



An Inspection of the Emergency Travel Document Process

May-September 2013



John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



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Independent Chief Inspector of Borders and Immigration,
5th Floor,
Globe House,
89 Eccleston Square,
London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

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Our Purpose

We provide independent scrutiny of the UK's border and immigration functions, to improve their efficiency and effectiveness.

Our Vision

To drive improvement within the UK's border and immigration functions, to ensure they deliver fair, consistent and respectful services.

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Foreword from John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



Many people who are removed from the UK have previously destroyed their own passports or have arrived here illegally without them. In such cases, the Home Office may need to obtain an Emergency Travel Document (ETD) from a foreign embassy before they can be removed. This inspection examined how efficient and effective the Home Office was at obtaining and using these documents to remove people from the UK.

The Home Office can face complex challenges in obtaining travel documents. Lengthy enquiries may have to be made overseas to confirm the nationality and identity of individuals. Some may refuse to comply with the process altogether or may provide false information. Despite this, I found the Home Office had agreed efficient processes with some foreign embassies that allowed it to obtain documents quickly for their nationals. Detained interview schemes, where embassies interviewed their nationals in prisons or removal centres, were particularly effective.

The Home Office claims that non-compliance by individuals with the ETD process is a major source of delay. I was concerned to find, however, that it did not have a clear picture of the scale of the problem, other than in criminal cases, and had no effective strategy for tackling it. Management information on other aspects of the ETD process was also inadequate and did not give an accurate picture of performance.

The Home Office was applying for too many ETDs that had little prospect of being used, rather than focusing resources on cases where re-documentation was likely to result in removal. This is a long-standing issue. I found that the Home Office had not used several thousand ETDs that had already been agreed by embassies. In some instances, these agreements dated back more than ten years. My sample showed that many such cases were not being actively progressed, leaving individuals' immigration status unresolved. This is unacceptable.

Finally, despite recommendations I have made previously, I was concerned to find that the Home Office was still keeping foreign criminals, who had completed their prison sentences, in immigration detention for months or even years in the hope that they would eventually comply with the re-documentation process. Given the legal requirement only to detain individuals where there is a realistic prospect of removal, this is potentially a breach of their human rights. It is also very costly for the taxpayer.

A handwritten signature in black ink that reads "John Vine .". The signature is written in a cursive, slightly stylized font.

John Vine, CBE QPM

Chapter 1: Executive Summary

- 1.1 Several of our previous inspections have identified re-documentation as a significant barrier to timely removal of those without leave to remain who do not have valid passports.¹ Our joint inspection of foreign national prisoners with Her Majesty's Inspector of Prisons (HMIP) found a particular problem with delayed deportation of offenders at the end of their custodial sentence due to individuals' non-compliance with the re-documentation process. The absence of returns agreements with some foreign governments has also led to delays in deportations and removals.
- 1.2 An additional area of concern has been the Home Office's use of travel documents once obtained. In 2009, the National Audit Office claimed that a backlog of 13,000 such documents had accumulated, 5,000 of which it was estimated could have been used to facilitate removals of those without leave to remain.²
- 1.3 This inspection examined the efficiency and effectiveness of the Home Office's management of the emergency travel document system, with a particular focus on three areas:
 - the speed and success rate of the current application process overall;
 - how non-compliance was being dealt with in the foreign national offender population; and
 - progress in using travel documents that had already been obtained.

Positive Findings

- 1.4 We found that the Home Office had developed good relationships with a number of embassies, which had resulted in efficient, successful re-documentation processes. Detained interview schemes, where embassy officials visited detainees in person to verify nationality and identity, were particularly likely to result in the swift issuance of an emergency travel document.

Detained interview schemes were particularly likely to result in the swift issuance of an emergency travel document
- 1.5 Our sampling of Home Office files indicated that Returns Liaison Officers based at British embassies overseas assisted the Home Office by using their local knowledge and expertise in conducting checks to verify individuals' identity and nationality in their countries of origin. This helped the Home Office to obtain ETDs in a number of cases where individuals had failed to co-operate fully with the application process.
- 1.6 A reluctance or refusal by individuals to provide evidence of their identity or nationality remains a significant obstacle to re-documentation and removal. Nonetheless, we found that 20% of the Foreign National Offenders (FNOs) in our sample of those cases had been successfully re-documented despite previous non-compliance. The work of specialist investigation teams had played an important role in the resolution of some of these cases, and had contributed to progress in others.

¹ <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf>; http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Asylum_Getting-the-Balance-Right_A-Thematic-Inspection.pdf; <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

² <http://www.nao.org.uk/wp-content/uploads/2009/01/0809124.pdf>

Areas for Improvement

- 1.7 Many of those who eventually need to be re-documented will have arrived in the UK on a visa. We were therefore concerned to find that bio-data³ that was potentially relevant to the ETD process was not retained on a systematic basis as part of the visa application process. Our file sampling showed that supporting evidence of nationality and identity was of central importance in persuading foreign embassies to issue ETDs, so we consider that the Home Office should ensure that such data is captured and retained from visa applicants. We also consider that the Home Office should do more to obtain identity data from the police, prisons and other government departments, as these can be useful sources of information when seeking to re-document foreign nationals with a view to removal.
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- Supporting evidence of nationality and identity was of central importance in persuading foreign embassies to issue ETDs*
-
- 1.8 There was also scope to improve interview processes and increase the use of effective ones such as detained interview schemes. While we found that interviews with embassies resulted in quick decisions on ETD applications, there could be substantial delays in arranging telephone interviews and last-minute cancellations by embassies were common. The Home Office should review existing protocols on telephone interviews with a view to reducing unnecessary delays and cancellations.
- 1.9 The Home Office had set up a quality assurance process for ETD applications, but it was not standardised and there was no audit trail. The output of Document Liaison Officers who checked applications was not monitored, and quality assurance results were not collated or used to improve performance. We were not, therefore, able to assess the quality of applications or the effectiveness of the assurance process. Although at least 25% of applications did not result in the issuance of a travel document, feedback was not consistently being sought from embassies to identify issues and modify processes.
- 1.10 We found that many non-compliant FNOs were being detained for long periods after their custodial sentences were completed, while the Home Office sought to obtain an ETD. Among the 52% classified as individually non-compliant who were detained under immigration powers when we conducted our sampling, the average detention time was 523 days; for those where the embassy was categorised by the Home Office as 'non-compliant', the average detention time was 755 days. In many of these cases, we assessed that there was little prospect of a travel document being obtained within a reasonable timescale.
- 1.11 Given that a criterion for maintaining detention is that there must be a realistic prospect of removal within a reasonable timescale, these long detention times are a serious concern. We recognise the importance of deporting those who represent a threat to the public. However, the practice of detaining FNOs for months or years in the hope that they will eventually comply with the ETD process is not only potentially a breach of their human rights, it is also poor value for money for the taxpayer, given the high costs involved.⁴
-
- The practice of detaining FNOs for months or years in the hope that they will eventually comply with the ETD process is not only potentially a breach of their human rights, it is also poor value for money for the taxpayer*
-
- 1.12 In an earlier inspection with HMIP,⁵ we found that those who failed to co-operate with the re-documentation process were rarely prosecuted. This remains the case. In our sample, we found that the Home Office used the threat of prosecution in the hope of encouraging compliance, but this was

³ Biometric or biographical data used to confirm and individual's identity or nationality.

⁴ We found that the average length of detention for non-compliant FNOs was 523 days. The cost of detaining an individual for this length of time is £85,772, based on an average cost per night of £164 in 2011/12, as given in the Home Office Returns Directorate Business Plan, 2012/13.

⁵ <http://icsinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

only followed through in two cases. We were concerned that no information was available on the extent of non-compliance, other than for criminal cases, and there did not appear to be a consistent strategy in place setting out the Home Office's approach to tackling it.

1.13 We found that management of the stock of unused ETDs⁶ was poor. This pool was not being used to generate removals: in our sample of these cases, 78% of those in contact with the Home Office were not being actively caseworked. In addition, we found that 11% of our sample had been granted some form of residency or leave to remain, so should not have remained in the pool.

We found that management of the stock of unused ETDs was poor. This pool was not being used to generate removals

1.14 Since ETDs are required only in order to facilitate removals, we were surprised to find that there was no high-level strategy in place to link the ETD application process with removals priorities. In the absence of such a strategy, it was not clear that the right ETDs were being applied for at the right time to ensure an efficiently coordinated removals process. The Home Office manages a stock of approximately 4,000 outstanding ETD applications at any one time. However, there is no central monitoring of the progress of these applications, and no effective prioritisation process, which has led to some applications remaining unresolved for long periods.

1.15 The Home Office could not provide us with management information on how many currently removable cases would need an ETD to be concluded, and data on the efficiency of the various elements of the application process was also not routinely available or used to drive improvements. We were concerned that the performance standards in place did not allow for detailed scrutiny of ETD application processes or promote effective planning.

1.16 As with previous inspections, it was not possible for the Home Office to provide a number of the paper files that we requested; in this inspection, a high percentage of files, 19%, were not made available. The Department must take steps to improve its file retrieval processes.

⁶ The Home Office defines an unused ETD as one that has promised or issued for more than 3 months without use. At the time of our inspection, the pool amounted to 6,460 cases.

Chapter 2: Summary Of Recommendations

We recommend that the Home Office:

1. Aligns its strategy on ETD applications and usage to its removal priorities.
2. Gathers accurate data on potentially removable cases that would require an ETD, in order to assess the resources needed for this task.
3. Develops a comprehensive and accurate performance measurement framework for managing and improving the ETD process.
4. Develops the capability to monitor all outstanding applications and renegotiates existing arrangements with foreign governments so that priority cases can be expedited.
5. Develops a comprehensive strategy to tackle non-compliance that includes:
 - identification of the scale of individual non-compliance with the re-documentation process across all case types;
 - evaluation of the current use of section 35; and
 - agreements with other government departments and public sector bodies to ensure that evidence of nationality and identity is available for re-documentation purposes.
6. Urgently reviews the cases of all long-term detainees where the absence of an ETD is the primary barrier to removal, in order to establish whether there is a realistic prospect of removal within a reasonable period.
7. Develops clear timescales for obtaining travel documentation in individual cases, to ensure that deportation action can be taken more quickly where appropriate.
8. As a matter of urgency, prioritises the resolution, either by removal or regularisation of immigration status, of the cases in the unused pool that are in contact; and
 - traces individuals for whom an ETD has been agreed but who are not currently in contact;
 - reviews the pool regularly to ensure that it only contains cases of individuals who are potentially subject to removal.
9. Ensures that identity details collected at the visa application stage are aligned to the requirements of ETD applications.
10. Reviews its use of interview protocols to ensure that the most effective methods, such as detained interview schemes, are expanded and that telephone interviews are conducted in a timely manner.
11. Establishes a central quality assurance framework for the ETD application process.
12. Makes updated guidance on ETD processes available in a central location.
13. Ensures that charged cases are prioritised where removal action has been initiated.

Chapter 3: The Inspection

Purpose and aim

- 3.1 This inspection examined how efficiently and effectively the Home Office managed the Emergency Travel Document (ETD) system used to facilitate the removal of those with no other travel document and no right to remain in the UK. The inspection focus was on:
- the speed and consistency of the process for obtaining ETDs to assist removal;
 - how efficient the Home Office was at managing and reducing the ‘unused pool’ of ETDs;⁷
 - the effectiveness of Home Office strategies to combat non-compliance with the re-documentation process; and
 - progress against relevant recommendations made in previous inspection reports, including our 2011 inspection of foreign national prisoners.⁸

Scope

- 3.2 An individual with no right to remain in the UK can be removed, despite not being in possession of their own valid passport, provided that one of the following can be obtained:
- An ETD.
 - A European Union letter (EUL).
 - A Chicago Convention letter (CCL). This is also known as a Chicago Convention document (CCD).
- 3.3 We did not examine the use of EU letters or Chicago Convention letters, as there is no formal application procedure for these types of document and they are locally produced by the Home Office. ETDs are, by contrast, produced by the relevant mission⁹ at the Home Office’s request.

Methodology

- 3.4 Eight of the Chief Inspector’s inspection criteria (set out in Appendix 2) were used to assess the efficiency and effectiveness of the Home Office’s management of the ETD system under the themes of:
- Operational Delivery;
 - Safeguarding Individuals; and
 - Continuous Improvement.
- 3.5 In advance of the on-site phase, we undertook a thorough examination of management information, policies and guidance relating to ETDs. We also interviewed Foreign and Commonwealth Office

⁷ Cases where an ETD had been agreed by the relevant high commission, embassy or consulate, but never used by the Home Office.

⁸ <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf> The Home Office now calls foreign national prisoners foreign national offenders (FNOs).

⁹ Embassy, high commission or consulate.

(FCO) staff and sought the views of foreign embassies. We interviewed staff at three embassies, and received 10 responses to our questionnaire.

3.6 We sampled 202 cases, broken down as follows:

- 75 cases where ETD applications were made between October and December 2012;
- 75 cases from the pool of ETDs that have been issued / promised by embassies but not used;
- 52 Foreign National Offender (FNO) cases defined by the Home Office as being non-compliant¹⁰ with the re-documentation process.

3.7 We sampled applications from the last quarter of 2012 in order to assess the efficiency and effectiveness of the ETD process in recent cases. The sample of cases from the unused ETD pool allowed us to analyse the reasons why individuals might not be removed using documents that are promised or issued. Finally we examined the FNO cases in order to understand the nature of non-compliance on the part of individuals and lack of cooperation on the part of embassies, as well as Home Office strategies for dealing with this.

3.8 We sampled 163 cases using the paper files and the Case Information Database (CID) and 39 cases solely on CID. As some of these were live cases, to ensure consistency in our findings we took into account all action up to 15 June 2013.

3.9 The on-site phase took place between 13 August and 12 September 2013 at eight locations, including Croydon, Sheffield, Liverpool, Solihull and Leeds. We conducted interviews, focus groups and drop-in sessions with 136 Home Office staff, as detailed below at Figure 1.

Figure 1: Composition of Interviewees (by grade)	
Grade (or equivalent)	Number
Senior Civil Servant (SCS)	2
Grade 6	6
Grade 7	7
Senior Executive Officer (SEO/HMI)	21
Higher Executive Officer (HEO)	26
Executive Officer (EO)	63
Administrative Officer (AO)	11
Total	136

3.10 On 30 September 2013, 12 working days after the completion of the on-site phase of the inspection, the inspection team provided feedback on high-level emerging findings to the Home Office.

3.11 The inspection identified 13 recommendations for improvement.

3.12 The final version of this report was submitted to the Home Secretary on 17th December 2013.

¹⁰ This could refer to either the individual, the relevant embassy, or both, being regarded as non-compliant or uncooperative.

Chapter 4: Background

The re-documentation challenge

- 4.1 Like other European countries, the UK faces a challenge in removing illegal immigrants and foreign nationals who no longer have a right to be here. Foreign nationals may have destroyed their identity documents after arrival, used false documents or entered illegally. They may take deliberate steps to obstruct the re-documentation process and the process itself can be bureaucratic and slow. For such reasons, the European Union (EU) has negotiated return and readmission agreements with a number of countries. The UK has also entered into bilateral agreements of its own.
- 4.2 Between 14,000 and 15,000 people are subject to enforced removal from the UK every year.¹¹

What is an Emergency Travel Document?

- 4.3 An ETD is a travel document issued by a high commission, embassy or consulate, at the request of the Home Office, for the purpose of removing a person from the UK who has failed to produce a valid passport and cannot be removed on an EU letter (EUL) or Chicago Convention letter (CCL).
- 4.4 Our 2011 inspection of Foreign National Prisoners (FNP)¹² identified that the principal reason for the UK Border Agency's failure to deport individuals was the difficulty in obtaining travel documentation.
- 4.5 The 2011 FNP inspection and the 2012 joint inspection with Her Majesty's Inspector of Prisons (HMIP) on immigration detention casework¹³ highlighted areas for improvement within the ETD process, including that:
- clear timescales ought to be developed for obtaining travel documentation in individual cases;
 - a strategic approach should be introduced for managing cases where there was, or was likely to be, a problem in obtaining travel documents; and
 - prosecution for non-compliance should be considered in cases where the Home Office assessed that detainees were failing to co-operate with the re-documentation process.

Re-documentation processes

- 4.6 The Home Office is responsible for gathering the necessary biometric data and country-specific information and submitting an ETD application, along with any supporting evidence, to the relevant embassy. Prior to submission, each ETD application is checked by a Document Liaison Officer (DLO), who ensures that the application satisfies the minimum requirements for that particular nationality.

11 This figure does not include those denied entry to the UK at ports, or those who depart voluntarily, with or without government assistance.

12 <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf>

13 <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

- 4.7 The efficiency and effectiveness of the ETD application process is heavily reliant on the strength of the relationship with the relevant embassy or foreign government and the nature of the process itself. The embassy or foreign government defines how the process operates for their nationals and ultimately makes the decision as to whether or not to issue an ETD in each individual case.
- 4.8 At the time of our inspection, there were 78 different ETD processes in operation. In some cases, the submission of the paper application will be sufficient. However, many countries require the individual to be interviewed by their embassy before a decision on the ETD application is made. Certain countries also require checks, known as pre-verification checks, to be conducted in the country of origin to establish the person's identity before an application can be submitted. The processes also vary by country, depending upon the level of supporting evidence that must be submitted with the application.
- 4.9 Where required, pre-verification checks are conducted by Returns Liaison Officers (RLOs) in the country of origin. These normally involve checking addresses and details of family members provided by the applicant and confirmation of a claimed identity with local officials and records. After verification, the ETD application will be submitted to the relevant embassy in the UK.
- 4.10 Once an application has been submitted, nationality-specific Home Office guidance outlines the average length of time the embassy will take to reach a decision. These timescales can vary significantly between nationalities, from two weeks to over one year; in some cases no estimated timescales are available.
- 4.11 All correspondence from the embassies is managed by the Home Office's Country Returns Operations and Strategy (CROS) team, which sits under the Director General for Immigration Enforcement. CROS also coordinates some re-documentation interviews if these are required by the embassy as part of the process. After an initial application has been submitted to the embassy, regional co-ordinators prioritise those applications that they wish CROS to follow up. CROS assesses these requests by their own criteria, and selects which to highlight to embassies.

Role of ETDs in Removals

- 4.12 The Home Office told us that the total proportion of enforced removals carried out using an ETD in the financial year 2012/13 was approximately 9%, although due to data quality issues we were unable to validate this figure. The Home Office's position is that they will pursue enforced removal, where appropriate, for nationals of all countries and will seek to obtain ETDs where necessary for removal, despite the considerable challenges they may face with certain nationalities.

Chapter 5: Inspection Findings

Decisions on the entry, stay and removal of people should be taken in accordance with the law and principles of good administration

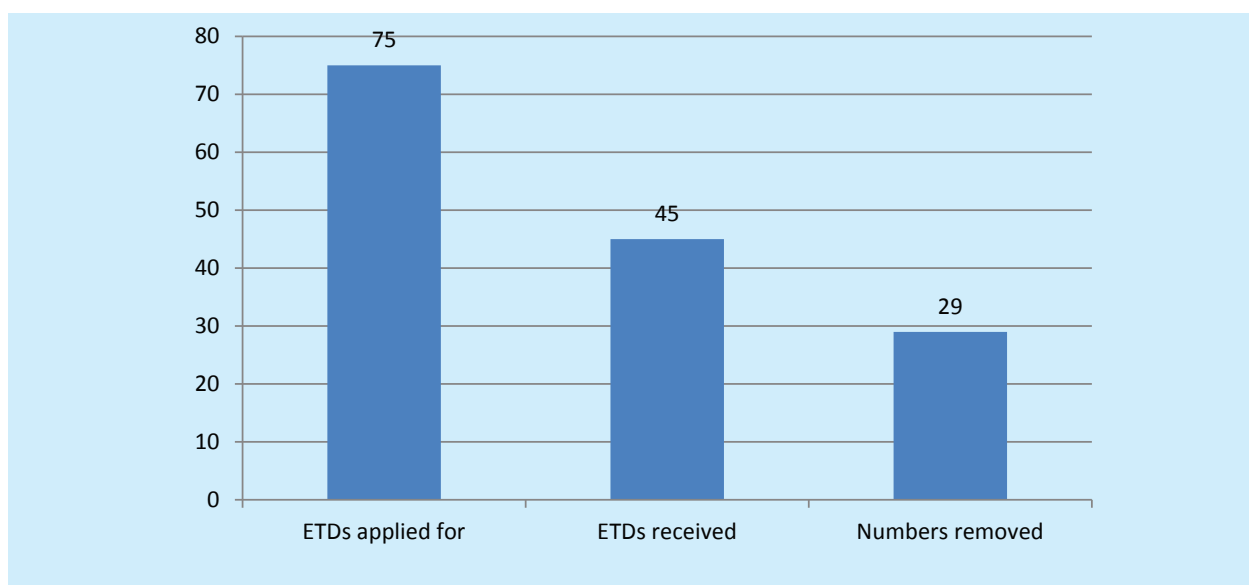
ETD applications: file sampling

- 5.1 To assess the effectiveness of the application process, we sampled 75 cases where an application for an ETD had been made between October and December 2012. Where relevant to decision quality and the efficiency of the ETD process, we also refer below to cases in our separate sample of FNOs.

Application success rate

- 5.2 Figure 2 shows that 45 of the 75 individuals (60%) in our file sample of applications made in the final quarter of 2012 had ETDs agreed by 15 June 2013, and that 29 (39%) had been removed:

Figure 2: Oct-Dec 2012: ETD success/usage rates

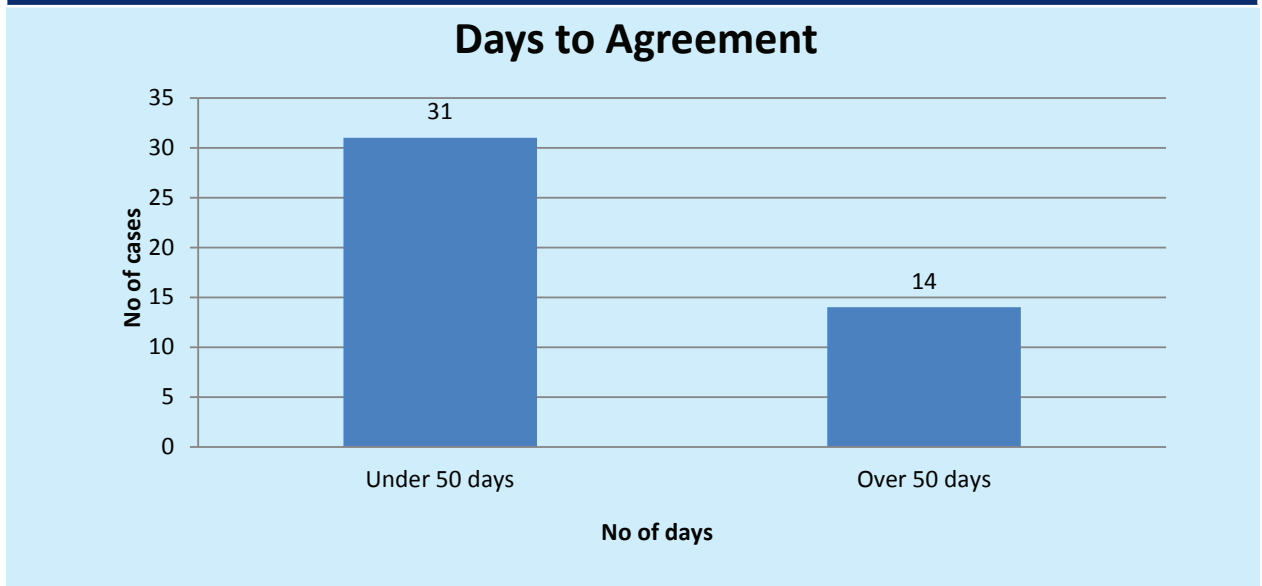


- 5.3 While there are data quality issues that make a direct comparison difficult, figures provided by the Home Office's Performance and Compliance Unit suggest that overall application and success rates for ETDs in 2012/13 were broadly aligned with our sample.

Speed of application process

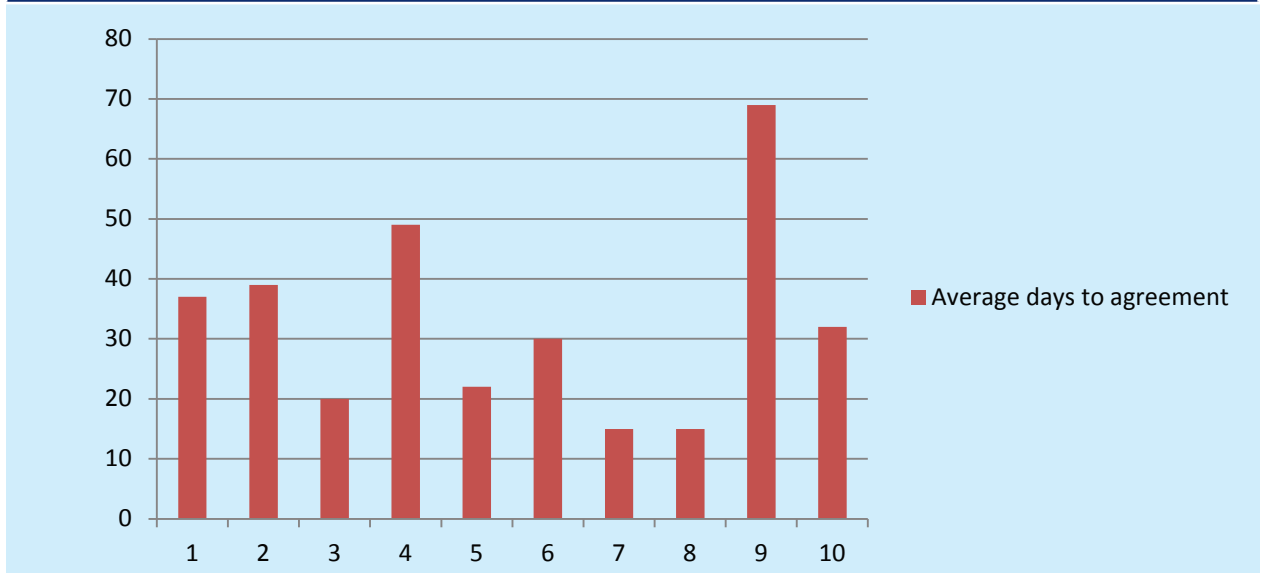
- 5.4 Of the 45 cases in our sample where an agreement to issue an ETD had been reached by 15 June 2013, the majority of cases were agreed in less than 50 days from submission of the application. Five cases took four days or less to be agreed; the longest took 204 days.

Figure 3: Oct-Dec 2012: Days from ETD application to agreement



5.5 Home Office data for all applications (April-December 2012) showed that for the ‘top ten’ highest volume nationalities, which account for 85% of all ETD applications, the average time from submission to agreement overall was 57 days. There were, however, very wide disparities in the average time required for different nationalities, as set out in Figure 4.

Figure 4: Top 10 countries: average days to ETD agreement



Note: Figures provided by the Home Office Performance and Compliance Unit (PCU).

5.6 The disparities are partly accounted for by the fact that some embassies’ requirements are lengthier than others; for example, a greater proportion of applications may need to be submitted for pre-verification checks in the country of origin. The time taken to agree to issue an ETD can also vary widely within a nationality, depending on the quality of the application or the amount of supporting evidence available. We took account of both of these elements in considering the factors that contribute to the successful and speedy conversion of ETD applications to agreements.

Gathering biographical and biometric data

- 5.7 Home Office managers and staff told us that lack of sufficient supporting evidence to confirm the nationality and identity of an individual would lengthen the process of obtaining an ETD and make applications less likely to succeed. This was confirmed by foreign embassy officials.
- 5.8 Many individuals who are forcibly removed originally entered the UK with a valid visa. Some who originally arrived illegally will also have applied for a visa and been refused. In both of these scenarios, biographical or biometric data will originally have been gathered by the Home Office in the process of assessing an application to enter the UK. Biometric data, in particular, represents an essential source that can be used to confirm identity incontrovertibly for the purposes of an ETD application.
- 5.9 We were concerned to find that all relevant data originally submitted to the Home Office in support of a visa application, and which might be required if an ETD were to be applied for, was not routinely scanned onto electronic systems overseas. For one nationality, the first two pages of applicants' passports were scanned by overseas staff, but the third page, containing details of applicants' family and home village, was not; these details were always required by the embassy of this country if an ETD was requested.
- 5.10 While online visa application processes now enable data to become part of the permanent electronic record, we found that no work had been done at a strategic level to ensure that data gathered at the visa application stage was aligned to what would be needed for use in any future ETD process.

We found that no work had been done at a strategic level to ensure that data gathered at the visa application stage was aligned to what would be needed for use in any future ETD process

We recommend that the Home Office:

Ensures that identity details collected at the visa application stage are aligned to the requirements of ETD applications.

- 5.11 Where data from an expired passport or visa application is not available, staff applying for an ETD must seek to confirm identity through other forms of documentation and information gathered from the applicant. Staff told us that any form of document could provide potentially useful information, but that other government departments, as well as police and prisons, would not necessarily be aware of the importance or significance of such material.¹⁴
- 5.12 Caseworkers and DLOs considered that getting biographical data at the first encounter with an individual was the most effective way of ensuring compliance and gaining the level of information required for a successful application. Our file sample of ETD applications made in the final quarter of 2012 showed that bio-data gathering started at the first encounter in 69% of cases. The timing of bio-data gathering for the remaining cases varied considerably, reflecting an inconsistency that was confirmed in our interviews with staff.
- 5.13 Senior managers recognised the importance of gathering bio-data as early as possible. This had led to procedures for the confirmation of identity and nationality being planned into the very first stages of new processes that were being implemented for both Criminal and Removals Casework. Although we were surprised that guidance did not already clearly specify that bio-data should always be gathered at first encounter, we welcome this intention to move to a more consistent approach.

¹⁴ See Chapter 6 for a complete discussion of arrangements to access documents in the context of non-compliance with re-documentation.

- 5.14 Our file sampling confirmed the importance of supporting evidence to facilitate the swift conversion of applications to agreements, and the difficulties faced by the Home Office where such evidence was found insufficient by embassies. Expired passports or other sources of biometric or biographical data, where available, enable identity to be readily verified, although, as the case study at Figure 5 shows, this is not always a straightforward process.

Figure 5: Case study: Importance of supporting evidence

Background:

- The individual was convicted of drug offences and refused to co-operate with the ETD process on the grounds that he was an EU national. Fingerprints matched him to a different identity and non-EU nationality and an ETD interview on this identity was held with an embassy official.
- The embassy initially refused to issue an ETD on the grounds that the individual claimed to be an EU national; it also stated that there was insufficient evidence to validate the alternative nationality and identity proposed by the Home Office.
- The individual subsequently made an application for further leave, using a third identity.
- The identity provided in this application was then linked by the Home Office to a visa application and a copy of an expired passport.
- The embassy agreed to issue an ETD on the basis of this supporting evidence.

Chief Inspector's Comments:

- This case illustrates the difficulties in attempting re-documentation where an individual does not voluntarily disclose identity or nationality, and where biometric data is not available.
- This individual was initially able to disguise his true identity, but the Home Office showed persistence in seeking further evidence.
- However, only the individual's decision to apply for further leave allowed the Home Office to obtain the clear documentary proof of identity and nationality that the Embassy required in order to issue an ETD.

Interview schemes

- 5.15 We compared the efficiency of the different processes the Home Office had developed with embassies to confirm an applicant's identity prior to issuing an ETD. In our sample, we found that interviews with embassies, whether in person or by telephone, often resulted in a relatively swift decision once the interview had been arranged: seven cases were agreed on the same day or the day after. Of the 32 applications in our sample where an interview was held and an agreement was forthcoming, the average (median) time to agreement after the interview was seven days.

We found that interviews with embassies, whether in person or by telephone, often resulted in a relatively swift decision once the interview had been arranged

- 5.16 However, we also found that arranging interviews was a significant potential source of delay; of the 33 cases where an interview was required, the average time elapsed between submission of the application and an interview's being held was 47 days. While this resulted in an average time from application to agreement of 62 days, in line with the Home Office's overall expected timescales, six cases in the sample took between 108 and 186 days to arrange an interview. This is inefficient and very costly when individuals are detained.

Telephone interviews

- 5.17 Difficulties faced by the Home Office in following telephone protocols included: applicants failing to attend as scheduled; contractors failing to provide timely transport for detained applicants; and embassy officials not being available at scheduled times. Individual cases in our sample showed that delays and waste of resources could be considerable. In one case, enforcement staff tried for 18 months to arrange a telephone interview, but were repeatedly unable to get hold of the embassy at scheduled times. Home Office staff did not know what alternative avenues to pursue to achieve a resolution, so continued to reschedule appointments even when it became clear that the individual had also ceased to cooperate with the process. In interviews, caseworkers confirmed that embassy officials' non-availability was a major cause of delay in progressing applications.

Figure 6: Case study of delays in arranging a telephone interview

Background:

- The individual was in immigration detention. His embassy required a telephone interview to confirm his nationality and identity before issuing an ETD. Over a period of 35 days, detention centre staff made seven attempts to conduct scheduled telephone interviews with the embassy, but on three occasions, the applicant was unwell or declined to attend, while the embassy official was not available on the other four occasions.
- An appointment was eventually made for the applicant to be seen in a face-to-face interview in the detention centre. This interview took place eight days later and an ETD was agreed on the day following the interview.

Chief Inspector's Comments:

- Telephone interviews, particularly when an individual is detained, can be a cost-effective procedure, but such arrangements are vulnerable to disruption.
- The Home Office should have intervened earlier with the embassy in this case, given the multiple failed attempts to carry out a telephone interview.
- When the case was escalated to CROS, they responded swiftly and negotiated effectively with the embassy to arrange an in-person interview.

- 5.18 We found some embassies were not adhering to their own processes for telephone interview schemes, as evidenced by both our file sampling and in interviews with staff. CROS managers told us that there was little that they could do to encourage embassy officials to engage more consistently, while embassies explained that the volume of requests for interviews was not always manageable, given other demands on their time. We consider that steps should be taken to address this issue.

We found some embassies were not adhering to their own processes for telephone interview schemes

Face-to-face interviews

- 5.19 The majority of face-to-face interviews are held at embassies. However, the Home Office has also negotiated schemes with some embassies where they visit prisons or detention centres to conduct interviews. In some cases, officials of the foreign government will travel to the UK for this purpose. The embassies who were involved in these schemes reported that the arrangements were efficiently managed by CROS. Embassies commented that the knowledge and expertise brought by foreign officials to face-to-face interviews were invaluable in confirming individuals' nationality and identity, particularly where the individuals had not complied fully with the ETD process.

- 5.20 Our sample of ETD applications made in late 2012 showed that these schemes produced the fastest decision rate: the average time to agreement or refusal was three days for the 10 cases interviewed in a detention centre. These cases also had a very high success rate: eight agreements were immediately issued and two others were agreed after a second interview.
- 5.21 Caseworkers confirmed that detained interview schemes were amongst the most effective means to obtain ETDs, and considered that CROS's ability to set up and manage these agreements was crucial to maintaining the capability to remove some nationalities.

We recommend that the Home Office:

Reviews its use of interview protocols to ensure that the most effective methods, such as detained interview schemes, are expanded and that telephone interviews are conducted in a timely manner.

Verification checks in the country of origin

- 5.22 Some embassies' protocols require that applicants undergo verification checks in their country of origin before an ETD is issued. This process can be relatively swift and effective: in the five cases in our sample of recent ETD applications that were referred and reached a conclusion, an agreement was obtained on average within three weeks. Our sample showed that Regional Liaison Officers (RLOs) could be of great assistance to the Home Office because of their local knowledge and contacts.

Our sample showed that Regional Liaison Officers (RLOs) could be of great assistance to the Home Office because of their local knowledge and contacts

Figure 7: Case study: Effective ETD process with RLO assistance

Background:

- A failed asylum-seeker provided family and local address details at an ETD interview, which were followed up by the RLO.
- The following day, the RLO reported that the given address was invalid and the claimed identity was false. Further enquiries by the RLO traced the individual's sister from visa application records.
- Ten days after the submission of the original application, the RLO confirmed a correct address and date of birth for the individual with another local authority. This allowed the ETD application to be forwarded to the embassy, which issued a document.

Chief Inspector's Comments:

- The speed of the original response from the RLO exemplifies good practice.
- This case illustrates the significant contribution that can be made by RLOs, particularly in cases where an individual is not complying fully with the re-documentation process.

Guidance: availability and coverage

- 5.23 In the majority of cases, ETD applications are submitted directly to foreign embassies by caseworkers. Staff use nationality-specific guidance to identify what is required for a particular country. In our sample of recent ETD applications, we found several examples where an application had been submitted under outdated rules because the guidance did not reflect current requirements. Caseworkers and DLOs confirmed that guidance on such processes was not always updated in a timely fashion in response to changes in embassy procedures. We found that this could lead to processing delays.

5.24 There were also instances where a failure to issue revised guidance in response to changes in diplomatic relations led to ETD applications being submitted which had no chance of a successful conclusion. Figure 8 refers to one such case.

A failure to issue revised guidance in response to changes in diplomatic relations led to ETD applications being submitted which had no chance of a successful conclusion

Figure 8: Case study: Consequence of outdated guidance

Background:

- The individual, an FNO, was moved into immigration detention while the Home Office sought to make progress on an ETD application, despite the individual's non-compliance. Detention was maintained during this period, in part because the Home Office assessed that an ETD would ultimately be forthcoming.
- An ETD application was submitted in May 2013. In June 2013, the application was returned because the embassy had closed the previous year and there was therefore no prospect of obtaining an ETD.
- The guidance had not been updated to reflect this. The individual was subsequently released from detention.

Chief Inspector's Comments:

- This case indicates that a failure to update guidance can lead to inefficiency, substantial detention costs and serious consequences for individuals.
- The closure of the embassy was crucial information, as it meant there was no prospect of obtaining an ETD. The fact that it had taken place in 2012 meant that the guidance was at least five months old when the ETD application was made in May 2013.
- It is unacceptable that the guidance had not been updated or accurate information provided to staff by other means.
- The individual's detention was prolonged because out-of-date guidance made staff believe incorrectly that an ETD would be forthcoming.

5.25 CROS managers acknowledged that there had been difficulties in keeping abreast of necessary changes to the guidance, while assuring us that they had plans to address this. They told us that, in advance of updates to the guidance being available, changes in procedure were circulated to DLOs by email, so the relevant information could be cascaded to staff. DLOs, however, regarded this mode of communication as ineffective.

5.26 We believe that more should be done to provide updated guidance swiftly in an alternative location or format, given that changes to the Home Office website are not currently being made within reasonable timescales.

5.27 Guidance on when to apply for an ETD states that, except where an asylum claim is outstanding, an application may be submitted once enforcement papers have been served.¹⁵ However, it does not set out the optimum timing for submission. We found no consistency in our sample as to when ETD applications were submitted to embassies, with some being sent straight after the first negative decision and others after all appeals had been dismissed. Our interviews with staff confirmed that timing was at the discretion of local managers. We found that it was taking too long to resolve some cases where an ETD was required because applications were not submitted at the earliest possible stage, and explored this issue with CROS and senior managers.

¹⁵ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/returns/docs-enforced-removals.pdf?view=Binary>

- 5.28 Their experience was that the optimum time to apply for an ETD, with the greatest chance it would be issued and used quickly, varied by nationality. The strength of the application in terms of supporting evidence available and the individual circumstances of the case were also important factors. Where a rapid turnaround could be anticipated, as was the case with some embassies, applying too early could lead to ETDs being issued before all appeals had been exhausted, potentially wasting resources if an appeal were allowed.
- 5.29 Given the acknowledged impact of application timing on the efficiency of both the ETD process and the likelihood of successful removal, we were surprised that guidance did not specify submission timings and direct caseworkers on how to make application timing decisions.

We recommend that the Home Office:

Makes updated guidance on ETD processes available in a central location.

Quality of ETD applications

- 5.30 We explored how the quality of ETD applications impacted on success rates and speed. We heard from embassies, CROS, DLOs and caseworkers that application quality was an issue. DLOs commented that they often received incomplete or incorrect forms. CROS assessed application quality as very variable, noting, for example, that approximately 10% of applications they received for embassy interviews contained photographs that were likely to be rejected as of insufficient quality. Embassies also confirmed that they had concerns about both insufficient information on forms and the quality of photographs.
- 5.31 Guidance requires that all applications be quality assured by a DLO prior to submission. However, we were unable to establish whether this guidance was being followed, as referrals from a caseworker to a DLO were not routinely noted on paper files or CID. We believe that a record of such checks should be retained in order to provide assurance that all ETD applications have been quality assured.
- 5.32 In our file sample, we found several examples of effective quality assurance by DLOs, where omissions were picked up and applications sent back to a caseworker with instructions on how to amend them. However, this good practice was not widely followed. DLOs confirmed that there was no established procedure for recording rejections or providing feedback to caseworkers for performance management or training purposes. We consider that this process should be standardised as part of the assurance process.
- DLOs confirmed that there was no established procedure for recording rejections or providing feedback to caseworkers for performance management or training purposes*
- 5.33 It also proved difficult to assess the quality of submitted ETD applications, and hence to assess the overall effectiveness of DLO interventions. In 58% (95 out of 163) of the cases we sampled where we had access to the paper file, no copy of the application had been retained, as required by the guidance.¹⁶ The Home Office must put more effective monitoring arrangements in place to ensure that copies of such applications are retained in all relevant cases. This is not only beneficial from an audit perspective, but would also allow the Home Office to analyse current application quality with a view to making improvements.

¹⁶ The rate for the sample of ETD applications made in late 2012 showed some improvement: 45% (25/56) of files did not contain a copy of the application.

- 5.34 No data is currently collected from embassies on why applications are unsuccessful. When we raised this with CROS, we were informed that there was no formal mechanism in place to ask for this feedback, or to record and analyse issues that arose. The feedback obtained from embassies on rejected applications varied according to nationality, and was often given informally. After we raised this issue, CROS drew up guidance requiring its country specialists to seek feedback on rejected applications. While we welcome this, CROS should also collect and analyse this data to assist DLOs and caseworkers to improve application quality.
- 5.35 In our file sample, we found many examples of cases where errors in ETD applications had not been addressed. The case study at Figure 9 illustrates how delays in re-documentation can occur as a result.

Figure 9: Case study: Application quality issues

Background:

- The individual was arrested in July 2012 having overstayed his visa. He had no passport, but claimed to wish to return to his own country. An ETD application was completed the following day, but he subsequently claimed asylum. The initial ETD application was submitted to the wrong embassy by the DLO; this error was identified after two weeks, and a caseworker was tasked with sending an application to the correct embassy. However, no action was taken for a further three months.
- The applicant subsequently withdrew his asylum claim, remaining in detention for three months before being granted bail by an immigration judge in October 2012. The individual then absconded, but was picked up by chance for a traffic offence in January 2013.
- When the ETD application was forwarded to the correct embassy, an agreement was reached in less than six weeks and the individual was removed in April 2013.

Home Office Response

- The issues in this case were caused by human error and stretched staff resources.

Chief Inspector's Comments:

- Although the individual was eventually removed, this case was handled extremely poorly by the Home Office. The ETD application was submitted, contrary to Home Office guidance, while an asylum claim was still outstanding; these errors should have been picked up by the DLO and could have placed the individual at risk.
- Although detention reviews were carried out regularly, no action was taken to ensure that the ETD application was being progressed. As a result, the Home Office incurred significant detention costs in this case.
- The individual was only subsequently traced by chance because his immigration status was checked when he was involved in a traffic accident.

Monitoring and support of the DLO network

- 5.36 The effectiveness of the devolved system of ETD applications relies heavily upon DLOs to maintain and deliver an acceptable standard of applications. However, we found that there did not appear to be any monitoring in place to evaluate DLO performance.
- 5.37 CROS told us that they were not responsible for monitoring or management of DLO performance. Staff told us that the DLO role had usually been allocated as an additional responsibility to those performing other duties. DLOs did not have standard performance targets set by CROS.

5.38 There was no central quality assurance framework for ETD applications at the time of our inspection. Quality assurance checklists, where they existed, were the product of local initiatives. DLOs confirmed that they understood the quality assurance process to be a matter for individual preference, and practice varied accordingly.

There was no central quality assurance framework for ETD applications at the time of our inspection.

5.39 DLOs said that there was no mechanism in place that would enable them to feedback issues or information either to each other or CROS. More experienced DLOs expressed frustration that there was no opportunity to pass on expertise, for example where they had developed successful methods for confirming addresses for particular nationalities. New DLOs explained that they relied on informal contacts, or CROS country experts, for guidance where necessary.

Quality assurance checklists, where they existed, were the product of local initiatives

5.40 DLOs also commented on the lack of initial training for newcomers: while training had been provided when the role was originally set up in July 2011, there had been none available for those who came later to DLO responsibilities; most current DLOs stated that they had had little or no handover and had learned on the job.

5.41 We raised the issue of inconsistent quality assurance processes and lack of monitoring and support for DLOs with CROS managers, who said that several measures were being put in place to improve oversight in this area. Managers acknowledged that both training and communication for the DLO network also needed to be improved.

5.42 We welcome the Home Office's recognition of this, as well as CROS's commitment to take action to address the issues. However, to ensure that ETD quality issues can be accurately assessed and tackled, we make the following recommendation:

We recommend that the Home Office:

Establishes a central quality assurance framework for the ETD application process.

Prioritisation of outstanding applications

5.43 CROS provides timescales for when an ETD can be expected to be issued, based on average length of application processes for each nationality. Once the expected timescale has been exceeded, caseworkers may apply, via a regional coordinator, to have the case placed on a priority list. Cases on the priority list will be reviewed by country specialists within CROS and can then be the subject of negotiation with embassies.

5.44 Of the approximately 4,000 cases outstanding at any one time, a quota system allows c. 250 (6%) to be raised with embassies each week. CROS told us that between August 2011 and May 2013, they followed up 20,941. CROS were not able to provide us with data on the outcomes in these cases and the timings of positive and negative decisions by embassies. We were concerned to find that CROS did not collate this information, as it would provide a means of assessing the efficiency and effectiveness of the prioritisation system.

5.45 In interviews, operational managers and caseworkers told us that prioritisation was not effective in the majority of cases. Staff questioned whether having a case on a priority list had any real effect on time taken to reach an agreement, or on the success rate. Managers and staff dealing with criminal and detained cases questioned the rationale for having a quota system by caseworking area. They argued that greater weight should be given to applications relating to FNOs and those in detention, not least because of the costs involved in keeping people in prisons and immigration removal centres while ETDs were sought.

- 5.46 CROS managers, in contrast, claimed that the current system worked well, given the constraints under which they operated. CROS did not consider that detained cases, or ETD applications for FNOs, should merit automatic inclusion on priority lists; the decision on which cases to put on the list was left to individual caseworking areas, which would be best placed to judge which should have the highest priority.
- 5.47 We found many examples in our file sample where the Home Office liaised repeatedly with missions to resolve difficult cases, although the exact nature of these negotiations remained unclear because no detailed notes were available on CID, and CROS did not use paper files. We were therefore unable to assess CROS's contribution to progressing cases overall. We consider that CROS should do more to provide an audit trail for prioritised cases, as this will allow it to identify areas where performance can be improved.
- 5.48 Acceptance onto the priority list was largely based on timescales defined by the embassies. As average turnaround times could be prolonged, caseworkers might have no mechanism for checking the progress of a case for weeks or months, because the required timescale had not yet been exceeded. CROS managers explained that maintaining their relationships with embassies depended on their accepting embassy protocols on application procedures and timings and, accordingly, at what point they could be followed up. As the case below shows, lack of monitoring and ineffective prioritisation can contribute to substantial delays:

Figure 10: Case study: Unsuccessful prioritisation

Background:

- The individual was arrested as a visa over-stayer and an ETD application was quickly emailed to the RLO for pre-verification.
- Detention was maintained on the basis that the expected timescale for an ETD was two to three weeks. The case was added to the priority list nine weeks after submission.
- CROS's review revealed that the RLO had not received the application. Over a three-week period the application was re-submitted twice, but, due to the re-submission, it was no longer eligible for prioritisation.
- The individual was released after four months in detention. After three months, the case was again prioritised; CROS reported that verification had taken place two months previously but no hard copy of the application had been received by the embassy.
- An ETD agreement was reached after a further 10 weeks. The individual absconded two months after the ETD was agreed.

Chief Inspector's Comments:

- The case exemplifies some of the limitations of the current prioritisation and review process, including outdated guidance in sending the application to the RLO for pre-verification checks, which CROS did not flag up.
- Lack of central monitoring of this application led to long delays and considerable costs being incurred.
- The prioritisation process was ineffective: each time the application was re-submitted, the timescale clock restarted, leading to a further six-week wait before the case was again eligible for review.
- This individual was detained, at considerable cost to the Home Office, for four months before being released without an ETD having been obtained; for all but 10 days of that time the ETD application was not being progressed.

- 5.49 Improved central monitoring of all applications would speed up the ETD process and reduce the need to include cases on the prioritisation list, as any problems would be picked up at an earlier stage in the process.
- 5.50 The absence of data on the prioritisation process should be addressed in order to allow for accurate assessment of the strengths and weaknesses of the current procedure. It is not acceptable that success rates for attempts at prioritisation are not collected and used to drive improvements in the process.
- 5.51 In our judgement, the dissatisfaction we found among operational staff about the prioritisation system was due partly to a lack of transparency about results and partly to a lack of clear communication from CROS as to the rationale behind the current quota system. Clearly defined, shared prioritisation criteria should be agreed across all areas involved in removals casework so that there can be confidence that the right cases are being taken up with embassies.
- 5.52 We were concerned that the timing of prioritisation was being driven by timescales over which the Home Office had little or no control in the majority of cases, and that adherence to average timescales for all cases was leading to delays. While we accept the need to accommodate embassy requirements that foreign nationals be adequately identified, we consider that a balance should be maintained between this principle and the Home Office's legitimate pursuit of timely enforced removal for individuals who have no right to be in the UK.

Monitoring outstanding applications

- 5.53 Our sample showed that ETD applications were often not progressed promptly, leading to delays in securing agreements from embassies. In many cases, delays were caused by failures at various stages in the ETD process that were managed centrally by CROS as part of their liaison function. For example, applications might not be received by RLOs or embassies, or interviews might not take place as scheduled, but CROS staff would not routinely pass on this information to caseworkers unless the case was already under review because it had been placed on a priority list.

ETD applications were often not progressed promptly, leading to delays in securing agreements from embassies

- 5.54 Some FCO staff and foreign embassies told us that in the absence of overall monitoring of ETD applications by CROS, they had developed local record-keeping systems to ensure that cases were resolved in a timely fashion. CROS managers claimed that applications were monitored by nationality by their country-specific teams, but staff in those teams told us that data on all outstanding cases was not routinely available to them.
- 5.55 Consistent monitoring of outstanding ETD applications by nationality by the specialist teams in CROS would improve the speed and conversion rates for ETDs and enable much better control over the process. Data-sharing mechanisms that would enable both embassy officials and CROS to record progress on applications on a shared database were under consideration at the time of our inspection. We consider that this development could lead to a better service for both embassies and caseworkers.

We recommend that the Home Office:

Develops the capability to monitor all outstanding applications and renegotiates existing arrangements with foreign governments so that priority cases can be expedited.

Chapter 6: Inspection Findings

Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted

Non-compliance with the documentation process

- 6.1 One of the main ways in which removal can be frustrated, should an individual hold no travel document, is through non-compliance with the ETD process. The Home Office does not have a generic definition of non-compliance. However, in relation to re-documentation, it interprets a ‘non-compliant’ individual to mean anyone who chooses not to give it verifiable evidence of their true identity and nationality.

Individuals

- 6.2 Individual non-compliance with the documentation process can lead to criminal prosecution. Under section 35 of the Asylum and Immigration Act 2004 it is a criminal offence if a person fails to comply, without reasonable excuse, with actions that would enable a travel document to be obtained on their behalf. Successful prosecution under section 35 can lead to a maximum of two years’ imprisonment and/or a fine.
- 6.3 The latest Home Office section 35 guidance provides examples of some non-compliant behaviour. These include:
- failing to attend a travel document interview;
 - attending but refusing to answer questions completely and accurately;
 - refusing to co-operate in applying for an ETD; or
 - providing incomplete or false information on the application form.¹⁷
- 6.4 There are a number of ways in which the Home Office can seek to obtain an ETD where individuals are non-compliant. We looked at how effectively section 35 powers were used, how consistently other approaches were used, and the overall effectiveness of the Home Office’s attempts to overcome individual non-compliance.

Embassies

- 6.5 The Home Office also uses the term ‘non-compliant’ to apply to cases where it assesses that foreign embassies or governments are failing to facilitate the re-documentation of an individual. There was no definitive classification of embassy non-cooperation, but the Home Office told us that key challenges included the protracted, complex returns processes for some nationalities, and difficulties in resolving individual cases.

¹⁷ The guidance also however emphasises that this is a non-exhaustive list: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/enforcement/10-enforcement/travel-doc-process?view=Binary> (page 7)

The scale of individual non-compliance

- 6.6 We requested statistics on the level of individual non-compliance with the documentation process. However, the Home Office informed us that it did not collect this information across all cases where re-documentation was required for enforced removal. It was only able to provide us with information on FNO cases.
- 6.7 Non-compliance with the documentation process is known to have a significant impact in detained FNO cases. In response to our 2011 inspection report on how the Agency managed foreign national prisoners, we were informed that non-compliance with the documentation process was a 'significant issue' in around 60% of long-term detained criminal cases.¹⁸ In July 2013, the Home Office advised the Home Affairs Select Committee that, of 528 FNOs facing removal or deportation who could not be removed at the end of quarter one 2013, individual non-compliance with the documentation process was the primary barrier to removal in 25% of these cases and country non-compliance in 6%.
- 6.8 We are extremely concerned that the Home Office is unable to provide information on the overall scale of non-compliance with the re-documentation process, other than for FNOs. It will be unable to develop an effective strategy to deal with non-compliance across all case types if it does not have reliable data on the issue.
- 6.9 As the Home Office could not provide us with a list of non-compliant cases across all case types, we examined 52 FNO cases subject to deportation action by Criminal Casework, which it had categorised either as 'individual non-compliant' or 'country non-compliant'.¹⁹ We assessed how effectively non-compliance had been managed or overcome in these cases.²⁰ Forty of the cases we sampled (77%) were categorised by the Home Office as 'individual' rather than 'country' non-compliant.

We are extremely concerned that the Home Office is unable to provide information on the overall scale of non-compliance with the re-documentation process, other than for FNOs

Categorisation of individual on-compliance

- 6.10 Most individuals in our sample had been categorised correctly as at some point having been non-compliant with the documentation process. The level of non-compliance, however, varied significantly from a one-off event to continued and repeated non-compliance. We found only one case with no evidence of any individual non-compliance. In that case the individual appeared to be deemed non-compliant after not attending a documentation interview for which the Home Office had failed to provide timely transport.

File sampling results

- 6.11 By the time we conducted our file sample, eight (20%) of the 40 'individual non-compliant' FNO cases had been successfully re-documented. However, of these eight cases only three showed evidence of the individuals themselves having become compliant with the process. In a further six cases we also found evidence of the individual having become compliant with the process, but no travel document had yet been issued.
- 6.12 The remaining 26 cases (65%) had remained non-compliant with the documentation process with no document obtained. In 22 (85%) of these cases no application was currently lodged, suggesting limited or no progress towards obtaining a document.²¹

¹⁸ The response to our thematic report on the management of foreign national prisoners can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/UK-Border-Agencys-response-to-the-management-of-foreign-national-prisoners-thematic-report.pdf>

¹⁹ Statistics could be provided for foreign national offenders by combining CID records and records in Criminal Casework's Perform database.

²⁰ The link between effective use of detention in cases of non-compliance with the documentation process is covered in Chapter 8 below.

²¹ This includes one of the cases where there was no apparent document process in place for enforced return for operational reasons.

6.13 Disputed nationality was an issue in 17 of the 40 cases (43%). We were disappointed to find that there was no written guidance on dealing with disputed nationality in the documentation process, given the apparent scale of the issue. While the Home Office assured us that it was drafting such guidance, this should have been in place earlier, given that disputed nationality is a long-standing and significant barrier to re-documentation.

Section 35

6.14 Section 35 of the Asylum and Immigration Act 2004 is the main legislative tool for countering non-compliance. On introducing the 2004 Bill to Parliament, the then Home Secretary said that lack of travel documentation was one of the key barriers to removal and that without such documents the Home Office had the ‘devil’s own job’ trying to enforce return.²²

6.15 In our previous joint inspection with HMIP into the effectiveness of immigration detention casework,²³ we found that the Home Office had undertaken few section 35 prosecutions. This broad trend continued into 2012, as shown in Figure 11.

Figure 11: Section 35 prosecutions since 2009		
Year	Number of people charged	Number convicted
2009	18	7
2010	12	8
2011	2	0
2012	8	6
Total	40	21

Use of section 35

6.16 We found that no prosecutions had been attempted in any of the 40 ‘individual non-compliant’ cases in our file-sample. In some cases this was despite a continual history of obvious non-compliance. Figure 12 refers.

22 David Blunkett MP, Hansard 17.12.2003, col 1592. <http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo031217/debtext/31217-10.htm>

23 <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

Figure 12: Case study: Failure to use section 35

Background:

- The individual was intercepted trying to leave the UK. He claimed to be nationality x. However biometric checks linked him to another identity in nationality y.
- He admitted this identity and provided vague bio data for an ETD application to country y, but the application was rejected on the grounds that details given were false.
- A CID note advised that section 35 should be considered if non-compliant at next documentation interview.
- The individual remained non-compliant, saying he would rather stay in prison where he got '3 meals a day and there is a gym'. No section 35 action was taken.
- A further ETD application was made to country y.
- Further work by the Home Office then suggested that the individual was in fact nationality z.
- The individual was advised to complete bio data forms under nationality z or face prosecution under section 35. He remained non-compliant at this and subsequent interviews. No section 35 action was taken.

Chief Inspector's Comments:

- It is unclear why section 35 action was not pursued in this case, when there appear to have been strong grounds for potential prosecution. The subject was non-compliant by providing false or no information on a number of occasions over a two-year period.
- It is vital for the integrity of the documentation process that the Home Office is willing to pursue cases with a view to prosecution under section 35 where the individual is clearly trying to frustrate the documentation process and their removal.

Section 35: Reasons for limited use

6.17 We explored the reasons for the low number of section 35 prosecutions in interviews with staff and managers. Staff and several managers stated that section 35 was very much seen as a 'last resort' when attempting to overcome non-compliance. In part this is a deliberate strategy, in that other measures – such as the information-gathering methods discussed below – provide a more practical and direct way to overcome non-compliance and obtain a travel document. However, staff and managers also considered that section 35 was rarely used because it was both 'toothless' and extremely difficult to implement effectively. In their experience, difficulties in securing successful prosecutions included:

- proving that the individual had been non-compliant to the criminal standard of proof;
- the fact that detainees, particularly FNOs, were aware that the slightest level of previous compliance would invalidate any subsequent prosecutions under section 35; and
- a lack of investigative capacity within the Home Office to pursue potential cases.

In a majority of the FNO cases we sampled, the threat of prosecution under section 35 had minimal direct impact on the willingness of individuals to co-operate with the ETD process

The threat of prosecution

- 6.18 Staff also told us that, rather than investigating individuals with a view to prosecution, the main way that section 35 was now used by the Home Office was as a threat to try and encourage compliance. In our sample of cases where FNOs were classed as non-compliant, we found evidence on CID in 13 cases (33%) that the threat of section 35 prosecution had been conveyed to the individual. In five of these 13 cases (38%), the individual subsequently became compliant. However, only in one case did the timing suggest that the threat of prosecution had a direct positive effect on their compliance.
- 6.19 In a majority of the FNO cases we sampled, the threat of prosecution under section 35 had minimal direct impact on the willingness of individuals to co-operate with the ETD process. This reflects in part the need to take a variety of approaches when dealing with individual cases, as what works for one individual may not work for another.

The impact of successful prosecution

- 6.20 Although our primary means of examining the issue of non-compliance was through our sample of 52 FNO cases, we also identified a section 35 intervention in our sample of ETD applications made between October and December 2012. In this case, and in a second that was in the FNO sample but labelled as 'country non-compliant', both individuals were successfully prosecuted under section 35, eventually complied with the ETD process and were then removed. The second of these cases is discussed in Figure 13.

Figure 13: Case study: Successful section 35 prosecution

Background:

- In March 2012, the Home Office attempted a documentation interview with a detained FNO. The individual was 'vague' and non-compliant. Notwithstanding this, he was interviewed by foreign officials in April 2012 as part of a detained interview exercise. In June 2012, the embassy confirmed that it could not verify his identity.
- Due to a 'substantial history' of non-compliance (having provided only vague details at previous Home Office interviews in September 2009 and July 2011), the individual was referred for consideration of section 35 prosecution.
- The case was accepted by the Criminal Investigations Team for potential prosecution in September 2012. In the same month, the individual's representatives advised that he was now willing to comply with the ETD process.
- A new ETD application was completed and emailed to RLO overseas for verification. When these details could not be confirmed, section 35 prosecution was pursued.
- In November 2012, he was sentenced to two months imprisonment under section 35 for 'furnishing false information'.
- Four days later, the Home Office attempted a further ETD interview. The individual wished to return home and provided new bio data information, subsequently verified as genuine.
- An ETD was agreed in December 2012 and the individual was deported from the UK in January 2013.

Chief Inspector's Comments:

- This is a positive example of how section 35 prosecution, if considered from an early stage, can be successfully pursued even in cases of false information. It also shows how successful prosecution can potentially lead to successful removal.

6.21 Cases of this nature suggest that targeted use of section 35 can lead to subsequent compliance with the ETD process.

Other strategies for tackling non-compliance – gathering information

6.22 Our sample of FNO cases showed that the Home Office's success at 'persuading' individuals to comply was limited, even taking into account the probably more resistant nature of the FNO cohort compared to other immigration offenders. We assessed that – of the 32 FNO cases still awaiting a travel document – 26 (81%) remained non-compliant with the documentation process.²⁴

6.23 Where an individual cannot be persuaded to comply, gathering additional information and evidence can be crucial in achieving re-documentation. This was clearly recognised by a majority of the staff we spoke to, and by foreign embassies.

6.24 The latest Criminal Casework guidance²⁵ sets out a detailed list of Home Office and other sources of information that should be checked in order to gather information on an individual, including immigration files of all known relatives, various immigration databases – such as visas and landing card records – and, if necessary, databases held by other government agencies. We strongly suggest that this guidance, which provides a systematic approach, is linked to the standard Documents for Enforced Returns guidance as an aid for staff who do not deal with criminal cases.

6.25 If further information cannot be found to establish identity and nationality, cases can be escalated by criminal caseworkers to the Criminal Casework Country Specialist Team and the Investigation Team.

6.26 A small intelligence resource also assists in gathering additional information on individuals for inclusion in document applications where insufficient evidence currently exists. This includes checking information held overseas, via either British embassies or international partners.

6.27 Investigation and Intelligence teams had significant input into some cases in our sample. This included:

- obtaining details of family members / associates (including through prison visitor and phone records) with a view to then approaching them to obtain further bio data for non-compliant FNOs;
- using supporting evidence lodged in the immigration records of other family members to help prove the FNO's nationality/identity;
- using FCO contacts abroad to obtain additional information in the country of origin; and
- using this information to either challenge the individual's previous story (an 'assertive interview') or to construct a nationality pack to lodge with the embassy in support of a travel document.

6.28 We saw direct evidence of these Investigation and Intelligence teams' activities in five of the nine cases (56%) where the individual had become compliant with the process. In two of the five cases where a travel document had been secured despite the individual remaining non-compliant, we also found evidence of these teams' direct involvement in securing these documents. This included the following case, where the extensive investigations carried out by the Home Office and a nationality pack submitted by the Investigations Team played a crucial role in securing a travel document for the individual.

²⁴ This figure does, however, include the five cases where no document will be issued unless they voluntarily return

²⁵ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/criminality-and-detention/nationality-identity?view=Binary>

Figure 14: Case study: Overcoming persistent non-compliance

Background:

- The Home Office made a first failed attempt to re-document the individual, an FNO, in 2005 when his nationality was not verified.
- A further ETD application lodged in 2006 was never resolved.
- The case was referred to Criminal Casework Investigations Team (CCIT) in March 2011, who began efforts to confirm identity through data searches, visiting alleged family members and examination of prison visitor and phone records.
- The FCO successfully traced family in country of origin, whom the individual claimed had died.
- The Home Office undertook an assertive interview with the individual in July 2012, during which the new evidence was put to him.
- An ETD application was delivered to the relevant embassy in February 2013, with a pack containing details of investigations, supporting evidence of nationality, evidence from interviews in UK and country of origin, as well as telephone transcripts.
- Following an embassy interview, where the Home Office's evidential report was used as the basis of questioning, an ETD was agreed in May 2013.
- The embassy stated that they had 'no doubt' over the individual's identity and nationality.

Chief Inspector's Comments:

- The Home Office overcame persistent non-compliance through excellent information-gathering and collaborative working.
- The work undertaken by the Home Office and the FCO resulted in a document being agreed in a case where little to no progress had been made over a number of years, showing the potential value of such intensive investigations.

Individuals who remain undocumented and non-compliant

- 6.29 In a majority of cases that remained non-compliant and had no document agreed, 20 of 26 cases (77%), we saw evidence that work was continuing to try and secure an ETD. However, we were concerned that in some cases progress was slow or non-existent. In the following case, we considered that the Home Office was pursuing efforts to obtain an ETD beyond any realistic prospect of success.

Figure 15: Case study: No realistic prospect of documentation

Background:

- The individual was convicted of using a counterfeit passport and recommended for deportation by the court. He claimed to have been born in country A, but lived in country B, which was now under the control of country C.
- In April 2009, he was moved into immigration detention. A detained interview scheme with country C was unsuccessful, despite positive pre-verification, as his identity did not match local records.
- In December 2010, after further unsuccessful ETD interviews, he was referred to the Investigations team, who began a series of searches with police, government agencies and overseas for supporting evidence of identity and nationality across three nationalities.
- In March 2011, the individual was released from detention on the grounds that there was no realistic prospect of re-documentation.
- He was re-detained in April 2012 and unsuccessfully interviewed three more times by different embassies.
- In 2013, after further searches unearthed a possible new name, additional interviews using this identity were held with two embassies, while data searches in a third found no trace.

Chief Inspector's Comments:

- The Home Office has made intensive and wide-ranging enquiries to substantiate this individual's identity, but this effort was spread out over more than three years, a very questionable use of resources.
- The strategy of repeated detained interviews has clearly not worked in this case.

6.30 We found a significant number of cases where the current approach appeared to rely upon repeat interviews in the hope that the individual would give in and agree to co-operate. This was a particularly common approach when the individual was detained. We appreciate that undocumented FNOs present extremely difficult challenges for the Home Office, as they must balance the rights of these individuals against the need both to secure their deportation and to protect the public. Maximum effort needs to be put into removing high harm cases, and non-compliance cannot be seen to be rewarded. But while the work undertaken by Home Office investigation teams had achieved some good results in individual cases, in a majority of the cases we sampled non-compliance had not successfully been overcome.

The use of detained interview schemes

6.31 As confirmed by our file sampling and recognised by staff, detained interview schemes conducted by foreign officials often produce quick decisions on ETD applications and are potentially an effective way of overcoming individual non-compliance. We were told that, in one established detained interview scheme, the foreign government agreed to issue an ETD in around 60-65% of all non-compliant cases. We found five cases in our file samples where non-compliance was overcome via detained interview schemes.²⁶ This reinforces our recommendation that the Home Office should expand the use of such schemes.

We found a significant number of cases where the current approach appeared to rely upon repeat interviews in the hope that the individual would give in and agree to co-operate

²⁶ This includes one case from our FNO sample and four cases from our sample of ETD applications made in late 2012.

The use of indemnity schemes

- 6.32 One nationality uses an indemnity scheme whereby, if supporting evidence of their assumed nationality is available, an individual is given two weeks to provide evidence to counter this assumption. If they fail to do this, then they are documented in their assumed nationality. This process effectively shifts the burden of proof onto the potential returnee. The Home Office should explore expanding this practice to other nationalities.

Assertive interviews

- 6.33 Assertive interviews, while not formally recognised in documentation guidance, are a key concept in addressing non-compliance. They involve interviewers using information from sources such as investigation reports in order to challenge and point out discrepancies in what the Home Office has previously been told.
- 6.34 While, other than in FNO cases, the Home Office did not have the skilled resources to carry out such interviews, we assess that such interviews offer significant value. The Home Office should consider whether there is merit in additional staff being trained in how to conduct such interviews.

Improving information-sharing with prisons and the police

- 6.35 We found no consistent overall approach to improving access to supporting evidence to assist in re-documentation processes. The view of staff was that information gathered at initial contact was crucial, as the individual was more likely to be co-operative and forthcoming as to their true identity and background at this stage. However, in some cases first contact would not be with an immigration officer but with a prison or police officer. More could be done in both areas to ensure that immigration interests were considered at first contact.
- 6.36 Criminal Casework currently have Immigration Officers based in nine prisons across the UK, supported by two mobile teams. This is to ensure that immigration staff make contact with all FNOs within five days of their arrival, to allow early collection of evidence of identity and nationality.²⁷ However, staff told us that access can be significantly more difficult in locations where immigration staff are not permanently located, and potentially useful supporting evidence was being missed by virtue of prison staff being unaware of what documents / information could be useful from an immigration viewpoint.
- 6.37 More could be done to ensure that information that may be relevant to the Home Office is gathered effectively where police are the first point of contact with immigration offenders. One of the aims of Operation Nexus,²⁸ which involves both immigration and police colleagues working together to target high harm individuals and seek their deportation or removal, was to educate police as to what sort of information and evidence may be useful for re-documentation. The ACPO Criminal Records Office was also developing a programme for police, setting out what they should record on nationality and identity and a pilot involving police collecting bio data was already underway.

We found no consistent overall approach to improving access to supporting evidence to assist in re-documentation processes

²⁷ <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/UK-Border-Agencys-response-to-the-management-of-foreign-national-prisoners-thematic-report.pdf> Para 3.3

²⁸ Under Operation Nexus, the Metropolitan Police will conduct investigations, including reviewing police custody records, financial investigations or visits to family members to establish nationality and identity for ETD documentations.

6.38 We welcome these potentially positive steps toward ensuring that immigration interests are considered at such encounters. The Home Office should develop a high-level plan with police and prison authorities so that supporting evidence to assist in documentation is identified and available to the Home Office as standard practice.

The Home Office should develop a high-level plan with police and prison authorities so that supporting evidence to assist in documentation is identified and available as standard practice

Information sharing with other government agencies

6.39 Criminal Casework's nationality and identity guidance provides some advice on approaching other government agencies for information that may assist re-documentation. However, the general perception among managers was that these resources could be better used; for example, the Home Office can currently only request 50 checks per month from HMRC. The Home Office needs to maximise the use of information held by these agencies that could assist with establishing identity and nationality,²⁹ and ensure that it has an effective high-level plan for gathering information from all relevant sources.

Lack of cooperation from embassies

6.40 Of the 52 files relating to FNOs that we sampled, 12 (23%) were categorised by the Home Office as 'country non-compliant'. We found two cases where a country was defined as 'non-compliant' by virtue of not documenting enforced returns as a matter of policy. Among the other cases, the level of non-cooperation varied significantly. In some cases the categorisation seemed to be linked to a one-off event, such as a travel document not being issued by an embassy in time for removal. More generally, an assessment of non-cooperation appeared to be based on a perceived delay in making a decision or issuing a document on the basis of the evidence provided.³⁰

6.41 In almost all cases we found that there was also some level of individual non-compliance: in six cases section 35 action had been considered and in a further two nationality was disputed. Identifying where non-compliance lay was, however, extremely difficult in some cases. Embassies legitimately having to conduct further, protracted checks could be perceived by the Home Office as a potential lack of cooperation. Conversely, an individual could be deemed non-compliant due to an embassy refusing to issue a document, even where he had provided extensive bio-data. Aside from those cases where as a matter of policy enforced returns could not be documented, in seven of the remaining cases where the Home Office defined an embassy as 'non-compliant' a travel document remained outstanding; in one other case no application had been lodged.³¹ These six applications had, at the time of our file-sample, been outstanding for an average of 719 days.

6.42 Where a returns process did exist, we identified probable deliberate non-cooperation on the part of the foreign government in only two cases. This was through refusal to accept nationality despite legal advice from the country of origin in one case, and obvious delays in processing the application in the other.

6.43 Home Office staff told us of some other significant patterns of lack of cooperation, such as:

- embassies refusing to issue documents due to the individual's circumstances in the UK, such as length of residence;

29 A further area which the Home Office should be looking to exploit in confirming identity and nationality is social media, such as Facebook. We found no evidence that this potential source of information was being used in any systematic way when it comes to documentation.

30 In one case it was unclear how the Embassy had been non-compliant in any sense. In this case, plus two others, a travel document had subsequently been secured.

31 In this case an application had not been made due to an apparent suspension of the documentation process. In three other cases a travel document had subsequently been agreed.

- embassies refusing to issue a document because the applicant had told them they had a further application or appeal outstanding; and
- embassies refusing or delaying accepting someone back because of previous political or criminal activity.

6.44 Some embassies that we spoke to confirmed that they did take claims of outstanding applications and length of residency into account in considering ETD applications.

6.45 The Home Office must make every effort to inform embassies of the significant legal safeguards in place to ensure that an individual is not removed unlawfully. However, if countries continue to refuse to re-document, or delay re-documenting, individuals in such cases, it is vital that this issue is escalated effectively, as such decisions have the potential to undermine the decisions not only of the Home Office but also of the independent courts.

Conclusions on non-compliance

6.46 Non-compliance can take many forms and individuals can move in and out of compliance, while the deliberately and the inadvertently non-compliant are, on occasion, extremely difficult to distinguish. We welcome many of the positive steps the Home Office is taking in an attempt to counter non-compliance, although we are concerned that these are almost entirely focused on criminal cases. The Home Office must address the gaps in its understanding of the extent of non-compliance across all other case types.

Much of the work being done at a tactical level was being undermined by the lack of a broader strategy in dealing with non-compliance

6.47 Much of the work being done at a tactical level was being undermined by the lack of a broader strategy in dealing with non-compliance. Further, we note that there is a significant gap, which has not been addressed, between the stated role of section 35 and the reality of how it is used. Finally, while there was a recognition amongst managers and staff that more should be done in terms of gathering information from other government departments it is not clear how, if at all, this is being progressed.

We recommend that the Home Office:

Develops a comprehensive strategy to tackle non-compliance that includes:

- identification of the scale of individual non-compliance with the re-documentation process across all case types;
- evaluation of the current use of section 35; and
- agreements with other government departments and public sector bodies to ensure that evidence of nationality and identity is available for re-documentation purposes.

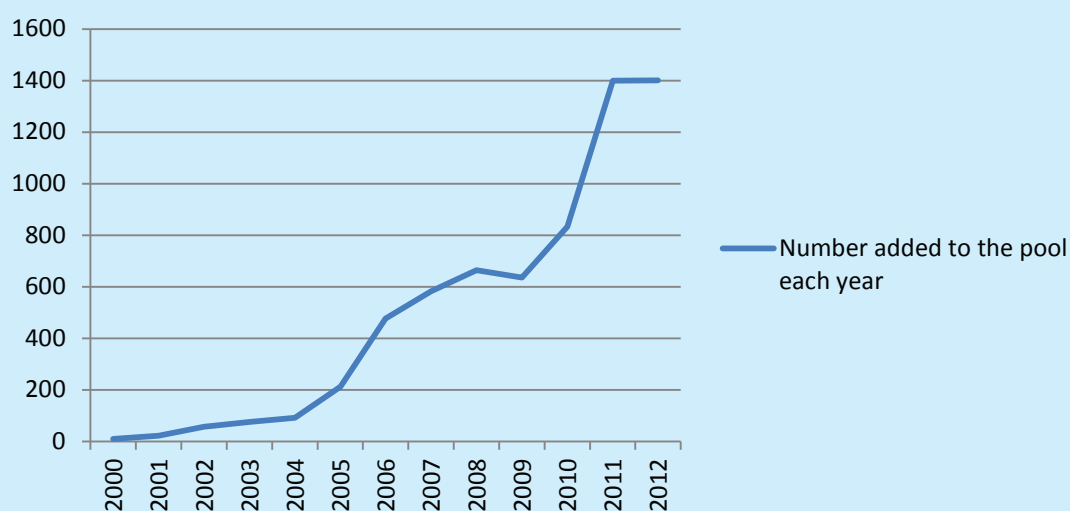
Chapter 7: Inspection Findings

Resources should be allocated to support operational delivery and achieve value for money

Unused ETDs: background

- 7.1 The Home Office's definition of an unused ETD is one that remains unused for the purpose of removal three months or more after it was agreed by the relevant embassy or government. The so-called 'unused pool' was established in 2000 in order to keep a record of cases where documents had been agreed, so that they could be used for future removals where appropriate. Since 2005, the number of cases added to the pool has increased substantially. At the end of 2012, according to figures supplied by the Home Office, the number of unused ETDs stood at 6,460 cases, with 10 nationalities accounting for 89% of the pool. Figure 16 illustrates how many cases have been added to the pool annually since 2000:

Figure 16: Additions to the unused pool of ETDs



- 7.2 CROS has ownership of the unused pool of ETDs and responsibility for updating it. It was clear, however, from our interviews with managers in CROS and caseworking areas that no area had overall responsibility for ensuring that the pool was used as a resource for removals.
- 7.3 It was widely acknowledged by both staff and managers that travel documents were frequently one of the most lengthy and difficult barriers to overcome when attempting to conclude a case. We therefore considered to what extent the unused pool was being used as a source of removals, as, by definition, these cases had all overcome this barrier.

7.4 We found that the unused pool could impact upon the Home Office's ability to apply pressure on foreign governments to agree greater numbers of ETDs. Some embassies were concerned that too many ETDs were being applied for and not used by the Home Office. They cited the existence of the unused pool as a reason why they would only issue a specific number of ETDs within a particular timeframe. The effective management of the unused pool is therefore extremely important in relation to the wider documentation process.

The effective management of the unused pool is extremely important in relation to the wider documentation process

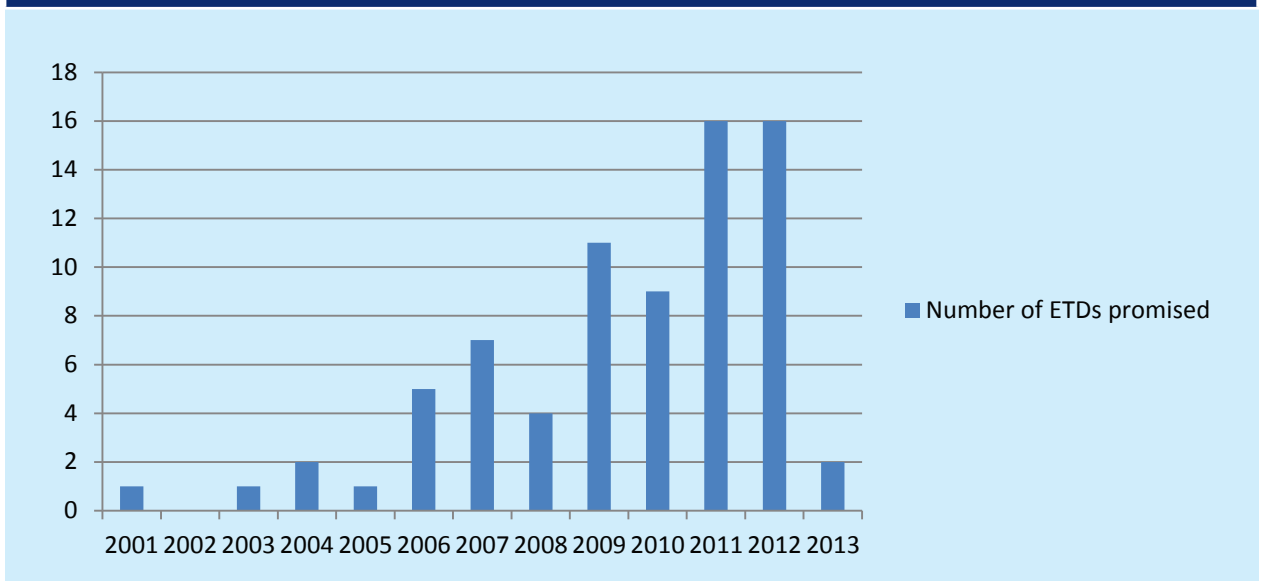
Our findings

- 7.5 We sampled 75 cases from the unused pool: 55 using the paper file together with the information recorded on CID and the remaining 20 using only CID.
- 7.6 In 43 cases (57%), the Home Office had set removal directions for the individual on at least one occasion. However, we found that removal did not occur in the majority of these cases, because the applicant raised late challenges to removal. In 70% of cases (30 of 43), the applicant either raised a last-minute legal challenge or submitted a fresh application to remain in the UK, which meant that removal had to be postponed.
- 7.7 The Home Office also missed opportunities to prioritise cases with ETD agreements when additional barriers to removal were raised. In our sample, there were a number of reasons why the Home Office had not used ETDs:
- in 32 cases (43%), the individuals were in contact with the Home Office but there was outstanding casework;
 - in 18 cases (24%), the individuals were not in contact with the Home Office;
 - in 14 cases (18%), the individuals were in contact but there were legal barriers to removal; and
 - in 11 cases (15%), the individuals had been granted leave or had obtained EEA residency rights.

Age of the unused ETDs in our file sample

- 7.8 Although in 43 cases (57 %) an ETD had been agreed within the past three years, in 17 (23%), the agreement had been reached over five years ago. The earliest ETD agreement dated back to December 2001, while the most recent was in January 2013. The Home Office should consider removing the oldest cases from the pool, as there is little realistic prospect of removal action being taken after many years have elapsed from the date of the original agreement. Figure 17 sets out the age of the ETD agreements in our sample.

Figure 17: Dates of ETD agreements



Monitoring and management of the unused ETD pool

- 7.9 The Home Office told us that the unused pool had reduced from 13,000 cases in 2009 to 6,460 by the end of 2012. This was due to data cleansing and the sifting out of cases where an ETD was no longer needed: for example, ones where leave had been granted. To test these assertions, we examined how effectively the unused ETD pool was being managed.
- 7.10 The Home Office previously circulated the list of unused ETDs internally on a monthly basis, as part of a removal logistics report. However, this process was discontinued in June 2012 because the data was captured on CID in a way that no longer reflected organisational structures. The Home Office had recently implemented a process for filtering cases where an ETD was no longer required and a monthly report was being commissioned to capture these cases.
- 7.11 Despite this, we found 11 cases (15% of our sample) where the applicants had been granted leave or had obtained residency rights by marrying a European national. These cases should therefore have been removed from the unused pool. It was clear from our sample that monitoring processes to ensure that the pool only contained the details of potentially removable applicants were not effective. If the 15% of the cases in our sample that had been granted leave was taken as representative of the unused pool as a whole, almost 1,000 cases could be cleansed using this criterion alone. Figure 18 examines one such case.

Monitoring processes to ensure that the pool only contained the details of potentially removable applicants were not effective

Figure 18: Case study: ETD no longer required

Background:

- The individual arrived in the UK in 2000 and made an unsuccessful asylum claim.
- He reported regularly between 2003 and 2008, but an ETD application was not made until 2007.
- The ETD was agreed in April 2007.
- The individual prevented removal in July 2007 by lodging an unsuccessful Judicial Review application, before absconding.
- In February 2010 he resumed contact with the Home Office by applying for permission to marry. This was granted in January 2011. He was not asked to resume reporting.
- In June 2012 he applied for residency on the basis of his marriage to an EEA national.
- This application was granted in August 2012 and he was issued with a five year residence card.

Home Office Response:

- As this individual currently has UK residence until 2017, the ETD will be cancelled and the embassy informed.

Chief Inspector's Comments:

- This case should have been removed from the unused ETD pool when the residence card was issued.
- The monitoring processes in operation were ineffective, as this case remained in the unused pool unnecessarily for over a year.

7.12 In addition, we found that, due to data quality issues, two cases in our sample were in the unused pool in error, as the relevant embassies had never promised ETDs. In both instances, this was because CID had been updated incorrectly.

Communication with foreign embassies

7.13 Staff told us that ETDs were sometimes issued but not used because embassies were not informed when an ETD that had been applied for was no longer needed. This could occur, for example, because the individual had been granted leave. The responsibility for communicating this belongs to CROS, but they were reliant on the relevant caseworker informing them that this action was required. CROS informed us that guidance clearly outlined that they must be informed when documents are no longer required. In addition, an interim operational instruction was issued to caseworkers in February 2013, reminding them of the process to be followed when an ETD is no longer needed.

7.14 The Home Office acknowledged there was room for improvement regarding the implementation of this process. While CROS had issued clear guidance to staff, managers must ensure the process is complied with if the number of redundant ETDs is to be reduced.

Prioritisation of cases in the unused ETD pool

7.15 In March 2013 the Home Office initiated an exercise to cleanse cases and work through barriers to removal in the unused ETD pool. We considered the extent to which the Home Office was prioritising outstanding casework in our sample of cases in the pool.

7.16 We were concerned to find that of the 32 cases (43%) in our sample that were in contact with the Home Office and had outstanding casework barriers preventing removal, only seven (22%) were the subject of active casework. We found no evidence of any ongoing activity to resolve these barriers in the remaining 25 cases (78%).

Of the 32 cases (43%) in our sample that were in contact with the Home Office and had outstanding casework barriers preventing removal, only seven (22%) were the subject of active casework

7.17 Contrary to what we were told by managers and contrary to the instructions issued in March 2013, we found that the Home Office had taken no action to ensure that the cases in our file sample were prioritised. If our findings reflect the bigger picture, this could mean that thousands of individuals, both those who should be removed and those likely to be granted leave to remain, are being kept in limbo for extended periods without resolution of their immigration status.

7.18 Following our preliminary findings, we raised this issue with the Home Office, who assured us that cases such as these would now be taken forward. However, we were disappointed to find that this had not taken place with our sample cases Figure 19 refers to one such case.

Figure 19: Case study: Failure to conclude casework barriers

Background:

- The individual was refused leave to enter the UK in 2002 but granted temporary admission for one night. He subsequently absconded.
- He resumed contact with the Home Office in March 2011, when he submitted an application to remain in the UK on Article 8 ECHR grounds (private and family life).
- An ETD agreement was reached in June 2011.
- In August 2011 the applicant's Article 8 application was refused with no in-country right of appeal.
- He was detained in September 2011 in order to effect removal. After a Judicial Review and two sets of further representations were all refused, he claimed asylum in November 2011 and was subsequently released from detention.
- In April 2012 the asylum decision was drafted, recommending no in-country right of appeal. This was never served on the applicant and remains outstanding.
- He has been reporting monthly since January 2012, receiving asylum support payments and accommodation since March 2012.

Home Office Response:

- The subject is currently reporting and has an outstanding asylum claim, which is now being taken forward.

Chief Inspector's Comments:

- This individual was in receipt of asylum support, in contact with the Home Office and with an agreed ETD.
- Despite the Home Office's assurance in July 2013 that this case would be taken forward, as of October 2013, the asylum decision remained outstanding.
- The completion of the asylum decision in this case should have been prioritised, particularly given the cost of his remaining on asylum support and the existence of an agreed ETD.

7.19 We also found that cases were unlikely to be prioritised if the outstanding barrier was an application that had been made to a different business area. Managers told us that temporary migration cases, charged applications³² and applications for residence on the basis of a relationship with an EEA national could be expedited if the circumstances were such that this was appropriate. However, we found no evidence in our file sample that such cases had been prioritised on this basis. Of the 25 individuals in contact with the Home Office where no action to overcome barriers to removal was taking place, 13 had outstanding applications of this type that were not being expedited. Figure 20 is an example of one such case where a further application had not been considered in a timely fashion.

Cases were unlikely to be prioritised if the outstanding barrier was an application that had been made to a different business area

Figure 20: Case study: Failure to conclude a charged application case

Background:

- The individual was encountered in 2007 working illegally.
- An ETD was agreed in June 2007 but the individual absconded.
- His next contact was in April 2010, when his solicitors submitted a charged application for leave to remain.
- This was refused in April 2011 with no right of appeal, but no referral to an enforcement team was made and no instructions to report were issued.
- The caseworking team wrote to his solicitors in May 2011 agreeing to reconsider this decision.
- In August 2011, the solicitors requested an update and were told that the case was under consideration and a decision would be made.
- No further activity had taken place since.

Home Office Response:

- The reconsideration request for this case remains outstanding. This case will be actioned.
- This case will be reviewed with a view to providing an instruction to report to the applicant.

Chief Inspector's Comments:

- Removal action should have been prioritised following the refusal of the charged application in April 2011, as an ETD had previously been issued.
- The lack of a joined-up process between casework areas resulted in this case lying dormant for almost two years. This is unacceptable and inefficient.

Supported cases

7.20 We found that seven (28%) of the 25 cases that the Home Office were not actively considering were receiving asylum support payments and accommodation. If this percentage were applied to the unused pool as a whole, it would mean that approximately 580 of 6,460 cases are receiving asylum support. Many of the cases in our sample involved applicants with a number of dependants who had been in receipt of support for a number of years. A breakdown of these cases is provided below.

³² Applications for leave to remain where a fee is payable to the Home Office on application.

Figure 21: Supported cases

Case number	Date support began	Number of family members	Date ETD agreed
1	July 2008	7	04 May 2011
2	April 2009	6	03 September 2012
3	March 2012	1	08 June 2011
4	August 2012	2	17 January 2013
5	January 2013	2	03 January 2012
6	January 2013	1	16 November 2012
7	June 2013	4	30 January 2008

7.21 While we acknowledge that the ETDs in these cases will need to be re-validated, we found that the unused pool was not being used as a potential source of removals for supported cases. We were particularly concerned at the length of time some of these individuals had been receiving support payments after ETDs had been promised, given the costs involved.

We found that the unused pool was not being used as a potential source of removals for supported cases

7.22 Managers told us that the best way to reduce the number of unused ETDs was to ensure that the ETD application was submitted at the most appropriate time. While this may have merit in reducing the number of cases that are added to the pool in future, it has no impact on how the existing pool is managed. Significant improvements are needed in the way the unused pool is monitored and cases are progressed.

7.23 We were told that an internal Home Office review of the unused ETD pool had been undertaken shortly before our inspection, which had recommended that cases be referred to a tasking team for action once an ETD was agreed. While we welcome this, we saw no evidence that it had had any impact on the cases in our sample. We consider it vital to the effective management of the unused ETD pool that appropriate cases are prioritised towards conclusion.

7.24 We therefore make the following recommendation:

We recommend that the Home Office:

As a matter of urgency, prioritises the resolution, either by removal or regularisation of immigration status, of the cases in the unused pool that are in contact; and

- traces individuals for whom an ETD has been agreed but who are not currently in contact;
- reviews the pool regularly to ensure that it only contains cases of individuals who are potentially subject to removal.

Management Information

Monitoring of removable cases where ETD required

- 7.25 In previous inspection reports, we have noted that the Home Office's ability to manage its operational areas efficiently is hampered by the absence of robust statistical data and management information.³³ We found a similar absence of reliable data in this inspection. This seriously limits how effectively the Home Office can identify and manage to conclusion the cases of those individuals without valid leave to remain in the UK whose removal has to be enforced.
- 7.26 The Home Office told us that approximately 9% of removals occur using an ETD. However, there is currently no data available to establish whether this proportion could be much higher if the ETD process itself were more efficient, or if targeting of cases needing an ETD were improved. In order to gauge the size of the challenge of re-documentation, we asked the Home Office to provide figures for the total number of potentially removable cases currently held by the Home Office where an ETD would be required. Figure 22 refers.³⁴

Figure 22: Removable pool data

Category ³⁵	Removable Pool (ARE only)	ETD Held	ETD needed - application made	ETD needed - no application made
FNO	Lead Case - Single	48	971	856
	Lead Case - part of family group	1	83	65
FAS	Lead Case - Single	249	4,564	30,016
	Lead Case - part of family group	37	710	2,698
NAO	Lead Case - Single	268	1,593	23,556
	Lead Case - part of family group	16	106	2,355

Note: Data provided by the Home Office Performance and Compliance Unit

- 7.27 While these figures appear to show a potential pool of some 58,000 cases where an ETD application is required, they are unreliable as a basis for defining strategy or allocation of resources for ETD applications. The figures only cover cases that have been through an appeal process, so any cases where no appeal has been made will not have been captured in Figure 22.
- 7.28 The gap here is potentially considerable, given that the Migration Refusal Pool, which represents only one source of potentially removable cases, stood at 182,500 in the first quarter of 2013.³⁶ On the other hand, the category 'ETD needed – no application made' may be falsely inflated due to CID's inability to distinguish accurately between those cases where a valid passport is available and those requiring an ETD.³⁷

33 See, for example, the report on UKBA's handling of legacy cases, published in November 2012, <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agency's-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf>

34 These figures are based on CID data, and cover all cases currently awaiting removal action that have exhausted their appeal rights.

35 The cases are classified as 'Foreign National Offender', 'Failed Asylum Seeker' or 'Non-Asylum Offender'

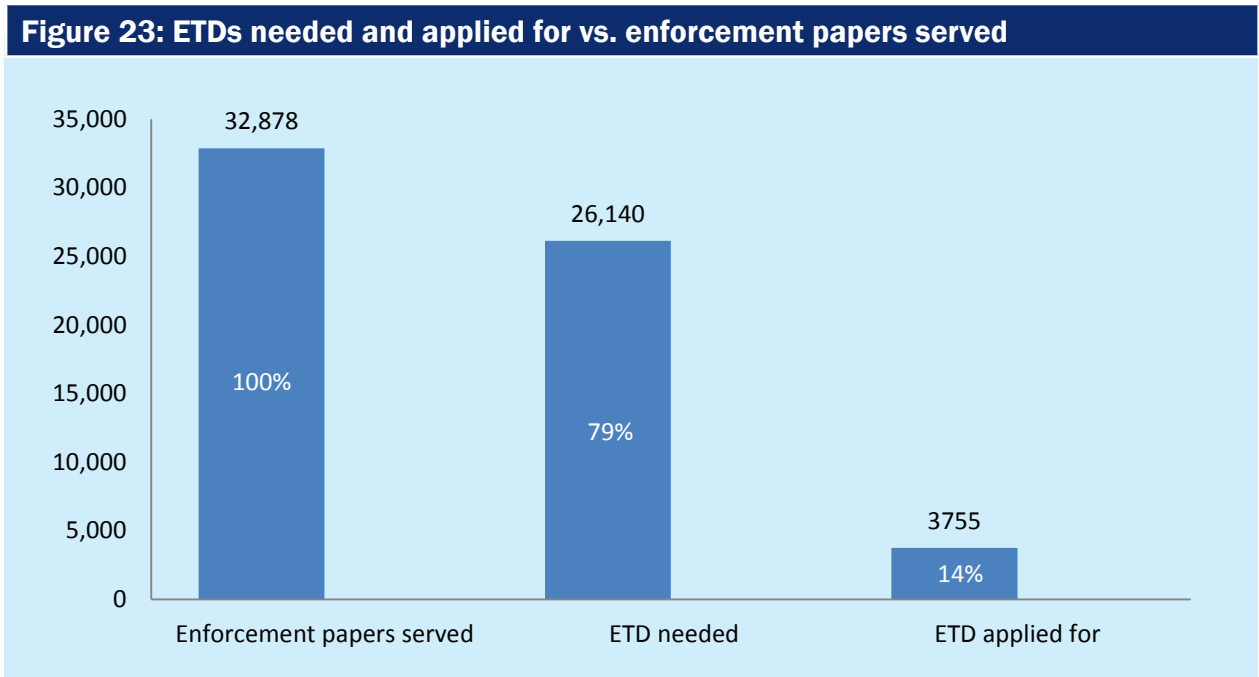
36 Quoted in HASC report on work of former UKBA, January-March 2013.

37 'Figures relating to 'no ETD applications made' may include cases where a valid passport is available. These cases have not been excluded because of data quality issues' HO Response to Evidence Request 29-07-13.

7.29 The Home Office assured us that steps were being taken to improve the quality of data available on removable cases through the development of the Artemis workflow and management information tool, which will be used within the new removals casework and detention estate management functions currently being established. This was a positive development, although we are concerned that the dependency of the new caseworking model for oversight of a large volume of cases on a relatively untried tool represents a potential risk to operational effectiveness. We also remain concerned that there is currently no data that could allow the Home Office to map accurately the number of cases that fall to be removed or to distinguish those where action to apply for an ETD will be required.

We remain concerned that there is currently no data that could allow the Home Office to map accurately the number of cases that fall to be removed or to distinguish those where action to apply for an ETD will be required

7.30 Although overall figures are not available, we were able to use a set of Home Office figures measuring the number of cases where enforcement papers had been served³⁸ between October 2012 and June 2013 to assess both the proportion of ETDs that would be needed if all potential removals were to be enforced and the current ETD application rate expressed as a proportion of that potential:



7.31 These figures show that, of the cases where notice of the intention to take enforcement action had recently been served, 22,385 ETDs potentially needed for removal had yet to be applied for.³⁹

7.32 While some of these cases will not be removed for other reasons, these figures imply that the size of the re-documentation challenge facing the Home Office has been underestimated and that the number of potential ETD-assisted removals is far higher than the approximately 9% of total removals that the Home Office told us it currently achieves. In the light of this, we make the following recommendation.

³⁸ Enforcement papers are served when an initial adverse decision (i.e. not to grant leave to remain) has been made.

³⁹ The data covered service of papers Oct 2012-June 2013 and ETD applications for these cases to the end of July 2013.

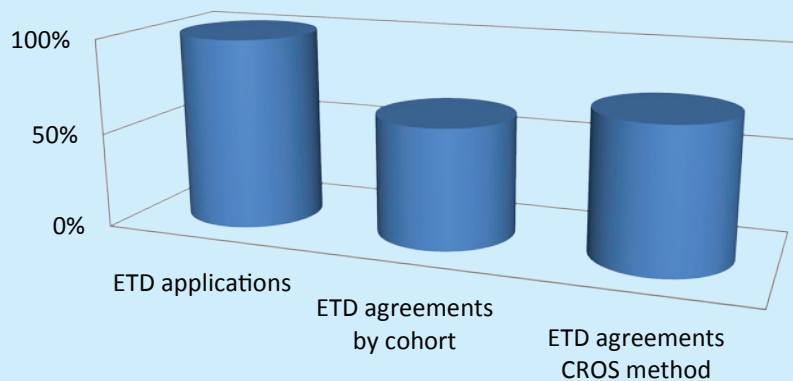
We recommend that the Home Office:

Gathers accurate data on potentially removable cases that would require an ETD in order to assess the resources needed for this task.

Performance measurement

- 7.33 The Home Office measured the effectiveness of the ETD application process by means of a target for conversion of applications to agreements. CROS reported an average rate for conversion of ETD applications to agreements of 73% for the months October 2012 to June 2013 against a target of 80%.
- 7.34 The methodology used to arrive at the conversion rate is the total volume of applications submitted in any one month compared against the total number of agreements received. We noted, however, that this method does not capture the progress of all applications, as high volume applications to embassies with a relatively quick turnaround time will always make up the bulk of agreements, while unsuccessful applications will remain untracked. Comparing a particular cohort of applications against agreement rates produced a significantly different result, shown in the figure below:

Figure 24: Methods of performance measurement compared



- 7.35 This analysis showed that, of 10,688 ETD applications made between April 2012 and March 2013, 6,777 resulted in an agreement, a success rate of 63% compared to the CROS reporting method which returns a figure for current performance of 74%.⁴⁰ We believe that the methodology currently used by CROS to measure performance gives a misleading picture of the efficiency of the ETD process, since it does not capture success or failure across all applications. Managers told us that consideration was being given to changing the counting method to address this issue.⁴¹
- 7.36 We noted that other potential measures of efficiency, such as average time taken prior to submission of applications to embassies, were not part of the performance framework, and that no benchmarking had been done on internal timings. Managers informed us that inconsistent practices across different casework areas had made benchmarking for internal timings difficult in the past, but that a single standardised process for ETD applications would be introduced, which would allow consistent performance management.

⁴⁰ The success rate for the top ten nationalities only, using the cohort method, was still lower at 57%.

⁴¹ The usage rate figures provided by CROS were calculated in a similar manner. When removal rates are compared across the same particular cohort, a usage rate of 40% is generated, compared to the 45% reported using the CROS method.

7.37 Managers were reluctant to benchmark embassy timeframes and incorporate these into performance management. They considered that the existing system of negotiation provided the necessary flexibility to maintain a reliable service, which might be compromised by an attempt to enforce timescales. We consider that the Home Office should measure and evaluate timings at every stage of the ETD process in order both to improve casework performance and to establish where action is needed to make protocols with embassies more efficient.

We consider that the Home Office should measure and evaluate timings at every stage of the ETD process

7.38 Data to distinguish between performance for detained and non-detained cases across all these measurements was not collected. Our file sampling showed that success rates for ETD agreements for detained cases were higher than for non-detained cases, and that ETDs were agreed more swiftly in such cases. However, we were surprised that more was not being done to ensure that the re-documentation of detained cases was being processed as quickly as possible, or to introduce performance standards that would link detention management with ETD progress.

We recommend that the Home Office:

Develops a comprehensive and accurate performance measurement framework to manage and improve the ETD process.

Chapter 8: Inspection Findings – Safeguarding Individuals

All individuals should be treated with dignity and respect and without discrimination in accordance with the law

Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose

Travel documentation and detention

- 8.1 Obtaining travel documents as quickly as possible is particularly important when an individual is detained pending removal, and issues of personal liberty and value for money – in terms of efficient use of detention space – need to be considered. We have commented on this issue in two previous reports, most recently in our joint inspection of detained casework with HMIP.

Our approach

- 8.2 We examined cases within our sample where the individual was detained prior to the submission of an ETD to establish:
- whether detention was used appropriately where a travel document was required; and
 - the effectiveness of the ETD process for detained individuals.

The legal basis for detention

- 8.3 Detention is an administrative decision taken by the Home Office rather than the judiciary. Chapter 55 of the Home Office Enforcement Instructions and Guidance, which sets out Home Office policy on the use of detention, states that detention is usually most appropriate:
- to effect removal;
 - initially to establish a person's identity or basis of claim; or
 - where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.
- 8.4 In accordance with the right to liberty in Article 5 of the ECHR, there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are to be used. The guidance makes clear that detention must be used sparingly, for the shortest period necessary, and for detention to be maintained there must be a realistic prospect of removal within a reasonable timescale.

Foreign national offenders

- 8.5 Home Office guidance does, however, make a stronger case for the detention of FNOs on the basis that there is a higher risk of absconding and harm to the public on release in such cases. It states that substantial weight should be given to such factors and that ‘it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale’.⁴²

Safeguards against unlawful detention

- 8.6 There are extensive safeguards against unlawful detention. The legality of detention can be challenged in the courts, and the detainee has the right to apply for bail at any time. The Home Office is expected to conduct regular detention reviews as set out in its guidance.⁴³
- 8.7 We found that detention reviews were being conducted as required by the guidance. Staff reassured us that detainees were being given a wealth of information about their rights regarding bail, following our recommendation in our recent report on detained casework.⁴⁴

We found that detention reviews were being conducted as required by the guidance

Timing of ETD applications for detained cases

- 8.8 When an individual is detained it is essential that actions, including re-documentation processes, are progressed as quickly as possible. The failure to complete even basic administrative tasks can have a significant impact on the length of time an individual spends in detention.
- 8.9 We found that in 36 out of 52 (69%) of the FNO cases in our file sample, re-documentation began before the detainee moved to immigration detention. This was positive, as there will always be cases where the Home Office will not get advance notice from the prison service that an individual is subject to deportation. For example, this would apply where they have served a long period on remand prior to receiving a short sentence.
- 8.10 Of the cohort of ETD applications made between October and December 2012, 26 (59%) of the 44 detained individuals had a travel document application submitted within 7 days of being placed in immigration detention, while 35 (80%) had an application lodged within 30 days.

Administration of detained cases where there was no ETD

- 8.11 While the majority of cases were effectively managed, we did see some cases in both our sample of recent ETD applications and our FNO sample where poor administration had an adverse impact on the effective handling of detained cases. Our main concern was the long gaps between individual actions which substantially increased detention time overall, such as in the case study at Figure 25.

⁴² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary> Chapter 55.1.3.

⁴³ Broadly, after the initial 28 days when there is a more intense level of reviews for all cases (except criminal cases), detention reviews are expected every month.

⁴⁴ ‘The UK Border Agency should ensure that all detainees are informed of their legal right to apply for bail, and how to do so, with each monthly progress report’ <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/UK-Border-Agency-response-to-the-joint-HMIP-ICI-report-detention-casework.pdf> (Para 1.21).

Figure 25: Case study: Delays in progressing case

Background:

- The individual, an FNO, was transferred into immigration detention in August 2010.
- The Home Office served a Deportation Order and submitted an ETD application in September 2010; the embassy referred this to the FNO's home country for verification checks.
- The case was placed on the CROS priority list from December 2010 to March 2011, without result.
- In March 2011, the individual was interviewed by his embassy and provided family contact details; the Home Office then made unsuccessful efforts to get additional evidence from the family.
- In July 2011, a joint Home Office and FCO visit to the individual's embassy took place. However, no response was received to subsequent update requests.
- In May 2012, a detention review indicated an intention to raise the case with Criminal Casework Investigations Teams. This was not done due to 'time constraints'.
- In September 2012, the case was referred to the Country Investigations / Specialist Team who suggested sending the application to the British embassy overseas to pursue.
- In November 2012, authorisation was given to release the individual, but this did not happen due to lack of a bail address.
- In January 2013, the British Embassy advised that details provided in the ETD application could not be confirmed. The Home Office requested a fresh ETD interview with the individual's embassy, but he refused to attend.
- The individual was released from detention in May 2013 after a bail address was secured.

Chief Inspector's Comments:

- While the individual and their government contributed to the delays, the Home Office did not consistently pursue this application.
- For one 10 month period, while this individual remained detained, nothing of substance was done to resolve the documentation issue. This is unacceptable, particularly given the cost of detention to the public purse.
- The main approach was simply to add the case to a priority list, with no result. The case should have been escalated to the investigations team and the British embassy overseas far earlier.

Length of detention

- 8.12 In our sample of ETD applications made in late 2012, of the 44 cases that were detained at the time when their ETD application was submitted, all had been released from detention by 15 June 2013. The average time spent in immigration detention for these cases was 54 days.

8.13 In contrast, we were concerned at the length of time that FNOs classed by the Home Office as non-compliant with the ETD process had spent in immigration detention. In our separate sample of these cases, nine individuals had been removed and 16 released on bail by 15 June 2013. However, the 27 individuals who remained detained had spent an average of 523 days in immigration detention.⁴⁵ The shortest period that any one FNO had spent in immigration detention was 176 days. The longest period was 1288 days, over three and a half years, at a total cost to the taxpayer of approximately £211,232.⁴⁶

We were concerned at the length of time that FNOs classed by the Home Office as non-compliant with the ETD process had spent in immigration detention

8.14 The average length of detention for those cases classified by the Home Office as ‘individual non-compliant’ was 563 days, and the average for those classified as ‘country non-compliant’ – despite the fact that country non-compliance is, according to Home Office guidance, a factor that may point towards release – was still higher at 755 days.

8.15 These statistics suggest that the amount of time spent in immigration detention by non-compliant FNOs is typically significantly longer than other detained cases, at an average of almost 18 months per individual. While we recognise that other considerations may, in some cases, explain the decision to maintain detention, this is a significant concern in terms of both value for money and the rights of the individuals themselves. We also question whether detention in such cases is in line with the Home Office’s own policy guidance, in particular that there must be a realistic prospect of removal within a reasonable timescale.

The shortest period that any one FNO had spent in immigration detention was 176 days. The longest period was 1288 days, over three and a half years, at a total cost to the taxpayer of approximately £211,232

Additional rules around non-compliance

8.16 Home Office guidance states that, if removal is considered imminent, then continued detention is appropriate. As a guide, it suggests that removal could be considered imminent if ‘a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.’

8.17 Availability of travel documentation therefore plays a key role in defining imminence, but non-compliance with the process can significantly delay or prevent removal. In all but six of the cases in our FNO sample, travel documentation was the key barrier to removal. Home Office guidance states that where removal is not imminent due to the FNO failing to cooperate with the ETD process, such ‘factors [weigh] strongly against release.’

Balancing responsibilities

8.18 We recognise that, as the case law of Chen [2002] EWHC 2797 (Admin)⁴⁷ sets out, such individuals are to some extent the authors of their own misfortune. We also recognise that detention can potentially be a significant tool in persuading individuals to comply and that the Home Office is concerned to ensure that non-compliance is not rewarded. However, we are concerned at how detention was being used in such cases.

8.19 The case study below provides an example where detention was maintained despite an apparent lack of any reasonable prospect of removal, and where no steps were being taken to resolve the issue.

⁴⁵ The average cost of a bed night for a detainee was £164 in 2011/2 (figures from Returns Directorate Business Plan, 2012/13). Based on this, the cost of detaining an individual for this length of time was £85,772.

⁴⁶ 1,288 days at £164 per night.

⁴⁷ <http://www.bailii.org/cgbin/markup.cgi?doc=/ew/cases/EWHC/Admin/2002/2797.html&query=EWHC+and+2797&method=boolean>

Figure 26: Case study: Detained with no realistic prospect of documentation

Background:

- After serving a custodial sentence, this individual had been in immigration detention since 2005, except for a brief spell in prison for attacking another detainee.
- A section 35 prosecution was originally threatened in 2005. It was to be pursued in 2006 but ceased due to an asylum claim.
- The Home Office cited pursuit of section 35 prosecution as one of the reasons to maintain detention, but it was never followed through. The individual occasionally suggested he might comply with the ETD process but then refused.
- The individual's home country will, in any event, only document voluntary returns.
- The individual's release had been regularly proposed, but never approved by Home Office senior managers.
- The individual had had more than 20 travel document or related interviews, with no success.
- The Home Office's latest suggested action was to carry out one more interview and offer voluntary return under the facilitated returns scheme (FRS).
- When we conducted our sampling, he remained detained.

Home Office Response

- Section 35 was not pursued because of the delay between issuing paperwork and action being taken.
- Detention is regularly reviewed; factors other than removability, including risk of harm and reoffending and the risk of absconding are taken into account in considering whether continued detention is appropriate.

Chief Inspector's Comments:

- The failure to take section 35 action in a timely manner limited the Home Office's ability to overcome this individual's non-compliance.
- The Home Office had no obvious means or strategy for overcoming this individual's non-compliance and had exhausted all options.
- While recognising the need not to be seen to reward non-compliance with the ETD process, there would appear to be no realistic prospect of removal in a reasonable timescale in this case. The individual's continued detention was therefore questionable.

Detention as default

- 8.20 This is not an isolated case. In his 2012/13 annual report, HM Chief Inspector of Prisons (HMIP) concluded that, rather than use section 35 to deal with non-compliance with the documentation process, caseworkers instead 'relied on open-ended and costly detention, effectively waiting for detainees to "give in"'.⁴⁸
- 8.21 In the 27 FNO cases in our sample that remained in immigration detention, we found that in:
- 13 cases no travel document application had been lodged with an embassy at any point;

48 <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf> page 66.

- a further six cases a previous application had been rejected and no new application had been submitted to the embassy; and
- only seven cases was an application currently under active consideration by an embassy or RLO.

8.22 Moreover, in at least 10 of the 19 cases where no application was lodged we assessed that there were no obvious new measures being taken to overcome non-compliance or gather supporting evidence to obtain a new travel document; the case study at Figure 26 is one such example.

Significance of findings

8.23 The broader significance of these patterns is three-fold. Firstly, these cases suggest, as HMIP has also found, that long-term detention is still the Home Office's default position in FNO cases where the individual is non-compliant with the ETD process. Of the FNO cases in our sample that had been released on bail rather than removed, only six had been bailed by the Home Office rather than as the result of an order by an immigration judge. This suggests a significant presumption towards maintaining detention. This is a questionable approach, given both the wording of the Home Office's own policies on detention and the presumption of a right to liberty under Article 5 of the ECHR.

8.24 Secondly, it was unclear in at least 10 of the detained FNO cases in our sample how a travel document could be expected to be obtained within a reasonable timescale. It is therefore difficult to see how the Home Office can argue that removal is a realistic prospect in a reasonable timescale in these cases. Finally, our findings also suggested that there was no real strategy for dealing with many of these cases, other than to maintain detention in the hope that the FNO would decide to co-operate with the re-documentation process. In our sample of FNO cases we saw no obvious cut-off point for when, should a document still not be forthcoming, release should be considered.

It was unclear in at least 10 of the detained FNO cases in our sample how a travel document could be expected to be obtained within a reasonable timescale

8.25 In our 2012 report on detained casework, we recommended that there should be an independent review mechanism for cases that remain in immigration detention for lengthy periods. This recommendation was rejected by the then UK Border Agency, but given our concerns as to the questionable nature of continued detention in many FNO cases, we make the following similar recommendation:

We recommend that the Home Office:

Urgently reviews the cases of all long-term detainees where the absence of an ETD is the primary barrier to removal, to ensure that there is a realistic prospect of removal within a reasonable period.

8.25 In addition, in our 2011 report on foreign national prisoners, we recommended that the Home Office develop clear timescales for obtaining travel documentation in individual cases. Although this recommendation was accepted by the Home Office, it has yet to be implemented. We therefore repeat it here:

We recommend that the Home Office:

Develops clear timescales for obtaining travel documentation in individual cases to ensure that deportation action can be taken more quickly where appropriate.

Personal data of individuals should be treated and stored securely in accordance with relevant legislation and regulations

File management

8.26 We originally requested 225 Home Office files. The Home Office were unable to provide us with 39 of the paper files we requested from the unused pool and ETD applications made in the last quarter of 2012 (19% of our overall request). This is outlined in Figure 27.

Figure 27: Files requested

File sample cohort	Number of files requested	Number of files received	% not received
October-December 2012	75	56	25%
Unused	75	55	27%
Non-compliant	52	52	0%
Total	202	163	19%

8.27 We gave the Home Office a period of over six weeks to locate and provide these files. We were therefore disappointed to find that the Home Office was unable to supply almost one-fifth of the paper files we requested.

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8.28 Staff told us that file retrieval continued to represent an obstacle to the efficient handling of cases. This was a particular concern when the case involved an asylum application, as some of the information, such as the substantive asylum interview, was not held electronically. We were told that it was often very labour-intensive trying to locate and retrieve paper files. Staff and managers told us that the difficulties involved in this process were usually attributable to human error and a failure to utilise file tracking systems effectively.

8.29 In the older cases that we examined, the amount of information on the paper file had built up significantly over the years, with many duplicate copies of minutes and documents. This was a particular issue in our sample of FNO files; in one case, dating back to 2003, there were 25 sub-files.

8.30 The issue of file management, storage and retrieval has been raised in several of our previous inspection reports. In our report on the handling of customs and immigration offences published in January 2013, we recommended that file retention and retrieval processes were managed to enable information to be provided efficiently when required.⁴⁹ This recommendation was accepted by the Home Office. We expect the Home Office to implement this recommendation consistently, effectively and without further delay.

⁴⁹ <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/An-inspection-of-how-the-UK-Border-Agency-and-Border-Force-handle-customs-and-immigration-offences-at-ports-FINAL-WEB.pdf>

Data protection

- 8.31 The Home Office should follow the principles enshrined within the Data Protection Act 1998 when handling an applicant's personal data. We considered how effectively they were following these principles in our file sample.
- 8.32 In 10 of the 163 paper files we sampled (6%), we found that original documents had been inappropriately retained. These documents included driving licences, marriage and birth certificates, and even a valid passport. While we accept that it is necessary for the Home Office to procure documents of this nature in order to apply for an ETD, it is vital that they are stored securely in a valuable document bank and not kept on the paper file. We have highlighted above the potential difficulties in locating paper files and many of these documents would be difficult to replace. Indeed, persistent loss of identity documents by the Home Office was an issue raised by some foreign embassies.
- 8.33 In eight cases (5%) there were either documents or notes contained on the file relating to somebody not connected with the application. We consider that there was no justification for this. The Home Office must ensure that all staff are aware of the importance of handling personal data and are careful to store it only in appropriate locations at all times.

Criminal convictions

- 8.34 Home Office policy is not to disclose details of an individual's criminal convictions to their embassy when making an application for an ETD. The guidance on how to obtain a travel document also states that details of any asylum claim, applications for stay in the UK, or personal information that might draw unnecessary attention to the person concerned should not be disclosed.
- 8.35 Despite this, we found clear evidence in three cases that the individual's criminal convictions in the UK had been disclosed to their embassy when the ETD application was made. In all three cases, details of the criminal convictions were included within the ETD submission packs that were sent to the relevant embassy. Although a relatively small number of cases, this directly contravenes the guidance. As indicated by the guidance, this could draw unnecessary attention to the individual who was not relevant to the re-documentation process. The Home Office needs to ensure that safeguards are put in place to ensure that the disclosure of criminal convictions only occurs in cases where relevant bilateral agreements, or other legal safeguards, are in place and disclosure is justified in terms of the need to obtain an ETD.

Chapter 9: Inspection Findings – Continuous Improvement

The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions

Removals Casework and National Removals Command

- 9.1 Just prior to the on-site phase of our inspection, the Home Office implemented a structural reorganisation of its removal casework operations and the management of its detention estate. This was done to improve oversight and management of cases where individuals had been refused leave to remain in the UK but had not yet returned home.
- 9.2 The reorganisation had been planned in order to address the large number of cases awaiting resolution in the Migration Refusal Pool, and to improve the cost-effectiveness of the Home Office's detention estate. Both the National Removals Command (NRC), which was scheduled to take over management of all detained cases from the start of 2014, and the Removal Casework Directorate were in the process of development and were not fully staffed.
- 9.3 Criteria for allocation of detention beds had been changed to ensure that detention was only authorised where staff could be confident that it would be possible to remove an individual within a relatively short period of time. In order to ensure the consistency of this process, detention management had been centralised and a 'gatekeeper' function, assessing detention requests against this criterion, introduced.
- 9.4 Given that the new structure was not fully operational at the time of our inspection, we were not able to assess the effect that the centralised arrangements would have on the efficiency of the ETD process. While we were impressed by the clear vision of an integrated casework operation set out by senior managers, we found that caseworkers were not fully aware of the purpose of the reorganisation, or how the detail of the new processes would function. However, where the vision had been communicated, staff were enthusiastic about the new arrangements for managing detention, and believed they would make it possible to progress more cases, more efficiently.

Re-documentation within new structure

- 9.5 Arrangements for managing the ETD process were still in flux at the time of our inspection. Staff told us that management of the re-documentation process had not been planned in advance of the rollout of the new procedures; roles and responsibilities had not been clarified until just before the new structure was operational. Some staff who had taken on responsibility for ETD applications said that they had had no training in the process and did not fully understand it. In other locations, experienced staff were unclear on how the new process would work, and felt that reassignment of staff with expertise in documentation to new roles, without knowledge transfer, had led to a loss of skills in this area.

9.6 Managers acknowledged that decisions on where responsibility for ETD applications would sit had not yet been finalised and that an interim process was running. In addition, the original modelling had overestimated the number of cases that were already documented and underestimated the volume of those that would require an ETD or some other form of re-documentation for removal, so re-distribution of resources and roles might be required. It was disappointing to find that re-documentation had not been fully integrated into the planning of the new casework model.

It was disappointing to find that re-documentation had not been fully integrated into the planning of the new casework model

9.7 We were concerned to find that caseworkers within the new structure reported that ETD applications were not being progressed because enforcement staff were not accepting requests to perform re-documentation interviews where these did not align with their local priorities. Managers in these areas confirmed that they were aware of this issue. It was explained that, in the long term, priorities for all enforcement and casework staff would be set centrally once the National Operating Model was operational in April 2014.

9.8 We believe that – at least in the short term, pending the planned central tasking process becoming operational – lack of alignment between caseworking and enforcement areas of the Home Office has the potential to derail the ETD process, and hence successful achievement of removals. We consider that the Home Office should take steps to ensure that priorities for ICE teams and removals casework are aligned so that ETDs required for removal casework are progressed.

Lack of alignment between caseworking and enforcement areas of the Home Office has the potential to derail the ETD process, and hence successful achievement of removals

Prioritisation of charged cases

9.9 Our samples of recent ETD applications and of unused ETDs showed that a major cause of delay or failure in removing individuals was the Home Office's inability to deal swiftly with new applications made for further leave or EEA residence cards. Managers assured us that the new removals casework structure would address this problem.

9.10 We explored with managers how the particular issue of 'charged cases' where a fee is payable would be dealt with, as these cases would not come within the caseworking remit of the new structure. Our file sampling had identified that no mechanism was in place to ensure that such applications would be prioritised where a removal was imminent in order to enable a case to reach a definite conclusion, whether of leave granted or removal enforced. Managers claimed that a process was now in place to ensure that such cases would be prioritised by arrangement with the caseworking location concerned. However, we found in interviews with staff that practice was not consistent between teams or across different locations within the new structure.

9.11 We believe that the efficiency of both the new removals casework organisation and the effectiveness of the ETD process will be severely hampered if the gap in dealing expeditiously with charged cases is not addressed.

We recommend that the Home Office:

Ensures that charged cases are prioritised where removal action has been initiated.

Risks to operational delivery should be identified, monitored and mitigated

Relations with foreign embassies and governments

- 9.12 Senior managers identified unpredictable changes in relations between the UK and countries to which foreign nationals needed to be returned as the main risk to an effective re-documentation process. Our sampling showed that not all embassies cooperated fully with Home Office attempts to re-document their nationals. Home Office statistics on success rate by country also indicate that some nationalities are consistently more difficult to document. We were told that the Home Office's focus on increasing removals was to some extent in conflict with wider government objectives of securing and maintaining successful international relationships. We accept that there are significant factors that are beyond the Home Office's control. However, in its engagement with foreign missions and governments, the Home Office should continue to emphasise the international obligation to re-document and accept the return of their own nationals.

Re-documentation strategy

- 9.13 The 2013/14 Business Plan for the Home Office's Returns Directorate states that one of its objectives is to 'be better at securing the right travel documents and ... demonstrably improve our use of the documents we have already secured'. We endorse this statement: re-documentation is a part of the Home Office remit only because of the need to remove individuals who do not have valid travel documents, and the effectiveness of an ETD process can only ultimately be judged by the rate of removals achieved.

- 9.14 However, we were told in interviews that the vision for re-documentation was 'as many ETDs, as quickly as possible'. This suggests that there is no consistent, strategic vision for re-documentation whereby resources are targeted at obtaining those ETDs that are most likely to be used for removal in accordance with priorities agreed across the Home Office. This may stem in part from the absence of the necessary tools to define and carry out this vision. We were assured that the creation of a national tasking process, scheduled for April 2014, would enable a strategic view of the application process and the usage of existing ETDs to be aligned with removals priorities. However, there is at present no governing mechanism whereby the ETD process is systemically linked to enforcement objectives.

There is no consistent, strategic vision for re-documentation whereby resources are targeted at obtaining those ETDs that are most likely to be used for removal

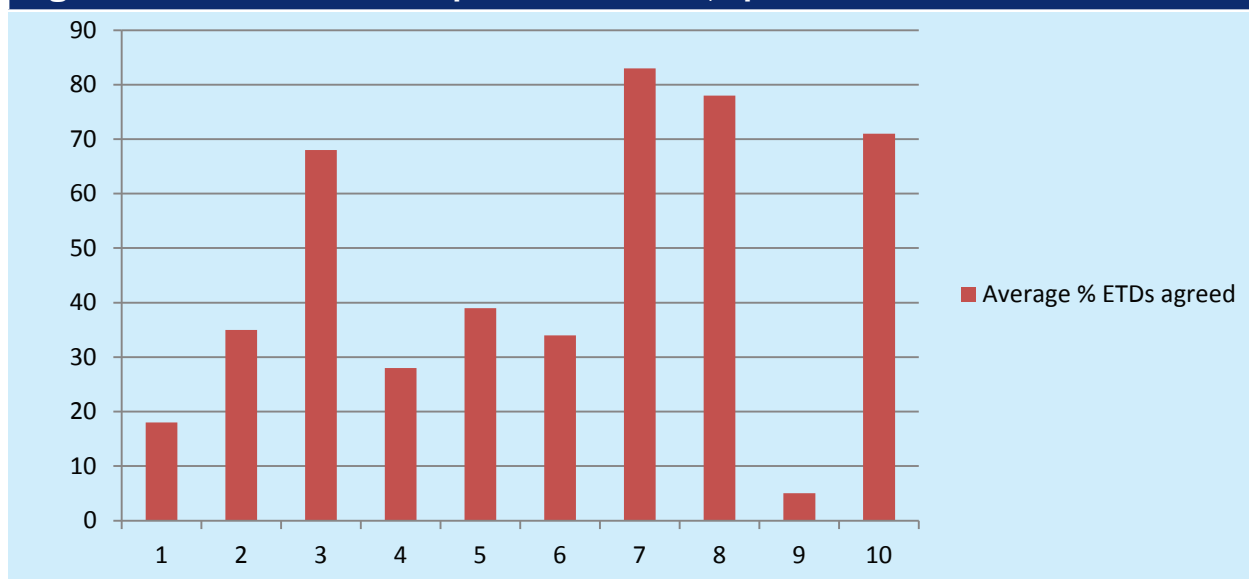
- 9.15 Ownership of the ETD process currently sits with CROS. While CROS's performance targets include an increase in usage rates for ETDs, removal targets are the responsibility of individual casework areas. CROS staff commented that they had only limited ability to influence usage of ETDs by caseworking areas, as other priorities in these areas might conflict with pursuing a particular documented case to removal.
- 9.16 The existence of an unused pool of ETDs suggests that there has been a consistent and long-term failure to join up the process of applying for ETDs with the usage of documents once obtained. Overall usage rates for ETDs run at approximately 40%.⁵⁰ While our file sample of recent ETD applications had a much higher usage rate of 65% for the 45 cases where an ETD had been obtained, examination of the remaining recent ETD applications and of the unused ETD sample showed that cases with travel documents are still not being consistently prioritised by enforcement staff.

⁵⁰ See figures at footnote 41, paragraph 7.35 above: CROS figures are typically higher at about 45% because of different counting methods.

9.17 The failure rate of approximately 25% for current ETD applications overall⁵¹ also raises the question of whether the correct ETDs are being applied for: of 4,000 outstanding applications, some 1,000 can be expected to fail. Considering application success rate by country, it is clear that nationality is a critical success factor. Figure 28 shows the application success rate for the top ten nationalities for ETD applications April-December 2012.

There has been a consistent and long-term failure to join up the process of applying for ETDs with the usage of documents once obtained

Figure 28: Success rates for top ten nationalities, April-December 2012 ⁵²



9.18 We were told by CROS and senior managers that the most important factor in determining ETD application success was the relationship with missions. Embassies with which the Home Office has created and maintained a productive relationship account for a high percentage, in volume terms, of successful ETD applications.

The failure rate of approximately 25% for current ETD applications overall also raises the question of whether the correct ETDs are being applied for

9.19 Any coherent re-documentation strategy must recognise the reality that some countries are easier to remove to than others, and that, where other considerations such as risk of harm are not paramount, limited resources must be deployed where they will be most effective in obtaining documents and ultimately removals. In the absence of strategic priorities across discrete parts of the Home Office that link decisions on targets for ETD applications with removal priorities, we consider that in respect of certain nationalities there is a risk of continued over-application for, and significant non-usage of, ETDs.

We recommend that the Home Office:

Aligns its strategy on ETD applications and usage to its removal priorities.

⁵¹ Based on CROS' reported success rate of 74%; using the 'cohort method' the failure rate would be higher.

⁵² PCU data, produced for Continuous Improvement team, July 2013.

Appendix 1: Role and remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency. The initial remit was to consider immigration, asylum and nationality issues but this was subsequently expanded by the Borders, Citizenship and Immigration Act 2009 which gave the Chief Inspector additional powers to look at customs functions and contractors employed by the Agency.

On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and, under a new package of reforms, brought back into the Home Office reporting directly to Ministers. The Chief Inspector continues to inspect UK immigration functions previously carried out by the Agency, immigration and customs functions exercised by Border Force, as well as contractors employed by the Home Office to deliver any of these functions.

The Chief Inspector is an independent public servant, appointed by and responsible to the Home Secretary.

Appendix 2: Inspection Criteria

The following of the Chief Inspector's standard inspection criteria were used in this inspection.

Inspection criteria used for this inspection

Operational Delivery

1. Decisions on the entry, stay and removal of people 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 in accordance with the law.
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. Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.
6. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations.

Continuous Improvement

7. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
8. Risks to operational delivery should be identified, monitored and mitigated.

Appendix 3: Glossary

Term	Description
A	
Artemis	Workflow and data management system developed by the Home Office to improve management of casework.
Asylum	Protection given by a country, pursuant to the Refugee Convention of 1951, to someone with a well-founded fear of persecution in their home country.
B	
Biometrics	Data such as fingerprints and digital face scans that can be used to establish identity.
C	
Case Information Database (CID)	The Casework Information Database is an administrative tool used by the Home Office to perform caseworking tasks and record decisions on cases.
Caseworker	Home Office term for official responsible for making decisions on cases and for completion of initial ETD applications.
Country Returns Operations and Strategy team (CROS)	Team within the Home Office responsible for liaison with foreign embassies and overall management of the ETD application process.
Criminal Casework (CC)	Directorate responsible for managing cases involving foreign national prisoners. CC considers whether a person should be deported from the UK, having committed a criminal offence.
Crown Prosecution Service (CPS)	The government department responsible for prosecuting criminal cases in England and Wales.
D	
Deportation	The process used to remove some foreign national prisoners who have committed criminal offences in the UK. People who are deported can only apply to return to the UK after they have successfully applied to have the Deportation Order revoked.
Deportation Order	An official document that requires a person to leave the UK. It also prohibits them from re-entering the UK while it remains in force.
Document Liaison Officer (DLO)	Home Office official responsible for quality assuring ETD applications before submission to an embassy.
E	

European Economic Area (EEA)	The European Economic Area was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association and the European Community, later the European Union (EU). All EEA nationals enjoy freedom of movement rights in the EEA. This means that they are not subject to the Immigration Rules of the UK and may come to the UK and reside here in accordance with the 2006 Regulations. They do not require permission from the Home Office to enter or remain, nor do they require a document confirming their free movement status.
Emergency Travel Document (ETD)	Replacement travel document issued by a High Commission, Embassy or Consulate where an individual is to be removed and has no valid passport.
F	
Foreign National Offender (FNO)	A foreign national who has been convicted of an offence for which they have been imprisoned (previously known as a Foreign National Prisoner).
Foreign National Prisoner	See Foreign National Offender.
H	
HMRC	Her Majesty's Revenue and Customs. Government department that collects and administers taxes. Also enforces and administers border and frontier protection amongst other functions.
I	
ICE team	Immigration Compliance and Engagement team. Local team undertaking community engagement, arrest and enforcement functions for the Home Office.
Immigration Detention	Detention under immigration powers, sanctioned by immigration officials rather than judiciary. Individuals may be held in prisons or immigration removal centres.
Immigration Offender	A person who has broken the immigration laws, for example by entering or staying in the country illegally.
M	
Management Information	Information produced internally within the Agency for management use.
Migration Refusal Pool	A group of people who have had leave to remain in the UK refused and have 28 days to leave the country.
N	
Non-compliant	For the purposes of re-documentation, the Home Office defines individuals or embassies as non-compliant if they do not cooperate with or facilitate the re-documentation of an individual in order to enable their removal with an ETD.
O	
Overstayer	A person who illegally remains in a country after the period of their permitted leave has expired.
P	

Pre-Verification Checks	Checks carried out in the claimed country of origin of an individual to confirm nationality or identity in advance of the submission of an emergency travel document application to the relevant high commission, embassy or consulate.
R	
Removal	The process by which foreign nationals with no entitlement to remain in the UK are removed.
Removals Casework	Directorate within the Home Office responsible for concluding cases where a decision to refuse leave to remain has been made but the individual has not left the UK.
Returns Liaison Officer (RLO)	UK government official based overseas who as part of their duties assists the Home Office to verify an individual's identity or nationality for ETD applications.
S	
Supporting Documents	Any documents that can be used to help confirm the identity or nationality of an individual for the purposes of an emergency travel document application.
U	
United Kingdom Border Agency (UKBA)	Former agency of the Home Office which, until April 2013, was responsible for considering applications for permission to enter and stay in the UK
V	
Verification Checks	Checks to confirm the claimed identity and nationality of an individual as part of the emergency travel documentation process, usually conducted in the country of origin using local records.

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Assistant Chief Inspector:

Dr Rod McLean

Lead Inspector:

Dr Anna Marslen-Wilson

Inspection Officers:

**Shahzad Arrain
James Clarke
Michael Townson**

Inspection Support:

Melanie Harris

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