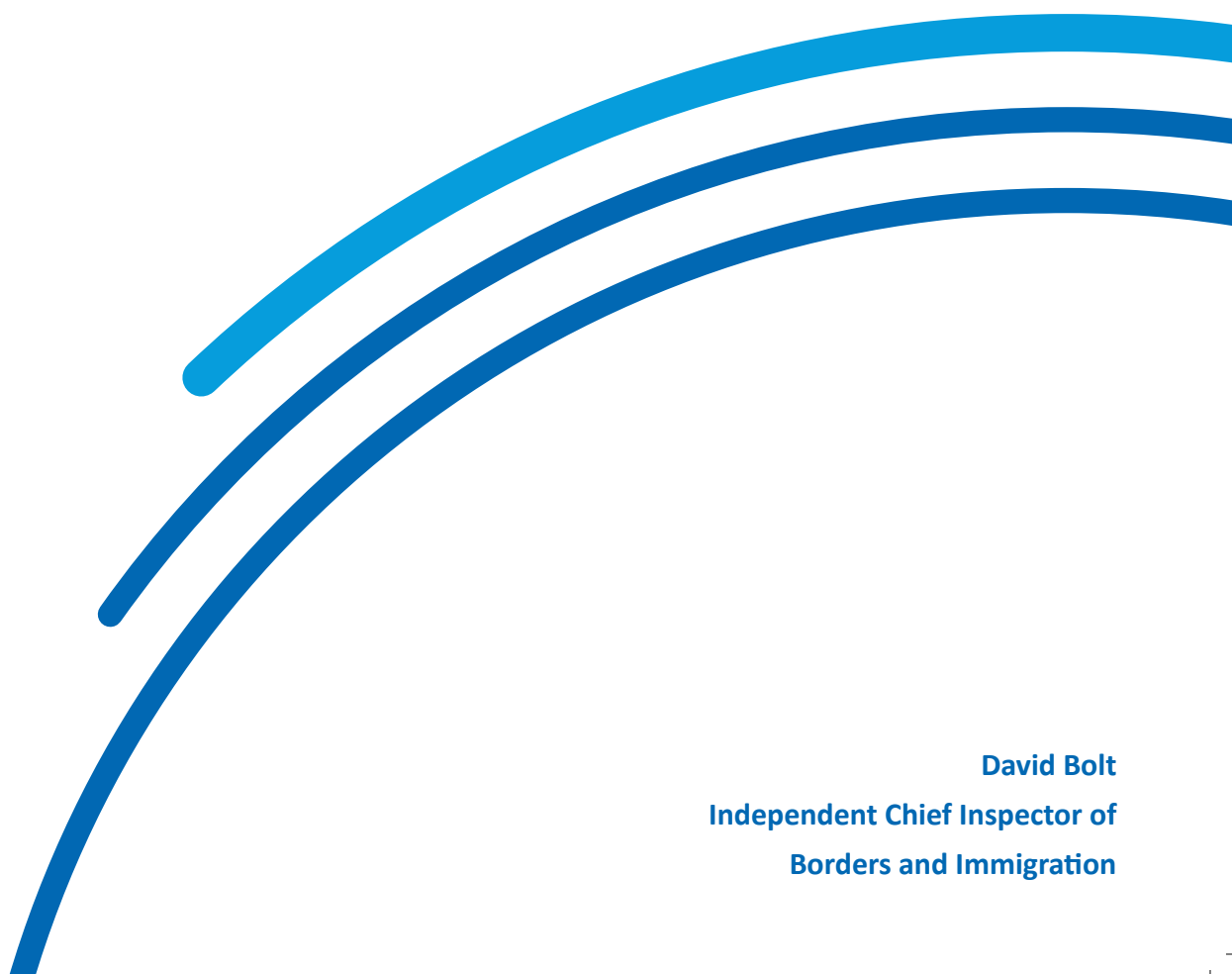




An inspection of the 'hostile environment' measures relating to driving licences and bank accounts

January to July 2016



David Bolt
Independent Chief Inspector of
Borders and Immigration

An inspection of the ‘hostile environment’ measures relating to driving licences and bank accounts

January to July 2016

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

October 2016



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Contents

Introduction by the Independent Chief Inspector	
Foreword	2
1. Purpose and scope	3
2. Key findings	5
3. Summary of recommendations	9
4. Background to the Inspection	11
5. Refusal and revocation of driving licences	17
6. Bank and building society current accounts	36
7. 'Hostile environment' – measuring impact	50
Appendix 1: Role and remit of the Chief Inspector	55
Appendix 2: Inspection criteria	56
Acknowledgements	57

Introduction by the Independent Chief Inspector

Foreword

The Immigration Act 2014 (the '2014 Act') introduced a range of measures aimed at creating a 'hostile environment' for individuals who are in the UK without valid leave. The government's stated intention was to deny illegal migrants access to public and other services and benefits to which they were not entitled by virtue of their immigration status, in the expectation that this would persuade large numbers to depart the UK voluntarily and would reduce the 'pull factor' for anyone thinking to come to the UK to settle illegally.

In presenting its case for new powers, the government argued that the measures were right in principle and would be seen as fair by most people. However, serious concerns were expressed by some stakeholders that the effect of the measures would be divisive and damaging to individuals and communities.

Each of the measures within the 2014 Act is distinct and operates independently of the others, but the Home Office regards them as a 'package' in that their power to influence the decisions made by illegal migrants comes from their combined and cumulative impact.

The Inspectorate plans to examine each of the measures in the 2014 Act in turn, plus the amendments and additions contained in the Immigration Act 2016. This first 'hostile environment' inspection looks at two measures: the refusal by DVLA of applications for a UK driving licence and the revocation of existing licences for individuals not lawfully resident in the UK; and, the requirement placed on banks and building societies to refuse an application for a UK current account from an individual listed as a *'disqualified person'*.

These two measures are the most mature, since limited versions of both were in place prior to the 2014 Act. They also share certain characteristics, in particular a reliance on bulk data sharing.

The inspection found that, because of the pre-existing relationships between the Home Office and DVLA and Cifas, the development and implementation of these measures was handled well, and the Home Office has since continued to work effectively and collaboratively with both partners. However, the Home Office now needs to ensure that sufficient attention and effort is put into improving the arrangements for data sharing, for assuring data quality, for processing matches and for making use of the resulting knowledge and intelligence. It also needs to give greater thought to the evaluation of these measures and to the overall 'package' of measures.

The report makes 14 recommendations. It was sent to the Home Secretary on 29 July 2016.

1. Purpose and scope

- 1.1 This inspection examined the efficiency and effectiveness of two of the package of measures introduced by the Home Office to create a 'hostile environment' for those unlawfully present in the UK, namely the powers to refuse or revoke a UK driving licence, those to prevent the opening of a UK bank account.
- 1.2 In relation to both, the inspection considered:
- the arrangements in place prior to the Immigration Act 2014 ('the 2014 Act');
 - the steps taken by the Home Office to prepare key partners, specifically the Driver and Vehicle Licensing Agency (DVLA), Cifas¹ and other stakeholders, for the changes created by the 2014 Act;
 - the comprehensiveness and accuracy of the Home Office's data about those not lawfully present in the UK, shared with DVLA and Cifas;
 - how effectively the Home Office used information (from DVLA, Cifas and financial institutions) for intelligence and operational tasking purposes;
 - how effectively outcomes were monitored to assess the impact of these measures on individuals, including on decisions to depart voluntarily, and overall; and
 - work by the Home Office and others to prepare for further measures contained within the Immigration Act 2016.
- 1.3 The inspection involved:
- a review and analysis of documentary and statistical evidence provided by the Home Office, DVLA and Cifas;
 - the observation of processes, procedures and practices in Home Office Interventions and Sanctions Directorate (ISD), DVLA and Cifas;
 - case file sampling and analysis; and
 - individual and group interviews with managers and staff at the Home Office and DVLA, and with other key stakeholders.
- 1.4 Emerging findings were presented to the Home Office on 3 May 2016.

¹ Formerly known as the Credit Industry Fraud Avoidance Service.

Notes:

1. The inspection did not consider the refusal of driving licences by the Driver and Vehicle Agency (DVA) in Northern Ireland. According to the Home Office, less than 0.5% of migrant records matched with driving licences issued by DVA.
2. Since they are not covered by the 2014 Act, the inspection did not consider:
 - financial products other than current accounts, e.g. overdrafts, loans and credit cards, offered by banks and building societies;
 - those financial institutions that did not offer current accounts; and
 - credit unions and friendly societies, who may offer current accounts.

2. Key findings

- 2.1 Although each is self-contained and distinct, the measures introduced in the Immigration Act 2014 (the '2014 Act') empowering the DVLA to refuse and revoke driving licences where an individual is '*not lawfully present in the UK*', and those requiring banks and building societies to refuse applications for a current account to listed '*disqualified persons*', share a number of common characteristics. Both involve partnership working that pre-dates the 2014 Act; both rely on large scale data sharing, including automated extracts from Home Office records; both produce new information regarding illegal migrants, with opportunities for the Home Office to take enforcement action; and both have since been amended in the Immigration Act 2016 to extend their scope.
- 2.2 Prior to the 2014 Act, the Home Office and DVLA had been working together for a number of years. Since 2005, the Home Office had had an officer embedded at DVLA to assist with immigration status checks on new licence applications where DVLA chose to refer them. Similarly, the Home Office had been sharing data on illegal migrants with Cifas since 2011, which means banks and building societies carrying out anti-fraud checks with Cifas on prospective customers received matches against individuals with no right to be in the UK. In both cases, the 2014 Act extended the existing arrangements and put them on a statutory footing.
- 2.3 These pre-existing relationships meant that the provisions of the 2014 Act were developed collaboratively and their implementation was smoother than might otherwise have been the case. Since the 2014 Act became law, the working relationship with the DVLA had become closer, with bi-weekly conference calls between the Home Office Interventions and Sanctions Directorate (ISD) and DVLA managers to discuss performance, emerging issues and to iron out any problems.
- 2.4 The process for checking the immigration status of applicants for a driving licence differs from that for checking the status of existing licence holders, and that for checking individuals applying to open a bank or building society account is different again. However, they all depend on efficient and effective data sharing.
- 2.5 The Home Office relies on common law to share data with DVLA, and on the Serious Crime Act 2007 to share data with Cifas. In both cases, the Data Protection Act 1998 applies, and in particular the Information Commissioner's Office's Code of Practice, which specifies *inter alia* that it is good practice to have in place a data sharing agreement which is reviewed regularly '*particularly where information is to be shared on a large scale, or on a regular basis*'.
- 2.6 The Home Office had signed Memoranda of Understanding (MoUs) with the DVLA and with Cifas that covered the key elements of a data sharing agreement identified in the code. However, the MoU with Cifas was not signed (by Home Office officials and Cifas) until December 2015, and the MoUs with DVLA did not cover the sharing of data connected with new driving licence applications. Given the weight placed on these 'hostile environment' measures, in ministerial statements and by the passing of new legislation, this was an oversight, the more so as data sharing with DVLA and Cifas pre-dated the 2014 Act.

- 2.7 Both sets of measures depend on Home Office data quality, particularly as shared data is extracted automatically from Home Office systems. The inspection found, as have previous inspections², that CID³ records for individuals were incomplete or had been completed incorrectly (with data placed in the wrong fields), or there were delays in updating records.
- 2.8 In the case of driving licences, these record keeping failings were to some extent mitigated as the Home Office checks its records manually for new licence applicants and also to confirm that the DVLA should proceed with a revocation. However, it remains the case that some individuals were being wrongly flagged to DVLA as present in the UK without leave, while others who were present without leave were being missed. During file sampling, the inspection identified a number of examples of individuals being wrongly listed as in the UK without leave.
- 2.9 In the case of the '*disqualified persons*' list there is no such secondary check, unless a bank or building society decides to contact the Home Office. Moreover, since it was decided not to include in the 2014 Act a requirement for banks and building societies to report when they refuse a current account to a '*disqualified person*', the Home Office has no systematic knowledge of who has been affected by this measure and of assuring whether this was lawful in terms of the 2014 Act.
- 2.10 The Home Office provided figures for revoked driving licences that had had to be reinstated. While these cases amounted to a small percentage of the total numbers of revocations, the Home Office did not appear to appreciate the seriousness of such errors for the individuals affected, and its proposed avenue of redress for individuals who had left the UK with valid leave outstanding, and had subsequently had their licence revoked, was inadequate.
- 2.11 Based on file sampling, interviews and observations, the inspection found that the processes for checking records, matching data and refusing or revoking driving licences generally work well (notwithstanding the data quality issues), due in large part to the experience and expertise of the ISD and DVLA staff and good working relationships. However, there were a number of vulnerabilities and risks. For example, immigration status checks for applicants for a new licence are requested only where DVLA staff are not satisfied with the documents supplied, and these will not show where leave has been curtailed; processes are not fully documented and supported by clear guidance; quality assurance checks are limited in scope and inconsistently applied; and reliance on manual checks limits scalability.
- 2.12 Performance benchmarks for ISD staff were not introduced until April 2016, since when administrative officers have had a daily target of 50 immigration status checks. In 2015, in order to manage the volumes of driving licence revocation checks, ISD had prioritised 'exact' data matches over 'fuzzy' matches, and the numbers of unprocessed 'fuzzy' matches had built up. While pragmatic, the available evidence suggests that most 'fuzzy' matches are 'correct', and therefore opportunities to revoke licences were delayed.
- 2.13 Earlier introduction of targets and of quality assurance checks may have produced efficiencies in the processing of data. Subsequent process improvements and the planned recruitment of additional staff will help. However, plans to clear c.120,000 'stock' or legacy cases will put further pressure on resources, as will any expansion of the dataset shared with DVLA, for example to include individuals identified through exit checks as overstayers, though this is necessary if the measures are to be applied comprehensively.

² Most recently, in 'An inspection of the Administrative Review processes introduced following the 2014 Immigration Act (September – December 2015)'.

³ Case Information Database (CID) is the Home Office's main caseworking and operational database. It is used throughout the Home Office to record personal details of all foreign nationals who pass through the Immigration system.

- 2.14 At the time of the inspection, the Home Office was not exploiting fully the knowledge and action-able intelligence generated from driving licence refusals and revocations, or from matches with individuals on the *'disqualified persons'* list reported back by Cifas. Current processes meant that some information was not reaching the Home Office. But, the inspection found no evidence of any trend analyses or strategic assessment in relation to the licences that had been refused or revoked.
- 2.15 Reporting of *'disqualified persons'* matches was harder to interpret, as some of it (produced by 'Participating Agencies'⁴) related to matches that did not meet the agreed three point 'Best Practice' standard (name, date of birth and address) and did not relate to current account applications. This produced a confused picture of the scale of applications for current accounts from illegal migrants, the number of confirmed matches, as well as the number of current accounts refused.
- 2.16 Both the driving licence and current account measures can produce new information about illegal migrants, particularly up to date addresses. Driving licence applications can also reveal individuals not previously known to the Home Office. In some cases, an applicant for a driving licence had submitted a valid travel document with their application and this had been retained by ISD in order to facilitate their removal. Some of these individuals received visits from local enforcement teams, and some had since either been subject to an enforced removal or had made a voluntary return.
- 2.17 File sampling also indicated that a large proportion of *'disqualified persons'* who were matched by a 'participating agency' were recorded as absconders, including individuals served with a Deportation Order. These matches therefore represented an opportunity to locate, re-establish contact, and possibly remove someone with whom the Home Office had lost touch.
- 2.18 While Immigration Enforcement's capacity to investigate and deploy operationally is finite, and local enforcement priorities differ, a more structured and determined response was needed to follow up the 'leads' produced through these 'hostile environment' measures.
- 2.19 Only a small proportion of individuals who had had their driving licence revoked surrendered the licence to DVLA. This undermines the intended two fold impact of revocation: stopping illegal migrants from being able to drive lawfully, and from using a driving licence to access other benefits and services. While powers exist to prosecute for the non-surrender of a revoked licence, they are rarely used.
- 2.20 The Immigration Act 2016 (the '2016 Act') received Royal Assent in May 2016. In the 2016 Act, the Home Office has sought to extend the 'hostile environment' measures in relation to driving licences and bank and building society accounts. The 2016 Act created an offence for driving unlawfully in the UK, gave new powers to search for and seize driving licences, and to impound vehicles. It required banks and building societies to report and close existing current accounts, and created the power to freeze assets. In effect, it closes various gaps in the 2014 Act and introduces more severe sanctions.
- 2.21 However, justification for extending the 'hostile environment' measures is based on the conviction that they are 'right' in principle, and enjoy broad public support, rather than on any evidence that the measures already introduced are working or needed to be strengthened, since no targets were set for the original measures and little had been done to evaluate them.

⁴ There are five Participating Agencies⁴ all of which provide credit reference checking services that conduct a range of checks, such as credit ratings, electoral roll checks etc. on individuals applying for a financial product, including to open a current account, on behalf of financial institutions, including most retail banks and building societies.

- 2.22 At the time of the inspection, the 2014 measures were still relatively new (albeit in the case of driving licences and current accounts they had existed in embryo prior to 2014), and there was insufficient hard evidence to say whether they were achieving what the government intended.
- 2.23 It is reasonable for the Home Office to argue that the overall success of its 'hostile environment' measures should be judged as a package and not in isolation. However, it is also reasonable as the measures become more established to expect to see some evaluation of each one, not least to justify the cost and effort required of the Home Office and from others to deliver them.
- 2.24 In the absence of even any 'soft' indicators of impact on, for example, voluntary returns, the Home Office lays itself open to criticism about the breadth of new legislation and the costs versus benefits. It is also harder for it to answer concerns about the potential damage to communities and to individuals. This puts a greater premium on the Home Office getting its contribution right, by ensuring that partnerships are managed effectively, that the data shared is accurate and up to date, and that it is seen to make full use of any new information that is generated about individuals who are in the UK illegally.

In summary

- 2.25 In summary, through good collaboration the Home Office and DVLA have succeeded in giving effect to the 'hostile environment' measures introduced by the 2014 Act in relation to the refusal and revocation of driving licences. The same holds true for the work with Cifas in relation to bank and building society current accounts. However, it now needs to ensure that sufficient attention and effort is put into improving the arrangements for data sharing, for assuring data quality, for processing matches and for making use of the resulting knowledge and intelligence.

3. Summary of recommendations

The Home Office should:

In relation to partnership working:

- Document fully the work flows between Interventions and Sanctions Directorate (ISD) and DVLA and Cifas, including guidance to ISD staff regarding their responsibilities;
- Agree with DVLA a means of quality assuring that driving licence applications from individuals requiring leave to enter that are not referred to ISD for an immigration status check are being correctly decided (both issues and refusals);
- Work with DVLA and prosecuting authorities to achieve an increase in the number of revoked licences that are surrendered, including by enforcement action against non compliant individuals and by prosecuting individuals for failure to surrender a revoked licence;
- With DVLA, ensure that other necessary contributors to the effectiveness of the driving licence measures, notably the police and motor insurers, are aware of the measures in the 2014 and 2016 Immigration Acts, how these affect them, and what information and support is available to them; and
- Work with Cifas to encourage banks and building societies to make greater use of the voluntary referral mechanism to improve the Home Office's knowledge of '*disqualified persons*', and consider the case for making this a statutory requirement.

In relation to data sharing:

- Ensure that the Memoranda of Understanding signed between the Home Office and DVLA and Cifas are reviewed regularly and updated as required by the Code of Practice published by the Information Commissioner's office;
- Expand the datasets shared with DVLA and Cifas to include all known illegal migrants, including any 'legacy' data and new data from exit checks in relation to overstayers; and
- Ensure that ISD operational managers are fully sighted on the timing and substance of any changes to the automated datasets provided to DVLA and Cifas.

In relation to data quality:

- Through user training and rigorous quality assurance, improve the accuracy and completeness of records held on the Case Information Database (CID), ensuring that any datasets extracted automatically are checked before release to partner agencies;
- Work with DVLA to identify all revocation cases where the driving licence holder departed with extant leave and reinstate the licence; and

- Cleanse the list of *'disqualified persons'* of all individuals who should not be included because they have leave to remain or an outstanding application, appeal, or other 'barrier', e.g. an outstanding application for Judicial Review.

In relation to data exploitation:

- Review its use of information received from DVLA and Cifas (and others) as a consequence of the driving licence and current account 'hostile environment' measures:
 - to identify trends and to inform threat assessments and priorities; and
 - to target immigration enforcement actions, in particular against absconders, individuals subject to a Deportation Order, and individuals not previously known to the Home Office.

In relation to measuring performance and impact:

- In the short term, develop performance indicators for the driving licence and current account 'hostile environment' measures introduced in the 2014 Act that as a minimum reflect the efficiency and effectiveness of the processes that underpin them; and
- In the medium term, develop a method of evaluating the impact of the 'package' of 'hostile environment' measures that includes an assessment of their effect on voluntary returns, enforced removals, and on the 'pull factor' for individuals considering settling illegally in the UK.

4. Background to the inspection

‘Hostile environment’: a cross-government issue

- 4.1 In 2012, the Prime Minister established the Inter-Ministerial Group on Migrants’ Access to Benefits and Public Services. Its purpose was to consider whether existing rules preventing illegal migrants from accessing benefits, employment and public services could be administered more effectively, and to determine whether existing rules on migrant access were overgenerous and should be tightened.
- 4.2 As at March 2013, membership comprised:
- Minister of State for Immigration
 - Minister of State for Care Services
 - Minister of State for Employment
 - Minister of State for Government Policy
 - Exchequer Secretary to the Treasury
 - Minister of State for Housing and Local Government
 - Minister of State for Schools
 - Minister of State for Foreign and Commonwealth Affairs
 - Minister of State for Universities and Science
 - Minister of State for Justice
 - Parliamentary Under-Secretary of State for Health
 - Parliamentary Under-Secretary of State for Transport
- 4.3 In a speech⁵ given on 25 March 2013, the Prime Minister referred to the relationship between maintaining effective immigration control and restricting migrant access to benefits and services, and set out his view that controlling immigration was a cross-government issue.

‘Controlling immigration has been a job for the Home Office, but the reality is you can’t control immigration if you have a welfare system that takes no account of who it’s paying out to. You can’t control immigration if you have a healthcare system that takes no account of the people using it. And you can’t control immigration if you have a housing policy that doesn’t take account of how long people have lived and contributed to a local area.’

⁵ <https://www.gov.uk/government/speeches/david-camerons-immigration-speech>.

The immigration bill

- 4.4 In October 2013, the government introduced an immigration bill (later the Immigration Act 2014). This set out the government's intention to *'prevent illegal immigrants accessing and abusing public services or the labour market'*⁶. The government would make it:

'more difficult for illegal immigrants to live in the UK by:

- Requiring private landlords to check the immigration status of their tenants, to prevent those with no right to live in the UK from accessing private rented housing;*
- making it easier for the Home Office to recover unpaid civil penalties;*
- prohibiting banks from opening current accounts for migrants identified as being in the UK unlawfully, by requiring banks to check against a database of known immigration offenders before opening accounts;*
- introducing new powers to check driving licence applicants' immigration status before issuing a licence and revoking licences where immigrants are found to have overstayed in the UK.'*

- 4.5 The Home Secretary said:⁷

'Most people will say it can't be fair for people who have no right to be here in the UK to continue to exist as everybody else does with bank accounts, with driving licences and with access to rented accommodation. We are going to be changing that because we don't think that is fair.'

She explained that the government would:

'create a really hostile environment for illegal migrants' [because] 'What we don't want is a situation where people think that they can come here and overstay because they're able to access everything they need.'

- 4.6 Serious misgivings were reported concerning the Bill. The focus of these was mostly on the proposed measures in relation to rented accommodation, which it was feared would lead to *'increased homelessness, including of families, and widespread discrimination'*.⁸ The Immigration Law Practitioners' Association (ILPA) was quoted as saying that the plan to fine landlords for not checking the immigration status of prospective tenants was *'unworkable'* and that the [*'hostile environment'*] *'scheme'* would be *'intrusive, bullying, ineffective and expensive and likely racist and unlawful to boot'*.

- 4.7 Habib Rahman of the Joint Council for the Welfare of Immigrants (JCWI), was quoted⁹ as saying:

'these measures will divide society, creating a two-tier Britain and a return to the days of 'no dogs, no blacks, no Irish' and of ill people with no access to healthcare walking the streets of Britain. This bill is a travesty and must be stopped.'

6 2014 Immigration Bill: Factsheet, published on the gov.uk website.

7 BBC Radio 4 interview, 10 October 2013.

8 The Guardian, 10 October 2013.

9 *ibid.*

4.8 The Immigration Minister defended the Bill, saying it would:

'stop migrants using public services to which they are not entitled, reduce the pull factors which encourage people to come to the UK and make it easier to remove people who should not be here.'

Bank accounts and driving licences

4.9 Specifically in relation to bank accounts and driving licences, during the Bill's second reading on 22 October 2013, the Home Secretary said:

*'The Bill will also introduce new rules to crack down on illegal migrants accessing banking products and services in the UK. Many illegal immigrants are already prevented from opening bank accounts, thanks to existing identification and fraud requirements. However, there is no specific rule to stop illegal migrants opening an account in the UK. This Bill will require banks and building societies, for the first time, to refuse a customer who wishes to open a new current account when they have been identified as an illegal immigrant....I also want to ensure that illegal migrants are denied driving licences. The Bill will give legislative force to the current administrative practice, but the measures go further, giving us the power to revoke licences. We will do everything we can to make it harder for illegal migrants to establish a settled life in the UK when they have no right to be here.'*¹⁰

4.10 The Immigration Bill received Royal Assent on 14 May 2014. The new legislation in relation to bank accounts and driving licences is set out in chapters 5 and 6.

The Home Office vision

4.11 The enforced removal from the UK of individuals who have no legal right to remain is recognised as being costly and complex, as well as distressing for those affected. Consequently, the Home Office looks wherever possible to encourage voluntary returns, in some cases covering or contributing to the costs of travel etc. However, as well as providing encouragement, for example through its family returns process¹¹, since at least 2010 it has also been committed to creating a 'hostile environment'¹² through a package of measures aimed at making it more difficult for illegal migrants to live and work in the UK.

4.12 Home Office senior managers saw the 'hostile environment' as being built upon a framework of compliance, deterrence and industrial scale data sharing, involving a range of government departments and agencies and private sector partners. While the various interventions and sanctions are distinct, managers stressed the importance of their cumulative impact on an individual. The overall aim was to deliver 'a rising and sustained increase in the number of voluntary returns growing over time...by shaping the person's behaviour and influencing this directly'.

Home Office structures

Interventions and Sanctions Directorate (ISD)

4.13 In June 2013, the Home Office created the Interventions and Sanctions Directorate (ISD). Its purpose was explained in an answer to a Freedom of Information request¹³ dated 25 November 2013 as follows:

10 <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131022/debtext/131022-0001.htm#13102262000002>.

11 See 'An Inspection of Removals, October 2014 – March 2015'.

12 The first public reference to 'hostile environment' was in 2012.

13 <https://www.whatdotheyknow.com/request/178455/response/453923/attach/html/3/FOI29596.pdf.html>.

'The unit has overall responsibility for removing incentives for people to stay illegally and encourage those who are in the country unlawfully to regularise their stay or leave the UK. This is achieved by ensuring a range of interventions and sanctions are systematically applied to deny access to services and benefits for those who are unlawfully in the UK. The unit works closely with government departments and a range of other partners across the public and private sectors to identify those migrants accessing such services and benefits to which they are not entitled.'

4.14 In 2015/16, the ISD budget¹⁴ was £5,489,498, including £3,300,000 retained from the Civil Penalty Scheme¹⁵, with a total headcount of 146 full-time equivalents (FTEs). Its 2015/16 business priorities¹⁶ were:

- *to develop systems swiftly to action exit checks data;*
- *to work with existing partners and to establish new partnerships to maximise the range of interventions and sanctions to make it harder for people to live in the UK illegally;*
- *to work closely with UKVI to apply sanctions at the earliest opportunity;*
- *to strengthen and simplify the civil penalty regime;*
- *to establish a systematic approach to identify potential illegal employers through data matching with HMRC real time information; and*
- *to work with other Home Office directorates and other government departments to disseminate reporting of the work of ISD and to gather feedback on effectiveness in order better to understand the 'pull factors' to the UK.*

4.15 ISD shares data with its partners in one of two ways. With some, primarily other government departments or agencies, ISD shares details of known illegal migrants in bulk, for the partner to match against its own records of those receiving benefits or services.

4.16 At the time of the inspection, ISD was sharing bulk data systematically with Her Majesty's Revenue & Customs (HMRC), the Department for Work and Pensions (DWP), the Driver and Vehicle Licensing Authority (DVLA), and Cifas.

4.17 With other partners, for example with employers and private landlords, ISD provides a checking service which that the partner can use to check the immigration status of an individual applying to them for a benefit or service. A checking service is also used in certain cases for some of those partners who receive bulk data, notably for the DVLA when it is checking on applicants for new driving licences.

Local Partnership Managers (LPMs)

4.18 As well as developing existing national-level partnerships, such as those with DVLA and Cifas, ISD's work includes centralising and formalising working level relationships that have built up over time between Immigration Compliance & Enforcement (ICE) teams and partners such as Local Authorities.

¹⁴ Home Office Interventions & Sanctions Directorate Business Plan April 2015 – March 2016 p.10.

¹⁵ Civil Penalty – Fine levied by the Home Office against an employer found to be employing those without a legal right to work in the UK.

¹⁶ Home Office Interventions & Sanctions Directorate Business Plan April 2015 – March 2016 p.5.

4.19 ISD has a national network of Local Partnership Managers (LPMs). The LPMs' role is to support delivery of ISD's communications strategy by raising awareness of ISD's activities and the 'hostile environment' measures with wider Home Office colleagues and partners. The LPMs then use those relationships to identify and develop solutions to local and national issues.

Governance

4.20 Governance of the hostile environment and voluntary returns programme is provided by a programme board, which reports directly to the Immigration Enforcement (IE) Board chaired by the Director General of IE. From June/July 2014 to May 2015, the DVLA steering group and the Financial Services steering group¹⁷ oversaw the driving licence and bank account measures. These Steering Groups reported to the hostile environment and voluntary returns programme board.

The inspection process

4.21 The inspection used seven of the Chief Inspector's core inspection criteria,¹⁸ which are set out at appendix 2. Inspectors:

It examined:

- Home Office management information in relation to the refusal and revocation of driving licences by DVLA, and the refusal of current account applications by banks and building societies;
- Home Office staff guidance and processes for sharing data with DVLA and Cifas; and
- documentary information provided by partners and stakeholders and invited contributions from banking organisations via a stakeholder survey.

It interviewed:

- Home Office managers and staff in ISD, the Immigration Intelligence Centre (IIC), Home Office Data and Digital, Home Office Science, the Immigration Bill Implementation team, and Immigration Enforcement including Operation Nexus (see figure 1);
- managers and staff at DVLA, and observed DVLA processes for deciding on driving licence applications and on Home Office requests for revocation;
- senior representatives of Cifas; and
- the Financial Conduct Authority (FCA), HM Treasury, the Immigration Law Practitioners Association (ILPA), the Joint Council for the Welfare of Immigrants (JCWI), the National Police Chiefs' Council (NPCC), the Department for Transport (DfT), and the Motor Insurers' Bureau.

Figure 1: Home Office staff interviewed

Grade	Number
Administrative Officers (AO)	4
Executive Officers (EO)	5
Higher Executive Officer (HEO)	3

¹⁷ These Steering groups sat below the Programme Board and agreed the detailed work required for the implementation of the driving licence and bank account measures. They were chaired by the Director of ISD and were made up of Home Office officials, officials from other government departments, e.g. Treasury, DfT, and representatives from DVLA and Cifas.

¹⁸ <http://icinspector.independent.gov.uk/wp-content/>.

Senior Executive Officer (SEO)	3
Grade 7	7
Grade 6	4
Senior Civil Servant (SCS)	2
Total	28

4.22 Inspectors also sampled 124 randomly selected records relating to driving licence refusals and revocations, and 169 cases where data shared with Cifas had been matched to an individual applying for a bank account or other financial product or service.

For driving licences these comprised:

- 50 records where revocation action was confirmed as having been taken by DVLA for immigration reasons between 1 April and 30 June 2015;
- 50 records identified from the April 2015 monthly data set provided to ISD where immigration case records suggested revocation would be appropriate if individuals matched against DVLA records; and
- 24 records where applications for new driving licences were refused by DVLA following referral to the Home Office for immigration status checks between 1 April and 30 June 2015.

For bank accounts these comprised:

- 169 records where a financial institution had matched an applicant for a financial product with an individual on the '*disqualified persons*' list.

4.23 The inspection findings for both driving licences and bank and building society accounts are broadly arranged in the same way and cover the same ground:

- Arrangements prior to the Immigration Act 2014;
- The Immigration Act 2014;
- Partnership working between the Home Office and DVLA/Cifas;
- Data sharing, including data quality;
- Whether the new processes were producing refusals and revocations; and
- Outcomes, including voluntary returns and removals.

5. Refusal and revocation of driving licences

Arrangements prior to the Immigration Act 2014

Validity of non-UK driving licences

- 5.1 A UK resident whose driving licence was issued in an EU/EEA country may drive on that licence until aged 70 or for 3 years after becoming resident in the UK, whichever is longer. The holder of a licence issued in one of a number of designated countries¹⁹ is required to exchange the licence 12 months after they become resident in the UK.
- 5.2 The holder of a full driving licence issued in a non-EEA country, or of an International Driving Permit, may drive in the UK for up to 12 months²⁰ using that document. To continue to drive lawfully after this date the holder must obtain a provisional UK licence and pass the relevant tests.²¹

2010 'enforcing the deal'

- 5.3 In March 2010, government policy relating to the issuing of UK driving licences changed as a result of a joint programme of work between the DVLA and the United Kingdom Border Agency (UKBA). This was part of the latter's 'enforcing the deal' strategy, published in June 2008. The effect was to restrict the issuing of UK driving licences to non-EEA nationals to those with a minimum of six months leave to remain outstanding. According to government statistics, around 3,000 licence applications were refused each year under this policy.²²

The Immigration Act 2014

Licence refusals and revocations based on unlawful residence

- 5.4 The Immigration Act 2014 (the '2014 Act') provided for the refusal of an application for a UK driving licence, and for the revocation of an issued licence, on the basis that the applicant or holder was not lawfully resident in the UK. In effect, this extended the scope and made law the existing policy on refusals and added new powers in relation to revocation.
- 5.5 Section 97 of the Road Traffic Act 1988²³ (the '1988 Act') sets out the circumstances in which the Secretary of State for Transport must grant a licence. Section 46(1) of the 2014 Act amends section 97(1) of the 1988 Act by inserting '*meets the relevant residence requirement*' after '*a person who*', and continues:

'97A Residence requirement

(1) For the purposes of an application under section 97, a person meets the relevant

19 As at 27 April 2016, designated countries were: Andorra, Australia, Barbados, British Virgin Islands, Canada, Falkland Islands, Faroe Islands, Gibraltar, Hong Kong, Japan, Monaco, New Zealand, Republic of Korea, Singapore, South Africa, Switzerland, Zimbabwe.

20 From the date of each entry as a visitor or from when the holder became resident.

21 <https://www.gov.uk/driving-nongb-licence/y/a-resident-of-great-britain/full-car-and-or-motorcycle>.

22 Explanatory Notes to the Immigration Act 2014 <http://www.legislation.gov.uk/ukpga/2014/22/notes>.

23 <http://www.legislation.gov.uk/ukpga/1988/52/contents>.

residence requirement if, on the date the application is made—

(a) in the case of an application that is made by virtue of section 89(1)(ea) (application by holder of Community licence), the applicant is lawfully resident in the United Kingdom and—

(i) is also normally resident in the United Kingdom, or

(ii) has been attending a course of study in the United Kingdom during the period of six months ending on that date;

(b) in the case of an application that is made by virtue of section 89(1)(f) (application by holder of exchangeable licence), the applicant is normally and lawfully resident in Great Britain but has not been so resident for more than the prescribed period;

(c) in the case of an application that is made by virtue of section 97(2) (application for provisional licence), the applicant is lawfully resident in Great Britain and the Secretary of State is satisfied that the applicant will remain so for not less than 185 days; and

(d) in any other case, the applicant is normally and lawfully resident in Great Britain.

(2) For the purposes of subsection (1) a person is not lawfully resident in Great Britain or the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.'

5.6 Prior to the 2014 Act, there was no power to revoke a driving licence on the grounds of the immigration status of the holder. Section 99 of the 1988 Act deals with the duration of UK driving licences. Section 47 (1) of the 2014 Act amends section 99 of the 1988 Act:

'47 Revocation of driving licences on grounds of immigration status

(1) In section 99 of the Road Traffic Act 1988 (duration of licences)—

(a) after subsection (3) insert—

“(3ZA) Where it appears to the Secretary of State that a licence holder is not lawfully resident in the United Kingdom, the Secretary of State may serve notice in writing on that person revoking the licence and requiring the person to surrender the licence and its counterpart forthwith to the Secretary of State, and it is the duty of that person to comply with the requirement.

(3ZB) For the purposes of subsection (3ZA) a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”

The government's intention behind the 2014 Act amendments

5.7 In the factsheet²⁴ accompanying the Immigration Bill (later the 2014 Act), the then Immigration Minister, Mark Harper, stated:

'It has previously been too easy for those here illegally to hold a UK driving licence and use it not only for driving, but as a piece of identification to help them access benefits, services and employment to which they are not entitled ... UK driving licences are often used by banks and building societies as a means of establishing someone's identity. Through this, illegal migrants could access services such as rented accommodation and financial services, helping them to establish a settled lifestyle in the UK, even though they have no right to be here.'

5.8 The factsheet explained that the new legislation would:

- *Ensure that only those migrants lawfully resident in the UK can obtain a full or provisional UK driving licence; and*
- *For the first time, create powers in law enabling the government to revoke the driving licence of a person here unlawfully.*

It would:

- *Give legislative force to tougher immigration checks first introduced into the driving licence application process in 2010 by requiring applicants to demonstrate they are lawfully resident in the UK before a new full or provisional UK driving licence can be issued;*
- *Inform migrants that if they fail to abide by our laws, are here illegally or do not comply with the immigration process, any driving licence they hold may be revoked; and*
- *Set out clearly the dire consequences for illegal migrants who continue to drive after their licence is revoked. They will be liable for prosecution for failure to surrender a licence; will be liable for prosecution if caught driving²⁵; face losing any vehicle they have and face detention and swift removal under immigration powers. Illegal migrants will understand that any convictions will be taken into consideration by the Home Office where they apply to stay here or return here in the future.*

It would also:

'send a message to uninsured drivers that it is not worth the risk. With automatic number plate recognition and new mobile technology, it is easy to check the insurance status of a car or its driver. The net is closing in on uninsured drivers be they UK residents or illegal immigrants, and the penalties are steep.'

And, it stated that:

'The Home Office has also engaged with the Association of British Insurers and the Motor Insurance Bureau in developing this policy and will continue to work with them in ensuring that they know where a licence has been revoked and are able to work with the police in enforcing the law.'

²⁴ Home Office Immigration Bill Factsheet: Migrants' access to UK driving licences (clauses 41-42) October 2013.

²⁵ Section 87 of the Road Traffic Act 1988 provides that it is an offence for a person 'to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class'. The offence attracts a fine of up to £1000, 3 - 6 penalty points and possible disqualification from driving.

Partnership working between the Home Office and DVLA

Collaboration

- 5.9 ISD and DVLA developed the processes required to give effect to sections 46 and 47 of the 2014 Act collaboratively. DVLA and the Department for Transport (DfT)²⁶ were represented on the DVLA steering group, and both were content that they had had sufficient opportunity to raise and resolve any concerns or issues prior to implementation.
- 5.10 Since 2005, the Home Office (initially UKBA, and since 2013 ISD) had had an embedded officer within DVLA, who was on hand to deal with any immigration-related queries about driving licence applications. The working relationship had developed following implementation of the 2014 Act, since when managers in ISD and DVLA had been holding bi-weekly conference calls to discuss performance, emerging issues and to iron out any problems. Also, ISD staff had visited DVLA in order to gain a better appreciation of how DVLA operated.

Data sharing

- 5.11 For new driving licence applications, ISD staff carry out checks of Home Office systems (Case Information Database (CID), Central Reference System (CRS), and Omnibase)²⁷ at DVLA's request. For revocations, the Home Office provides DVLA with a list of certain categories of migrant that are known to be unlawfully present in the UK. In both cases, this involves the sharing of personal data between the Home Office and DVLA.

- 5.12 The Information Commissioner's Office (ICO) defines personal data as:

'data which relates to a living individual who can be identified:

(a) From those data, or

*(b) From those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'*²⁸

- 5.13 The ICO Code of Practice explains how the Data Protection Act (DPA) 1998 applies to the sharing of personal data and provides advice on good practice. Section 4 of the Code of Practice states:

'If you wish to share information with another person, whether by way of a one-off disclosure or as part of a large-scale data sharing arrangement, you need to consider whether you have the legal power or ability to do so.'

- 5.14 Section 4 draws a distinction between government departments headed by a Minister of the Crown, which have common law powers to share information, and other public sector organisations that derive their powers entirely from statute. Both the Home Office and DVLA rely on common law powers as the legal basis for sharing data.

²⁶ DVLA is an Executive Agency of the DfT.

²⁷ CRS holds entry clearance information from visa applications made overseas. Omnibase database is owned by HM Passport Office and contains records of British passports issued since 1989.

²⁸ ICO Code of Practice, published under section 52 of the Data Protection Act 1988 (DPA).

5.15 Section 8 of the ICO Code of Practice states that:

'it is good practice to have a data sharing agreement in place, and to review it regularly, particularly where information is to be shared on a large scale, or on a regular basis.'

The key elements of such an agreement are set out in section 14:

- *the purpose of the data sharing initiative;*
- *the organisations that will be involved in the data sharing;*
- *the data items to be shared;*
- *the basis for sharing;*
- *access and individuals' rights; and*
- *information governance.*

5.16 The inspection was shown two Memoranda of Understanding (MoUs)^{29 30} agreed between the Home Secretary and the Secretary of State for Transport that dealt with data sharing between the Home Office and the DVLA.

5.17 The first MoU, dated 23 June 2014, focused on revocations. It did not cover the driving licence applications. The MoU addressed the key elements set out in section 14.

5.18 The second MoU, drafted in December 2015, referred to a 'process level agreement' regarding the checking of immigration status for new driving licence applications. This Agreement was not shared with inspectors. Again, the draft MoU included all of the key elements from the ICO Code of Practice.

5.19 Regarding the status of these MoUs, the Home Office told inspectors that:

'The initial MoU with DVLA was designed to test the processes that would need to be implemented as a result of the new driving licence measures included in the Immigration Act 2014. Following this exercise, neither party looked to formalise the regular data sharing with another distinct MoU, as the expectations from all involved were the same and the new legislation made it clear any ongoing exchanges were legal. A new MoU was subsequently drafted to allow the Home Office access to DVLA's database as part of the revocation process. After reviewing the MoUs in place and in draft, it was considered appropriate to merge the MoUs into one agreement to cover the DVS³¹ access as well as the regular data sharing. This MoU was signed on 25 April 2016.'

Data quality

5.20 Annex 1 of the ICO Code of Practice states:

'Personal data shall be accurate and, where necessary, kept up to date'.

29 Memorandum of Understanding between the Secretary of State for Transport (Acting through the Driver & Vehicle Licensing Agency) and the Secretary of State for the Home Department in respect of: Sharing of immigration-related data for the purpose of processing driving licence revocations of persons not lawfully resident in the UK dated 23 June 2014.

30 Memorandum of Understanding (Umbrella) between the Secretary of State for Transport (Acting through the Driver & Vehicle Licensing Agency) and the Secretary of State for the Home Department (Draft V0.2 December 2015).

31 DVS – Driver Validation Service is a DVLA database containing records of licence holders to which ISD have read-only access.

- 5.21 ISD managers and staff reported that it was not uncommon for CID not to be updated with relevant information, e.g. a voluntary return or a lodged appeal, until some months after the event, and that data was often entered in the wrong place, usually in a free text field.
- 5.22 For new driving licence applicants, ISD staff check Home Office records manually, and their familiarity with CID and ability to use their judgement reduces some of the risks from poor data quality.
- 5.23 However, for revocations the Home Office shares with DVLA a list extracted automatically from CID³² of agreed case types (individuals refused leave to remain; failed asylum claimants; absconders; immigration offenders – e.g. illegal entrants, illegal workers, overstayers – encountered and served with notice of liability for removal; individuals subject to a deportation order; and removals, including voluntary returns).
- 5.24 Data quality for this extract, provided by the Managing Integrated Data Solutions Service (MIDAS), depends on both the accuracy of the information contained on CID and on it having been entered in the correct field, and therefore the extract is not wholly accurate. For example, individuals listed may have left the UK with valid leave remaining, but information about their departure may not have been entered on CID when the data is extracted, indicating that they remained in the UK without valid leave.
- 5.25 As a safeguard, before DVLA acts to revoke a licence, ISD carries out a manual check of any matches thrown up by the data extract. This reduces the risk that a licence is revoked based on incorrect or out of date data, but does not remove it entirely.

New applications

- 5.26 There was no documented process for determining whether an applicant for a new (full or provisional) driving licence satisfies the residence requirement as set out in the 2014 Act. However, ISD and DVLA staff reported that the process mirrored what had been in place since 2010 in relation to limiting the issue of licences to non-EEA nationals with more than six months leave to remain. This too was undocumented.
- 5.27 However, the 'new' process was described to inspectors as follows:

Where it appears to DVLA staff, based on the documents submitted³³, that a migrant applying for a new driving licence meets the residence requirement, DVLA decides whether to grant the application without reference to the Home Office.

Where DVLA staff discover that the document(s) submitted by a migrant in support of an application for a new driving licence is obtained fraudulently, is counterfeit or forged, the application is refused without reference to ISD. In each case, an intelligence report is completed and disseminated to Home Office intelligence teams and the local ISD officer.

Where it appears to DVLA staff that an applicant does not meet the residence requirement, or where they are unsure, DVLA provides ISD³⁴ with the name, date of birth, address and travel document details for an immigration status check. These are provided in a spreadsheet, via the government secure network (GSN). ISD checks Home Office systems, and updates and returns the spreadsheet via GSN.

³² CID - Case Information Database.

³³ In the case of a non EU/EEA national, the applicant is required to submit a current and valid passport, a biometric residence permit (BRP) formerly known as the identity card for foreign nationals or a travel document. In all cases the original documents, rather than copies, must be submitted.

³⁴ The embedded ISD officer or ISD in the Home Office (Croydon).

Where the status check reveals that the applicant has no valid leave in the UK, the embedded ISD officer will seize the applicant's travel document under Section 17 of the Asylum and Immigration (Treatment of Claimants) Act 2004, which provides that:

'Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the Secretary of State or an immigration officer may retain the document while he suspects that—

(a) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and

(b) retention of the document may facilitate the removal.'

Where the applicant's travel document is seized, the embedded ISD officer will task the case for enforcement action on CID, creating a new CID record if the status check revealed 'no trace' of the applicant on Home Office systems.

Where the travel document has been seized, DVLA will inform the applicant by letter to contact their local immigration office to arrange for the return of their document.

- 5.28 ISD and DVLA managers accepted that the documents submitted by an applicant might not reflect their current immigration status. For example, while their passport might indicate that an applicant has leave to remain in the UK, they may have had their leave curtailed. DVLA managers said that, in such cases, if the DVLA officer is satisfied with the document(s), it would be highly unlikely that they would refer it to the Home Office for checking.

Quality assurance

- 5.29 ISD reported that it had recently introduced a requirement for its Executive Officer (EO) managers to quality assure status checks conducted by Administrative Officers (AO). The inspection found that this was not done consistently, nor was it always recorded.
- 5.30 There was no quality assurance of decisions by DVLA staff to request a status check or not. File sampling revealed one case where a licence was issued where a status check would have resulted in a refusal. The error was later identified and the individual's travel document re-requested and retained. However, he was in possession of a driving licence to which he was not entitled for just under a year. The Home Office was unable to explain why DVLA had failed to refer the initial application for an immigration status check. There was no evidence that the Home Office had taken action to prevent a repetition. It said that such errors were dealt with 'on a case-by-case basis'.

New applications - refusals and follow-up enforcement action

- 5.31 Home Office data showed that in 2015 (1 January to 31 December) 269 new driving licence applications were refused based on the outcome of an immigration status check by DVLA with ISD. Of these, 154 applications were made by individuals with no valid leave, and 115 were made by individuals with insufficient outstanding leave to satisfy the residence requirement.

- 5.32 Inspectors examined 24 of the 269 refusals, and found that Home Office records showed that at the time of the status check:
- 11 applicants were recorded as not having valid leave; and
 - 13 applicants were ‘no trace’.
- 5.33 In all 24 cases, the ISD informed DVLA correctly of the applicant’s immigration status and DVLA correctly refused the application in accordance with the 2014 Act. Subsequently, two applicants provided evidence, not submitted with their original applications, that they were dual nationals and therefore met the residence requirement.
- 5.34 In 19 of the 24 cases, the ISD officer seized the travel document because the applicant appeared to be liable for removal.³⁵ From their case files, the other five applicants also appeared not to have valid leave, but their travel documents had not been seized. The reasons for this were not recorded.
- 5.35 The travel document was retained in all 13 of the cases where the applicant was not previously known (‘no trace’) to the Home Office, and a CID record created and flagged for tasking to an enforcement (ICE) team. In six of these cases, the ICE team visited the address provided to DVLA in the licence application. An example of a successful enforcement action is provided in figure 2.

Figure 2: Case study of successful enforcement action following DVLA status check and licence application refusal

Sequence of events:

- On 1 May 2015, DVLA referred the individual’s details to the ISD embedded officer for an immigration status check:
 - Home Office records indicated the applicant did not have valid leave;
 - he was recorded as having been convicted of committing an offence of common assault in 2008; and
 - his most recent immigration application had been refused on 8 December 2009.
- On 5 May 2015, DVLA refused the driving licence application:
 - the individual’s passport was impounded by the embedded ISD officer, who updated CID, including with details of the individual’s employer, and flagged the case for enforcement tasking.
- On 11 July 2015, the individual was located at his home address and detained by an enforcement team.
- On 7 November 2015, he was removed from the UK.

Chief Inspector’s comment:

This is an example of effective collaboration between DVLA and the Home Office bringing to notice an immigration offender, and of a successful enforcement outcome.

The retention of the passport facilitated the eventual removal of the individual.

It was not clear from Home Office records whether the information relating to the individual’s employer resulted in any action.

³⁵ A travel document is necessary to enable removal from the UK and the documentation process can be lengthy.

5.36 In total, 16 of the 24 sampled cases were flagged on CID for tasking. The criteria used by ISD for flagging cases for tasking were not clear, and the rationale was not always recorded. The ICE response to tasking generated from refused driving licence applications varied. One ICE team manager commented that, due to the high volumes of cases flagged via CID for tasking and the time it took to sift through them, it would be more likely that this type of case would be adopted for enforcement action if they were all identified under a common codename. An example of a tasking that was rejected for enforcement action is provided at figure 3.

Figure 3: Case study of tasking rejected for enforcement action

Sequence of events:

- On 27 May 2015, the individual applied for a driving licence.
- On 3 June 2015, DVLA referred the application to the embedded ISD officer for an immigration status check:
 - There was no trace of the applicant on Home Office systems;
 - The passport was impounded by ISD and the driving licence application refused by DVLA; and
 - The case was flagged on CID for enforcement tasking.
- On 9 June 2015, the local Immigration Enforcement Tasking & Coordination Group (TCG) rejected the tasking on the grounds that the DVLA application was not strong enough evidence of a current address without additional information, such as an Experian check.
- On 15 July 2015, the TCG again rejected the tasking on the same grounds.
- On 31 July 2015, the TCG again rejected the tasking on the same grounds.
- On 9 February 2016, the individual was circulated as an absconder.

Chief Inspector's comment:

In this case, the absence of a Home Office record suggested that the applicant might be an illegal entrant. The applicant provided an address, ostensibly their home address, to which they requested their new licence be sent. They also submitted a valid travel document with their application. It is therefore difficult to understand the decision to reject the tasking, and the failure to conduct further checks on the address, if needed.

Home Office response:

'Regional demands may vary, influenced where demand outstrips supply. Tasking of ICE is always limited against given and agreed priorities, some of which may not always compliment or support the requesting unit's ambition.'

5.37 DVLA reported that it had produced 606 intelligence reports relating to immigration cases in 2014/15, and 633 in 2015/16. Most of the cases involved forged or counterfeit documents, where the DVLA had already refused the application in question without reference to the Home Office. The Home Office said that 169 intelligence reports had been routed from DVLA via the embedded ISD officer in 2014/15 (April to March) and 244 in 2015/16. Of these, half (206) were recorded as having been disseminated to ICE teams. The inspection found no evidence of a formal process to capture trends or analyse this intelligence at DVLA, at ISD, or at Immigration Enforcement's Immigration Intelligence Centre, but inspectors were subsequently told that DVLA has a criminal intelligence team which carries out trend analysis and that outputs from this analysis are shared with the Home Office.

5.38 There was no evidence of a recorded departure from the UK in 21 of the 24 sampled new licence application refusals. Of the three cases where a departure was recorded, in one the applicant had made a Voluntary Return. As well as being refused a driving licence because they did not have valid leave, this individual had also been refused private rented accommodation (a ‘hostile environment’ measure introduced in the 2014 Act). Home Office records showed that both sanctions were applied on 20 April 2015, and the individual departed on 15 June 2015. In the other two cases, the individuals were subject to enforced removals.

Driving licence revocations³⁶

5.39 Individuals holding a driving licence who are not lawfully present in the UK, and therefore stand to have their licence revoked under the 2014 Act, are identified in one of three ways:

- through bulk data matching of Home Office data with DVLA records; or
- as the result of an encounter with an ICE team or with Reporting and Offender Management (ROM) staff, during which the individual is found to be in possession of a UK driving licence;
- as the result of referral from other business areas, including removals casework, where an individual is found/thought to be in possession of a UK driving licence.

Driving licence revocations – bulk data matching

5.40 Each month, ISD provides DVLA with the data extract for the agreed case types (individuals refused leave to remain; failed asylum claimants; absconders; immigration offenders, e.g. illegal entrants, illegal workers and overstayers, encountered and served with notice of liability for removal; individuals subject to a deportation order; and removals, including voluntary returns). The extract consists of name, address and date of birth.

5.41 Visa nationals who have overstayed the leave granted by their visa but had not been encountered, and non-visa nationals who had overstayed the period of leave granted on entry but had not been encountered, are not included in the list of case types. However, inspectors were told that the Home Office was in discussion with DVLA about including the former where they had had been identified through exit check data.³⁷

5.42 The data matching process developed as follows:

The data extract is ‘washed’ against DVLA’s licence holder database, and DVLA returns a list of ‘exact’ matches³⁸ and ‘fuzzy’ matches³⁹ with driving licence numbers to ISD.

ISD carries out a status check of all matches to establish whether any barriers to revocation have emerged since the bulk data matching, manually checking CID and, for ‘fuzzy’ matches, also comparing photographs on CID with those on the DVLA’s Driver Verification System (DVS).

Where the status check reveals that the individual has no valid leave to remain, and there is no outstanding application or appeal, ISD sends a letter to the individual warning them that they have ten working days to provide grounds why their licence should not be revoked.

³⁶ The total number of driving licences revoked between 14 July 2014 and 31 December 2015 was 15,470. In 2015 (January-December), the Home Office made 9,732 requests for revocation to DVLA, all but 18 of which were taken forward.

³⁷ Exit checks were introduced from 8 April 2015 and captured data about individuals leaving the UK on scheduled air, sea and rail routes. By matching of immigration records to passenger travel data the Home Office can identify individuals who may have overstayed their leave to be in the UK.

³⁸ An ‘exact’ match is a match of forename, surname, date of birth and postcode.

³⁹ A ‘fuzzy’ match is a match of initial, surname, date of birth and postcode.

After ten days, ISD sends to DVLA the list of individuals with no leave, no barriers to revocation, and where discretion⁴⁰ has not been exercised.

Where the status check reveals an outstanding application or appeal, revocation is placed on hold and ISD conducts monthly status checks until the individual is either granted leave or the barrier to revocation is removed.

Where the status check reveals that the individual has leave to remain or has departed with valid leave, ISD guidance⁴¹ is to take no further action.

- 5.43 Prior to April 2016, there had been no performance benchmark for ISD staff processing matches. Since April 2016, ISD staff had a daily target of 50 immigration status checks. New guidance covering the revocation process was issued on 26 April 2016. The guidance, *'Sanctions: Vehicle and licensing Version 2.0'*, omits the comparison of photographs on CID and DVS for 'fuzzy' matches, but it is otherwise as set out above.
- 5.44 Inspectors were told that checking the photographs meant that it was taking longer to process 'fuzzy' matches than 'exact' matches, and very few cases were eliminated as a result of these checks, added to which DVS was unstable and could close down unexpectedly, locking the user out for up to 15 minutes. DVLA had therefore agreed to dispense with the photograph comparison check, and 'exact' and 'fuzzy' matches were now subject to the same process. However, ISD prioritised 'exact' matches.
- 5.45 Home Office data revealed that the number of unprocessed 'fuzzy' matches peaked in October 2015 at 7,749. At the beginning of March 2016, there was a plan to reduce this to *'frictional levels within eight weeks'*.⁴² The recorded figure for March 2016 was 3,490.
- 5.46 The number of matches received varied significantly from month to month, making resource planning difficult. The monthly figures for 2015 are shown at figure 4.

Figure 4: Matches received from DVLA in 2015		
Month	'Exact' matches	'Fuzzy' matches
January	712	1,465
February	718	898
March	568	776
April	1,674	2,182
May	224	297
June	881	1,069
July	613	706
August	478	599
September	2,953	3,058

40 ISD can exercise discretion where human rights grounds are raised against revocation. This is rare. In 2015, there were no cases that reached the Home Office's threshold.

41 ISD DVLA Standard Operating Procedures Version 1.0, 8 January 2016.

42 The Home Office uses the term 'frictional levels' to describe where intake volumes may exceed capacity but not to the extent that a backlog builds up.

October	861	1,022
November	747	808
December	783	860
Total	11,212	13,740

5.47 ISD operational managers explained that the ‘spikes’ in April and September 2015 had been caused by the recoding of the parameters used to generate the data extract. As a result, larger data sets had been sent to DVLA generating more matches. ISD operational managers said they had no control over the timing of any recoding exercises, and had received no warnings. Inspectors were subsequently informed that the recoding and timings of such is agreed at a high level within steering groups, where Home Office Digital, ISD and other business areas are represented.

5.48 The Home Office also reported that there was a cohort of ‘stock’ or legacy cases, estimated to consist of 120,000 records, generated prior to the introduction of the new driving licence measures in 2014, but not passed to DVLA because neither ISD or DVLA had the capacity to deal with them. Negotiations were underway with DVLA to process these in batches during 2016.

Driving licence revocations – referrals by ICE teams and ROM staff

5.49 ISD managers said that ICE teams and ROM staff were aware of the need to refer cases where they encountered migrants with no leave who were in possession of a UK driving licence, and the process for referrals was working well. On receipt of a referral, ISD would send a warning letter to the licence holder and then follow the same process as for matches received from DVLA.

Driving licence revocations - follow-up actions and outcomes

5.50 The Home Office reported that a target of 10,000 driving licence revocations by the end of 31 March 2015 had been agreed with the Cabinet Office, and that this target had been achieved. In 2015 (1 January to 31 December), the Home Office made 9,732 revocation requests to DVLA.

Data extract sample

5.51 In March 2016, the inspection sampled 50 records drawn at random from the data extract provided to DVLA in April 2015. Of these 50 records, nine produced matches against the DVLA’s licence holder records, of which:

- four were ‘exact’ matches;
- three were ‘fuzzy’ matches; and
- two were added to the data extract having been referred by ICE/ROM.

5.52 As at file sampling, seven of the nine matches had resulted in a revocation. In two of these cases, the individuals had left the UK: one had been an enforced removal; the other had been a voluntary return, although there was no evidence that the revocation had had any impact on the decision to depart.

5.53 One case out of the 50 sampled involved a minor. In this case, the details of the father were later shared with DVLA, but the mother's details were not. The Home Office was unable to provide assurance that, where a minor appears in the data extract, checks would be carried out to ensure that the details of adult family members had been included.

Revocations sample

5.54 The inspection sampled 50 cases where DVLA had revoked a driving licence following a request from ISD:

- 11 cases referred by ICE/ROM; and
- 39 cases generated by bulk data matching.

5.55 In all of the 11 referred cases, the decision to revoke the licence was correct according to the 2014 Act. One of these cases is described at Figure 5.

Figure 5: Case study – licence revocation as a result of an internal referral

- In September 2009, the individual entered the UK as the dependant of her husband. She later obtained further leave to remain, which expired on 28 December 2014.
- On 11 March 2015, the family came to the attention of an ICE team when they were served immigration papers as overstayers, having remained in the UK without leave. Their details were referred to ISD on the same date.
- On 12 March 2015, ISD considered revocation action.
- On 16 March 2015, ISD sent a warning letter to the individual.
- On 8 April 2015, ISD made a request for revocation to DVLA.
- On 27 April 2015, DVLA revoked the driving licence.

Chief Inspector's comment:

There were 32 working days between the date the family was recorded by the ICE team as not lawfully resident and revocation of the licence. This is an example of efficient and accurate data flows within the Home Office and between it and DVLA, and the efficient and effective use of that data.

5.56 The decision to revoke the licence was correct, according to the 2014 Act, in 34 of the 39 bulk data matched cases. In the other five cases, the licence holder had departed the UK before their leave had expired and had not ever been '*not lawfully resident*' in the UK. The Home Office explained that these errors were caused by poor quality CID data and/or delays in updating CID with the record of the individual's departure. One of these cases is described at figure 6.

Figure 6: Case study – Licence incorrectly revoked for an individual who departed with valid leave

- From 1 July 2006, the individual was continuously resident and lawfully in the UK, most recently with a Tier 2 work visa that was valid until 30 May 2014.
- On 10 December 2013, the individual departed the UK (confirmed by airline records).
- On 2 January 2014, the Home Office revoked his former employer's licence.
- On 31 March 2014, the Home Office curtailed the individual's leave with an expiry date of 30 May 2014.
- On 8 April 2015, the individual's details entered the data extract.
- On 17 April 2015, ISD considered revocation action.
- On 30 April 2015, ISD sent a warning letter to the UK home address on file.
- On 26 May 2015, ISD requested DVLA to revoke the individual's driving licence.
- On 1 June 2015, DVLA revoked the driving licence.

The Home Office said:

'Although this person left before the curtailment decision was made, the removal screen was not updated so the case fell into the MRP⁴³ as a result of the re-coding. Whilst case notes refer to a departure, if the removal screen is not updated on CID, our staff will assume the person is still in the UK or has subsequently returned.'

Unfortunately, now he has left the UK, we cannot contact him to tell him of this error. CID only holds UK addresses for him and we know he is no longer there. However, should he return to the UK with leave, he may apply for his licence to be re-instated for free (as opposed to applying for a new licence which has a fee).'

Chief Inspector's comment:

The individual was lawfully resident in the UK for almost 8 years and, according to Home Office records, complied with his leave conditions throughout. He left the UK voluntarily before the legislation relating to the revocation of driving licences was introduced. In the event that he returns to the UK, the Home Office's actions put him at risk of driving 'otherwise than in accordance with a licence',⁴⁴ which is a strict liability offence.⁴⁵

Since he could not reasonably be expected to know that his licence has been revoked, the Home Office's proposed avenue of redress is unsatisfactory.

- 5.57 Since ISD sends warning letters to the last known UK address, it is possible that all five of the individuals who departed before their leave had expired remain unaware that their UK driving licence has been revoked, and are at risk of committing a strict liability offence if they return to the UK and drive while relying on their revoked licence. ISD managers reported that they had already identified this issue and had taken remedial action, and that an individual's primary avenue of redress was to apply for the licence to be reinstated. It was unclear how

⁴³ The Migration Refusal Pool (MRP) is managed by Home Office Removals Casework (RC) and consists of records indicate that an individual has no right to be in the UK, and there is no evidence of a departure from the UK.

⁴⁴ Under section 87 of the Road Traffic Act 1988 it is an offence for a person 'to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class'. The offence attracts a fine of up to £1000, 3 – 6 penalty points and possible disqualification from driving.

⁴⁵ Strict liability offence is an offence which requires no proof of intention or knowledge of wrongdoing.

the individual was supposed to know to do this. The Home Office was unable say how many individuals may have been affected since the introduction of the 2014 measures, or to guarantee that this would no longer happen.

Follow-up actions

- 5.58 ISD reported that each month it sent Immigration Intelligence, ICE teams and ROM details of all licence revocations for the previous month, and that Immigration Intelligence used this to feed into threat assessments. The inspection found no evidence of this in any national intelligence products. In November 2015, there had been discussions between the Home Office, DVLA and the Metropolitan Police (MPS) about using DVLA revocations data to produce 'heat maps' to inform intelligence led police operations in the MPS area, but it had not been possible to reach agreement about sharing data for this purpose. A separate proposal by the Home Office to obtain copies of travel documents provided with licence applications, for use in the event the individual became liable for removal, was also not pursued.

Outcomes

- 5.59 In 2015, the Home Office requested that DVLA revoke licences for 9,732 individuals. The inspection asked about the current status or outcome of these cases. The Home Office tried to provide an update via MIDAS but was unable to do so. However, it reported that from 1 April 2015 to 31 January 2016, 583 individuals had left the UK having had their UK driving licence revoked: 411 voluntary returns; and 172 enforced removals.⁴⁶
- 5.60 Of the 50 sampled revocation cases:
- 30 individuals remained in the UK at the time of the inspection; and
 - 20 had departed; of whom,
 - 14 were voluntary returns, 11 of whom had departed before their licence was revoked.
- 5.61 In 11 of the 30 cases, the case records showed that the individual had taken steps to become compliant, by making a fresh immigration application or lodging further representations,⁴⁷ after they had received notification of the intention to revoke their licence. However, the records did not show a clear causal link between revocation and the decision to depart for those who made a voluntary return (the individuals were not asked their reasons for leaving).

Driving licence revocations - reinstatements

- 5.62 The Home Office reported that in 2015 (1 January to 31 December), 259 revoked licences were reinstated. Of these, 67 individuals provided evidence of valid leave, and 192 provided evidence that they had submitted a fresh application before ISD had requested revocation. It was not clear why the ISD status check had not picked this up, but the most likely explanation was a mixture of human error and CID data quality.
- 5.63 The Home Office did not have a performance target for reinstatements, but Home Office managers said they were comfortable with current levels. However, DVLA flagged up the negative operational impact of reinstatements, which were labour-intensive for it to process.⁴⁸

⁴⁶ The data in this paragraph is Home Office internal management information and has not been quality assured under National Statistics protocols.

⁴⁷ Such as an appeal or request for Administrative Review against an adverse immigration decision.

⁴⁸ Driving Licence Implementation Steering Group Minutes – February 2015.

Driving licence revocations – returning the licence to DVLA

- 5.64 Individuals are informed in writing by the DVLA where their licence is revoked for immigration reasons. The letter includes an instruction to return the licence to DVLA, advising that failure to do so is an offence under section 99(5) of the Road Traffic Act 1988. Responsibility for any prosecutions rests with the Police and CPS, rather than with the Home Office. According to the DVLA, in 2014/15 475 driving licences revoked for immigration reasons were surrendered to DVLA. In 2015/16, the figure was 337. The inspection found no evidence of any criminal prosecutions.
- 5.65 Until 2016,⁴⁹ there was no power to seize a revoked driving licence or the licence of an individual unlawfully present in the UK. However, Home Office staff reported that prior to 2016, driving licences of individuals without valid leave were sometimes seized during enforcement operations and sent to ISD. Training materials for enforcement staff wrongly advised that a driving licence should be retained where CID showed that it had been revoked by DVLA.

Driving licence revocations – sharing data with others

Motor insurers

- 5.66 In most circumstances, it is an offence under section 143 of the Road Traffic Act 1988 to drive a vehicle on a road or in a public place without insurance against third party risks. Conviction can attract an unlimited fine, disqualification and the seizure and destruction of the vehicle.
- 5.67 The Motor Insurers' Bureau (MIB) reported that only 26% of motor insurance providers used the MyLicence⁵⁰ system to check the validity of a prospective customer's driving licence when considering an application for motor insurance. Three quarters of providers accepted a declaration from a prospective customer that they held a valid driving licence. The MIB reported that motor insurance providers are not automatically informed when a policy holder's driving licence is revoked, but if information comes to light that the policy holder's driving licence is revoked, insurers may choose to not to pay claims where the driver did not have licence to drive.⁵¹

Police

- 5.68 The Automatic Number Plate Recognition (ANPR) system comprises fixed-point cameras and mobile units. Police vehicle patrols and check points use ANPR to check vehicles and registered drivers. If motor insurers know that a vehicle is not insured, this will be flagged up on ANPR. It is then a matter for the police officer(s) to decide what action, if any, to take.
- 5.69 Licence revocation data is uploaded daily on to the Police National Computer (PNC) by DVLA. Therefore, a police officer conducting a PNC check on a person or driving licence will be alerted where the individual's licence has been revoked. Police officers can also contact the Home Office 24/7 to request an immigration status check.
- 5.70 However, there had been limited engagement and communication with the police leading up to the introduction of the 2014 Act. Therefore, awareness amongst officers of its driving licence provisions was low. The National Police Chiefs' Council (NPCC) believed that if an individual produced a driving licence that had been revoked at a police station, in response to a request to produce driving documents, it was unlikely that the fact it had been revoked would be identified as it would receive only a visual check.

49 Immigration Act 2016.

50 A service provided by MIB making DVLA licence data available to the insurer at the point of quote.

51 In such situations the Road Traffic Act ensures that innocent third parties would still be compensated.

Conclusions

- 5.71 The Immigration Act 2014 (the '2014 Act') made amendments to the Road Traffic Act' 1988 (the 1988 Act') to empower the DVLA to refuse driving licence applications from, and revoke existing licences for, individuals not lawfully present in the UK. The government's intentions were clearly set out in the factsheet accompanying the Bill. These were to deny any person not lawfully in the UK the use of a UK driving licence both for the purpose of driving and as a means of identification to access benefits and services, and to back this up with a range of sanctions, including prosecutions, detentions and removals.
- 5.72 The Home Office and DVLA had been working together for a number of years prior to the introduction of these new 'hostile environment' measures. Since 2005, the Home Office had had an officer embedded at DVLA to assist with immigration status checks. As a result, the processes required to give effect to the new measures (contained in sections 46 and 47 of the 2014 Act) were developed collaboratively. Since the 2014 Act had become law the working relationship had become closer, with bi-weekly conference calls between Home Office Interventions and Sanctions Directorate (ISD) and DVLA managers to discuss performance and emerging issues, and to iron out any problems.
- 5.73 The new measures depend on efficient and effective data sharing between the Home Office and DVLA, to identify matches in the former's records of individuals present in the UK without leave and the latter's records of driving licence applicants and licence holders. As government departments headed by Ministers of the Crown, the Home Office and the Department for Transport (of which DVLA is an Executive Agency) were able to rely on common law powers to share this personal information.
- 5.74 However, the two departments had not adhered to the Code of Practice published by the Information Commissioner's Office to accompany the Data Protection Act 1998 (DPA), which identifies it as good practice to have in place a data sharing agreement, which is reviewed regularly, '*particularly where information is to be shared on a large scale, or on a regular basis*'. Although the Home Office and DVLA had agreed a Memorandum of Understanding (MoU) in 2014, this only covered revocations. New applications were covered in a second MoU, but as at December 2015 this was still only a draft, and it was not until April 2016 that the Secretaries of State signed a MoU covering both measures. Given the weight placed on these measures, this was an oversight.
- 5.75 The new measures also depend on data quality, and on the efficiency, effectiveness and consistency of processes for matching data and acting on the results. With regard to data quality, the inspection found that CID records for individuals were incomplete, or had been completed incorrectly (with data placed in the wrong fields), or there were delays in updating records. These record keeping failings were to some extent mitigated as the Home Office checks its records manually for new licence applicants and to confirm that revocations should proceed. However, the bulk data provided to DVLA in relation to immigration status is extracted automatically from CID and therefore some individuals are being wrongly flagged to DVLA as present in the UK without leave, while others who are present without leave are being missed.
- 5.76 The inspection identified a number of examples of the former, and the Home Office provided figures for revoked licences that had had to be reinstated. While these cases amounted to a small percentage of the total numbers of revocations, the Home Office did not appear to appreciate the seriousness of such errors for the individuals affected. This was particularly true where a licence had been revoked when the individual had departed the UK before their leave

had expired. In these cases, not only was the revocation not justified in terms of the 2014 Act, but the individual could not reasonably be expected to know about it, since notification was sent to their former UK address. Nonetheless, if they were to return to the UK and rely on their revoked licence to drive they would be guilty of a strict liability offence that attracted a fine, penalty points and possible disqualification from driving.

- 5.77 Based on file sampling, interviews and observations, the inspection found that the processes for checking records, matching data and refusing or revoking licences generally work well (notwithstanding the data quality issues), due in large part to the experience and expertise of the ISD and DVLA staff and good working relationships. However, there are a number of vulnerabilities and risks. For example: immigration status checks for applicants for a new licence are requested only where DVLA staff are not satisfied with the documents supplied, and these will not show where leave has been curtailed; processes are not fully documented and supported by clear guidance; quality assurance checks are limited in scope and inconsistently applied; and reliance on manual checks limits scalability.
- 5.78 Performance benchmarks for ISD staff were not introduced until April 2016, since when Administrative Officers have had a daily target of 50 immigration status checks. In 2015, in order to manage the volumes of driving licence revocation checks, ISD had prioritised 'exact' data matches over 'fuzzy' matches, and the numbers of unprocessed 'fuzzy' matches had built up. While pragmatic, the available evidence suggests that most 'fuzzy' matches are 'correct', and therefore opportunities to revoke licences were delayed.
- 5.79 Earlier introduction of targets and of quality assurance checks may have led to efficiencies in the processing of data. Subsequent process improvements and plans to recruit additional staff will help. However, plans to clear c.120,000 'stock' or legacy cases will put further pressure on resources, as will any expansion of the data extract, for example to include individuals identified through exit checks as overstayers but not having been encountered by Immigration Enforcement, though this is necessary if the measures are to be applied comprehensively.
- 5.80 At the time of the inspection, the Home Office was not exploiting fully the knowledge and actionable intelligence generated from driving licence refusals and revocations. Current processes mean that some information might not be reaching the Home Office; for example, where DVLA detect that a migrant has used forged documents, at which it is skilled, applications are refused without involving ISD. Inspectors were told that where DVLA staff discover that a document submitted by a migrant in support of an application for a new driving licence is a fraudulently obtained genuine document, counterfeit or forged, an intelligence report is completed and disseminated to Home Office intelligence teams and a copy provided to the local ISD officer who refers the report to Immigration Intelligence or an ICE team. Meanwhile, the Home Office Immigration Intelligence Centre appeared to have little or no knowledge of these reports, and the inspection found no evidence of any trend analyses or strategic assessment in relation to the licences that had been refused or revoked.
- 5.81 In some instances, driving licence applications had revealed illegal migrants not previously known to the Home Office, or had provided an up to date address for an individual with whom the Home Office had lost contact. In some cases, the applicant had submitted a valid travel document with their application and this had been retained by ISD as the absence of a valid travel document is a barrier to removal. Some of these migrants received visits from local ICE teams, and some had since either been subject to an enforced removal or had made a voluntary return.

- 5.82 However, as local priorities dictate whether any enforcement action is taken, there is no consistency. The inspection found one particularly stark example of ineffective and unintelligent local handling of potentially actionable intelligence, where the individual absconded and the opportunity to act was lost, but it was unclear how common this was. On the flip side, there was evidence that ICE teams and ROM staff who encountered illegal migrants in possession of a UK driving licence were feeding this back to DVLA (via ISD) so that the licence could be revoked.
- 5.83 Only a small proportion of individuals who had had their driving licence revoked surrendered it to DVLA, which undermines the intended two fold impact of revocation: stopping illegal migrants from being able to drive lawfully and from using a driving licence to access other benefits and services. While powers exist to prosecute for failing to surrender a revoked licence, they are rarely used.
- 5.84 It was unclear what efforts the Home Office and DVLA had made before to the introduction of the new measures to engage with and raise awareness amongst other parties who would have an interest in and might be able to help to enforce the measures, notably the police, but also motor insurers. At the time of the inspection, discussions were taking place regarding the latter. But, police leaders judged awareness amongst police officers of the new revocation measures to be low, and more should have been done in advance of the 2014 Act to prepare them for the changes.
- 5.85 In summary, through good collaboration the Home Office and DVLA have succeeded in giving effect to the 'hostile environment' measures introduced by the 2014 Act in relation to the refusal and revocation of driving licences. However, arrangements for data sharing, data quality, processing matches and making use of the resulting knowledge and intelligence, all need to improve. At the time of the inspection, the measures were still relatively new, and there was insufficient hard evidence to say whether they were achieving what the government intended.
- 5.86 While it is reasonable for the Home Office to argue that these particular measures should be considered alongside the full range of 'hostile environment' measures and not judged in isolation, it is also reasonable as they become more established to expect an attempt at evaluating each measure, not least to justify the resources required to deliver them. This might start by looking to establish through interviews and debriefing whether there is any causal link between particular measures and moves by those touched by them to regularise their immigration status or to make a voluntary return.

6. Bank and building society current accounts

Background

- 6.1 There are no reliable figures for the number of applications to open a current account made each year to banks and building societies in the UK. Inspectors were told that this was because High Street banks consider the information to be commercially sensitive, and even the British Bankers' Association (BBA) was unable to provide a figure. However, the Financial Conduct Authority (FCA) reported that just over one million customers switched banks in 2015, and that switching made up roughly a quarter of the new current accounts opened.

Arrangements prior to the Immigration Act 2014

Access to bank accounts

- 6.2 Prior to the Immigration Act 2014 (the '2014 Act'), banks and building societies were not required by law to consider the immigration status of a customer when deciding whether to offer any of their services or products. However, along with other financial service providers they were subject to legislation and guidance requiring them to be satisfied regarding a customer's identity and the provenance of their funds.

The Money Laundering Regulations 2007

- 6.3 Regulation seven of The Money Laundering Regulations 2007⁵² required that a credit institution⁵³ (amongst others) '*must apply customer due diligence measures*' when it:

- (a) *establishes a business relationship;*
- (b) *carries out an occasional transaction;*
- (c) *suspects money laundering or terrorist financing;*
- (d) *doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.*

- 6.4 Regulation five defined '*customer due diligence measures*' as meaning:

- (a) *identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;*
- (b) *identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal*

⁵² <http://www.legislation.gov.uk/ukxi/2007/2157/regulation/7/made>.

⁵³ A credit institution is defined in the EC Banking Consolidation Directive as 'an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account' or 'an electronic money institution within the meaning of Directive 2000/24/EC'.

arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and

(c) obtaining information on the purpose and intended nature of the business relationship.

- 6.5 Most credit institutions have a specialist anti-fraud department to assist in carrying out these due diligence measures. Since 2011, banks and building societies carrying out anti fraud checks with Cifas on prospective customers received matches against individuals with no right to be in the UK. This assisted in assessing the risk of a customer departing or being removed on immigration grounds while owing monies.

Cifas checks

- 6.6 Due diligence measures typically include checks with a credit reference agency to determine a customer's creditworthiness, and with Cifas, directly or via a credit reference agency, to check if there was any evidence that the customer had been involved in financial fraud.
- 6.7 The Home Office started sharing data with Cifas in December 2011, since when a search of the Cifas database had also produced matches against individuals with no right to be in the UK.

The Immigration Act 2014

Sections 40-43

- 6.8 Section 40 of 2014 Act places legal obligations on banks and building societies in relation to current accounts. It states:

40 Prohibition on opening current accounts for disqualified persons

(1) A bank or building society (B) must not open a current account for a person (P) who is within subsection (2) unless—

(a) B has carried out a status check which indicates that P is not a disqualified person, or

(b) at the time when the account is opened B is unable, because of circumstances that cannot reasonably be regarded as within its control, to carry out a status check in relation to P.

(2) A person is within this subsection if he or she—

(a) is in the United Kingdom, and

(b) requires leave to enter or remain in the United Kingdom but does not have it.

(3) For the purposes of this section—

(a) carrying out a "status check" in relation to P means checking with a specified anti-fraud organisation⁵⁴ or a specified data-matching authority whether, according to information supplied to that organisation or

⁵⁴ Cifas is a 'specified' anti-fraud organisation.

authority by the Secretary of State, P is a disqualified person;

(b) a “disqualified person” is a person within subsection (2) for whom the Secretary of State considers that a current account should not be opened by a bank or building society;

(c) opening an account for P includes—

(i) opening a joint account for P and others;

(ii) opening an account in relation to which P is a signatory or is identified as a beneficiary;

(iii) adding P as an account holder or as a signatory or identified beneficiary in relation to an account.

(4) In subsection (3)(a)—

“anti-fraud organisation” has the same meaning as in section 68 of the Serious Crime Act 2007;

“data-matching authority” means a person or body conducting data matching exercises, within the meaning of Schedule 9 to the Local Audit and Accountability Act 2014, under or by virtue of that or any other Act;

“specified” means specified by an order made by the Secretary of State for the purposes of this section.

(5) Subsection (1)(b) does not apply where—

(a) a bank or building society is required to pay a reasonable fee for carrying out status checks, and

(b) its inability to carry out a status check is due to its failure to pay the fee.

(6) A bank or building society that refuses to open a current account for someone on the ground that he or she is a disqualified person must tell the person, if it may lawfully do so, that that is the reason for its refusal.

6.9 With regard to the other sections:

- Section 41 of the 2014 Act sets out the regulations and provisions by means of which the Financial Conduct Authority (FCA) may monitor and enforce compliance with the prohibition described at section 40, *inter alia* giving the FCA the power ‘to impose disciplinary measures (including financial penalties)’.
- Section 42 defines ‘bank’ and ‘building society’ for the purposes of the Act: the former means ‘authorised deposit taker’.⁵⁵
- Section 43 gives HM Treasury the power to amend any of sections 40 to 42 ‘so as to alter the categories of institutions’ and ‘accounts’ to which these sections apply.

⁵⁵ By reference to Parts 4A and paragraphs 5(b), 12(1) and 15 of Schedule 3 of the Financial Services and Markets Act 2000

The government's intention behind the 2014 Act provisions

6.10 In October 2013, the Home Office and HM Treasury jointly issued a factsheet⁵⁶ about illegal migrants' access to current bank and building society accounts to accompany the Immigration Bill (later the 2014 Act). The factsheet stated that the bill was designed to:

'Ensure that known illegal migrants are not able to open current accounts... being refused a current account will make it extremely difficult for the individuals concerned to access other lines of credit such as mobile phone contracts, credit cards or other types of loans (including a mortgage) which rely on a current account to make repayments ... This will in turn assist in preventing illegal migrants from gradually building up a credit history and from illegally establishing a life in the UK.'

The Factsheet highlighted two further benefits the Bill would deliver:

- *The financial sector and other providers of credit, such as the retail sector, will benefit because of the reduced risk of extending such credit to individuals who are likely to be removed from the country at short notice.*
- *The economy more generally will benefit because there will be a reduced demand for public services from illegal migrants who are deterred from remaining in the UK.*

In a section headed "How we are going to do it", the factsheet stated:

- *Banks and building societies will be required to undertake an immigration status check of any new applicant for a current account against an anti-fraud organisation or a data matching public authority designated by the Home Secretary for this purpose. These types of organisations include CIFAS, a leading anti-fraud organisation which already holds government data on tens of thousands of illegal migrants, from which there have been a significant number of matches against applications for financial products.*
- *The different categories of illegal migrants whose details will be forwarded to the specified organisation will only include those individuals who have exhausted all appeal rights, and who will therefore be liable for removal or deportation from the UK.*
- *A person is liable to be disqualified from opening a current account if they are physically present in the UK and require leave to enter or remain in the UK under the Immigration Act 1971 but do not have leave to be here. This could be because they never had such leave (they entered illegally), they did have such leave but stayed on after it expired or was revoked, or they could be a national of an EEA state who is subject to a deportation or exclusion order.*
- *If a bank or building society refuses to open a current account in accordance with the requirements of this Bill, it must inform the person of the reason, provided it can do so lawfully. This is intended to enable the person to obtain evidence of their lawful immigration status so they can then reapply for an account. However, the duty to inform is subject to any other provision that would prevent a bank or building society from communicating this information to the person.*
- *To ensure this measure is targeted effectively, and does not affect those who have a legitimate barrier which prevents them from leaving the country even if they do not have leave to be here, the Secretary of State will retain discretion whether an individual who has been identified as an illegal migrant should be referred to the anti-fraud organisation or data matching authority.*

⁵⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249249/Factsheet_09_Bank_accounts.pdf.

Partnership working between the Home Office and Cifas

Collaboration

- 6.11 The Home Office became a member of Cifas in December 2011. However, it reported that it had been in discussion with Cifas about providing data for matching purposes since 2006. Since December 2011, other Cifas members had been able to check against records supplied by the Home Office of individuals with no right to remain in the UK. This was, in effect, the precursor to the *'disqualified persons'* list created to support section 40 of the 2014 Act. During this time, the Home Office and Cifas developed processes and etiquettes for the weekly bulk transmission of data.
- 6.12 As the *'specified anti fraud organisation'* responsible for holding the *'disqualified persons'* list, Cifas was fully involved in discussions between the Home Office, HM Treasury and the Banks and Building Society Associations about exactly how the section 40 checking requirements could be implemented without having an adverse impact on the normal business of the financial institutions.
- 6.13 Inspectors saw evidence of the close working relationship and mutual understanding between the Home Office Interventions and Sanctions Directorate (ISD) and Cifas, and also of the trust that financial institutions had prior to the 2014 Act in the ability of Cifas to process their checking requests.

Data sharing

- 6.14 The processes put in place by the Home Office and Cifas to give effect to the provisions in the 2014 Act concerning bank and building society accounts involve the sharing of personal data between the two.
- 6.15 The Information Commissioner is statutorily responsible for promoting good practice in the sharing of personal data through a Code of Practice.⁵⁷ The Code of Practice, produced and maintained by the Information Commissioner's Office (ICO), defines personal data as:
- .. 'data which relate to a living individual who can be identified:*
- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*
- (c) and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'⁵⁸*
- 6.16 The ICO Code of Practice explains how the Data Protection Act (DPA) 1998 applies to the sharing of personal data and provides good practice advice. Section 4 of the Code of Practice states:
- 'If you wish to share information with another person, whether by way of a one-off disclosure or as part of a large-scale data sharing arrangement, you need to consider whether you have the legal power or ability to do so.'*
- 6.17 Section 4 of the ICO Code of Practice draws a distinction between government departments headed by a Minister of the Crown, which have common law powers to share information, and other public sector organisations that derive their powers entirely from statute.

⁵⁷ Data Protection Act 1998, section 52A.

⁵⁸ ICO Code of Practice, available on the ICO's website.

- 6.18 In this instance, section 68 of the Serious Crime Act 2007 created the power for public authorities, such as the Home Office, to disclose information, for the purpose of preventing fraud, to a ‘*specified anti fraud organisation*’, subject to the caveat that the disclosure of the information must not contravene the Data Protection Act 1998.
- 6.19 The Serious Crime Act 2007 (Specified Anti fraud Organisations) Order 2008, which came into force on 1 October 2008, designated six organisations as ‘*specified anti-fraud organisations*’ for the purposes of section 68 of that Act. One of these was Cifas.
- 6.20 Section 8 of the ICO Code of Practice states that:

‘it is good practice to have a data sharing agreement in place, and to review it regularly, particularly where information is to be shared on a large scale, or on a regular basis.’

The key elements of such an agreement are set out in section 14:

- the purpose of the data sharing initiative – why is it necessary, specific aims, the benefits to individuals or to society more widely;
 - the organisations that will be involved in the data sharing – key members of staff, arrangements for adding organisations, and any exclusions;
 - the data items to be shared – sufficiently detailed to distinguish if more sensitive material should be shared, and attaching ‘permissions’ to certain data items;
 - an explanation of the legal basis for sharing data;
 - access and individuals’ rights – how to respond to DPA or Freedom of Information Act (FOIA) request; and
 - information governance – to prevent irrelevant or excessive information being disclosed, to ensure data is accurate, compatible, is retained and deleted according to common rules, and is transmitted securely.
- 6.21 Inspectors were provided with a copy of a *Memorandum of Understanding (Umbrella) between the Secretary of State for The Home Department and CIFAS*, signed by representatives of both parties in December 2015, which included at annex an *MoU (Process level Agreement) between The Secretary of State for the Home Department and CIFAS*. These MoUs covered all of the key elements of a data sharing agreement set out in the ICO Code of Practice.

Data quality

- 6.22 Annex 1 of the ICO Code of Practice states:

“Personal data shall be accurate and, where necessary, kept up to date”.

- 6.23 The Home Office shares data with Cifas on a weekly basis in the form of updates (additions and deletions) to the list of ‘*disqualified persons*’, and the list is updated by Cifas on the same day. At the time of the inspection, the list contained the details of around 200,000 individuals, including permutations of names, dates of birth and addresses, and the weekly updates affected around 2,000 individuals.

- 6.24 There is no IT interface between CID and the Cifas National Fraud Database, which holds the list. However, the Home Office has direct access to the Cifas system and can make manual amendments to the list at any time, which it sometimes did to delete or amend individual entries, for example to revise a spelling or a date of birth.
- 6.25 The 'bulk' weekly updates are extracted automatically from CID, and comprise agreed categories of individuals who are in the UK and require leave to enter or remain but do not have it. The categories are: individuals refused leave to remain; absconders; immigration offenders – e.g. illegal entrants, illegal workers, overstayers⁵⁹ – who have been encountered and served with notice of liability for removal; and individuals for whom a deportation order is being pursued. The dataset includes any known aliases⁶⁰ used and previous addresses.
- 6.26 Data quality for this list depended on the accuracy of the information contained on CID, and also on it having been entered in the correct field so that it could be automatically retrieved. However, ISD managers and staff reported that CID might not to be updated with relevant information, e.g. a voluntary return or a lodged appeal, until some months after the event, and that data was often entered in the wrong field, commonly as free text. Therefore, the list was not always accurate, with both omissions and individuals wrongly included as '*disqualified persons*' who had departed, or had succeeded in an appeal or had regularised their immigration status and were not in the UK with valid leave.
- 6.27 To mitigate this, the Home Office put in place a checking service that banks and building societies could use to check the details of an individual if they have any queries. There are also mechanisms in place for individuals to raise questions about the outcome of their status checks directly with the Home Office, if they believe they have been refused a bank account based on incorrect immigration information. Details of those mechanisms are provided in a leaflet the Home Office developed to support communications.
- 6.28 ISD managers said that individuals were not added to the '*disqualified persons*' list immediately following an adverse immigration decision if they were entitled to lodge an in-country appeal. They would not be added until the time limit for an appeal had expired or until any appeal rights had become exhausted. Staff from the MIDAS⁶¹, responsible for the coding for the automated extract, confirmed that the coding is written so as to exclude individuals with outstanding applications for further leave, appeals or Judicial Reviews.
- 6.29 Inspectors examined the immigration history recorded on CID for 169 cases where a search of the Cifas database by a financial institution for a prospective customer had resulted in a match with an individual on the list of '*disqualified persons*'. Of these, 17 (10%) should never have been listed as '*disqualified persons*' or should have been removed from the list, because:
- nine had leave to remain;
 - six had an outstanding application for further leave; and
 - two had an outstanding appeal.
- 6.30 Figure 7 is an example of one of the nine cases where the individual was wrongly included in the list of '*disqualified persons*' when they had leave to remain.

59 Individuals known to have arrived but not known to have left and now beyond their period of leave.

60 Including alternative spellings, dates of birth.

61 Managing Integrated Data Solutions Service.

Figure 7: Case study – Incorrect inclusion in ‘disqualified persons’ list

- On 23 March 2002, a Jamaican national entered the UK as a visitor
- On 10 December 2013, this individual was granted leave to remain (LTR) until 10 June 2016, on the basis of a right to a family and private life being in the UK
- On 14 April 2014, a request to vary the conditions of leave was received
- On 23 June 2014, the request to vary the conditions of leave was considered
- On 27 June 2014, the request to vary the conditions of leave was denied and No Recourse to Public Funds status was maintained
- On 30 June 2014, the individual’s details were passed to Cifas as a ‘disqualified person’
- On 1 June 2015, a ‘Same Individual At Address’ match was made

Chief Inspector’s Comment

This individual was lawfully present in the UK at the time their details were added to the ‘disqualified persons’ list and when the data match was made. Their initial inclusion in the list was in error, which was first identified by the inspection team, suggesting that no consideration was given to the SIAA match on receipt or since.

On 28 April 2016, the record was amended and annotated ‘Cifas exempt’ and ‘valid LTR’.

Processes for checking current account applications

- 6.31 When negotiating how the 2014 Act would be implemented, the Home Office, HM Treasury, and representatives of the banks and building societies, agreed that banks and building societies would be prohibited from opening a current account where there was a three point match - name, date of birth and address – of the applicant with an individual listed as a ‘disqualified person’. This is known as a ‘Best Practice’ match.
- 6.32 Banks and building societies can check applicants through a ‘participating agency’ or through the Cifas ‘immigration portal’. There are five participating agencies,⁶² all of which provide credit reference checking services, that conduct a range of checks, such as credit ratings, electoral roll checks etc. on individuals applying for a financial product, including to open a current account, on behalf of financial institutions, including most retail banks and building societies.

Participating agencies

- 6.33 The participating agencies hold mirror copies of the Cifas ‘disqualified persons’ list, which are updated weekly at the same time as the Cifas list. Each participating agency has its own methodology for data checking, and this is not shared (including with Cifas) as it is considered commercially sensitive. With regard to ‘disqualified persons’ matches, participating agencies do not use the ‘Best Practice’ terminology, but instead report ‘Same Individual At Address’ (SIAA) matches, some of which will in fact be ‘best practice’ matches and some not. The latter will be where the participating agency is satisfied that an applicant is a match with a listed ‘disqualified person’, but there is not a match on all three points - name, date of birth and address.
- 6.34 The bank or building society receiving the SIAA matches is responsible for checking them against the application, ensuring that reported matches are correct. Where it is satisfied that there is a three point match, it is prohibited from opening the account. In other cases, it can use its discretion.

62 Callcredit Limited, Equifax Ltd, Experian Ltd, Experian Limited - Experian Decision Analytics and Synectics Solutions Limited

Cifas Immigration Portal

- 6.35 In order to enable them to comply with section 40 of the 2014 Act, Cifas developed a facility for banks and building societies who were not Cifas members⁶³ to check current account applications against the *'disqualified persons'* list.
- 6.36 The Cifas Immigration Portal (CIP) and is a secure, web-based application and is used to check current account applications only (not other financial products). At the time of the inspection, the Cifas website⁶⁴ listed 102 institutions who were using the CIP to meet their immigration status check obligations under the 2014 Act. CIP users enter application details online and the results are displayed immediately. The facility to search against batches of applications is also available to CIP users.

Outcomes - Bank accounts refused and follow-up actions

Number of accounts refused

- 6.37 Neither the Home Office nor Cifas holds any data for the number of current account applications refused under section 40 of the 2014 Act, since banks and building societies are not required to inform the Home Office, Cifas, or the participating agency when they refuse to open a current account for a *'disqualified person'*.
- 6.38 Home Office officials responsible for the Immigration Bill (later the 2014 Act) during its passage through Parliament reported that Ministers had not sought to impose a reporting requirement on banks and building societies for current account refusals, as they took the view that this would impose a disproportionate regulatory burden.
- 6.39 In an 'implementation report' prepared for the Home Office in 2015 by the Financial Conduct Authority (FCA) in its monitoring and enforcement role, the FCA concluded that firms active in the personal current account and business account markets were *'complying with the requirements of the Act, identifying disqualified individuals and declining accounts when necessary.'*

Number of data matches

- 6.40 In 2015, participating agencies reported 16,096 matches ('best practice' and SIAA) with the list of *'disqualified persons'* relating to 5,675 individuals to Cifas⁶⁵, but the reports did not specify the type(s) of financial product involved, so the number of current account applications is not known. Meanwhile, Cifas was able to audit the use of CIP and collect data for the number of searches that produced a 'best practice' match. In 2015, from 651,017 CIP searches conducted, there were 112 (0.017%) 'best practice' matches.
- 6.41 Cifas provides a monthly return to the Home Office of all 'best practice' and SIAA matches. This contains details of which individuals on the list of *'disqualified persons'* had attempted to access financial services or products and on how many occasions. In relation to this return, the Home Office stated:

'The primary purpose for sharing data with Cifas is to prevent new bank accounts being opened to immigration offenders. We do not routinely cross-match records

63 These non-members are typically banks providing specialised banking facilities or institutions based overseas with very limited presence in the UK. According to Cifas, almost all UK retail banks and building societies are Cifas members.

64 https://www.cifas.org.uk/immigration_act_organisations.

65 Data showed that individuals often made multiple applications for financial products which resulted in several matches per individual in some instances.

back against CID, as data matches are against information (for example, about the address) that we already have on our system and therefore the results we stand to gain from that secondary cross-matching are not always proportionate to the resource it requires. Data matches confirmed that individuals were using the same address details as those already recorded on CID. Where matching is carried out decisions to take enforcement action are taken in line with Immigration Enforcement's broader priorities.'

'Best practice' and SIAA matches - sampling

- 6.42 Inspectors examined the CID records for 169 individuals listed as '*disqualified persons*' where there had been a 'best practice' or SIAA match. These broke down into 19 'best practice' matches from 2015, and 150 SIAA matches from April to June 2015.
- 6.43 Of the 169 individuals, by 19 January 2016 (the cut-off date for file sampling) ten (5.9%) had left the UK after a match had been reported. In eight of these cases the individual made a voluntary return, and in two there had been an enforced removal. All ten cases were SIAA matches, and therefore it was not known whether the financial product applied for had been a current account or whether the product had been refused.
- 6.44 The 19 'best practice' matches were all applications for a current account. Three of these individuals were recorded as having left the UK prior to the match being reported. In 15 cases, there was no evidence of a removal or voluntary return. In the remaining case, it was not possible to work out when the individual had left the UK.
- 6.45 Of the 169 records, 44 (26%) were listed as absconders at the time the match was made. Figure 8 describes one of these absconder cases.

Figure 8: Case study – CIFAS match – Absconder

- On 9 July 2008, an Indian national was served with a signed, court-recommended Deportation Order (DO) following a criminal conviction. He was granted Chief Immigration Officer bail the same day, but subsequently did not comply with the terms
- On 4 November 2008, he was declared an absconder. The case record was marked 'DO Unable to be Enforced Subject Absconded'
- On 10 April 2015, his details were included on the '*disqualified persons*' list and passed to Cifas
- On 19 June 2015, an SIAA match was made
- On 10 July 2015, Cifas passed the match result to the Home Office
- On 16 January 2016, a Case Information Database (CID) note was made by the Criminal Casework Directorate (CCD). This was the first note made on CID since 11 December 2013. It read:

'Stage 1 review commenced with a view to try to locate this FNO [Foreign National Offender] absconder.

This case is currently with the CCD Trace & Locate team as a person liable to deportation but who has absconded before their deportation could be effected.

Please contact this team if any contact or correspondence is received from this subject or representatives, Do not grant any form of leave without contacting this team.

Note for Command & Control or LIT

If this subject is encountered please detain'.

Chief Inspector's comment

Although ISD was informed by Cifas in July 2015 that a person matching the details of this long term absconder had been attempting to access financial services, nothing was done with this information, despite the existence of a Deportation Order.

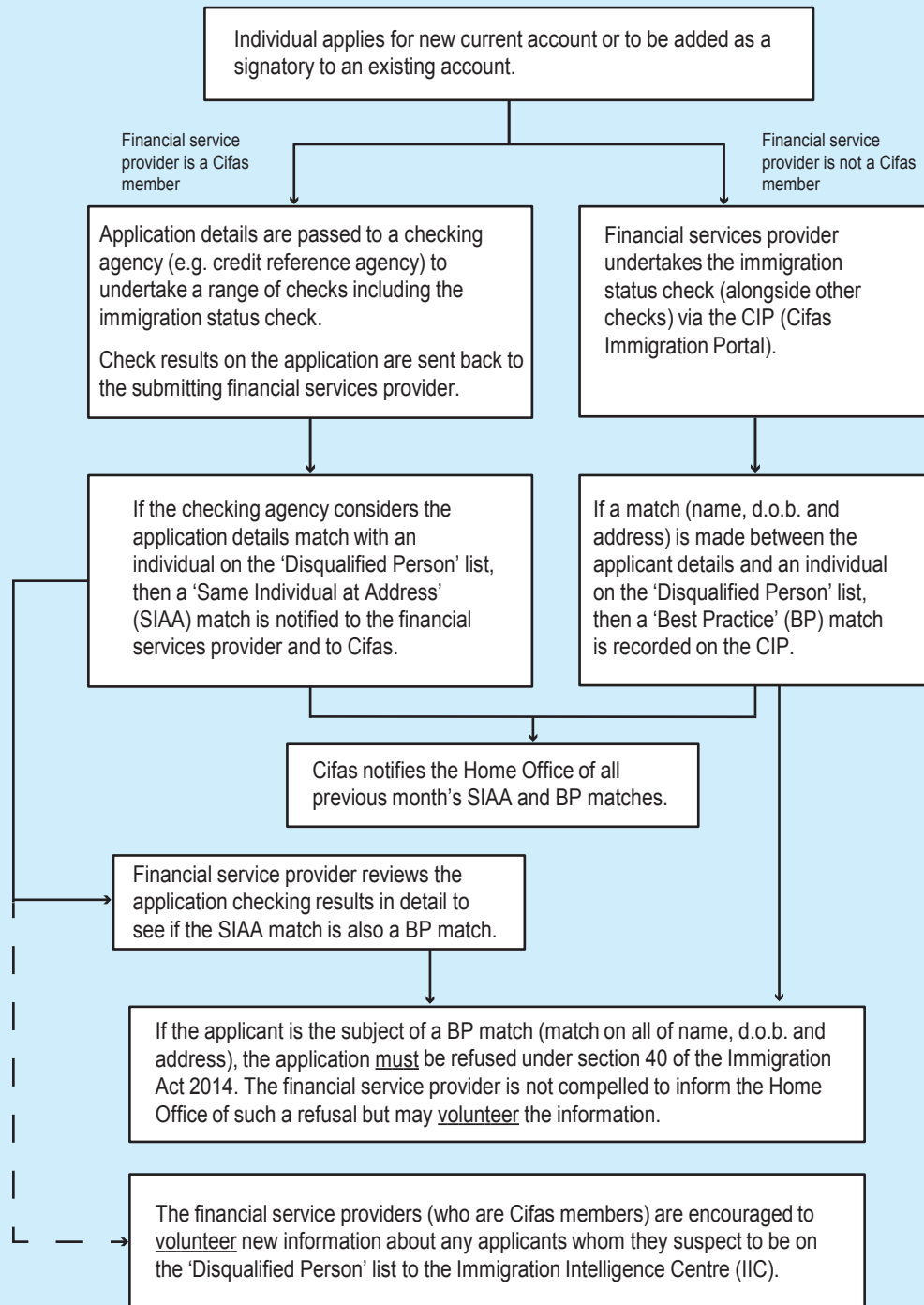
At the time of the inspection, the status of this case remained 'DO Unable to be Enforced-Subject Absconded'.

- 6.46 In 16 (9.5%) cases, there was a match with an individual on the '*disqualified persons*' list with someone who had been removed from the UK or had made a voluntary return prior to the match being made. Of these 16 cases, three individuals had been served with a deportation order.
- 6.47 The Home Office said that there were various reasons why Cifas might report a match with an individual who was no longer in the UK:
- the individual had applied for a financial product from overseas;
 - a UK resident spouse or partner had applied for a joint product whilst the '*disqualified person*' was overseas; or
 - a third party had used the '*disqualified person's* details; or
 - the '*disqualified person*' had returned to the UK.
- 6.48 The only way the Home Office could determine which of these scenarios applied would be to investigate further by contacting the financial service provider directly. The inspection found no evidence of any further investigation in any of the 16 cases.

Other related reporting

- 6.49 Cifas encourages its members to report new or useful information arising from applications for any type of product or service to the Home Office's Immigration Intelligence Centre (IIC). Cifas members include not only financial service providers but also providers of other services, whose checking procedures can also generate matches with individuals on the list of '*disqualified persons*'.
- 6.50 IIC staff said that they evaluate and, where necessary, conduct research into information provided by Cifas members, where appropriate preparing and sending an intelligence report to the relevant Home Office business area(s). Home Office records showed that Cifas members had made 322 voluntary referrals to the IIC in 2015. From these 322 referrals, IIC had produced 137 intelligence reports, of which 26 related to the refusal of financial products.
- 6.51 Figure 9 provides a flowchart summarising the Cifas checking processes and outcomes in relation to individuals seeking to open a new current account in the UK or add a signatory to an existing current account.

Figure 9 : Summary of the Cifas checking processes in relation to individuals seeking to open a new current account in the UK



Conclusions

- 6.52 According to the Home Office and HM Treasury, the aim of the current account measures in the Immigration Act 2014 (the '2014 Act') was to reassure the public that an individual in the UK with no legal basis to remain would not be able to open a current account with a bank or building society. Without this, it would be harder for them to access other lines of credit, such as mobile phone contracts, credit cards and loans.
- 6.53 Under the Money Laundering Regulations 2007, banks and building societies, along with other financial institutions, were already required to apply customer due diligence measures when establishing a business relationship. The main high street banks and building societies covering the vast majority of current account customers in the UK are members of Cifas and run anti-fraud checks with Cifas. From 2011, the Home Office had been sharing data on illegal migrants with Cifas, which means banks and building societies carrying out anti-fraud checks on prospective customers with Cifas received matches against individuals with no right to be in the UK.
- 6.54 The effect of the 2014 Act was to place the requirement for banks and building societies to check the immigration status of prospective customers seeking to open a current account on a statutory footing. The fact that the Home Office and Cifas had already been working together for a number of years, and that banks and building societies had an established and trusting relationship with Cifas, meant that the new legally enforceable measures were developed collaboratively and implemented smoothly.
- 6.55 The new measures depend on efficient and effective data sharing between the Home Office and Cifas. The Home Office supplies Cifas with weekly data to delete from or amend the list of 'disqualified persons'. To do this, it relies on section 68 of the Serious Crime Act 2007, which empowered public authorities to disclose information for the purpose of preventing fraud to a 'specified anti-fraud organisation', of which Cifas is one of six designated organisations.
- 6.56 The caveat to section 68 of the Serious Crime Act 2007 is that the disclosure must not contravene the Data Protection Act 1998. The latter is supported by a statutory Code of Practice published by the Information Commissioner's Office, which identifies it as good practice to have in place a data sharing agreement, which is reviewed regularly, 'particularly where information is to be shared on a large scale, or on a regular basis', as is the case here. In December 2015, representatives of the Home Office and Cifas signed two Memoranda of Understanding (MoUs) that together covered all the key elements set out in the ICO Code of Practice. The Home Office should not have allowed this to take so long to complete, particularly as it was already sharing data with Cifas prior to the 2014 Act.
- 6.57 Data quality is key to the new measures working as intended. The inspection found, as have previous inspections,⁶⁶ that CID records for individuals were incomplete, or had been completed incorrectly (with data placed in the wrong fields), or there were delays in updating records. Data is extracted automatically to create the weekly update to the list of 'disqualified persons', so poorly maintained records mean that some individuals are wrongly (unlawfully) included, while others who should be listed are not. The list is also incomplete in that overstayers who have not been encountered, but have been identified by comparing entry records with exit checks, are currently excluded. Unlike the list used for driving licence revocations, which is also extracted automatically, there is no secondary manual checking of the Home Office record of those listed as 'disqualified persons' before action is taken and therefore the risk of errors is not mitigated.

⁶⁶ Most recently in 'An inspection of the Administrative Review processes introduced following the 2014 Immigration act (September – December 2015)'.

- 6.58 By not including in the 2014 Act the requirement for institutions to report when they refuse a customer a current account on immigration grounds, the government avoided possible resistance from the industry and ensured full take up of the measures (which the Financial Conduct Authority has confirmed). However, it means that there is no systematic data collection about refusals resulting from immigration status checks.
- 6.59 There is data in relation to matches. Cifas reports only three-point (name, date of birth and address) 'Best Practice' matches and only for applications for current accounts. Meanwhile, 'Participating Agencies', who carry out a range of checks on prospective customers on behalf of banks and building societies, including against the '*disqualified persons*' list, report 'same individual at address' matches (some of which are not three point matches) and do not distinguish between current account applications and applications for other financial products or services. The result is a confused picture of the scale of applications for current accounts from illegal migrants, the number of confirmed matches, and the number of current accounts refused.
- 6.60 Based on file sampling, the Home Office is failing to follow up and fully exploit the information it receives in relation to data matches. Immigration Enforcement's capacity to investigate and deploy operationally is finite, and local enforcement priorities differ, but file sampling indicated that a large proportion of '*disqualified persons*' who were SIAA matched by a 'Participating Agency' were recorded as absconders, including individuals served with a Deportation Order. These matches therefore represented an opportunity to locate, re-establish contact, and possibly to remove individuals with whom the Home Office had lost touch. As such, they required a more structured and determined response.
- 6.61 In summary, the Home Office and Cifas had collaborated effectively, both in developing the 'hostile environment' measures in relation to bank accounts formalised by the 2014 Act and in securing the cooperation of banks and building societies to implement them. However, improvements are now needed. If the '*disqualified persons*' list is to continue to be extracted automatically, the Home Office needs to improve the accuracy of its record keeping, and to introduce some measure of quality assurance for the extracted data.
- 6.62 Unless the banks and building societies report when they have refused a current account application on immigration grounds, whether on a voluntary basis or by amending the 2014 Act to make this a requirement, and unless the reporting of matches is standardised, the learning from these new measures will be incomplete. Although it is reasonable for the Home Office to look to these particular measures to work alongside other 'hostile environment' measures in encouraging more voluntary returns, it should at the same time be doing more to exploit the data matches and intelligence it currently receives.

7. ‘Hostile environment’ – measuring impact

Costs and benefits

- 7.1 The Overarching Impact Assessment (IA)⁶⁷ that accompanied the immigration bill gave the net annual cost of the measures contained within the Bill as £4.71m, which *‘will mainly impact on the public sector; the Home Office; HM Courts and Tribunal Service (HMCTS); National Health Service and General Register Office. The Government may also see a loss of income if the volume of legal migrants applying to enter or stay in the UK changes’*.
- 7.2 The IA did not give a monetary value to the expected benefits, but indicated that would be *‘to the public sector including the Home Office and HMCTS. The Exchequer will benefit from additional income and reduced provision of public services. There may be additional employment opportunities for UK residents.’* However, under *‘Other key non-monetised benefits’* it noted *‘Increased detection and removal of immigration offenders’*.
- 7.3 The IA made no direct reference to the expected costs and benefits associated with the driving licence measures, explaining that impact assessments had not been prepared for measures that fell below the thresholds that required one.⁶⁸ In respect of access to banking services, it stated that an impact assessment⁶⁹ was being prepared and would be published in due course.

Voluntary returns, enforced removals, and entry refusals

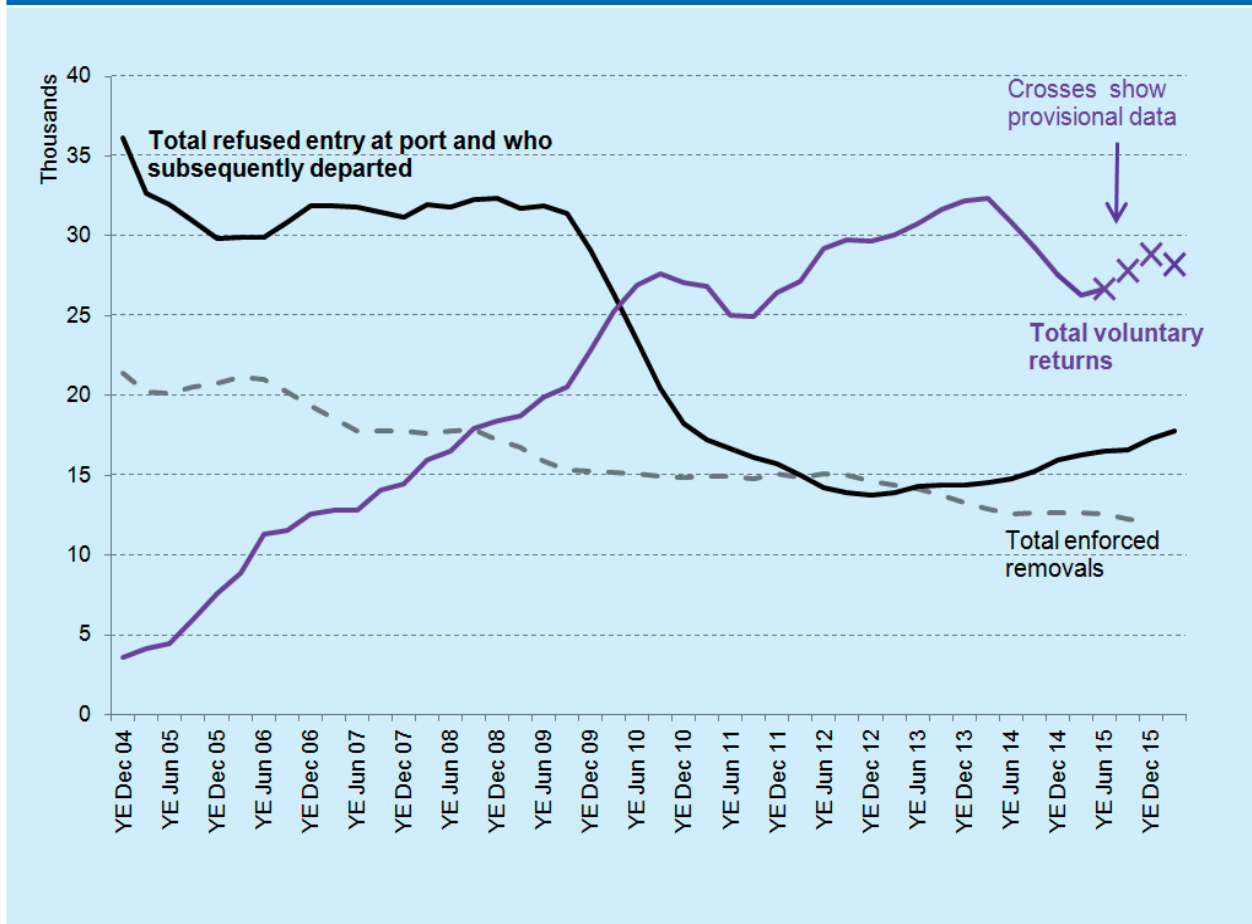
- 7.4 Home Office statistics for 2004 to 2015 show that voluntary returns rose year on year up to 2010, and continued to rise again from 2011 to 2013. However, during 2014 the numbers departing voluntarily dropped to 2010 levels - see figure 10. Meanwhile, since 2004 the numbers of enforced removals per annum have been on a downward trend, and by 2015 had almost halved. Entry refusals had also dropped to around half of their 2004 high, but had begun to increase slowly since 2012.
- 7.5 The Home Office said that it was too early for it to provide definitive evidence of the impact of the ‘hostile environment’ measures on Voluntary Returns or in dissuading would-be illegal migrants from coming to the UK. While the concept of a ‘hostile environment’ was first articulated in 2012, work to measure its effectiveness had only recently started, because the priority had been to deliver process outcomes, such as driving licence revocations. The Interventions and Sanctions Directorate (ISD) was keen to understand how well the various interventions and sanctions were working, and did not want to slow down roll out and use of ‘hostile environment’ measures. Meanwhile, in its 2015/16 business plan, ISD stated: *‘Individually these interventions may be seen as just a nuisance but collectively, as we have already seen, they have the ability to encourage illegal migrants to voluntarily leave or never attempt to come to the UK illegally.’*

⁶⁷ Dated 14 October 2013, available on the gov.uk website.

⁶⁸ No costs to businesses or civil society organisations, no information requirement imposed or removed from bodies that deliver public services, and the cost to the public sector does not exceed £5m per annum.

⁶⁹ http://www.legislation.gov.uk/ukia/2014/234/pdfs/ukia_20140234_en.pdf.

Figure 10: Voluntary returns, enforced removals and entry refusals statistics 2004 - 2015



7.6 Home Office senior managers reported that work was ongoing with Home Office Science to develop business rules that could be used to determine if a voluntary return could reasonably be linked to an intervention or sanction. Home Office Science confirmed that this work was in its early stages. The intention was to compare behaviours between a ‘control group’, where interventions and sanctions had not been applied, and a ‘treatment group’, where they had not been applied. This presented various challenges, including:

- a lack of sufficient data where the number of sanctions was low;
- data from operational systems being unsuitable for the purposes of analysis; and
- limitations on sample sizes caused by delays in logging voluntary returns.

7.7 There was no evidence that any work had been done or was planned in relation to measuring the deterrent effect of the ‘hostile environment’ on would-be illegal migrants.

7.8 Senior managers said that it was unlikely that the strategy of making life and work difficult for illegal migrants would be abandoned, even if it could not be demonstrated definitively that the ‘hostile environment’ measures had led to an increase in voluntary returns or a reduction in the number of illegal migrants entering the UK. This was because it was the right thing to do, and the public would not find it acceptable that illegal migrants could access the same range of benefits and services as British citizens and legal migrants.

- 7.9 Senior managers also said that ministers had not set any specific targets for voluntary returns or net migration by which the effectiveness of the ‘hostile environment’ measures would be assessed. There had been no pressure to date to deliver specific outcomes, but it was inevitable that they would be expected to demonstrate the effectiveness of these interventions and sanctions at some future stage.

Extensions to ‘hostile environment’ measures

- 7.10 At the time of the inspection ISD was heavily involved with DVLA and Cifas preparing for the implementation of new measures contained in the Immigration Act 2016 (the ‘2016 Act’).⁷⁰ Both DVLA and Cifas reported that discussions with the Home Office were going well, and both were confident of agreeing workable processes between themselves and the Home Office.

Driving licences

- 7.11 In respect of driving licences, the 2016 Act gives police and immigration officers powers to search ‘premises’ and ‘persons’ where the officer ‘has reasonable grounds for believing that a person (a) is in possession of a driving licence, and (b) is not lawfully resident in the UK’.
- 7.12 It also creates an offence, which attracts a custodial sentence and/or a fine, of ‘driving when unlawfully in the United Kingdom’, which can be committed irrespective of whether the offender is in possession of a valid UK or foreign issued driving licence, and the power to ‘detain a relevant vehicle’ where a person has been arrested for this offence. This closes the ‘loophole’ created by permitting individuals to use a foreign issued driving licence for a defined period in order to drive lawfully in the UK.
- 7.13 Concerns were expressed by stakeholders and in Parliament about the potential for these new provisions to damage police/community relations if it increased the likelihood of police officers stopping vehicles based on the ethnic appearance of the driver, and that that there had already been a displacement from ‘stop and search’ to the use of traffic stops against ethnic minorities. However, the Home Secretary stated that the police will be required to start ‘collecting information on road traffic stops for the first time as part of measures aimed at reassuring minority communities’.
- 7.14 Home Office managers reported that discussions were underway between ISD and DVLA concerning the sharing of data with the vehicle registration business area in DVLA to facilitate the use of the new power to seize vehicles and to explore the potential for using the Automatic Number Plate Reader (ANPR) system⁷¹ to identify vehicles owned by individuals present without leave. The initial response from DVLA was that they would be unable to use names, addresses and dates of birth to match against their vehicle registration records and would require the vehicle registration number. ISD and DVLA were trying to find a solution to this issue.

Bank and building society accounts

- 7.15 The 2014 Act gave the Treasury the power to amend by order any of the sections (40-42) referring to ‘Bank accounts’, so as to alter the categories of financial institutions and of accounts.⁷² The 2016 Act imposes new requirements on banks and building societies ‘to carry out immigration checks in relation to current accounts’ and ‘to notify existence of current

⁷⁰ The Immigration Act 2016 received Royal Assent on 12 May 2016.

⁷¹ Automatic Number Plate Recognition (ANPR) technology is used to help detect, deter and disrupt criminality at a local, force, regional and national level, including tackling travelling criminals, Organised Crime Groups and terrorists. ANPR provides lines of enquiry and evidence in the investigation of crime and is used by law enforcement agencies throughout England, Wales, Scotland and Northern Ireland.

⁷² An account is defined as including ‘a financial product by means of which a payment may be made’.

accounts for disqualified persons'. It also empowers the Secretary of State to apply to the court for *'a freezing order'* in respect of an account. Where the Secretary of State has not applied for a freezing order (or one is not made or is discharged), the bank or building *society* *'must as soon as reasonably practicable close each account held with it'* by a disqualified person.

- 7.16 The 2016 Act requires the Secretary of State to prepare a report reviewing the operation of the sections inserted (schedule seven of the 2016 Act) and lay it before Parliament within five years of schedule seven coming fully into force.
- 7.17 The Home Office *'factsheet'*⁷³ accompanying the immigration bill (later the 2016 Act) referred to *'a graduated, escalating range of options which could be deployed where a current account holder is confirmed to be unlawfully present'*. It stated that applications to freeze accounts *'until the illegal migrant leaves the UK'* would be *'targeted towards hard-to-remove cases with significant funds, to leverage co-operation with the removal process.'* Where a bank or building society contacted the Home Office to *'double check'* that a match from the Cifas list was (still) a *'disqualified person'*, and this was confirmed, Home Office managers expected that in most cases they would request the bank or building society simply to close the account.

Other measures

- 7.18 ISD was working with a range of private and public sector partners to increase the range of interventions and sanctions to apply to illegal migrants. This was in line with one of its business plan priorities to *'establish new partnerships in the public and private sector to maximise our range of interventions and sanctions to make it harder for people to live in the UK illegally.'*
- 7.19 Beyond 2015/16, ISD was looking to:
- align with the government's digital agenda to develop common platforms to facilitate real time, government wide and automated data sharing;
 - conduct systematic data matching with all relevant government departments, with the capability to deliver *'automatic switch off'* of a range of benefits and services;
 - develop their range of partners and increase the scope of sanctions to the extent that illegal migrants will come into contact with Immigration Enforcement, either directly or indirectly, each time they try to access any benefit or service; and
 - understand the extent of its influence over an illegal migrant's decision to leave (or not enter) the UK.
- 7.20 Home Office senior managers said that as new partners came on board and volumes of data increased, the ability to automate data sharing, particularly with other public sector organisations, was crucial. The ISD Business Plan contained a milestone for an Automated IT solution to be in the implementation planning stage by the end of 2015/16.

Stakeholder concerns

- 7.21 The Immigration Law Practitioners' Association (ILPA) and the Joint Council for the Welfare of Immigrants (JCWI) raised concerns with inspectors about the Home Office's capacity to deliver additional interventions and sanctions due to what they perceived to be the poor quality of the data on Home Office systems. They believed the latter would lead to highly disruptive sanctions being applied unjustly to individuals who had leave to remain. They reported that there had been instances where incorrect information was given to employers when using the employer

⁷³ Dated December 2015.

checking service, which had led to individuals with valid leave being prevented from working and suffering hardship as a result.

Conclusions

- 7.22 In the Immigration Act 2016 (the '2016 Act'), the Home Office has sought to extend the 'hostile environment' measures in relation to driving licences and bank and building society accounts. The newer measures – to create an offence of driving while unlawfully in the UK, powers to search for and seize driving licences, to impound vehicles, and to report and close existing current accounts and to freeze assets – have the effect of closing various gaps in the 2014 Act and of introducing more severe sanctions.
- 7.23 However, justification for extending the 'hostile environment' measures is based on the conviction that they are 'right' in principle, and enjoy broad public support, rather than on any evidence that the measures already introduced are working or need to be strengthened, since no targets were set for the original measures and little has been done to evaluate them.
- 7.24 At the time of the inspection, the Home Office was working on how it might measure impact. But, almost two years after the 2014 Act and with the years of collaboration on driving licences and bank accounts that preceded it, this work was still only its early stages and limited in its scope, and was not attempting to address the question of impact on the 'pull factor'.
- 7.25 It is undoubtedly difficult to produce reliable metrics for the outcomes from any individual 'hostile environment' measure, and it is arguably at odds with the idea that the measures are intended to work as a 'package'. However, in the absence of even any 'soft' indicators of impact on, for example, voluntary returns, the Home Office lays itself open to criticism about the breadth of new legislation and the cost/benefit to itself and others of implementing each measure. It is also harder for it to answer concerns about the potential damage to communities and to individuals. This puts a greater premium on the Home Office getting its contribution right, by ensuring that partnerships are managed effectively, that the data shared is accurate and up to date, and that it is seen to make full use of any new information that is generated about individuals who are in the UK illegally.

Appendix 1: Role and remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act

2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act

2002 (c. 41) (unfounded claim)

- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings

- customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

Appendix 2: Inspection criteria

Inspection criteria
Operational delivery
1. Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration
2. Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted
3. Resources should be allocated to support operational delivery and achieve value for money
Safeguarding individuals
4. All individuals should be treated with dignity and respect and without discrimination in accordance with the law
5. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations
Continuous improvement
6. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions
7. Risks to operational delivery should be identified, monitored and mitigated

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