



A reinspection into failed right of abode applications and referral for consideration for enforcement action

May – July 2019

David Bolt

Independent Chief Inspector of
Borders and Immigration

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Foreword

A Certificate of Entitlement to the Right of Abode confirms that a person is “free to live in, and come and go into and from, the United Kingdom without let or hindrance”.¹ The Certificate is obtained by making an application to the Home Office.

In 2016, I was asked by the Home Secretary to review the process for referring failed right of abode applicants for enforcement action. I found that the numbers of right of abode applications received were small, just over 26,000 in the ten years to 2015, and that over 80% of applications were granted. But, a significant percentage of refused applications were from individuals who had no right to remain in the UK at the time of applying and there was no consistency about referring these individuals for enforcement action, including where they had been identified as having used deception when applying.

The inspection report made three recommendations, all of which were accepted by the Home Office. They aimed at ensuring that, where appropriate, failed applicants were referred for enforcement action and that this was done in a consistent fashion and in line with guidance.

This reinspection sought to examine how this process was working. It found that improvements had been made, but some elements of the original recommendations still remained “Open”, despite previous assurances, and there were further areas where improvements were needed.

According to the evidence provided for this reinspection, the trend in applications received each year is downwards; the refusal rate is low, 10 to 12% in the last two business years; guidance and Standard Operating Procedures are up-to-date; and, caseworkers are experienced and appear genuinely committed to providing good customer service. With these advantages, the process should be efficient and effective. However, the Home Office needed to improve its record keeping and quality assurance in order to prove that this was indeed the case and to demonstrate that right of abode work fully supports other Borders, Immigration and Citizenship System functions.

This report makes six recommendations, the first of which is that the Home Office should review the recommendations from the 2016 inspection and, where necessary, complete the actions required to close them. The remainder are new. The report was sent to the Home Secretary on 23 October 2019.

David Bolt
Independent Chief Inspector of Borders and Immigration

¹ The Immigration Act 1971

1. Purpose and scope

- 1.1** 'An inspection into failed right of abode applications and referral for enforcement action' was published on 13 October 2016. The inspection examined the effectiveness of actions taken by the Home Office and others after an application for right of abode (RoA) had been refused. It did not look at the quality of decisions taken to refuse RoA applications.
- 1.2** The inspection report contained three recommendations. These concerned:
- ensuring that individuals refused RoA without valid leave at the time of refusal were considered for enforcement action
 - aligning the referral process for refused cases that are suitable for enforcement action with guidance
 - making evidence of deception available to Home Office caseworkers
- 1.3** In its formal response, the Home Office "accepted" all three recommendations, stating that two were "already implemented" and that the third had been "implemented in part".
- 1.4** This reinspection looked again at the recommendations and at what actions the Home Office had taken. It also looked to evaluate the effects of those actions.
- 1.5** Where relevant, in line with the ICIBI's 'Expectations' (see Annex B), inspectors also sought to identify any further areas for improvement.

2. Methodology

2.1 Between June and July 2019, inspectors reviewed:

- data provided by the Home Office for all right of abode (RoA) applications decided between 1 January 2015 and 30 April 2019, showing grants and refusals broken down by applicants with and without valid leave to enter or remain, and also showing where follow-up enforcement action was taken
- current and archived policy and operational guidance for processing RoA applications and for dealing with applications where fraud or forgery is identified
- current training packs or materials used to train RoA caseworkers
- 50 RoA case records for applications refused between 1 June 2018 and 31 May 2019

2.2 On 26 June 2019, inspectors visited Nationality Group in Liverpool and interviewed managers, Senior Caseworkers and caseworking staff about the process for handling RoA cases after refusal and what they did to identify fraudulent documents.

2.3 Inspectors also looked for evidence that actions taken on RoA cases met the ICIBI's 'Expectations' (see Annex B).

3. Summary of conclusions

- 3.1** In 2016, inspectors found that where applicants for a Certificate of Entitlement to the Right of Abode in the UK were refused, there was no consistency about referring those individuals who did not have the right to remain in the UK at the time of their application for enforcement action. This lack of consistency extended to cases where the individual was known or suspected to have used deception, typically forged or fraudulent documents, when applying for right of abode (RoA).
- 3.2** The 2016 inspection report, which was sent to the Home Secretary in August 2016, made three recommendations aimed at bringing about greater consistency. All three were accepted by the Home Office. By the time the report was published in October 2016, the Home Office reported that the first two had already been implemented and the third had been “implemented in part”.
- 3.3** This reinspection found that improvements had been made, but some elements of the original recommendations still remained “Open”, despite previous assurances, and there were further areas where improvements were needed.
- 3.4** In 2017, as a way of ensuring consistency, the Home Office decided to “pull” all refused RoA applications where the applicant had no current basis of stay in the UK automatically into the Migration Refusal Pool (MRP). This was not the intention of the recommendation, and the decision failed to take account of the fact that an individual might correctly be refused RoA but still have the right to remain in the UK, the refusal having no effect on immigration status. When the Home Office recognised its mistake the practice was quickly stopped. However, over a period of several months, “a small number of cases” were wrongly referred for consideration for enforcement action.
- 3.5** The system in place at the time of this reinspection involved an assessment of the circumstances of each case. This was clearly more appropriate, but it made it harder for the Home Office to demonstrate that its decision making and actions were consistent. However, the involvement of senior caseworkers in considering enforcement referrals, plus clear and properly aligned guidance and caseworker Standard Operating Procedures (SOPs), provided some measure of assurance.
- 3.6** But, this was undermined by poor record keeping (for example, failure to record that referral for enforcement action or for forgery checks had been considered, and that information had been shared with other parts of the Home Office) identified in the sample of 50 files examined by inspectors. In common with much of BICS, RoA caseworkers need to improve the quality of their record keeping regarding their decisions and follow-up actions.
- 3.7** As elsewhere, the Home Office had looked to an IT solution, known as the “Magic Minute”. This guides RoA caseworkers step-by-step through the consideration process and generates a record based on the entries the caseworker completes at each step. However, while it goes to the consistency point, there is a risk that this will encourage a “tick box” approach and it

therefore needs to be supported by adequate quality assurance checks, evidence of which was limited.

- 3.8** On balance, provided the Home Office pays closer attention to its RoA record keeping, inspectors were satisfied that Recommendation 1 from the 2016 inspection, which concerned the flow of appropriate RoA refusals into the MRP, can be considered “Closed”.
- 3.9** Some of the “small number of cases” that were “pulled” automatically into the MRP were Windrush individuals. Following its creation in April 2018, the RoA unit (and other Nationality Group caseworking areas) worked with the ‘Windrush Taskforce’ for a period. And, in May 2018, the ‘Nationality: right of abode’ guidance was updated to include a flowchart to help caseworkers assess whether a “citizen of the UK and Colonies” had the right of abode on 31 December 1982.²
- 3.10** RoA caseworkers and managers reported that since the Windrush scandal the culture surrounding decision making had changed significantly. They were now more customer focused and the tone and content of correspondence was more helpful, even where the decision was a refusal. For example, where the applicant was likely to be entitled to RoA but the application had been refused due to insufficient evidence of entitlement, refusal letters advised them to make a further application providing additional evidence or signposted them to an approved immigration adviser.
- 3.11** If the Home Office is looking to demonstrate a change of culture regarding RoA applications, and more generally, it might usefully review the decision to redact passages of the GOV.UK version of the guidance. It was unclear to inspectors why these redactions, which concerned various checks that caseworkers were required to make, were considered necessary in the first place. But, their effect is to raise suspicions about what should be a straightforward and transparent process. This is at best unhelpful, particularly in the wake of the Windrush scandal.
- 3.12** Given the efforts to identify and remedy Windrush errors, it is reasonable to assume that any refused RoA applications from Windrush individuals that were automatically “pulled” into the MRP in 2017 have since been identified. However, in responding to this reinspection report, the Home Office should provide assurances that all cases, not just Windrush ones, that were wrongly “pulled” into the MRP have been identified and remedial action taken.
- 3.13** At the time of the reinspection, inspectors were satisfied that the first part of Recommendation 2, regarding the alignment of guidance and practice, could also be considered “Closed”. However, the Home Office needed to guard against lengthy delays in updating SOPs when the guidance changes, as happened in 2017 and again in 2018, since this increased the risk of errors and inconsistencies.
- 3.14** Based on the 2019 file sample, the second part of Recommendation 2 did not appear to have been implemented. This concerned individuals who were the subject of enforcement action when they made their RoA application. The recommendation was that the RoA caseworker should return the refusal to the relevant enforcement unit to continue its action. The reinspection found that the RoA guidance was deficient and needed to be expanded to cover such a situation.
- 3.15** Recommendation 3 concerned cases where deception was identified or suspected. The Home Office told inspectors that the number of cases of false or fraudulent documents seen across

² The provisions for RoA changed on 1 January 1983.

BICS had fallen significantly over recent years as document security features have improved. The 2016 and 2019 file samples bore this out.

- 3.16** A combination of document examination training, familiarity with the most commonly used documents, and a good working relationship with the National Document Fraud Unit (NDFU), meant that where forged or fraudulent documents were used to support an RoA application caseworkers and managers were confident they would spot them.
- 3.17** But, although the guidance and SOPs required caseworkers to create a CID ‘flag’ and to email Her Majesty’s Passport Office (HMPO), the reinspection raised doubts about the effectiveness of the latter process. RoA records did not provide a consistent picture of whether information regarding forged or fraudulently obtained documents or about the applicant’s attempted deception was sent to HMPO, and HMPO was not required to confirm receipt of emails or to give feedback on any actions taken. Recommendation 3 therefore remained “Open”.
- 3.18** Looking beyond the original recommendations, the reinspection found that most RoA applications received a decision well within the six-month Service Standard. In the 2019 file sample, where this was not the case it was either because of genuine complexity or because the caseworker was exercising discretion to allow the applicant, a Windrush individual, more time to provide the necessary proof of eligibility.
- 3.19** RoA caseworkers and managers were not persuaded that a triage system to identify where applications were missing the necessary documents would be of much value. However, they felt that it would save time and reduce the number of refusals if they did not need to affix the RoA certificate to the applicant’s passport, as it was often the case that applicants asked to have their passport returned before their application was decided because they needed it for travel purposes.
- 3.20** According to the evidence provided for this reinspection, the numbers of RoA applications received each year are small, around 1,200; the trend is downwards; the refusal rate is low, 10 to 12% in the last two business years; guidance and SOPs are up-to-date; and, caseworkers are experienced and appear genuinely committed to providing good customer service. With these advantages, the RoA process should be efficient and effective. In the circumstances, the Home Office should have every incentive to improve its record keeping and quality assurance in order to prove that this is indeed the case and to demonstrate that RoA work fully supports other BICS functions.

4. Recommendations

The Home Office should:

- 4.1 Review the recommendations from the 2016 inspection and, where necessary, complete the actions required to close them.
- 4.2 Raise the standard of record keeping in relation to right of abode applications, by ensuring that there is an effective quality assurance regime, in particular in relation to refused applications.
- 4.3 Confirm that all refused applications that were “pulled” automatically into the Migration Refusal Pool in 2017 have been identified and the necessary remedial actions taken.
- 4.4 Reconsider whether the redactions made to the GOV.UK version of the right of abode guidance are justified and necessary.
- 4.5 Consider whether there would be value in terms of efficiency, effectiveness and good customer service in introducing a triage process to identify on receipt of an application where documentary evidence is missing so that the applicant can be requested at the earliest opportunity to provide additional evidence.
- 4.6 Consider whether, once the Home Office has satisfied itself that an applicant holds a valid passport, a Certificate of Entitlement to the Right of Abode needs to be affixed to the passport by the Home Office.

5. Background

Right of abode

- 5.1** The Immigration Act 1971 (the '1971 Act') introduced the general principle of 'right of abode in the United Kingdom'. Under the 1971 Act, those with right of abode would be 'free to live in, and to come and go into and from, the United Kingdom without let or hindrance'. Meanwhile, those not having right of abode 'may live, work and settle in the United Kingdom by permission' and with 'their entry into, stay in and departure from the United Kingdom' subject to 'regulation and control'.
- 5.2** Under the 1971 Act (as amended by the British Nationality Act 1981), the following citizens of the UK and Colonies (CUKCs)³ acquired right of abode in the UK:
- those born, registered, naturalised or adopted in the UK
 - those whose parent or grandparent was born, registered, naturalised or adopted in the UK
 - those who had lived in the UK for a period of five years before 1 January 1983, and were settled in the UK at the end of that five-year period
 - those women who had been married to a man with the right of abode before 1 January 1983
- 5.3** In addition, some Commonwealth citizens who had right of abode on 31 December 1982, and have not ceased to be Commonwealth citizens at any time since then qualify, being:
- those with a parent or adoptive parent who, at the time of the person's birth or adoption, was a citizen of the United Kingdom and colonies by birth in the UK
 - those women who had been married to a man with right of abode before 1 January 1983

The application process

- 5.4** A person who believes they are entitled to right of abode (RoA) may apply for a 'Certificate of Entitlement to the Right of Abode in the United Kingdom'. There is a fee, which in 2019-20 was £372.⁴ If the application is successful, a paper vignette is attached to a visa page in the applicant's passport. This remains valid until expiry of that passport.
- 5.5** Before 21 December 2006, when a passport expired the certificate could be transferred to a new passport without re-consideration of an applicant's entitlement to RoA. Since that date, it has been necessary to apply for a new certificate and produce supporting evidence

³ A person born before 1 January 1949 in the UK or in a British colony became a British Subject. On 1 January 1949, the British Nationality Act 1948 came into force. The 1948 Act provided for two forms of British subject:

- those British subjects who had a connection with the UK or a remaining colony acquired the status 'British subject: citizen of the UK and Colonies (CUKC)'

- those with a connection with a former colony became British subjects with the citizenship of the newly independent country.

⁴ <https://www.gov.uk/government/publications/fees-for-citizenship-applications/fees-for-citizenship-applications-and-the-right-of-abode-from-6-april-2018> (accessed July 2019).

of entitlement, while a person ceased to be eligible to hold both a passport describing them as a British Citizen⁵ and a foreign passport holding a 'Certificate of Entitlement to the Right of Abode'.⁶

- 5.6** On receipt of an RoA application, the Home Office assesses whether the applicant has proven that they are entitled to RoA. A decision to refuse an RoA application has no effect on the applicant's immigration status.

Treatment of refusals

- 5.7** Until 6 April 2015, where an RoA application was refused it was standard procedure for the Home Office to return all supporting documents to the applicant along with the decision letter. The caseworker then sent the paper case file to the appeals processing team in anticipation of a possible appeal. Where the applicant did not appeal within the allowed period, the file was sent to storage.
- 5.8** The right of appeal was removed with effect from 6 April 2015,⁷ since when applicants have been able to request the Home Office to reconsider its decision. This attracts a further fee, which in 2018-19 was £372.
- 5.9** The Home Office changed its instructions to staff to reflect this, introducing a requirement to consider refused applications for enforcement action. The 2015 instructions⁸ required the caseworker to complete a 'Harm Assessment Matrix'.⁹ Caseworkers were also required to add a 'flag' to the Case Information Database (CID)¹⁰ to alert enforcement officers that the case may require enforcement action and to email the Immigration Compliance and Enforcement (ICE) team closest to the refused applicant's home address to request they consider enforcement action.
- 5.10** Having notified ICE, RoA caseworkers were instructed to hold back service of the RoA refusal decision for four weeks to enable ICE to consider enforcement action. If no notification of enforcement action was received after four weeks, the caseworker was to serve the refusal decision, return all supporting documents to the applicant, including the passport, and send the file to storage.

Consideration of enforcement action

- 5.11** RoA applicants have never been required by law or policy to provide confirmation of their current immigration status as part of the application. Many have extant leave to enter or remain at the time of applying. Some may have 'Indefinite Leave to Remain' but are seeking a 'Certificate of Entitlement to the Right of Abode' to be able to leave the UK for extended periods and be free to return. Others may have entered the UK on a short-term visa, such as a 'Visitor Visa', which is still valid. Some have no permission to be in the UK and may already be subject to immigration enforcement action.

5 A British citizen is a category of British citizenship that always has the right of abode. Other forms of British citizenship exist that do not normally have the right of abode, for example, a British Overseas Citizen.

6 The changes to entitlement are set out in the Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006, as amended by the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) (Amendment) Regulations 2011.

7 By virtue of the Immigration Act 2014.

8 Archived Home Office guidance entitled 'Nationality: right of abode (formerly Chapter 57) Version 1.0'.

9 A proforma document designed to assess the harm the applicant poses to the immigration system. It also assesses any criminal background of the applicant.

10 The Home Office's Borders, Immigration and Citizenship case handling system.

- 5.12** Unlike most other immigration refusal decisions, nationality refusals, including RoA, are not “adverse”. This means that applicants do not become liable to enforcement action as a result of the refusal decision. Applicants with a valid immigration status at the time of an RoA refusal continue to hold that status until it expires.

The 2016 inspection

- 5.13** On 29 January 2016, the Home Secretary wrote to the Independent Chief Inspector (ICI) requesting a review of “failed right of abode applications and referral for enforcement action”.
- 5.14** ICIBI conducted an inspection of right of abode applications between May and July 2016, and the ICI sent his report to the Home Secretary on 19 August 2016. The report and the Home Office’s formal response were published on 13 October 2016.

Findings

- 5.15** Inspectors found that, in January 2016, the RoA team had introduced a process for referring all refused RoA cases where there was no extant leave to remain and no record of enforcement interest to an Immigration Compliance and Enforcement (ICE) team. This process was introduced without consultation with enforcement specialists and was not in line with Home Office guidance on how or to whom cases should be routed. While some cases were adopted for enforcement, the process remained sub-optimal. Managers acknowledged the need to improve co-ordination with enforcement colleagues and to put in place a referral process for refused cases that followed the relevant guidance.
- 5.16** The overall finding was of a lack of consistency regarding referrals for enforcement action, including where the applicant had overstayed their leave to remain in the UK or was suspected of having used deception when applying. Refused applicants with no leave to remain were not placed into the Migration Refusal Pool (MRP)¹¹ where they would be visible to Removals Casework (responsible for managing the cases of individuals who remain in the UK after their leave has expired). The result was that opportunities for immigration control were being missed.

Recommendations and Home Office responses

- 5.17** The 2016 inspection report contained three recommendations, all of which were accepted by the Home Office.

Recommendation 1

The Home Office should ensure that individuals refused right of abode applications, without leave at the time of refusal, flow into the Migration Refusal Pool (MRP) for enforcement action to be progressed where appropriate.

Home Office response:

“Accepted; already implemented”

“The Home Office agrees that such referrals of refusal decisions need to be made in a consistent way. From 1 September 2016 all refused Right of Abode cases where the applicant is not already British or does not have extant leave at the time of the decision will

¹¹ The Migration Refusal Pool is a dataset that enables the Home Office to track the cases of applicants where an application has been refused and there is no record on Home Office systems that the applicant is British or otherwise has leave to remain in the UK.

be referred into the Migration Refusal Pool in line with existing practice for others refused leave to remain.”

Recommendation 2

The Home Office should ensure that the referral process for refused cases that are suitable for enforcement action, in particular absconders or long-term overstayers, is aligned with guidance, and that cases referred to the right of abode team by Removals Casework (where enforcement action is already underway) are referred back on completion.

Home Office response:

“Accepted; already implemented”

“The referral process is now aligned with the guidance.”

Recommendation 3

Where there is evidence of deception having been used to attempt to obtain a ‘Certificate of Entitlement to the Right of Abode’, the Home Office should ensure that this information is available to caseworkers throughout the Home Office, including Her Majesty’s Passport Office (HMPO), when considering any future applications, e.g. for a visa or UK passport.

Home Office response:

“Accepted; implemented in part”

“The Home Office has a process in place to highlight where there is evidence of deception more prominently on visa systems. The system used within HMPO is separate and options that would allow for this information to be effectively shared and utilised by HMPO colleagues will be explored and the most appropriate implemented.”

5.18 In its covering note, the Home Office commented:

“It is recognised that in the past there was some inconsistency in processes for referring the relevant sub-set of Right of Abode refusals for enforcement action. Building on an updated process already implemented on 20 January 2016, the Home Office has now further revised and agreed an effective process to refer all relevant Right of Abode refusals from UKVI to Immigration Enforcement from 1 September 2016 where the applicant is not already British or does not have extant leave at the time of the decision. This process will place such cases on the same footing as the standard arrangements which apply when a normal application for leave to remain is refused.”

5.19 It noted that most RoA applications were granted and that a significant proportion of those refused had the right to remain:

“However, it is recognised that there is a limited cohort of applicants who have been refused a Right of Abode application and also have no basis of leave to remain and as such enforcement action should be pursued.”

5.20 Referring to the improvements it had already implemented in response to the inspection report, it stated:

“These include agreeing a consistent referral process when enforcement is appropriate and better highlighting for relevant action those cases where there is evidence of deception. All Right of Abode caseworkers have been trained in these revised processes and all appropriate historical refusal decisions where the applicant has not regularised their

stay or left the UK are being reviewed and then referred for enforcement action where appropriate.”

The 2019 reinspection

- 5.21** As a matter of routine, ICIBI carries out a number of reinspections each year. The main purpose of these is to check that the actions the Home Office has committed to in response to an inspection have been carried out, and to see whether these have led to improvements in the efficiency and effectiveness of that business area or function. This also serves as a test of the value of the original inspection.

- 5.22** This reinspection, which ran from May to July 2019, traced the development of RoA caseworking processes since 2016. In doing so, it took account not just of the earlier findings and recommendations but also of the ICIBI’s ‘Expectations’ (see Annex B), which post-date the original inspection.

6. Reinspection findings

Application volumes

- 6.1** The Home Office provided data for applications for a 'Certificate of Entitlement to the Right of Abode' in the UK for each business year from 2005 to 2006 to 2018 to 2019 – see Figure 1. The data includes right of abode (RoA) applications made in the UK and a handful made at overseas visa posts, but not those made at the border.

Figure 1

Right of abode applications per year 2005-06 to 2018-19

Year	Granted	Refused	Total
2005-06	4,538	751	5,289
2006-07	2,449	733	3,182
2007-08	1,912	693	2,605
2008-09	1,625	312	1,937
2009-10	1,387	225	1,612
2010-11	1,366	110	1,476
2011-12	1,277	117	1,394
2012-13	1,273	103	1,376
2013-14	1,260	157	1,417
2014-15	1,362	280	1,642
2015-16	1,358	419	1,777
2016-17	1,118	210	1,328
2017-18	1,049	139	1,188
2018-19	1,076	128	1,204
Total	23,050	4,377	27,427

Refusals

- 6.2** The 2016 inspection found that of 26,024 applications received over an 11-year period to 2015 only 4,771 (18%) were refused.¹² The updated figures show an overall decline in the number of applications per year. Between 2016-17 and 2018-19, the refusal rate was 13%, bringing the overall average since 2005-06 down to 16%.

¹² The total number of refusals between 2005-06 and 2018-19 at Figure 1 is lower than the total provided to the original inspection team for the calendar years 2005 to 2015. However, the latter included RoA decisions made at the border. The original inspection was told that over an 11-year period to 2015, at the border RoA applications accounted for approximately 10% of the total applications received.

6.3 In its formal response to the inspection report the Home Office stated:

“once those who were already British and/or held British passports at the time of decision are excluded from applications made in country, this figure [18%] is reduced to 11%. Of the remainder some of these applicants will not have sent the appropriate evidence to demonstrate their right to abode which is a statutory right which a person either has or does not have. Other applicants who have been in the UK for a number of years may have a right to stay here under another immigration route.”

6.4 The relatively small numbers of refusals overall and the smaller sub-set without the right to remain, combined with the fact that refusals are not “adverse” immigration decisions, may have contributed to the inconsistency regarding referrals for enforcement action found by inspectors in 2016.

6.5 Whatever the reasons, in the file sample examined for the 2016 inspection, a significant proportion of applicants did not appear to have valid immigration status at the point the RoA refusal decision was made (11 out of 50 (22%) in the 2005 sample, and 44 of 50 (88%) in the 2015 sample), but few of these had been referred for enforcement action.

2016 guidance for caseworkers

6.6 One of the ICIBI’s ‘Expectations’ of all BICS functions is that background and explanatory documents are easily understandable, up to date and readily accessible. With this in mind, inspectors assessed RoA guidance and instructions past and present.

6.7 At the time of the reinspection, a collection of guidance documents concerned with RoA were available on GOV.UK. Given the scope of the 2016 inspection and this reinspection, inspectors focused on the guidance produced for Home Office staff responsible for assessing RoA applications. However, they also noted the separate guidance explaining RoA, and the guidance and form for requesting reconsideration of a decision to refuse RoA.

6.8 Despite the statement that “It is a live document under constant review”, ‘Right of Abode’ (RoA)¹³ was last updated on 12 August 2015. However, the embedded hyperlinks take the reader to the latest version of the guidance for staff assessing RoA applications and the latest fees schedule.

6.9 The guidance in relation to reconsiderations, dated July 2018, provides a brief explanation of how RoA decisions are reached and the circumstances in which the Home Office might “reopen” an application, including, for example, when it has failed to take account of relevant documents or information in the applicant’s possession. Here too, the hyperlinks are up-to-date.

6.10 The guidance for staff assessing applications that was in place at the time of the 2016 inspection was published on 5 April 2016. ‘Nationality: right of abode’ was new at the time of the 2016 inspection and the file samples examined for that inspection pre-dated its introduction, so it was not possible to assess how effective it was in practice.

6.11 Prior to 2016, there were no instructions for RoA caseworkers to consider referring refusals for enforcement action. The 2016 guidance instructed staff that, when an RoA application was refused, they should complete a ‘Harm Assessment Matrix’ and consider why the applicant

¹³ <https://www.gov.uk/government/publications/right-of-abode-roa>

had no lawful basis to stay in the UK. Caseworkers were required to send the completed matrix to an Immigration Compliance and Enforcement (ICE) team, which would consider whether enforcement action was necessary. This process concluded either when the ICE team accepted the referral for action or when the RoA caseworker had heard nothing from the ICE team after four weeks, in which case their instructions were to send the file to storage.

Automatic routing of refusals into the Migration Refusal Pool

- 6.12** Following the 2016 inspection, the Home Office decided to automate the process of moving refused RoA cases into the ‘Migration Refusal Pool’ (MRP), which was already standard practice for certain other types of refused cases.
- 6.13** From 16 January 2017, all refused RoA applications where the applicant had no basis of stay in the UK were “pulled” automatically into the MRP. Belatedly, on 20 April 2017, instructions were issued to caseworkers stating: “If an application is refused and the applicant has no current basis of stay in the UK the case will automatically be forwarded to the migration refusal pool (MRP)”. Meanwhile, the relevant ‘Standard Operating Procedures’ (SOPs)¹⁴ were not updated until 11 October 2017.

Recognition that automatic routing was a mistake

- 6.14** The decision to automate the process failed to take full account of the complexity of some RoA applications and, according to RoA caseworkers and managers, “towards the end of 2017” the Home Office found that a “small number of cases” had been referred for consideration of enforcement action, despite the individual having been in the UK for a considerable number of years. These were primarily ‘No Time Limit’ (NTL)¹⁵ cases. An NTL decision, like an RoA decision, confirms rather than confers status. Therefore, a refusal does not mean that enforcement action is automatically appropriate.
- 6.15** On 29 November 2017, RoA managers suspended the issuing of all refusal decisions where the applicant did not appear to have a valid immigration status or where their status pre-dated the introduction of the Case Information Database (CID). In December 2017, managers disabled the automated process that moved refused RoA cases into the MRP.

New guidance

- 6.16** The RoA guidance was updated on 31 January 2018 to reflect this change, but again the SOPs were not updated until much later, on 10 June 2018. A new requirement was placed on caseworkers to consider the circumstances of the case, including whether an applicant had valid leave to remain in the UK and whether referral for potential enforcement action was appropriate.

¹⁴ SOPs are detailed, process-specific instructions for staff. In this case, they included items such as verification that the fee has been paid, the range of background checks required, and how to determine entitlement.

¹⁵ “NTL is an administrative process by which a person with indefinite leave to enter (ILE) or indefinite leave to remain (ILR) can apply for confirmation of this status on a Biometric Residence Permit. A person who has ILE or ILR is free of immigration time restrictions and considered to be ‘settled’ in the UK (if ordinarily resident).” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793574/No-time-limit-v14.0ext.pdf (accessed July 2019).

Windrush and the latest guidance

- 6.17** On 16 April 2018, the Home Office created the ‘Windrush Taskforce’.¹⁶ Managers decided that the RoA unit (and other Nationality Group caseworking areas) should work with the Taskforce for a period to improve decision-making effectiveness and raise awareness that applicants for RoA might qualify for the Windrush Scheme.¹⁷
- 6.18** Version 4.0 of ‘Nationality: right of abode’ guidance was issued on 23 May 2018 and was in use at the time of this reinspection. It introduced a flowchart to help caseworkers to assess whether a “citizen of the UK and Colonies” had the right of abode on 31 December 1982.¹⁸ As at July 2019, caseworkers could find the latest guidance on the Home Office intranet system, ‘Horizon’. Meanwhile, a redacted version was available on GOV.UK.
- 6.19** Inspectors reviewed the latest guidance and found it clear and easy to understand. It set out the criteria that caseworkers should consider, describing when not to refer a refused application for enforcement action and giving examples of when a referral must be made. If in doubt, caseworkers must seek advice from senior caseworkers.
- 6.20** The guidance also instructed caseworkers on what to do in cases where the applicant was likely to be entitled to RoA but the application had been refused for other reasons, for example, the absence of sufficient documentary evidence. In such circumstances, caseworkers should include information in the refusal letter advising the applicant to make a further application that provides additional or missing evidence, or to seek advice from an approved immigration adviser, referring the applicant to the “Find an immigration adviser” page on GOV.UK.¹⁹
- 6.21** The guidance specified that caseworkers must use the CID to ‘flag’ refused RoA cases for enforcement action by creating a new ‘event’ on the system, referred to as ‘RCC-UKVI Signpost’. This enables other Home Office units responsible for enforcement action to find cases in the database and consider them for action. This approach was applied retrospectively to all cases decided after 29 November 2017.
- 6.22** The redactions to the publicly-available version of the guidance concern various checks that caseworkers are required to make. It was unclear to inspectors why these redactions were considered necessary. They simply raise suspicions about what should be a straightforward and transparent process. This is at best unhelpful, particularly in the wake of the Windrush scandal.

Assessing cases for enforcement action

- 6.23** During the course of the reinspection, RoA caseworkers told inspectors that they were highly experienced, most having worked on RoA applications for over ten years, and that they had received all the training they needed to process applications correctly, and were confident that the guidance and the support they received enabled them to make the right decisions consistently.
- 6.24** They believed that the earlier move to have refusals referred automatically for enforcement action reflected a “compliance heavy era”. Now, caseworkers and managers had been given

¹⁶ “The Windrush Taskforce can offer support and guidance to individuals on the Windrush Scheme and how to apply. The taskforce can also help vulnerable people or those who need additional support.” <https://www.gov.uk/guidance/windrush-scheme#the-windrush-taskforce> (accessed July 2019).

¹⁷ <https://www.gov.uk/guidance/windrush-scheme>

¹⁸ The provisions for RoA changed on 1 January 1983.

¹⁹ <https://www.gov.uk/find-an-immigration-adviser>

greater discretion and the process for assessing which cases merited action and onward referral was working well, and they felt that the “balance was right”.

- 6.25** Before refusing an RoA application, caseworkers must assess the applicant’s immigration status to determine whether enforcement action would be in line with the guidance and to discuss it with a senior caseworker before referring the case. However, RoA applications do not require the applicant to specify their current immigration status, and this can involve the caseworker having to check several IT systems, which may or may not contain the relevant information.
- 6.26** Caseworkers said that requiring an applicant to declare their immigration status could improve decision making, given that Home Office records may be incomplete and where a person’s status pre-dates its IT systems. However, caseworkers and managers warned that making this a requirement could also discourage applications from eligible applicants who feared they would not be able to produce evidence of their immigration status.
- 6.27** Caseworkers and managers reported that since the Windrush scandal the culture surrounding decision making had changed significantly. They were now more customer focused and the tone and content of correspondence was more helpful, even where the decision was a refusal. For example, where an applicant has been unable to satisfy the decision maker that they are entitled to RoA, they are given advice on how they might regularise their stay in the UK.

File sample: Right of abode refusals 1 June 2018 to 31 May 2019

- 6.28** Inspectors examined 50 RoA refusals made between 1 June 2018 and 31 May 2019:
- in 17 cases, the applicant had extant leave to remain at the time of the RoA refusal decision
 - in a further 20 cases, the applicant had extant leave at the time of the RoA application, but
 - in eight cases their leave expired during the application process
 - eight were refused because a previous RoA application had been granted in error
 - four provided insufficient evidence of their eligibility for RoA
 - in 32 cases, the applicant had no valid immigration status²⁰ at the time of the refusal decision
 - in one case, the applicant’s immigration status was not known
- 6.29** In 13 of the 32 cases where the applicant had no valid immigration status at the time of the refusal decision, RoA caseworkers referred the case for enforcement action. An example is at Figure 2.

²⁰ “No valid immigration status” includes applicants with no leave to enter or remain, those who at the time of their RoA application relied on a previously granted RoA but who were now determined not to be entitled to RoA based on the evidence provided with the application.

Figure 2

Case Study 1: Referral of refused right of abode applicant without valid immigration status for enforcement action

The applicant:

- made an application for RoA in February 2018 while they held valid leave to enter
- provided all the required evidential documents
- did not qualify for RoA based on all the facts
- had their application refused in August 2018 by when their leave to enter had expired

The applicant considered that a relationship with a grandparent, which is not a qualifying relationship under the legislation, created an entitlement to RoA status. The Home Office correctly refused the application. During the application process the applicant's leave to enter expired.

The caseworker followed the enforcement consideration process, correctly identifying the expired leave, keeping the applicant's passport when refusing the application and comprehensively recording this in the case records.

- 6.30** The file sample suggested an improvement in the rate of referrals of refused cases for enforcement action compared with 2015. In 2015, only 12 out of 44 (27%) cases that had no leave to remain at the time of the RoA refusal were referred. In 2018-19, 13 out of 32 cases were referred. However, this is still only 40%.²¹
- 6.31** Looking at the 19 (out of 32) RoA refusals that were not referred for enforcement action despite there being no valid immigration status at the time of the refusal decision, inspectors judged that ten should have been referred, while the records for the other nine contained evidence that the caseworker had properly considered the wider circumstances of the case and decided correctly not to refer them based on the available facts.
- 6.32** As an example of the latter, a caseworker determined that it was inappropriate to refer an application for enforcement action where the applicant was not entitled to RoA but had been resident in the UK for many years following the incorrect issue of a number of certificates by the Home Office.
- 6.33** Inspectors found examples of caseworkers providing helpful advice, as indicated in the guidance, and some applicants had been referred to the Windrush Scheme. There were also two examples of caseworkers referring the case to a manager to obtain a refund of the fee.
- 6.34** The first example involved an applicant who had previously made a successful RoA application. In considering the most recent application, the caseworker determined that RoA had previously been granted in error as there was no entitlement. Caseworkers explained that in such circumstances they would arrange a refund of the RoA application fee and recommend that the applicant applies for another leave to remain product.
- 6.35** The second example involved a Windrush applicant. The caseworker followed the policy and allowed the application to be made free of charge. Caseworkers told inspectors that where

²¹ The sample size in 2015 and 2019 was the same: 50 refused cases. However, the number of refusals in these two periods was materially different. While the 2015 sample represented roughly 12% of the cases refused, the 2019 sample was nearer to half.

someone had applied and paid the fee but could have applied for free under the Windrush Scheme they looked to refund them.

Record keeping

- 6.36** The 2019 file sampling revealed that the standard of record keeping by caseworkers was generally poor. Inspectors found no evidence in 30 of the 50 case records that caseworkers had considered referral for enforcement action. In fact, in ten of these 30 cases enforcement action had been taken in line with guidance, however inspectors were able to establish this only through a detailed examination of later entries in the case records.
- 6.37** Of the 20 cases where the records were more complete, inspectors disagreed with the outcomes in two instances. In one, the circumstances were complex and related to another category of British nationality where the applicant did not have the required leave to enter the UK. In the other, the caseworker referred the case for enforcement action, but this was stopped. The reasons were not recorded however the applicant went on to make a further application for leave to remain.

Referring cases back to enforcement units

- 6.38** The 2016 inspection identified a specific issue where Removals Casework was preparing for the enforced removal of an individual who then made an application for RoA. Several such cases were passed by Removals Casework to Nationality Group for a decision on the RoA application, but none of those that were refused were passed back to Removals Casework to complete the removal. Recommendation 2 sought to remedy this.
- 6.39** In the 2019 file sample, there were five cases that were either in the MRP or were being progressed by enforcement units prior to the applicant making their RoA application and were referred for enforcement action following the refusal of RoA. However, inspectors also found two cases where the applicant was being considered for enforced removal prior to them making a RoA application that were not returned to the relevant enforcement unit when the RoA application was refused, suggesting that the problem identified in 2016 persisted.
- 6.40** Despite the Home Office's response that the recommendation was "already implemented", inspectors were unable to find any evidence of any instructions to RoA caseworkers about returning refused applications. Guidance issued since 2016 makes no mention of this.

Deception: forged and fraudulent documents

- 6.41** The 2016 inspection found that where RoA caseworkers suspected documents included with an application were fraudulent or forged they sent them for expert checking, retaining any that were confirmed as not genuine. Based on the 2015 file sample, very few such cases were passed to enforcement officers for further action and there was little evidence of effective sharing of this information. This meant that these applicants were free to pursue further applications for leave or to seek British Citizenship.
- 6.42** Recommendation 3 sought to address this information-sharing gap by making the information available to caseworkers across the Home Office, including Her Majesty's Passport Office (HMPO).
- 6.43** The 2016 inspection examined 50 failed RoA applications from 2005 alongside 50 from 2015. The recorded use of deception, mostly commonly the use of fraudulent or forged documents,

was much lower in the later file sample (three cases compared with 23). The instances of fraud or forgery found during this reinspection (four suspected cases in the sample of 50, two of which were subsequently confirmed) was consistent with the 2015 sample.

- 6.44** The Home Office explained that the sharp decline in forgery detections, which was replicated across BICS, was due to a number of factors, but it was principally because most genuine documents now contained more sophisticated security features, making forgery more difficult and acting as a deterrent. In the case of RoA applications, the risk of document fraud had been further reduced because the business had removed the most commonly seen fraudulent documents from the list of documents that could be used to support an application.
- 6.45** Caseworkers told inspectors that they were confident of their ability to detect fraudulent or forged documents submitted with a RoA application. It helped that they were familiar with the genuine documents issued by those countries most frequently associated with RoA applications. In addition, they had received document examination training and had access to refresher training on a regular basis.
- 6.46** Previously, they had received regular bulletins from the National Document Fraud Unit (NDFU) highlighting developments in document construction and safeguards, as well as trends identified elsewhere in BICS. These had stopped “some time ago” and they would like to see them reinstated.²²
- 6.47** RoA staff and managers told inspectors that where they were unable to resolve concerns about a document’s authenticity within the team they would refer the document to NDFU, either using a ‘drop box’ system²³ or by visiting the NDFU office, which was on another floor of their building. NDFU specialists would examine the document and provide the RoA caseworker with a report on its authenticity.
- 6.48** Of the four cases in the file sample where the record showed evidence of RoA caseworker concern about document authenticity, two were resolved within the RoA team, and two were referred to NDFU. The reasons for the referral were not recorded in either case, and only one referral was recorded on CID.
- 6.49** In one of these two cases, NDFU confirmed the forgery and impounded the false documents to prevent their fraudulent use elsewhere. The RoA caseworker refused the application on deception grounds.
- 6.50** Inspectors asked RoA staff and managers whether criminal prosecution was considered where forged or fraudulent documents were identified. They replied that RoA caseworkers were neither trained nor equipped to investigate criminal matters, and this would be for areas of the Home Office concerned with fraud prevention to do.
- 6.51** The file sample revealed a case where an RoA caseworker was confident an impersonator had made an application. The case notes showed that the caseworker had tried to refer the case to Immigration Enforcement to pursue but without success. See Figure 3.

²² The Home Office confirmed that these bulletins continue to be available on the Home Office intranet (Horizon), and that a reminder would be issued to staff.

²³ Suspect documents were packaged with a referral form for regular collection by NDFU staff for examination in their offices. Examined documents found genuine would be returned, fraudulent documents would be retained.

Figure 3

Case Study 2: Investigation of an identified impersonator not pursued

The applicant:

- made an application for RoA in January 2018
- used the identity of another British Citizen to obtain a Certificate of Entitlement to the Right of Abode
- provided expired passports and a birth certificate
- provided a current passport
- provided postal and email addresses matching those of the other person
- was refused on 28 September 2018

The RoA caseworker:

- conducted checks that revealed that the rightful holder held a current British passport
- verified that the photographs on the RoA application were not those of the rightful holder of the British passport, satisfying themselves that the RoA applicant was an impersonator
- between 6 August and 28 September 2018, having spoken to their manager, sought unsuccessfully to get other Home Office units to investigate the impersonator, including sending a tasking request to Immigration Enforcement, who were unable to proceed as the RoA application had not been concluded
- refused the application
- as no other unit was willing to make follow-up enquiries, returned all the documents, including the passports, to the address on the application

Home Office comment:

In October 2018, HM Passport Office (HMPO) confirmed by email that they were satisfied the holder of the British passport is the genuine holder of the identity.

UKVI has engaged with Immigration Enforcement under the current joint working process to highlight concerns and to refer the case for consideration of enforcement action.

ICI comment:

This was clearly a missed opportunity to investigate an attempted deception. The RoA caseworker appears to have done as much as they could to interest an enforcement team. However, the decision to return all of the documents should have been escalated to a senior manager.

Sharing intelligence

6.52 Standard Operating Procedures (SOPs) instruct RoA caseworkers:

“If the refusal is on the grounds of deception caseworker must enter the ROADEC marker on Special Conditions Flag²⁴ and issue e-mail to HMPO.”

²⁴ The Special Conditions screen is displayed each time the CID is accessed.

- 6.53** RoA SOPs do not require caseworkers to request confirmation of receipt of their email to HMPO or a response, so the RoA caseworker is unsighted on what action HMPO has taken, if any. There was no evidence that the RoA caseworker had complied with the requirement to email HMPO in either of the two confirmed cases of deception in the file sample, also failing to create a CID ‘flag’ in one.
- 6.54** Inspectors asked RoA staff whether information about fraudulent applications is available to UKVI colleagues considering visa and other applications made from overseas. They explained that when NDFU confirms a forgery, information about the forged document is uploaded to a “central database” which is accessible to all UKVI staff.

Service Standard

- 6.55** The Service Standard for deciding an RoA application is six months. RoA caseworkers and managers told inspectors that applications normally took between two and four months for a decision, with refusals on average taking longer than grants because they are more likely to involve requests for further evidence or require caseworkers to carry out further enquiries.
- 6.56** In the 50 cases in the 2019 file sample, two had taken over a year to resolve. Inspectors agreed that the first, which took one year, two months and five days, was particularly complex. The second, which took one year and nine days, was delayed because the applicant did not respond to requests for further evidence of entitlement. Under ordinary circumstances this application would have been refused, but the caseworker kept it open as the applicant fell within the Windrush “cadre”.
- 6.57** If these two complex cases were removed from the calculations, the average time taken to process the application within the file sample was five months and 22 days, with cases involving writing to the applicant for further evidence taking the longest time. However, the Home Office stated that the overall average for applications decided in the timeframe covered by the file sample was three months and 14 days (104 days), suggesting that most cases were decided well within the Service Standard.
- 6.58** The issuing of some RoA certificates was delayed, and in some cases the application was ultimately refused, because the applicant had not provided a passport in which to affix the certificate. In the 2019 file sample, 17 (out of 50) applications did not attach a valid passport. In four cases, the caseworker had written to request a passport but, having not received a response, had subsequently refused the application in line with guidance.²⁵

Triaging applications

- 6.59** Inspectors asked RoA caseworkers and managers whether applications were checked for all the necessary documents on receipt. They explained that applications were checked to ensure that the applicant had paid the fee and completed the application form, but not to confirm that the required documents or passports had been submitted.
- 6.60** Caseworkers believed that the administrative staff who did this checking would require additional training to check for relevant documents, but it was not unusual for applicants to provide a passport with their application and then request it be returned before their

²⁵ Guidance indicates that if an application is missing evidential documents or a valid passport in which to affix the certificate, the caseworker should write to the applicant requesting the missing documents. The applicant is given 14 days to supply them. Normally at 21 days, in the absence of a response, the caseworker will proceed to refuse the application.

application had been considered because they required it to travel. These applicants had to be asked to resubmit their passport after they had travelled.

- 6.61** Inspectors also asked whether applications were ever expedited, for example, if a case originated from an enforcement unit and were told that cases were sometimes considered “out of turn”, but this was usually due to urgent travel and in these circumstances a Senior Executive Officer (SEO) made the decision. More rarely, other Home Office units requested a case to be expedited for operational reasons, and these were also considered by an SEO.
- 6.62** Caseworkers and managers were not convinced that a ‘triage’ process to identify any issues with an application at an early stage would improve customer service significantly. They suggested that the biggest improvement would come from removing the requirement for a passport to be present when granting an application.

Record keeping – ‘Magic Minute’

- 6.63** From the 2019 file sample, inspectors noted that caseworkers recorded most actions taken in relation to an RoA application using an IT tool called ‘Magic Minute’, which enabled them to enter text and choose options from lists and check boxes while considering the application. The tool takes the caseworker through the consideration process, step-by-step. Once completed, the tool generates a block of text setting out the steps and the actions taken that the caseworker can copy into CID.
- 6.64** Inspectors examined the ‘Magic Minute’ and found that it did not record certain actions set out in the guidance in sufficient detail to enable effective oversight and quality assurance, for example how the caseworker had considered referral for enforcement action. Caseworkers were reminded to “Complete a quick fraud check of the documents”, but no function to record whether, or with whom, information about document fraud had been shared.
- 6.65** While the ‘Magic Minute’ may serve as a useful prompt to caseworkers to complete the required actions, inspectors were concerned that it risked turning the recording of the process into an unthinking ‘tick box’ exercise – see Figure 4.

Figure 4

Case Study 3: Record not in line with the facts of the case

The applicant:

- made an application for RoA in February 2018
- used a forged passport in a false identity
- used the false identity fraudulently to obtain two genuine documents from the proper authorities
- had their RoA application refused in November 2018

The RoA caseworker:

arranged for NDFU to examine the documents, however the 'Magic Minute' CID entry stated: "There are no concerns about document integrity". Meanwhile, the caseworker and NDFU appeared to have acted correctly by impounding all of the documents.

The Home Office commented:

"The Case Information Database (CID) record correctly records the concerns about the documentation. However, the field in the consideration 'Magic Minute' automatically populated with – there are no concerns about document integrity. The caseworker should have deleted this and made an appropriate record/reference – yes...see person notes. UKVI are in the process of reviewing the decision-making template."

Windrush

- 6.66** Inspectors did not set out specifically to examine the handling of applications from the Windrush Generation and their dependents and families, since the independent Windrush Lessons Learned Review was due to report before this reinspection report would be published.
- 6.67** However, when speaking to RoA caseworkers and managers, and when examining the 2019 file sample, inspectors were aware that some Windrush individuals would have made RoA applications during the period covered by this reinspection.
- 6.68** It was clear from the file sample that, following the Windrush scandal and the creation of the Windrush Taskforce in April 2018, it was a priority for caseworkers to treat applicants who might fall into this category with sensitivity. Inspectors saw several examples of this. Where it was possible that an applicant might be a Windrush individual, caseworkers took considerable care to ensure that the applicant's circumstances were fully considered.
- 6.69** Staff and managers told inspectors that they now had much greater discretion when considering an individual's circumstances and the focus was on getting all decisions right first time. They also reported that the Home Office's approach was changing. It was looking to show a "more human face" to applicants.
- 6.70** Inspectors saw evidence of caseworkers having assisted applicants who had not evidenced their RoA entitlement in their application, for example allowing extra time for them to submit documents or, where refusing applications, signposting other routes or approved immigration advisers – see Figure 5.

Case Study 4: Windrush applicant

The applicant:

- for personal reasons, needed documentary proof of his lawful status in the UK
- in February 2018, prior to the creation of the Windrush Scheme, made an application for RoA
- in May 2018, made a successful application through the Windrush Scheme for 'No Time Limit' (NTL)²⁶
- In November 2018, had his RoA application refused

The RoA caseworker:

When the RoA application reached the front of the queue the caseworker correctly assessed it against the eligibility criteria and refused it. In light of the grant of NTL, the caseworker arranged for an *ex gratia* refund of the RoA application fee on the same day.

²⁶ See footnote 4

Annex A: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

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

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

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials

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

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session.

Reports are published in full except for any material that the Secretary of State determines is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

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

Annex B: ICIBI ‘Expectations’

Background and explanatory documents are easy to understand and use (for example, statements of intent (both ministerial and managerial), impact assessments, legislation, policies, guidance, instructions, strategies, business plans, intranet and GOV.UK pages, posters, leaflets etc.)

- They are written in plain, unambiguous English (with foreign language versions available, where appropriate)
- They are kept up to date
- They are readily accessible to anyone who needs to rely on them (with online signposting and links, wherever possible)

Processes are simple to follow and transparent

- They are IT-enabled and include input formatting to prevent users from making data entry errors
- Mandatory requirements, including the nature and extent of evidence required to support applications and claims, are clearly defined
- The potential for blockages and delays is designed out, wherever possible
- They are resourced to meet time and quality standards (including legal requirements, Service Level Agreements, published targets)

Anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary is fully competent

- Individuals understand their role, responsibilities, accountabilities and powers
- Everyone receives the training they need for their current role and for their professional development, plus regular feedback on their performance
- Individuals and teams have the tools, support and leadership they need to perform efficiently, effectively and lawfully
- Everyone is making full use of their powers and capabilities, including to prevent, detect, investigate and, where appropriate, prosecute offences
- The workplace culture ensures that individuals feel able to raise concerns and issues without fear of the consequences

Decisions and actions are ‘right first time’

- They are demonstrably evidence-based or, where appropriate, intelligence-led
- They are made in accordance with relevant legislation and guidance
- They are reasonable (in light of the available evidence) and consistent
- They are recorded and communicated accurately, in the required format and detail, and can be readily retrieved (with due regard to data protection requirements)

Errors are identified, acknowledged and promptly 'put right'

- Safeguards, management oversight, and quality assurance measures are in place, are tested and are seen to be effective
- Complaints are handled efficiently, effectively and consistently
- Lessons are learned and shared, including from administrative reviews and litigation
- There is a commitment to continuous improvement, including by the prompt implementation of recommendations from reviews, inspections and audits

Each immigration, asylum, nationality or customs function has a Home Office (Borders, Immigration and Citizenship System) 'owner'

- The BICS 'owner' is accountable for:
 - implementation of relevant policies and processes
 - performance (informed by routine collection and analysis of Management Information (MI) and data, and monitoring of agreed targets/deliverables/budgets)
 - resourcing (including workforce planning and capability development, including knowledge and information management)
 - managing risks (including maintaining a risk register)
 - communications, collaborations and deconfliction within the Home Office, with other government departments and agencies, and other affected bodies
 - effective monitoring and management of relevant contracted out services
 - stakeholder engagement (including customers, applicants, claimants and their representatives)

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