and Financial Investigation team accept a referred section 35 case they must report the offence to the Procurator Fiscal who:

- reviews the case
- decides whether to start proceedings or how to proceed

If there is not enough evidence to report an individual for the offence

At this stage any further interviews must only be conducted by officers trained in criminal investigations, after the individual has been:

- detained or arrested
- offered the services of and/or provided with access to a solicitor, following the solicitor access recording form (SARF) process

For information on the SARF, see related link.

Official sensitive – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only.

Official sensitive – do not disclose – end of section

In this section
[Issuing the IS35 in Scotland](#)

[Travel document interview in Scotland](#)

[Referring a section 35 offence for criminal prosecution in Scotland](#)

Downloads
Links to staff intranet removed

Travel document interview process and prosecution under section 35

Recording section 35 activities

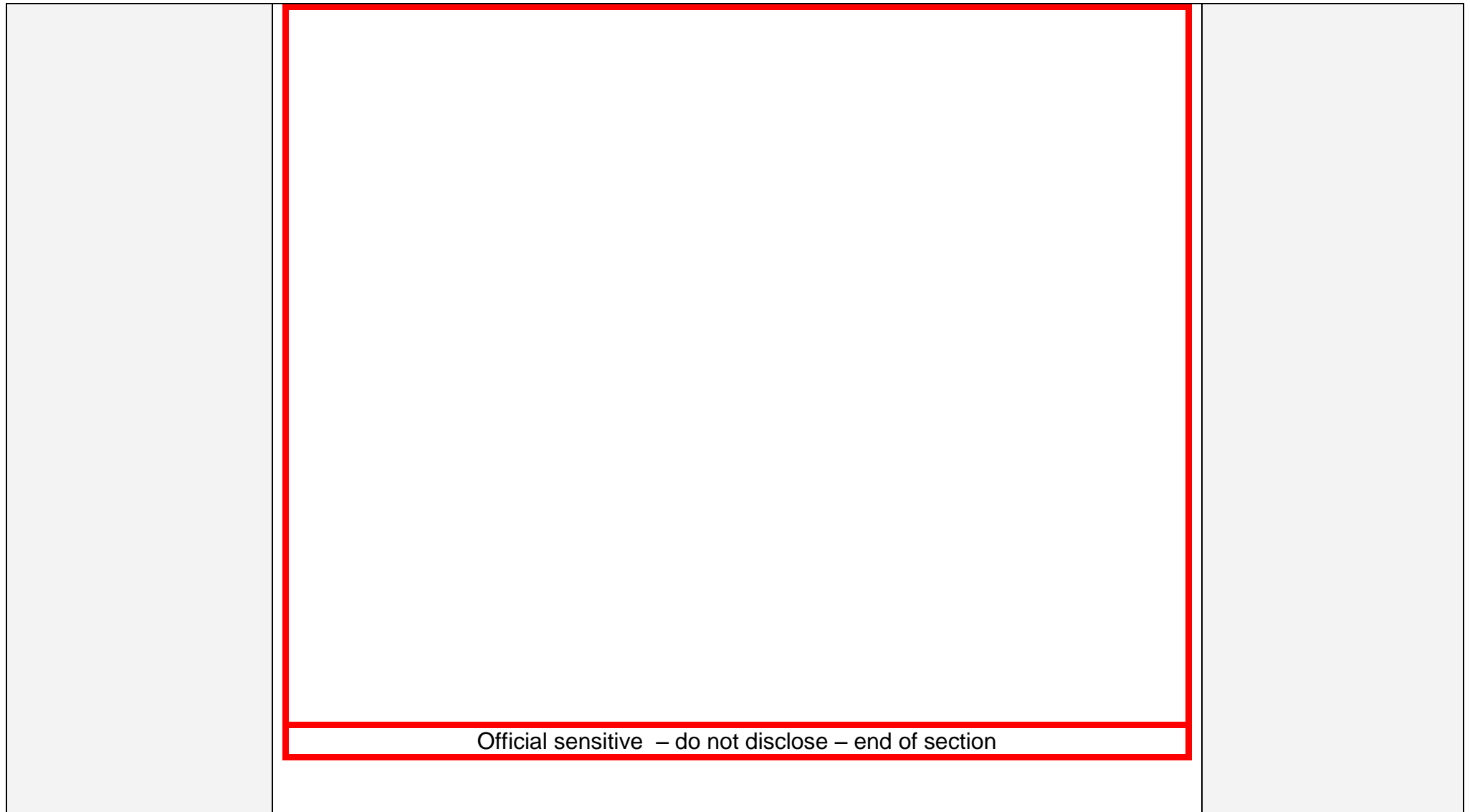
[About this guidance](#)
[Section 35 of the Asylum and Immigration Act 2004: the offence](#)
[Section 35 process: England, Wales and Northern Ireland](#)
[The section 35 process in Scotland](#)

This page tells you how to record what you have done on all section 35 cases where a person has not complied with the travel document interview process.

The guidance in this page is for all officers working in England, Wales, Northern Ireland and Scotland involved in the travel document interview process.

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The information in this page has been removed as it is restricted for internal Home Office use only.



Travel document interview process and prosecution under section 35

Travel document interview process and prosecution under section 35: Contact

<p>About this guidance Section 35 of the Asylum and Immigration Act 2004 – the offence Section 35 process - England, Wales and Northern Ireland The section 35 process in Scotland Recording section 35 activities</p>	<p>This page tells you who to contact for more help with a specific case when referring non-compliant travel document interview cases for prosecution under section 35.</p> <p>If you have read the relevant legislation and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If the question cannot be answered at that level, you may contact the CFI Modernising Guidance Project Team, using the related link.</p> <p>Changes to this guidance can only be made by the guidance rules and forms team (GRaFT). If you think the policy content needs amending you must contact the CFI Modernising Guidance Project team, who will ask the GRaFT to update the guidance, if appropriate.</p> <p>The GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can email these to Guidance – making changes.</p>	<p>Related links Changes to this guidance Information owner</p> <p>External links</p>
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Travel document interview process and prosecution under section 35

Travel document interview process and prosecution under section 35: Information owner

[About this guidance](#)
[Section 35 of the Asylum and Immigration Act 2004 – the offence](#)
[Section 35 process - England, Wales and Northern Ireland](#)
[The section 35 process in Scotland](#)
[Recording section 35 activities](#)

This page tells you about this version of the 'Travel document interview process and prosecution under section 35' guidance, and who owns it.

Version	5.0
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Cleared by director	Official – sensitive: information removed
Director's role	Official – sensitive: information removed
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This version approved for publication by	Official – sensitive: information removed
Approver's role	Official – sensitive: information removed
Approval date	28 July 2015

Changes to this guidance can only be made by the guidance rules and forms team (GRaFT). If you think the policy content needs amending you must contact the CFI Modernising Guidance Project team, who will ask the GRaFT to update the guidance, if appropriate.

The GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can email these to Guidance – making changes.

Related links
[Changes to this guidance](#)

[Contact](#)

External links