



National Audit Office

Report

by the Comptroller
and Auditor General

Home Office

Handling of the Windrush situation

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Home Office

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Report by the Comptroller and Auditor General

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Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

30 November 2018

This study examined how the Home Office handled the impact of its immigration policies on the Windrush generation. We sought to establish whether long-running problems with the way the Home Office handles information and immigration casework may have contributed to the situation.

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Key facts

2,658

people granted citizenship, or leave to remain, through the Home Office's Windrush taskforce, as at 30 September 2018

164

cases the Home Office identified of individuals in the country before 1973 who were detained and/or removed since 2002

18

people the Home Office considers most likely to have suffered detriment, such as being detained or removed, because their right to be in the UK was not recognised and therefore where it is most likely to have acted wrongfully

599,078

Commonwealth-born people living in the UK who arrived before 1971, based on the 2011 Census

500,000

Settled migrants living in the UK who did not hold a biometric residence permit to prove their right to reside and access public services, based on Home Office estimates in 2014

**Around
171,000**

Commonwealth individuals on whom the Home Office has a record on its immigration database and who were born before 1 January 1973

11,800

Cases involving detention and removal reviewed by the Home Office, relating to Caribbean Commonwealth nationals

**Around
2,000**

Caribbean nationals whose case the Home Office is reviewing to assess whether or not they may have been in the UK before 1973 and whether they may have been subject to a compliant environment sanction

Summary

Background

1 Between 1948 and 1973 many Commonwealth citizens came to the UK under successive pieces of immigration legislation. Some of these individuals, particularly those from Caribbean nations, have recently become known as the Windrush generation. There is no definitive estimate of how many people came to the UK, or still live here, although some academics have put the figure at more than 500,000 (not including children of original Windrush migrants). The government amended existing immigration legislation with the Immigration Act 1971, which came into force in 1973. At this time, Commonwealth immigrants already settled in the UK were given indefinite leave to remain, but many were not issued with any documentation, and the Home Office (the Department) kept no records confirming these individuals' status.

2 Over at least the past 10 years the government has further reformed immigration policies according to the principle that the right to live, work and access services in the UK should only be available to those migrants who are eligible. This policy was known as the 'hostile environment', a term that dates from 2010, and is now known as the compliant environment. Through the 2014 and 2016 Immigration Acts, the government introduced a range of checks and controls on migrants' access to services such as welfare benefits, driving licences and bank accounts. These were designed to prevent illegal immigration, remove incentives for illegal migrants to enter or remain in the UK and encourage them to depart.

3 The Department and its agencies play several key roles in the UK immigration system.

- **The core Department** sets and oversees immigration policy.
- **UK Visas and Immigration** makes decisions about who has the right to visit or stay in the country.
- **Immigration Enforcement** is responsible for preventing abuse of the immigration system, dealing with the threats associated with immigration offending and encouraging and enforcing the departure of illegal migrants from the UK.
- **Border Force** is responsible for enforcing the law at the UK border and carrying out immigration and customs controls for people and goods entering the UK.

4 Other public bodies, such as the Department for Work & Pensions and the Driver & Vehicle Licensing Agency (DVLA) enforce the compliant environment in their areas of responsibility. Private individuals and businesses also help enforce the compliant environment, for example by checking people's rights to rent a home or to work in the UK.

5 In the spring of 2018, the media began to report stories of people who had come to the UK from the Commonwealth, being denied access to public services, being detained in the UK or at the border, or removed from, or refused re-entry to, the UK. It was reported that some people did not have the paperwork to prove their legal right to reside in the UK. This included people who worked in Parliament and public services. In April 2018, the government acknowledged that the Windrush generation had been treated unfairly and set up a taskforce and scheme to help individuals to resolve their immigration status.

Our report

6 The Home Affairs Committee, the Joint Committee on Human Rights and individual MPs, among other commentators, have raised concerns about whether the experience of the Windrush generation indicates systemic problems in the Department. They highlighted shortcomings such as poor data management and poor management oversight.

7 This report seeks: to increase transparency about what happened; and to establish whether problems with the Department's information management and management of immigration casework may have contributed to the situation. We are not questioning the merits of the Department's policy objectives. We examine:

- the scale and impact of the problem of people from the Windrush generation potentially being denied access to services, or detained or removed from the UK;
- whether the Department identified the potential for new legislation and policy to have adverse effects on the Windrush generation and others;
- whether its systems, guidance and processes contributed to negative outcomes, such as wrongful detention and removal;
- whether the quality of the Department's information was a factor in people being wrongfully detained, removed or denied access to services;
- whether the Department had adequate feedback loops to identify any adverse or unintended consequences and responded appropriately to feedback; and
- how the Department is now supporting people who might have been affected, through the Windrush scheme.

8 Our report draws on fieldwork conducted in August and September 2018, and on our previous work examining the Department's management of immigration policy and casework. We reviewed official documents and data and interviewed officials from the Department and other public bodies. We also reviewed reports by other, independent commentators, such as the Independent Chief Inspector of Borders and Immigration (the Inspectorate). We focused on the Department's role as the lead department responsible for setting and managing immigration policy across government. We did not examine all aspects of immigration policy or operations, or other departments' systems, in detail but we did consider the impact of data-sharing between departments. Appendix One describes our methodology.

Key findings

The impact on those affected

9 The Department has not yet established the full extent of the problems affecting people of the Windrush generation. It has reviewed 11,800 cases of Caribbean Commonwealth individuals who had been detained and/or removed from the UK since 2002 and who were born before 1 January 1973. From this, it identified 164 cases where there was an indication in the record that the individual could have been in the UK before 1973. From these cases it identified 18 people it considers most likely to have suffered detriment, such as being detained and/or removed, because their right to be in the UK was not recognised and therefore where it is most likely to have acted wrongfully. The Department announced in November 2018 that this number may rise because it drew too broad a definition of criminal activity in attempting to exclude foreign national offenders from its review. The Department is also conducting a separate review of around 2,000 cases to identify individuals who may have been the subject of a compliant environment sanction, such as having a driving licence revoked, and who could have been in the UK before 1973. We understand this is likely to identify at least 25 such cases (paragraphs 2.4, 2.5, 2.8 and Figure 3).

10 The Department decided to narrowly focus its historical reviews on individuals from the Caribbean. It considers that proactively reviewing other Commonwealth nationals' cases would be disproportionate. It based this decision on the nationality of applicants who were granted status through its Windrush taskforce, in its first operational month. We do not believe this was sufficient evidence on which to draw this conclusion. The Department has not established whether those who applied through the taskforce are representative of the underlying population who may have experienced detriment, for example, by reviewing a sample of cases. It also has not presented any analysis to support its assertion about the effort required. Established principles on legal entitlements and administrative practices (LEAP), which set out how government should correct situations in which departments know or suspect that people's legal entitlements might not have been met, place the onus on the Department to use its own data to identify people affected. The Department tells us that it does not believe LEAP principles are applicable although legal advice to the National Audit Office (NAO) indicates they are (paragraphs 2.10 to 2.13 and Figure 4).

Whether the Department identified the potential for new legislation and policy to have adverse effects on the Windrush generation and others

11 The Department's impact assessments did not analyse sufficiently the risk that compliant environment policies might have unintended or unfair consequences. Pre-implementation impact assessments of compliant environment policies, introduced between 2012 and 2016, contained very little analysis of the potential negative effects on individuals or communities who were in the UK lawfully but would find it harder to prove their immigration status. The Department's own analysis in 2014 indicated that there might be around 500,000 people in this position, although Home Office data indicates it has issued around 90,000 no time limit biometric residence permits¹ to individuals since June 2014 to help them clarify their status. Guidance on impact assessments states that the Department should analyse how and to what extent new policies may impact on different stakeholders. The Department also did not bring together equality impact analyses of individual schemes, such as the scheme to restrict access to bank accounts, and to develop a combined analysis of the impact of its proposals (paragraphs 2.14, 3.2 to 3.4).

Whether the Department's systems, guidance and processes contributed to negative outcomes, such as wrongful detention or removal

12 Some of the Department's processes contributed to the risk of wrongful detentions and removals. The Department has identified 18 cases where it was likely that it had incorrectly treated someone as not in the UK legally. In a wider group of 74, it considers it less clear that it acted wrongly because, for example, people had left the UK for more than two years and lost their indefinite leave to remain. This may have led to individuals being denied entry at the border and removed, or to being detained in an immigration removal centre and removed from the UK. We identified some common themes and issues in our review of the summaries of these cases. These include: poor records management by the Department and poor customer service. The complexity of the immigration system may also have been an issue. In some cases individuals appeared to be confused about their immigration status, rights and responsibilities, applying for visas for which they were not eligible, or not keeping up to date documentation demonstrating their current immigration status (paragraphs 2.5, 3.6, Figure 3 and Figure 7).

¹ A biometric residence permit is a card which holds a migrant's biographic details (name, date and place of birth) and biometric information (facial image and fingerprints), and shows their immigration status and entitlements while they remain in the UK. Any individual who is granted indefinite leave to enter or remain in the UK or who has no time limit on their stay here may stay and work in the UK as long as they like.

13 UK Visas and Immigration's quality assurance systems are not focused on outcomes or the impact of decisions. UK Visas and Immigration's overall performance framework is geared towards processing large volumes of immigration decisions within agreed target times. However, its quality assurance approach does not reflect fully the complexity of the decisions it makes, or the impact of different decisions. It selects cases to check by randomly sampling 2% of completed cases within each immigration route. However, visa and citizenship refusals, which would have been more of an issue for the Windrush cases, make up a relatively small proportion of the outcomes (approximately 5.6% for settlement and citizenship applications) and so would inevitably have been reviewed infrequently. UK Visas and Immigration has acknowledged in its revised assurance strategy, published October 2017, that it could do more to focus its quality assurance approach on outcomes across its operations (paragraphs 3.9 to 3.11).

14 The Department has had targets for removing illegal migrants since 2004, but there is insufficient information to conclude on whether this contributed to the Windrush situation. In 2017-18 Immigration Enforcement expected to achieve 12,800 enforced removals and broke this target down into weekly targets of around 230 to 250 removals. The Department has said that targets for enforced removals were part of an overall target for removals in previous years.² It has also said that during the period in which specific, quantified goals were set by senior managers, it was common practice for those to be apportioned among individual teams, reflecting their roles or areas of geographical coverage, and for local members of staff to see how their own work contributed to that. It is therefore reasonable to conclude that these targets would influence how staff carried out their work. Sir Alex Allan, in his report on the circumstances surrounding the former Home Secretary's evidence to the Home Affairs Committee on 25 April 2018, found that communication on this issue had not been clear. In relation to other targets for compliant environment sanctions, the DVLA also had a target, set by the then Prime Minister's Office, to deliver 10,000 licence revocations in 2014-15 (paragraphs 3.12 and 3.13 and Figure 1).

² This also included a target for voluntary departures.

Whether the quality of information shared with agencies was a factor in people being wrongfully denied access to public and private services, and accommodation

15 Issues with the Department’s data management increased the risk of action being taken against people who had a legal right to be in the UK. When the Department identifies someone it believes should not be in the UK, for example because it refuses that person’s visa application, it places them automatically in a ‘migration refusal pool’. Immigration Enforcement uses these data to target its work on removals and detention. The Department also shares these data with other public bodies, which may then apply other sanctions. Both we and the Inspectorate have raised concerns several times since 2014 about the quality of the data and controls underpinning this system. The Department declined to cleanse its database as recommended by the Inspectorate in its review of compliant environment measures on driving licences and bank accounts in 2016. The Department has now paused some of this data-sharing with other departments. It has also paused the automatic ‘pull’ of selected visa refusal cases into the migration refusal pool. It has not decided when, or if, it will resume these activities (paragraphs 3.14 to 3.16, 3.19, 3.21 and Figure 8).

Whether the Department had feedback loops to identify any adverse or unintended consequences and responded appropriately to feedback

16 The Department did not act on credible information about issues that may have contributed to the Windrush situation. We found several Inspectorate reports that raised issues with the targeting of compliant environment measures generally, including the possibility that some people were being sanctioned who should not have been, because of issues such as incorrect data. The reports also mention that in some cases there was a lack of information to properly assess the impact of compliant environment measures. In relation to Windrush specifically, a 2014 report called ‘Chasing Status’, by the Legal Action Group highlighted the potential adverse impact of compliant environment policy on certain groups, including Jamaican migrants who arrived in the UK before 1973.³ The Department was aware of the report at the time but did not act on it. In addition, Caribbean ministers raised Windrush cases with the UK government at a ministerial forum in April 2016. The Foreign & Commonwealth Office subsequently shared a brief record of this forum but it is not clear whether the Department was aware of this. It is our view that there were warning signs from enough different sources, over a long enough period, to collectively indicate a potential problem that merited further investigation (paragraphs 3.21 and 3.22).

3 Legal Action Group, Fiona Bawdon, *Chasing status: if not British, then what am I? The ‘surprised Brits’ who find they are living with irregular immigration status*, October 2014.

The Department's plans to provide redress

17 The Department has established a dedicated team to respond to people who may have been affected. It set up a Windrush scheme in April 2018 to help individuals to resolve their immigration status. It has waived its usual fees for people applying through the scheme. As at 30 September 2018, the Department had issued 2,658 individuals with documentation to confirm their status. The majority are from Caribbean Commonwealth nations (73%) and other Commonwealth nations (25%), although a minority (2%) are from other countries, such as Italy. The scheme is open to people from any country, as long as they arrived in the UK before 31 December 1988 and are settled in the UK. It has issued documents to individuals from around 50 nationalities. The Department has run outreach activities to raise awareness of the scheme. It also set up additional support for vulnerable people and simplified some of its forms to help people apply more easily to the best immigration route for their circumstances. The Department plans to embed some of these practices more widely through its immigration casework processes, although it has not yet confirmed what will change and how it will be sustained. It has also established a head of profession and chief caseworkers unit to provide professional leadership and guidance to caseworkers on complex cases (paragraphs 2.10 and 4.1 to 4.4).

18 The Department is setting up a compensation scheme, the cost of which is still being established, and this might result in a large range of financial liabilities. The Department has committed to public consultation on issues such as who will be eligible for compensation, and what they will receive under the scheme. It has said that it intends to compensate people for a broad range of impacts and that the scheme will not necessarily be limited to Commonwealth citizens. It intends to start making payments by spring 2019. It has been a long-standing practice for the Department to agree confidentiality when settling immigration and asylum compensation claims. It has said that claims paid under the formal Windrush compensation scheme will not be subject to confidentiality agreements and that in future, such agreements will only be used where there is clear legal advice that there are valid reasons for their use (paragraphs 4.5 and 4.8).

Conclusion on value for money

19 The policy of successive governments to create a hostile/compliant environment for illegal migrants involved limiting access to benefits and services and tightening enforcement activities. This included a 'devolved approach' placing a duty on landlords and employers and public service providers to carry out checks. This predictably carried a risk of impacting on individuals who were, in fact, entitled to residence, but who did not have the necessary documents.

20 The Department had a duty of care to ensure that people's rights and entitlements were recognised and this has been re-emphasised by the Prime Minister. We do not consider that the Department adequately considered that duty in the way that it introduced immigration policy.

21 In its implementation of the policy with few checks and balances and targets for enforcement action, we do not consider, once again, that the Department adequately prioritised the protection of those who suffered distress and damage through being wrongly penalised, and to whom they owed a duty of care. Instead it operated a target-driven environment for its enforcement teams. The clarity of briefing to the former Home Secretary on this issue has also been called into question.

22 It is clear that the Department received warnings of the fact that people, including in one case an employee of the House of Commons, were being wrongly caught up in the enforcement and compliant environment sanction regimes it was responsible for, but this did not have the effect of stimulating inquiry, or timely action.

23 The Department is now moving to identify affected individuals, and to compensate them. This is positive. However, it is still showing a lack of curiosity about individuals who may have been affected, and who are not of Caribbean heritage, on the basis that this would be a 'disproportionate effort'. In the circumstances, we find this surprising.

24 It is clear that the Department's implementation of the policy, now resulting in a belated and costly exercise in seeking information and paying compensation, to say nothing of the reputational damage involved, was not value for money.

Recommendations

25 This report shows how the Department's failure to fully consider the needs of a specific group within the wider immigration system led to serious adverse consequences for the individuals affected. Our recommendations are designed to help the Department reduce the risk that a similar situation will happen again.

- a** **The Department should consider its responsibility, in line with LEAP principles, to be more proactive in identifying people affected and put right any detriment detected.** It should consider reviewing data on: other Commonwealth cases as well as Caribbean nations; and on refusals of citizenships and other immigration routes. It should also identify and contact proactively individuals who suffered detriment other than removal and detention.
- b** **The Department should improve its approach to assessing the risks to particular individuals and groups before it implements its policies.** It should bring analyses together to develop a clear picture of the impact on individuals or groups of people who might be vulnerable to unintentional adverse impacts. Where there are several aspects to a policy, as there are in the compliant environment, it should consider the combined effects, rather than treating each element as a 'stand-alone' initiative.

- c The Department should develop a Department-wide strategy to support potentially vulnerable customers across the immigration system as a whole.** Specific actions might include allowing one claim to be considered under multiple application routes, as well as simplifying forms and guidance.
- d The Department should place greater emphasis on outcomes in its assurance of immigration decision-making.** It should develop a system that seeks actively to improve decision quality and is based on a broad understanding of the risks and impact of incorrect or inconsistent decisions. This should include testing proactively for the risks that new policies present, including the risk that individuals who have the right to reside in the UK are wrongfully identified as being in the country illegally. Specifically, it should consider additional checks on refusal decisions, because enforcement action may follow automatically.
- e The Department should use independent scrutiny to identify and counter potential negative consequences.** This should include:
- incorporating more independent analysis when developing policy and operational processes;
 - acting positively on external reviews and inspections, particularly where these identify potential problems; and
 - conducting more, and better, independent evaluation of the impact of its policies.
- f The Department should, as soon as reasonably possible, clarify the arrangements for the Windrush compensation scheme.** This should include clarifying who is eligible to apply for compensation and the potential cost so that the Department can assess the financial management and budgeting implications.

Part One

Policy and operational context

The ‘Windrush generation’ and immigration from the Commonwealth

1.1 In the spring of 2018 the media began to report the stories of people who had come to the UK from the Commonwealth being denied access to public services or detained, removed from, or refused re-entry to, the UK. In some cases, people did not have the paperwork to prove their right to reside in the UK, making it difficult for them and their families to prove they were in the UK legally. These reports suggested that in some cases there may have been issues going back over many years, although some also highlighted the impact of measures introduced in the 2014 and 2016 Immigration Acts, such as checks by landlords and employers, or the power to revoke driving licences. Press articles and the Home Office’s (the Department’s) own review of cases have particularly highlighted individuals from Black Caribbean backgrounds but there is no complete picture of the demographic characteristics of the people potentially affected.

1.2 Under the British Nationality Act 1948, citizens of Commonwealth nations became citizens of the UK and Colonies. Many citizens from these nations came to the UK, encouraged by job and other opportunities amid the post-war labour shortage. This attracted to the UK, for the first time, large numbers of workers and their families from outside Europe, including from the Caribbean, India and Pakistan. Some of these individuals have recently become known as the ‘Windrush generation’, after the ship *HMT Empire Windrush*, which in 1948 carried hundreds of passengers mainly from the Caribbean to England. Under the British Nationality Act 1948, these people had the right to remain in the UK, with no time limit.

1.3 There is no definitive estimate of how many people came to the UK between 1948 and 1971, or how many still live here. Figures from the 2011 Census indicated that nearly 600,000 Commonwealth-born people lived in the UK, and had arrived before 1971, at that time.⁴ Oxford University’s Migration Observatory has also estimated that, in the year ending June 2017, there were 524,000 Commonwealth-born people living in the UK who had arrived before 1971.⁵

4 Office for National Statistics, *CT0801_2011 Census - COB (UK, Commonwealth, continent) by YR arrival by passport – Nat to region*, May 2018. Available at: www.ons.gov.uk

5 The Migration Observatory, *Commonwealth migrants arriving before 1971, year ending June 2017*, May 2018. Available at: www.migrationobservatory.ox.ac.uk

1.4 The Immigration Act 1971, which came into force in 1973, introduced changes to end large-scale immigration from the Commonwealth. The Act preserved the indefinite leave to remain of Commonwealth citizens already living in the UK but from that point on people arriving from Commonwealth countries were granted temporary residence. The Department did not keep a record of those with preserved indefinite leave to remain, which was not time-limited, and it did not issue paperwork to people to confirm this. There was also no requirement for individuals to obtain proof of their status.

Recent immigration policy and legislation and the ‘compliant environment’

1.5 The policy of recent governments has been to make it progressively harder for illegal migrants to live, work and access services in the UK, and to emphasise individuals’ responsibility to prove that they are in the UK legally. This policy was known since before 2010 as the ‘hostile environment’. It is now known as the ‘compliant environment’.

1.6 The compliant environment is a cross-government policy designed to reduce the impact of all types of migration on public services, while supporting the government’s ambition to reduce overall net migration to the UK. In 2012, the government established an inter-ministerial group on migrants’ access to benefits and public services (the inter-ministerial group) to:

- consider whether existing rules preventing illegal migrants from accessing benefits, employment and public services could be administered more effectively; and
- determine whether existing rules on migrants’ access to benefits and public services should be strengthened.

1.7 Following this, it introduced tougher controls in the Immigration Act 2014, and the Immigration Act 2016. These Acts introduced checks and controls to close ‘loopholes’ that enabled illegal migrants’ to access housing, welfare benefits, driving licences and bank accounts. The 2014 Act also introduced amended rules on charging for some NHS services.

Delivering compliant environment sanctions

1.8 The Department and its agencies play several key roles in the UK immigration system.

- **The core Department** sets and oversees immigration policy.
- **UK Visas and Immigration** makes decisions about who has the right to visit or stay in the country.
- **Immigration Enforcement** is responsible for preventing abuse of the immigration system, dealing with the threats associated with immigration offending and encouraging and enforcing the departure of illegal migrants from the UK.
- **Border Force** is responsible for enforcing the law at the UK border and carrying out immigration and customs controls for people and goods entering the UK.

1.9 Other public bodies deliver and enforce specific compliant environment controls in their areas of responsibility. These bodies include the Department for Work & Pensions and the Driver & Vehicle Licensing Agency (DVLA). Private individuals and businesses also operate controls, for example, by checking individuals' rights to rent homes or work in the UK (**Figure 1**).

1.10 The Department works with other government departments and public bodies, typically through a memorandum of understanding, to proactively share data on individuals it considers to be in the country illegally. The other public body will then match that data against its own records. If there is a match it may issue sanctions, or deny or restrict access to particular services. The Department also offers verification services, including the Right to Rent checking service and Employer Checking Service. These allow employers and landlords to check whether someone is eligible to work or rent a property.

1.11 The compliant environment has also emphasised the need for individuals to prove their immigration status to access certain services. In some cases, this may require the individual to provide substantial evidence to satisfy the Department of their settled status before they can obtain official documentation proving this (such as a certificate of entitlement), or a visa. Other government departments and agencies may also require individuals to provide documentary evidence of their settled status.







Routes to obtaining the right to remain in the UK

1.12 Different immigration statuses determine individuals' rights to remain in the UK and their entitlement to services and benefits (**Figure 2** on pages 18 and 19). There are complex rules governing which immigration status may be awarded to an individual seeking to remain in the UK. These take into account factors such as individuals' nationality, the immigration status of their parents or spouse, their date of arrival or birth in the UK, and the purpose of their arrival. In most cases, individuals seeking to apply for, change or confirm their immigration status must pay a fee.

1.13 The time it takes the Department to decide on an application can vary according to the type of application and whether it is classified as straightforward or non-straightforward. For instance, UK Visas and Immigration's service standard for straightforward out-of-country settlement applications is 60 working days, and a straightforward in-country application for indefinite leave to remain or no time limit is six months. There are no service standards for non-straightforward cases, meaning an applicant has no guarantee of when their application will be resolved. Individuals may receive different types of documentation from the Department to confirm their immigration status, for example, a stamp in their passport, an official letter or certificate, or a biometric residence permit. Those who have been provided documentation through its Windrush scheme include those awarded citizenship, indefinite leave to remain and biometric residence permits.

Figure 1
Examples of measures that affect how migrants access services in the UK

A range of departments and other bodies operate controls on, and charge for, migrant's access to services

| Area affected | Measures | Agencies with which the Home Office shares information |
|---|---|--|
|  <p>Driving licences</p> | <p>The Driver & Vehicle Licensing Agency (DVLA) checks individuals' immigration status before issuing a driving licence.</p> <p>Existing driving licence holders who are considered to be in the UK illegally may have their licence revoked.</p> <p>For 2014-15, the Prime Minister's Office set the DVLA and Home Office a target of 10,000 revocations.</p> | <p>DVLA</p> |
|  <p>Bank accounts</p> | <p>Banks and building societies must check current account holders against a Cifas immigration database. They may close or restrict access to accounts where the owner is considered to be in the UK illegally.</p> | <p>Cifas</p> |
|  <p>Benefits and pensions</p> | <p>The Department for Work & Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) must confirm individuals' immigration status before issuing certain benefits, such as Child Benefit or Working Tax Credits.</p> <p>DWP and HMRC may stop benefit payments for those identified as not having recourse to public funds.</p> | <p>DWP HMRC</p> |
|  <p>Private sector rented housing</p> | <p>Private landlords should check the immigration status of prospective tenants, and can evict existing tenants who are in the UK illegally.</p> <p>Private landlords may face civil financial penalties if they are found to be renting to illegal migrants. Those found to be knowingly or repeatedly renting homes to illegal migrants may face a criminal sanction.</p> | <p>Private landlords (via Right to Rent checking service)</p> |
|  <p>Employment</p> | <p>Employers should check whether an employee is legally entitled to work in the UK.</p> <p>Employers found to be employing illegal migrants face civil penalties. Those found to be knowingly or repeatedly employing illegal migrants may face a criminal sanction.</p> | <p>Employers (via Employer Checking Service)</p> |
|  <p>Health</p> | <p>Since 1982, individuals who do not normally live in the UK have to pay for NHS secondary care unless they are exempt.</p> <p>An immigration health surcharge was introduced in 2015 for those who apply to reside in the UK for six months or more.</p> <p>From October 2017, health providers are legally required to recover these charges in full and in advance when health needs are assessed as being non-urgent, and safe to wait until the patient can leave the UK.</p> | <p>Department of Health & Social Care NHS trusts NHS Digital</p> |

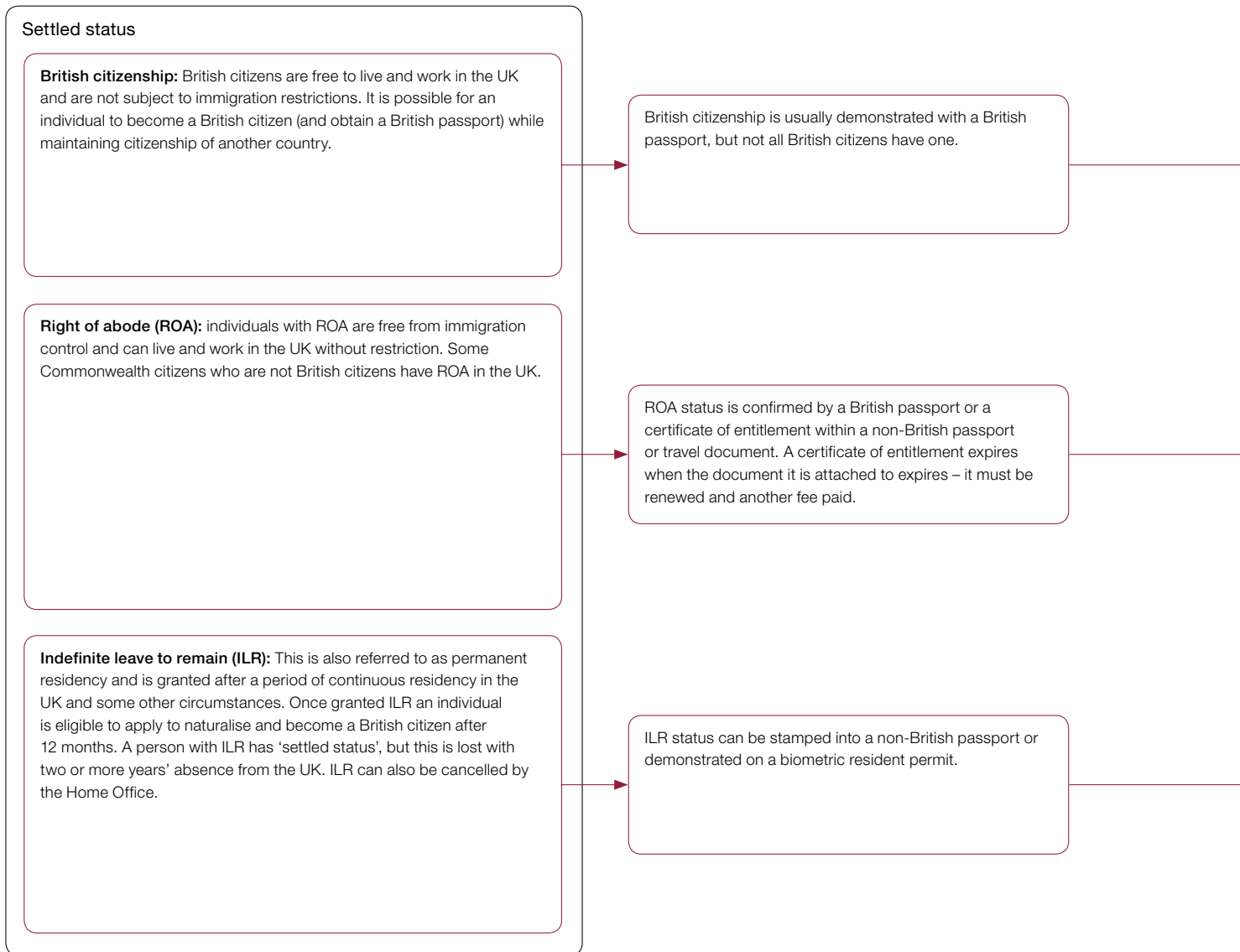
Source: National Audit Office review of Home Office and published evidence

Figure 2 Routes to obtaining a right to remain

There are many ways for an individual to obtain the right to remain in the UK

Desired status

Desired documentation



Notes

- 1 Individuals from the European Economic Area with a permanent residence document are also eligible to apply to naturalise.
- 2 The standalone application fee for a biometric residence permit outside of an application for ILR, or for a replacement biometric residence permit, is £56.00. A fee of £19.20 for biometric enrolment is also applicable for individuals applying for a biometric residence permit.
- 3 Fees are as of October 2018, based on one adult, and may vary according to the circumstances of the individual involved. Additional fees may apply for dependants.
- 4 Individuals can pay for a premium service for some applications, in which the decision is made in a shorter time frame at an additional cost of £610 per person.
- 5 Individuals arriving in the UK before 1973 were granted indefinite leave to remain status under the Immigration Act 1971. However, provisions in the Immigration Act 1988 meant that this indefinite leave to remain would lapse after two years' absence from the UK. Individuals subject to this therefore need to apply for re-entry on their return to the UK and be prepared to provide evidence to demonstrate their previous settlement in the UK.

Application process

Applicable fees

Potential outcomes

Apply to the Home Office for naturalisation: This is the process by which an individual with ILR (or other settled status) applies to become a British citizen.¹ The applicant must satisfy a number of conditions and evidence requirements from the Home Office, including speaking English, proof of previous residency in the UK and being of good character. A certificate of naturalisation is given to the individual at a citizenship ceremony, who can then apply for a British passport.

- The fee for naturalisation is **£1,330**
- An adult British passport costs from **£75.50**

Application granted

The individual's immigration status is granted.

Apply to the Home Office for a certificate of entitlement: The applicant must satisfy certain conditions and evidence requirements from the Home Office related to the basis of their application.

- A certificate of entitlement (to demonstrate ROA) costs **£372** (UK-based applications) or **£388** (non-UK based applications)

Application rejected

This may be on a technicality such as the individual not submitting the right evidence or fee. The fee paid will be refunded minus an administration charge, and the applicant will be able to reapply.

Application to the Home Office for ILR or permanent residency: The applicant must satisfy certain conditions and evidence requirements from the Home Office, including on proof of previous residency within the UK, speaking English, and passing the Life in the UK Test. A person with ILR can also apply for **no time limit (NTL)**, which transfers an existing settlement visa from an old passport to a biometric residence permit.² A person who was previously settled with ILR but has been away for more than two years would need to apply for a **Returning Resident visa** to come back to live in the UK.

- The fee for ILR (UK-based applications) is **£2,389**
- The settlement fee (for non-UK based applications) starts from **£1,523**
- The Life in the UK Test fee is **£50**
- The fee for NTL is **£229**
- A Returning Resident visa costs **£516**

Application refused

The Home Office will not refund a fee if it refuses an application.

Applicants may be given the opportunity to appeal the decision or request an administrative review.

1.14 In the remainder of the report we examine:

- the scale and impact of the problem of people from the Windrush generation potentially being denied access to services, or detained or removed from the UK (Part Two);
- the extent to which the Department's systems and processes contributed to problems (Part Three); and
- how the Department is now supporting people who might have been affected through the Windrush scheme (Part Four).

Part Two

The scale and impact of the Windrush generation being denied access to services, or detained or removed from the UK

2.1 In this part of the report, we examine the potential impact on people from the Windrush generation who may have:

- been incorrectly refused citizenship or other immigration status by the Home Office (the Department);
- had immigration enforcement action wrongly taken against them, including: detention in a Department facility, or at the border; or being removed from the UK, or refused entry or re-entry to the UK; or
- been wrongly denied access to services, or had their services removed.

Number of people affected

2.2 The Department has attempted to identify the number of individuals affected and the impacts on them, by reviewing cases on its Casework Information Database. This included:

- a first review of cases involving people who may have been wrongfully detained, removed or deported;⁶ and
- a second review of cases involving people who may have been subject to 'proactive' compliant environment sanctions.

2.3 Its reviews included nationals of 12 Caribbean Commonwealth countries, who were born before 1 January 1973 and therefore might have been settled in the UK before 1973,⁷ and who have been detained or removed from the UK since 2002. The Department does not record an individual's date of arrival in the UK so it cannot identify potential Windrush cases directly.

⁶ According to UK immigration rules, a deportation refers to individuals whose removal is deemed "conducive to the public good", for example foreign national offenders. A removal refers to both the enforced removal of those who are deemed to be here illegally or a voluntary departure following enforcement action.

⁷ The Caribbean countries included in the historical reviews are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and St Nevis, St Lucia, St Vincent and the Grenadines and Trinidad and Tobago.

Review of detention and removal cases

2.4 In May 2018, the Home Secretary first reported to the Home Affairs Select Committee that 63 individuals may have been wrongly removed or deported since 2002. This was based on an initial review of 8,000 removals and deportations.⁸ This was followed by a wider review of 11,800 cases that considered removals and/or detentions.⁹ This review of 11,800 identified 164 individuals where there was an indication in the record that they could have been in the UK before 1973. The 164 cases identified in August does not relate directly to the 63 cases identified earlier in the year because the methodology used to review the cases changed between the two reviews. This change in methodology also meant the 11,800 cases did not include all of the 8,000 cases initially reviewed – the later review did not consider deportations.

2.5 The Department further reviewed these 164 cases to identify the outcomes for these people (**Figure 3**). It told us that, on review, it considered that not all of the cases involved mistakes or detriment. In some cases, the main detriment suffered was a short detention at the border. It has issued formal letters of apology to 15 of the 18 individuals it considers most likely to have suffered detriment such as being detained or removed and therefore where it is most likely that the Department has acted wrongfully. Officials are still working to identify the remaining two individuals and the next of kin of the one deceased individual. These 18 represent 11% of the 164 people it identified as part of its historical cases review. A further group of 74 (45%), in its view, were subject to some action, including removal or detention, which was not necessarily incorrect based on immigration rules and entitlements. This could be because the individual appears to have left the UK for more than two years and, as a result, lost their indefinite leave to remain. In November 2018, the Department announced that these numbers may rise because it drew too broad a definition of criminal activity in attempting to exclude foreign national offenders from its review.

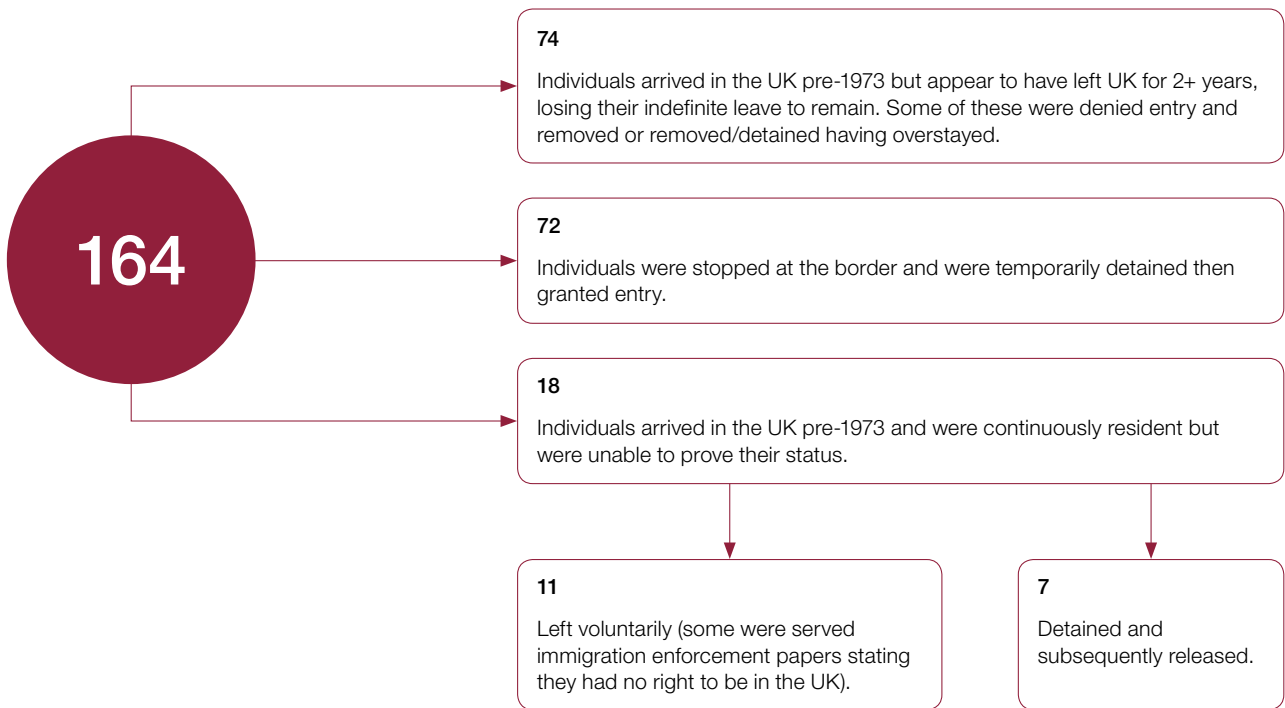
8 HC Home Affairs Committee, *Oral evidence: Windrush children*, HC 990, Q 237–238, 15 May 2018.

9 Home Office, *Letter from the Home Secretary regarding Windrush: August update*, 21 August 2018.

Figure 3

The 164 cases of detention and removal identified by the Home Office historical review

The breakdown of these cases identifies numerous different outcomes for the individuals with varying levels of detriment



Source: Home Office update to the Home Affairs Select Committee, 21 August 2018

2.6 The case summaries provided to us by the Department were one to four pages in length and were based on the case files of those 164 individuals. We found problems with some of the summaries, including errors in the file names, a duplicate case and missing information. This initially made it difficult to reconcile our findings with those the Department had publicly reported. We found that:

- more than half of the cases (56%) involved Jamaican nationals. Other Caribbean nationals featured within the cases included those from Barbados (13%) and Trinidad and Tobago (8%);
- 52% of the cases concerned men, and 48% concerned women;
- fifteen cases referred to past criminal activity (9%). The summaries did not provide enough information to determine how this may have influenced how this individual's case was handled;
- based on the information provided in the summaries, we also formed a view on whether the individual appeared to be returning from overseas to the UK or had always been in the UK. A majority of the cases appeared to involve individuals returning from overseas (72%). Of the remaining cases, 26% involved people who appeared to have been continuously resident in the UK, and in 2% of cases it was not clear which was the case; and
- there was evidence of long-standing engagement with the Department on immigration-related issues, with some cases dating back to the early 1990s.

2.7 The case summaries also detailed the removal type, detention type, and Home Office interaction experienced by the 164 individuals:

- **Removals:**

Of the 164, 83 people left the UK following action by the Department (51%). Twenty-nine of these were removed while trying to enter the UK, and two people were removed while living in the UK. Thirty-five were 'other verified returns'. This means the Department initiated removal action on them and they left voluntarily without notifying immigration officials. Their departure was confirmed via other means. Seventeen individuals left the UK voluntarily, notifying the Department of this. The remaining 81 people (49%) were not subject to any removal action.

- **Detentions:**

Ninety-seven people (59%) were detained at a port or short-term holding facility, while 14 were held in an immigration removal centre (9%). One person was held in another type of detention, such as a police station (1%). Fifty-two individuals (32%) were subject to no detention.

- **Home Office interaction:**

Fifty-eight individuals had no previous interaction with the Home Office's visa or enforcement systems, specifically no negative application decision or serving of enforcement papers (35%). Fifty-four individuals received a negative decision, meaning their application for a particular visa or immigration status was either rejected or refused (33%). Twenty-one individuals were refused entry at the port, and they were either removed from the UK, left voluntarily, or were allowed temporary entry clearance. Of those remaining, eight people were served with removal papers, and two were subjected to compliant environment sanctions. Twenty-one people had more than one interaction with the Home Office, meaning, for example, that they were subjected to a refusal and served with removal papers.

Review of 'proactive' compliant environment activity

2.8 The Department is also seeking to identify people who have been subject to a 'proactive' compliant environment sanction and who may have been in the country before 1973. To do this, it applied the same criteria on nationality and age from its first review to different data covering around 114,000 potential data matches with other bodies.¹⁰ From this, it identified around 2,000 individuals born before 1 January 1973 from the same 12 Caribbean nations. The Department has not yet completed its review of these cases and so we could not examine these case summaries. Based on early work the Department considers that at least 25 cases of sanctions were wrongfully applied. This equates to around 1.3% of cases reviewed.

2.9 This review includes sanctions issued as a result of direct activity by the Department's Interventions and Sanctions Directorate. It does not include measures enforced by employers and landlords on people's eligibility to work or rent a home. The Department does not collect data to allow it to identify all the decisions taken under these schemes.

The scope of the Department's response and the potential for a larger group of people to be affected

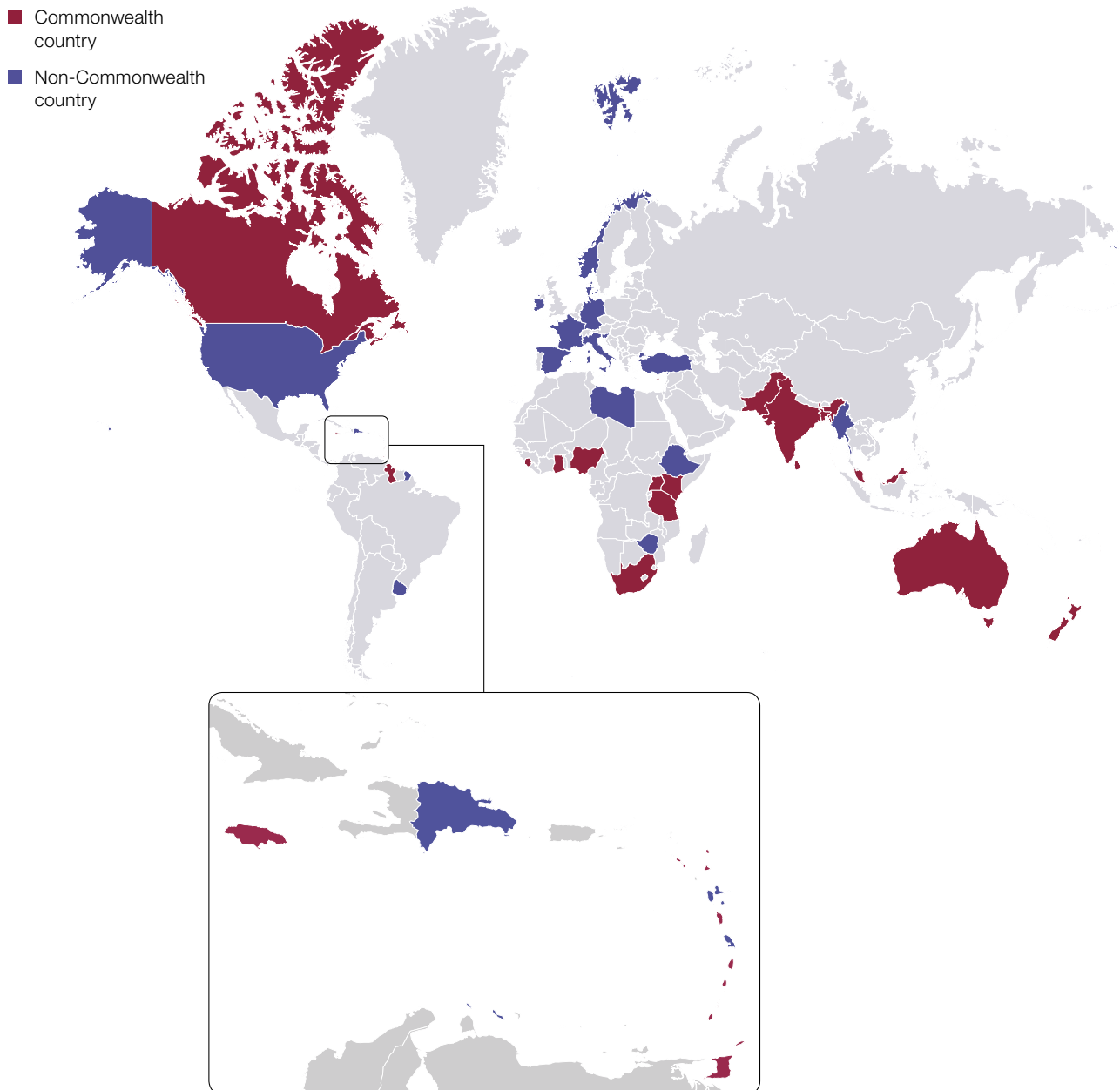
2.10 The Department has so far focused both of its reviews on individuals from 12 Caribbean Commonwealth countries. However, the evidence indicates that a broader population might be affected. People from other Commonwealth nations who arrived in the UK before 1973 are a particularly clear example because their indefinite leave to remain is preserved under the 1971 Immigration Act and because it is known that there was no documentation provided at the time. The possibility that other Commonwealth and even non-Commonwealth nationals may be affected is supported by the profile of people who have been awarded immigration status through the Department's Windrush taskforce. In total, between April and August 2018, documents were provided to individuals from around 50 countries. About three-quarters of these applicants are of Caribbean origin. The majority of the remainder are from other Commonwealth countries such as India, Canada, Nigeria and Australia. A small minority (2.4%) are from other countries such as Italy (**Figure 4** overleaf).

¹⁰ A data match is where Home Office data matches with records held by other government departments. It is not confirmation that the individual is in receipt of a service or benefit. Following receipt of the matched data and after further investigation, the other department may consider revoking access to services or benefits.

Figure 4

Nationalities of the individuals provided with documentation to confirm their status in the UK by the Windrush Taskforce from April to August 2018

The nationalities provided with documentation are wide ranging and include both non-Commonwealth and Commonwealth nationals



Notes

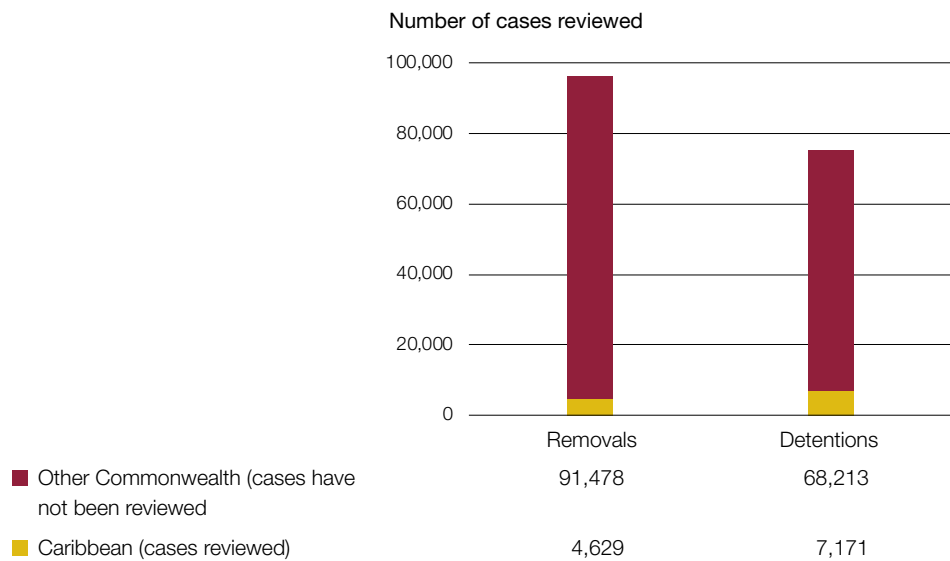
- 1 Based on the above data which relates to April to August 2018:
 - Some 1,662 individuals from Caribbean countries had documentation to confirm their status in the UK
 - Some 558 individuals from Commonwealth countries (excluding Caribbean countries) had received documentation to confirm their status in the UK
 - A total of 54 individuals from non-Commonwealth countries had received documentation to confirm their status in the UK
- 2 We requested updated data but the Department did not provide this in time for us to consider it as part of our review.

Source: Home Office data on the work of the Windrush Taskforce

2.11 The Department has identified that it holds records on a total of around 171,000 cases of Commonwealth nationals aged over 45 who may have been detained or removed since 2002. Taking into account the 11,800 cases already reviewed, this means the Department has not reviewed around 160,000 files relating to non-Caribbean Commonwealth nationals (**Figure 5**). The Department has decided that reviewing cases relating to other Commonwealth nations would involve disproportionate effort. In response to questions from the Home Secretary about whether the review was wide enough, it analysed data from its Windrush taskforce in its first month of operation, which indicated that 13% of people coming forward to the scheme from non-Caribbean nations were being granted documents.

Figure 5
Commonwealth cases reviewed by the Home Office

The number of wider Commonwealth cases not reviewed by the Home Office is substantially larger than the Commonwealth cases that have been reviewed



Note

1 The total number of Caribbean Commonwealth cases reviewed is 11,800. These are the cases included in the Home Office historical review of removals and detentions.

Source: National Audit Office analysis of Home Office data

2.12 Data from the taskforce is not a sufficient basis on which to decide that reviewing other Commonwealth cases would be disproportionate. The Department's decision assumes that people coming forward to the taskforce are representative of the underlying population affected. However, it has not undertaken any analysis, for example, of a sample of those cases, to support this assumption. It also has not presented any analysis of the potential costs of the exercise relative to the potential benefits to individuals affected, to substantiate its assertion about the proportionality of the effort required. In relation to the review of sanctions in particular, the Department is reviewing fewer cases but its work to date indicates that there may be more cases of action having been taken against people who may have been in the country before 1973, despite many of the sanctions only having been introduced recently. This could reasonably be seen to indicate a bigger problem. Given this, we find the Department's decision not to investigate further surprising.

2.13 The relatively narrow scope of the Department's review also means it may not meet established principles on legal entitlements and administrative practices (LEAP). The 1979 LEAP report sets out how government departments should act in situations where people's legal entitlements might not have been met. The report states explicitly: "The general principle is that a legal entitlement, once validly established and, where necessary, properly claimed, must be met, whatever the administrative difficulties or costs involved in doing so". It also places the onus on departments to use data available to them to identify people affected and provide remedy, as well as publicising the situation to help individuals affected to come forward.¹¹ The scope of the Department's proactive reviews is also inconsistent with the broader scope of its own Windrush scheme, and its proposed compensation scheme.

2.14 More broadly still, other groups of people, such as children of the original Windrush generation and people who came to the UK from outside the Commonwealth, may also be affected by the general issue of finding it harder to prove their right to reside in the UK. The Department estimated in 2014 that 500,000 people might be in the UK lawfully who do not hold a biometric residence permit. A biometric residence permit is a document that non-European Economic Area nationals can use to confirm their identity; right to study or work in the UK; or right to any public services or benefits. The Department expected this number to decline over time as people took up biometric residence permits, which it started to issue in 2008, gained citizenship, or died, but for it to remain in the hundreds of thousands well into 2019. The Department's data indicate it has issued around 90,000 no time limit biometric residence permits to settled migrants since June 2014. However, it has never formally or systematically issued them to this group, despite several briefings to ministers on this issue since at least 2013. There is no clear evidence that these wider groups have been subject to any adverse outcomes, and the Department has not undertaken any broader review of whether other groups of people might have been subject to adverse outcomes, such as sanctions under the compliant environment.

¹¹ Civil Service Department, Legal Entitlements and Administrative Practices, a report by officials, 1979. LEAP is a report by civil servants published in the late 1970s that departments use to guide their response when there has been a change in the law, or in the interpretation of a law, and individuals' entitlement might be affected.

Part Three

Home Office operational processes and systems

3.1 In this part we examine whether the Home Office (the Department) took enough action to protect those who had a legitimate right to be in the UK when it designed and implemented recent immigration policy initiatives and its key business processes and systems. We based our review on established frameworks, particularly our core management cycle (**Figure 6** overleaf) and on risks raised by other external, independent reviews, as well as the Department's evidence to the Home Affairs Select Committee. We considered:

- **strategy and planning:** whether the Department identified that its new legislation and policy might have adverse effects on the Windrush generation or others;
- **implementation and measurement:** whether the Department's systems, guidance and processes, including targets and quality assurance regimes and data management, contributed to people being wrongfully detained, removed or denied access to services; and
- **evaluation and feedback:** whether the Department had adequate feedback loops to identify any adverse or unintended consequences and responded appropriately to feedback.

Strategy and planning

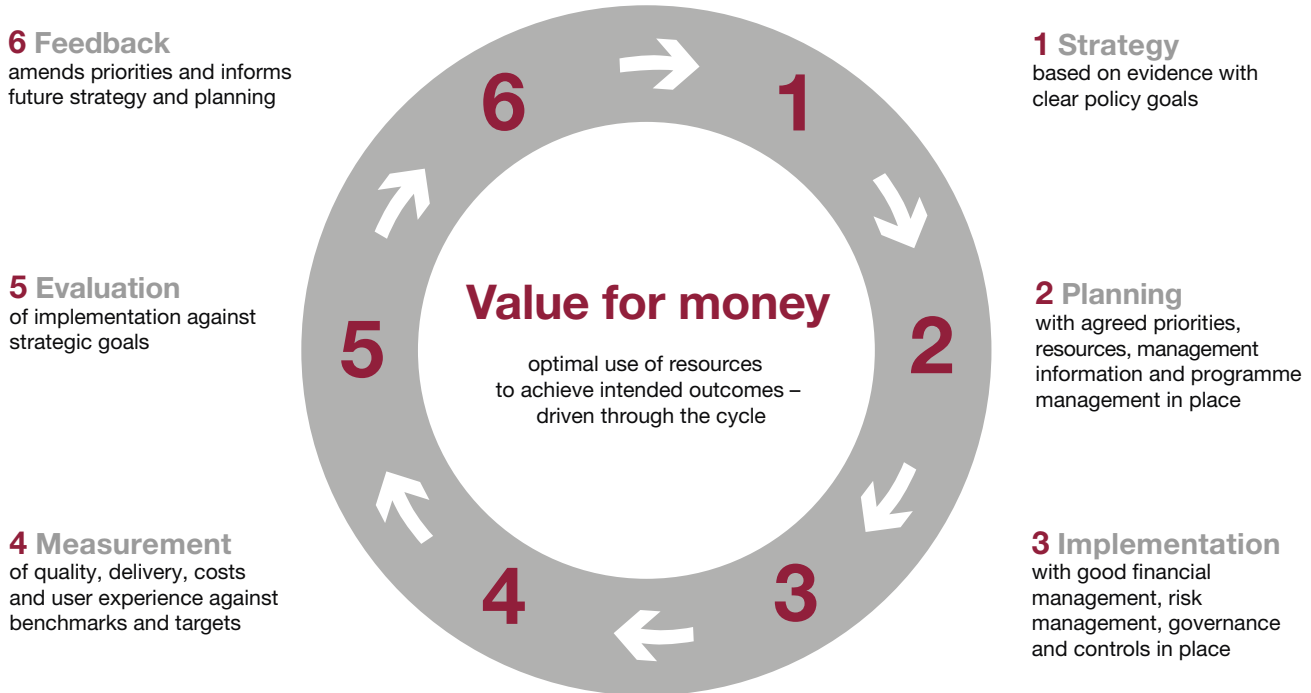
Assessing the impact of proposed policies

3.2 As set out in Part One, the government's objective for the compliant environment was to reduce the impact of all types of migration on public services, while supporting its ambition to reduce overall net migration to the UK. We found that the Department recognised the need to ensure the restrictions it imposed did not impact on particular communities and groups unfairly. There was also no intention to disadvantage non-European Economic Area (EEA) migrants, vulnerable groups, or other migrants settled in the UK. For instance, a 2012 briefing to the inter-ministerial group referred explicitly to ensuring that the policy protected the rights of particularly vulnerable groups or wider communities. The Department also considered, to an extent, the impact of specific elements of the compliant environment on individuals with the protected characteristics of age, race or religion or belief.

Figure 6

The National Audit Office's core management cycle

The framework used to review Home Office operational processes and systems in relation to Windrush

Source: National Audit Office, *A Short Guide to Structured Cost Reduction*, June 2010

3.3 Overall, however, we found that the Department did not do enough to assess the risk that its policies might have unintended or unfair consequences, before implementing them. It addressed this risk only briefly in the impact assessments relating to the 2014 and 2016 Immigration Acts, which we reviewed. Where risks of unintended consequences relating to particular individuals or communities were identified, they were not treated as material. For example, in the impact assessment on tackling existing bank current accounts held by illegal migrants, the Department identified that the proposed measures could impact on the “appetite of firms to offer banking services to legal migrants who do not have permanent leave to remain in the UK”. It concluded, however, that “the government does not consider the risk that firms will cease to offer bank accounts to legal migrants to be material and will monitor the impact of this legislation”.

3.4 The Department did analyse the risk that its policies would have an impact on those with protected characteristics such as age and ethnicity in policy equality statements but did not bring these together to develop a clear picture of the overall impact on individuals, groups or communities who might possess one or more of these characteristics. The over-arching assessments for both the 2014 and 2016 Acts simply refer to the individual assessments for the underlying initiatives rather than assessing the combined effect of all the elements covered.

3.5 The Department made plans to reduce the general effect of discrimination, and other adverse effects, for some of its policies. For example, it developed a code of practice for landlords for the Right to Rent scheme in consultation with landlords and other stakeholders although some stakeholders have questioned the effectiveness of this (see paragraph 3.23).

Implementation and measurement

Operational systems

3.6 Our review of the 164 case summaries indicated a number of factors that we consider increased the risk of people with the right to remain in the UK being incorrectly detained or removed, or those who may not be aware of their rights becoming inadvertently drawn into enforcement action. Not all of these were a result of direct action by the Department. Some appear to have been caused because individuals found the immigration systems and the rules governing different immigration statuses complex and confusing. This meant that these individuals applied for visas for which they were ineligible, or did not keep or renew documentation demonstrating their current immigration status (**Figure 7** overleaf). However, the risk factors also included a number of issues relating to the Department's operational systems and management. These included poor records management by the Department, poor customer service, and an inconsistent approach to cases.

3.7 In the remainder of this part we consider whether these and other issues that we and the Committee of Public Accounts, the Home Affairs Committee and others have identified could have been factors in creating a risk of incorrect detentions and removals and also a broader risk of people receiving other sanctions.

The role of targets, management information and quality assurance

3.8 In its report of July 2018, the Home Affairs Committee voiced concerns that targets, including targets for enforced removals, may have affected the way officials approached immigration casework.¹² We considered whether the performance management and quality assurance regime in place across parts of the Department may have contributed to the Windrush situation.

UK Visas and Immigration

3.9 UK Visas and Immigration measures its performance using a range of indicators to help it manage a high volume of visa and citizenship applications within target times. It has a quality assurance regime but its formal quality checks are not geared towards identifying or counteracting situations like Windrush. It also does not routinely analyse issues that recur over time. The way it selects cases for review reflects this. It randomly selects a 2% sample of completed cases within each application route. This means its quality checks will tend to focus on the most common outcomes, rather than those where the risk of an incorrect decision is higher, or the potential impact greater.

12 HC Home Affairs Committee, *The Windrush generation*, Sixth Report of Session 2017–2019, HC 990, July 2018.

Figure 7

National Audit Office analysis of the 164 case summaries identified by the Home Office historical review team

Where problems occurred in these 164 case summaries

| | Where the detriment occurred and why | Percentage of cases (%) |
|-------------|---|-------------------------|
| Home Office | At the border (Border Force): the individual was detained at port or removed at port even though they had the right to remain. | 7 |
| | At UK Visas and Immigration: the individual experienced poor customer service; they were subjected to a very high and/or unrealistic evidence threshold to demonstrate their right to residency within the UK; there was evidence of an inconsistent approach to cases; incorrect decisions were made by caseworkers. | 20 |
| | At Immigration Enforcement: the individual was wrongly served with removal papers, detained (in an immigration removal centre, or other non-port setting) or removed. | 1 |
| | At multiple points: we found failures at two or more bodies that led to an individual being removed or detained. | 16 |
| Unclear | It was not immediately clear from the summary whether a failure happened, or if it did, who was at fault. | 31 |
| External | The individual appeared to be misinformed about their right to enter the UK following a period of prolonged leave, and was correctly stopped trying to enter the UK. The individual did not have certain documentation in place (for example, they had lost their passport) which meant they were unable to prove their immigration status. | 26 |

Source: National Audit Office analysis of Home Office evidence

3.10 In Windrush cases, the risk would have been incorrect refusals of visa and citizenship applications. Refusals make up a relatively small proportion of decisions. In the year ending September 2018, about 5.6% of decisions made on settlement and citizenship applications by UK Visas and Immigration were refusals. As a result, the sample reviewed would likely have been too small to identify a systemic issue.

3.11 UK Visas and Immigration has acknowledged that its checks focus on assurance (checking that a decision has been made correctly, following the correct process) rather than outcomes or identifying problems. An assurance strategy published in October 2017, acknowledges the need to draw on a wider range of information to diagnose and act on problems in decision-making. In May 2018, it also set up a central chief caseworker unit, led by a head of profession, to advise on complex cases and spot strategic themes that need to be addressed.

Immigration Enforcement

3.12 Immigration Enforcement uses a range of targets to manage its operations. In recent years this included an annual target to achieve enforced removals. Until 2017-18, this target was part of an overall removals target, but in 2017-18 it focused only on enforced removals rather than any other type of removal. It broke the overall target of 12,800 down into weekly targets of 230 to 250 removals. It also developed detailed operational targets to guide its work at team and individual level. The Department has said that targets for enforced removals were in place in previous years. It also told us that during the period in which specific, quantified goals were set by senior managers, it was common practice for those to be apportioned among individual teams, reflecting their roles or areas of geographical coverage, and for local members of staff to see how their own work contributed to that. It is therefore reasonable to conclude that these targets would influence how staff carried out their work. Similar targets were in place at least at a high level in prior years. We also know that the Driver & Vehicle Licensing Agency (DVLA) had a target in 2014-15 to deliver 10,000 licence revocations.

3.13 We have seen evidence from 2017-18 that indicates officials recognised the risk that the target could lead to its staff focusing on enforced removals in cases where a voluntary removal might have been an option. It also noted that prioritising the enforced removals target meant that staff might focus less on applying a risk-based approach across their work, or on removing people from nationalities that were more difficult to remove. We do not know in detail what happened in previous years. Sir Alex Allan, in his report on the circumstances surrounding the then Home Secretary's evidence to the Home Affairs Committee on 25 April 2018, found that communication on targets had not been clear.¹³

Data management and data-sharing

3.14 Under compliant environment measures, the Home Office and other departments shared data proactively to help identify illegal migrants and impose sanctions to prevent them accessing some public services. These data include:

- those that have been removed from the UK, those who have been listed as absconders and failed asylum-seekers.
- a 'migration refusal pool' which is a count of records where there has been a negative immigration decision by the Department (a refusal, rejection, curtailment or void outcome)¹⁴ and the Department has no evidence that the individual concerned has departed from the UK or obtained a grant of leave.

¹³ Home Office, *Sir Alex Allan review: executive summary*, 2 November 2018. Available at: www.gov.uk

¹⁴ A case is rejected where key information has not been supplied including payment, photos and so forth. In this case the applicant is expected to correct the error and resubmit. A case is refused if it has been formally considered by a decision-maker as not meeting immigration rules. Void means where an application has been made in error and is considered withdrawn. Curtailed is where leave to remain has been curtailed prior to expiry because of information received by the Home Office.

3.15 The pool does not include cases involving asylum, criminality or people entering from the EU. Records enter the pool as negative decisions are made, and leave it as people leave the UK, or are granted leave to remain. In September 2018, there were around 126,000 records in the pool, with around 30,000 entering or leaving it in the last three months. This is a decrease since December 2017 when there were around 133,000 records.¹⁵

3.16 If the Department makes an incorrect decision, or enters data relating to that decision wrongly, the consequences could be serious for the individual concerned. Immigration Enforcement uses the migration refusal pool to identify individuals who should be removed or detained. The Department's sanctions team shares the data with other government departments to help them enforce the compliant environment.

3.17 **Figure 8** shows the scale of records shared in 2017-18 and the outcomes that resulted where a match was confirmed, as reported in August 2018. The outcomes are not specifically related to Windrush cases.

3.18 Until recently, the Department automatically entered all negative decisions into the pool. This may have included some cases where the application was incomplete or incorrect (for example, because the individuals had paid the wrong fee, or included the wrong evidence). However, in March 2018, the Department recognised that this was capturing too wide a group of individuals, so it started checking no time limit and right of abode cases manually before adding them to the pool.

Figure 8

Scale of Home Office data-sharing with other organisations in 2017-18

This table shows the scale of records shared and the outcomes that resulted where a match was confirmed

| Department | Records shared | Outcome |
|-----------------------------------|----------------|--|
| Driver & Vehicle Licensing Agency | 107,201 | 4,271 driving licences revoked ¹ |
| HM Revenue & Customs | 122,527 | 621 benefits/credit stopped |
| Department for Work & Pensions | 29,050 | 205 benefits/credit stopped |
| NHS | n/a | 5,904 people reported to Home Office as owing money for treatment ² |
| Local authority ³ | n/a | 2,253 had support denied 1,207 had support curtailed |
| Banks | | 17 accounts closed |

Notes

- 1 This number was provided by the Home Office. DVLA have provided an alternative figure of 4,097 licenses revoked
- 2 Some individuals may be refused a new visa or extension of stay in the UK. Access to care is not impacted (other than those who are refused entry to the UK due to an outstanding NHS debt).
- 3 Local authorities are required to provide support to vulnerable groups if they do not qualify for mainstream support due to their immigration status.
- 4 We requested updated data but the Department did not provide this in time for us to consider it as part of our review.

Source: Home office data as reported in August 2018

3.19 In July 2018, the Department temporarily paused proactive data-sharing with other government departments and delivery partners for people of all nationalities aged over 30, initially for three months. It issued new guidance to departments, employers and landlords to encourage them to get in touch with the Department checking service if a Commonwealth citizen did not have the documents to demonstrate their status. This pause is still in place and the Department has not decided when, or if, data-sharing will recommence.

3.20 The bodies that use immigration data to make decisions rely on it being correct. For example, Immigration Enforcement checks there are no legal barriers to removal, such as outstanding appeals or applications, and has extra checks for people it considers vulnerable. It does not, however, reassess the original refusal decision unless further evidence comes to light.

3.21 A number of external reviews and inspections have raised concerns that the Department did not take enough care to ensure the information on which action was based was correct. For example:

- In December 2014, an Independent Chief Inspector of Borders and Immigration (Inspectorate) report on how the Department deals with people who overstay their visas found that 16 out of 57 records they reviewed were wrongly counted towards removal statistics. These errors also resulted in some people who had complied fully with immigration legislation being misidentified as overstayers.¹⁶
- In October 2016, another Inspectorate report covering compliant environment measures on bank accounts and driving licences found that:
 - of 169 cases where a search of the government's Cifas counter-fraud database by a financial institution for a prospective customer had resulted in a match on the list of 'disqualified persons', 17 (10%) should never have been listed as 'disqualified persons' or should have been removed from the list; and
 - in relation to driving licences: some individuals were wrongly flagged to the DVLA as present in the UK without leave, while others who were present without leave were missed. Of 14 recommendations made in this report, the only one the Department rejected was that it cleanse its database of any individuals listed as disqualified who should not be there.¹⁷
- We have also raised issues with the quality of data and supporting IT systems in our reports.¹⁸

¹⁶ Independent Chief Inspector of Borders and Immigration, *An Inspection of Overstayers: How the Home Office handles the cases of individuals with no right to stay in the UK*, December 2014.

¹⁷ Independent Chief Inspector of Borders and Immigration, *An Inspection of the "hostile environment" measures relating to driving licences and bank accounts*, October 2016.

¹⁸ For example: Comptroller and Auditor General, *E-borders and successor programmes*, Session 2015-16, HC 608, National Audit Office, December 2015.

Feedback and evaluation

3.22 While not every report or indication of a problem can or should be followed up there were warning signs that, taken together, indicated that the compliant environment system could be creating adverse unintended outcomes, which the Department chose not to follow up. For example:

- A 2014 report called ‘Chasing Status’, by the Legal Action Group raised concerns relating to the impact of immigration policy on certain groups, including Jamaican migrants who arrived in the UK before 1973.¹⁹ In October 2014, responding to a question in the House of Lords, the Department confirmed it was aware of the report but thought there might be a “small number” of individuals who found themselves unable to demonstrate their entitlement to work and to receive benefits. It did not define what it meant by “small number”. In the spring of 2018, the Department confirmed in response to further MPs’ questions that it had taken no action as a result of the report.
- Caribbean ministers raised the Windrush issues directly with the UK government at a forum in April 2016. The Foreign & Commonwealth Office subsequently shared a record of this forum but it is not clear whether the Department was aware of this.
- The Inspectorate’s concern that driving licences were being revoked incorrectly was raised in briefings to ministers but as a media-handling issue and no practical plans to investigate the issue were put forward.

3.23 Where the Department did attempt to identify the impact of its policies, we did not see evidence that it used the information effectively to identify or counter the problems of unintended negative effects. The Department conducted an evaluation of a six-month pilot of the Right to Rent scheme, in the West Midlands. It concluded from its pilot that the scheme was having a positive effect on immigration enforcement outcomes.²⁰ A review by the Joint Council for the Welfare of Immigrants, meanwhile, claimed explicitly to have identified both direct and indirect discrimination resulting from the Right to Rent scheme.²¹ The Inspectorate later concluded that the Department’s evaluation had “explained away” concerns about negative impacts such as discrimination.²²

3.24 Aside from the Right to Rent pilot evaluation, the Department has not evaluated the impact of compliant environment measures and acknowledges that it will struggle to do so. This also means that the Department may find it hard to understand whether any measures it puts in place to safeguard people such as the Windrush generation are having the impact intended.

¹⁹ Legal Action Group, Fiona Bawdon, *Chasing status: if not British, then what am I? The ‘surprised brits’ who find they are living with irregular immigration status*, October 2014.

²⁰ Home Office, *Evaluation of the Right to Rent scheme, Full evaluation report of phase one*, research report 83, October 2015.

²¹ Joint Council for the Welfare of Immigrants, *No passport equals no home: independent evaluation of the right to rent scheme*, September 2015.

²² Independent Chief Inspector of Borders and Immigration, *An Inspection of the “right to rent” scheme*, March 2018.

Part Four

Home Office actions to provide redress

The Windrush taskforce and scheme

4.1 In April 2018, the Home Office (the Department) established a taskforce to help people affected by the Windrush situation to resolve their immigration status. It set up a free helpline to provide advice and arranged appointments at UK Visas and Immigration's (UKVI's) premium service centres, for individuals to meet caseworkers. In May 2018, it formalised these arrangements under the 'Windrush Scheme' (the scheme).²³ The scheme is open to anyone who arrived before 1988 and is settled in the UK who has had difficulty in proving their immigration status and wants to regularise it. It also allows some people to apply for a more advantageous status such as citizenship, which is free under the scheme.

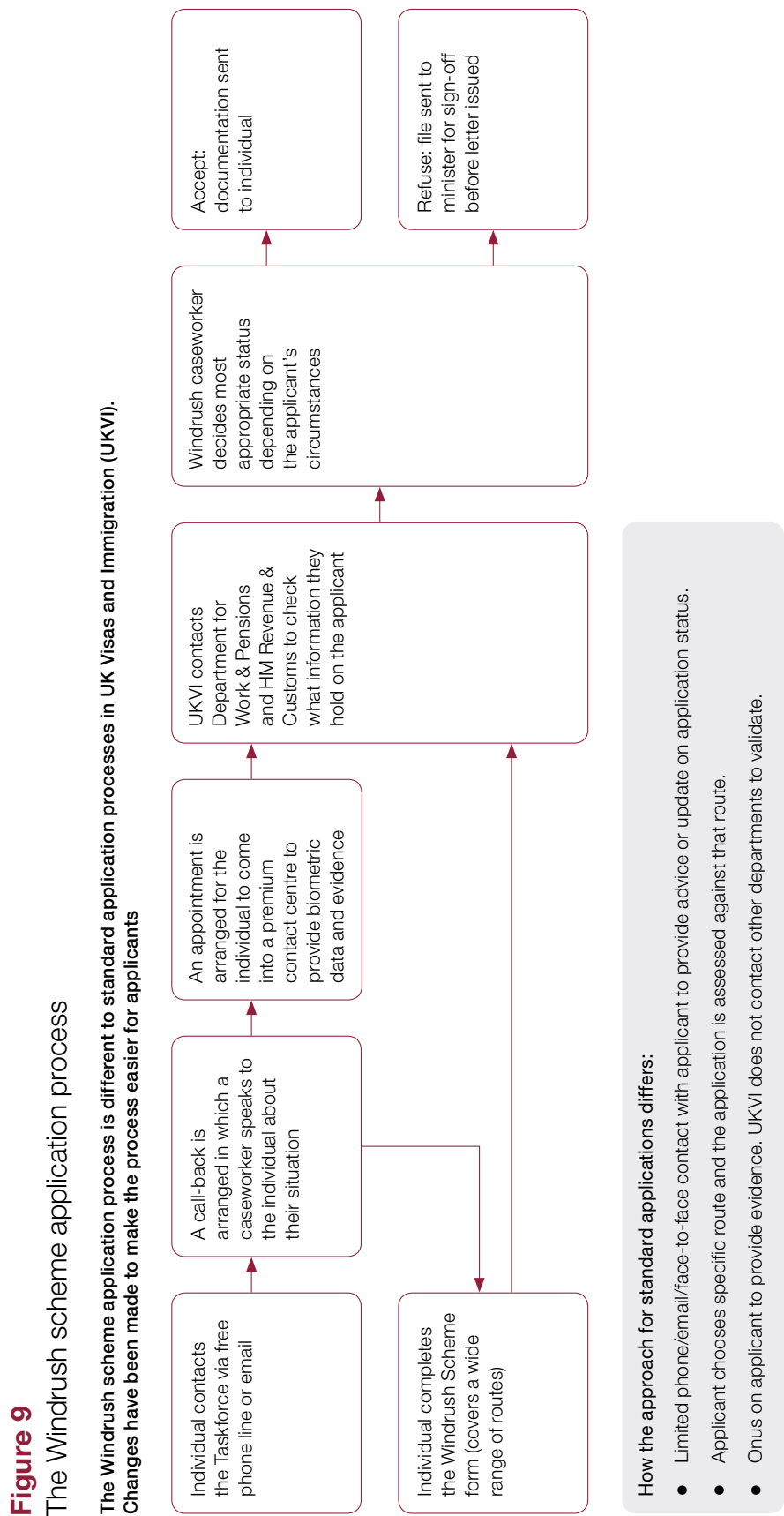
4.2 In addition to the helpline, the Department established teams to support vulnerable individuals and developed a specific, simplified application form, so that people could provide information once and be considered for citizenship and other possible visa routes. It also liaised with other government departments to help establish applicants' history in the UK. It committed to resolving decisions within two weeks and also waived its usual fees for people who apply through the scheme.²⁴ There is a separate route for people applying from overseas. **Figure 9** overleaf sets out the key steps for applicants and how these compare with the normal application processes.

4.3 Between April and September 2018, the Department received 6,589 calls from individuals who they believed to be part of the Windrush generation, or other eligible groups. As at 30 September, it had issued 2,658 individuals with documentation to confirm their immigration status. Of these, 91% were grants of citizenship, and the remainder confirmed individuals' indefinite leave to remain. It has also granted 50 visas to overseas applicants for visit visas and returning resident visas. During September, 41 refusals were made under the scheme, all of which were subject to additional scrutiny including review by the minister. These refusals were made because of serious criminality or because of the ineligibility of applicants applying to the scheme from overseas.²⁵ We requested updated taskforce data but the Department did not provide this in time for us to consider it as part of our review.

23 Home Office, *Home Secretary launches Windrush scheme*, press release, 24 May 2018. Available at: www.gov.uk

24 Home Office, *Windrush scheme*, April 2018.

25 Home Office, *Letter from the Home Secretary: Update on the work of the Home Office in relation to Windrush*, 12 November 2018.



Source: National Audit Office analysis of Home Office information and interview material

4.4 To raise awareness of the scheme, the Department has worked with government, stakeholders and representative groups, including community associations, faith groups and lawyers to run outreach events. It also set up a network of volunteers to communicate information.

Compensation scheme

4.5 Following a call for evidence in May 2018, the Department opened a formal consultation on a proposed compensation scheme in July 2018, which it closed in November 2018.²⁶ The Department told us that it is aiming to start making payments under the scheme by early 2019. The consultation is seeking views on scheme eligibility, what effects the Department should compensate for, and the assessment process. The Department has not yet decided the scheme's scope but it told us that it expects the compensation scheme to be open to people from a wide range of different countries and that it intends to compensate a broad range of impacts. These could include loss of employment or benefits, wrongful detention or removal, denial of access to public services and the impact on mental well-being. It has, however, not yet decided if this will be based on a formula or tariffs, or actual losses, or a mixture.

4.6 In developing the compensation scheme, the Department faces a number of uncertainties such as the number of people who might apply, the nature and complexity of the claims, and how many of those will be successful. It is relying on information from those who have applied to the scheme, and people who responded to the call for evidence and consultation. The Department also has to balance the need to make the system easy for applicants to access and provide evidence against the need for a formalised application, criteria and assessment thresholds. It is important that the Department manages the risk of double payments as by the time it establishes the scheme, some departments may already have reimbursed people.

4.7 In July 2018, the Home Secretary in a written update to the Home Affairs Select Committee, mentioned the possibility that some people in the Windrush generation may already have received compensation following a notice of legal action or under an *ex gratia* scheme it uses to compensate people who have been wrongly detained.²⁷ This is a separate scheme, which predates the Windrush schemes. The Department told us that it knew of two cases from this year where individuals had been paid compensation for unlawful detention but there may be others that were not previously identified as related to Windrush.

²⁶ Home Office, *Windrush Compensation Scheme*, July 2018. Available at: www.gov.uk

²⁷ Home Office, *Correspondence from the Home Secretary regarding the Windrush compensation scheme*, 13 July 2018. Available at: www.parliament.uk

4.8 It has been a long-standing practice for the Department to agree confidentiality when settling immigration and asylum compensation claims. It told us there are a number of reasons for this:

- to protect the rights of the individual;
- to prevent solicitors and individuals comparing awards and seeking to always achieve the highest award possible;
- to prevent further (potentially speculative) litigation; and
- to provide the time to properly resolve issues internally.

It recently reviewed the use of confidentiality clauses and decided that they will only be used where there is clear legal advice that there are valid reasons for their use. The Home Secretary has also said that claims paid under the formal Windrush compensation scheme will not be subject to confidentiality agreements.

Future plans

4.9 A lessons learned review led by an independent adviser, Wendy Williams, a HM Inspector of Constabulary, is ongoing and due to report in spring 2019.²⁸ In the meantime, the Department has proposed changes to aspects of its operations within both UKVI and Immigration and Enforcement. It has, or plans to:

- set up a central chief caseworker unit, led by a head of profession, to advise on complex cases and to spot strategic themes that need to be addressed; it has similar plans for the enforcement side, to introduce an expert peer review group;
- set up a customer contact centre to offer advice on immigration routes;²⁹
- consider how to treat vulnerable applicants, including the possibility of continuing the function of a dedicated vulnerability team;
- review public guidance and forms, create an online landing page and consider signposting alternative routes within forms;
- seek feedback on user experience with decision letters;
- set out evidential requirements more clearly in forms and simplify the rules to be more helpful for applicants;
- consider how to identify applicants who are marginalised or confused by the immigration system with a view to introducing a 'minded to refuse' category; and
- provide training and accreditation to caseworkers with the aim of developing a professional cadre of staff who take a more customer-focused approach to handling cases and who can apply discretion.

²⁸ Hansard HC, *Debate on Windrush compensation, response by Home Secretary*, 16 July 2018, Vol 645.

²⁹ Home Office, *Home Secretary statement on the Windrush generation*, 23 April 2018. Available at: www.gov.uk

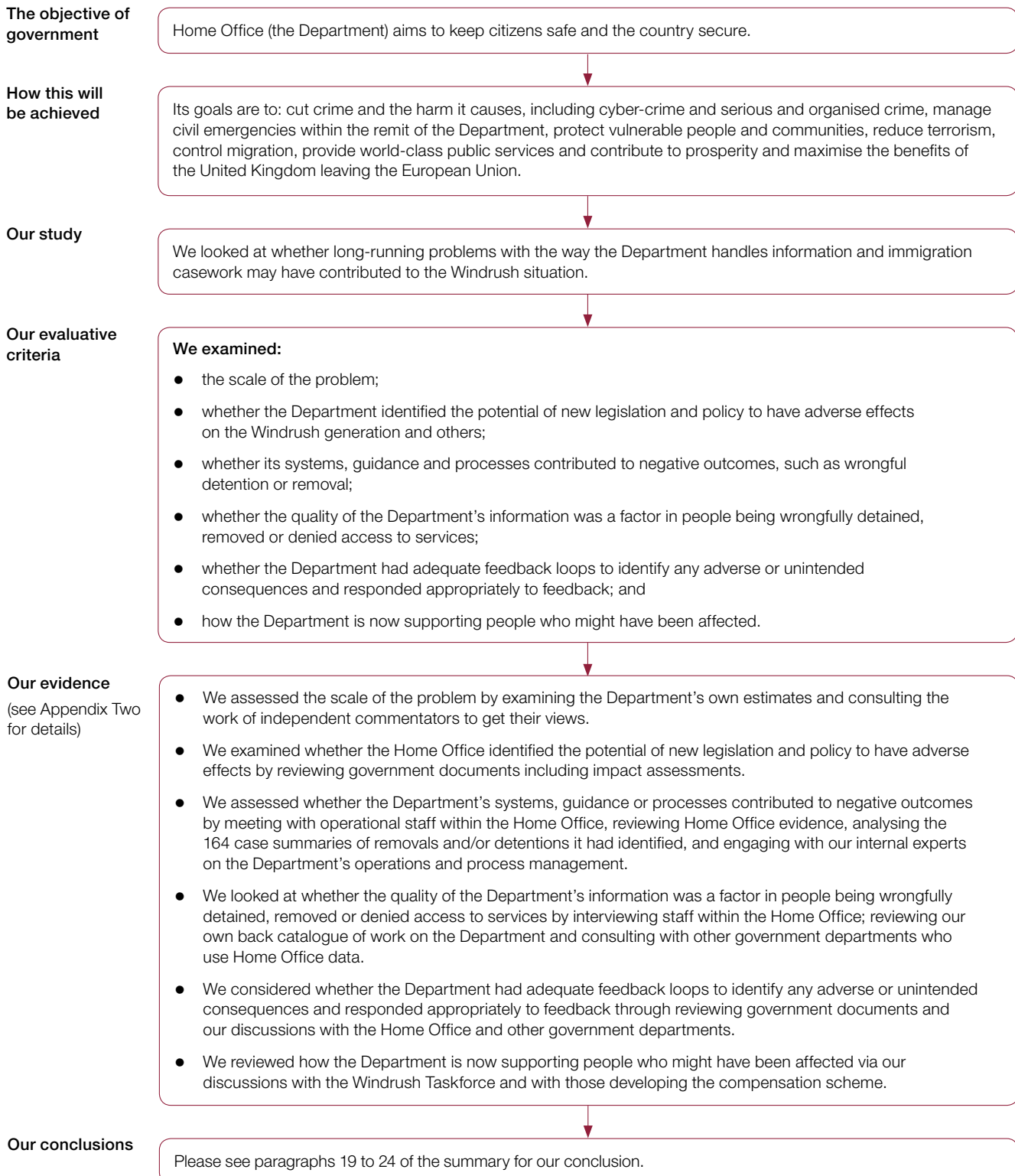
Appendix One

Our audit approach

1 This study examined how the Home Office handled the impact of its immigration policies on the Windrush generation. We sought to establish whether long-running problems with the way the Home Office handles information and immigration casework may have contributed to the situation. Our audit approach is outlined in **Figure 10** overleaf.

Figure 10

Our audit approach



Appendix Two

Our evidence base

- 1** Our report draws on fieldwork conducted in August and September 2018, and on our previous work examining the Home Office's management of immigration policy and casework.
- 2** We interviewed a range of senior staff from the Windrush programme team to understand their response to the situation, including managers from the taskforce, compensation, legal team, communications, casework and call centre.
- 3** We also met with operational teams from UK Visas and Immigration (UKVI) to understand their case work, quality assurance and management systems in their usual business and the Windrush scheme. This included visiting operational centres in Liverpool and Sheffield to see the services in action. These visits allowed us to engage with the people who oversee the implementation of the system on the frontline, such as senior UKVI staff, operations and quality managers, caseworkers and call centre staff.
- 4** We spoke to senior staff from Immigration Enforcement to understand how cases escalate to enforcement and the review process before individuals are removed and/or detained.
- 5** We reviewed the Home Office's approach to its historical review of cases including understanding the data sources and methodology. We did not repeat the Home Office's analysis but assessed its approach and reviewed the 164 case summaries of individuals who were identified as detained or removed in order to identify the characteristics of those identified and common themes.
- 6** We met with policy officials to understand the context of immigration policy and how the policies were developed, considered and implemented. To support this, we reviewed Home Office reports, meeting minutes, submissions and impact assessments relating to the 2014 and 2016 Immigration Acts. This included the overarching assessments and specific assessments covering the Right to Rent, and Right to Work schemes, and other measures. Impact assessments assess the need for, and likely impact of, proposed government policies. We also reviewed a selection of other related documents, such as consultations and policy equality statements.

7 We also reviewed reports by other, independent commentators, such as the Independent Chief Inspector of Borders and Immigration (the Inspectorate), the Joint Council for the Welfare of Immigrants, the Legal Action Group and the Immigration Law Practitioner's Association.

8 We consulted with other government departments and organisations to understand how they use immigration data to inform decisions on service eligibility, and sought views on the data-sharing arrangements. We also asked about their engagement with the Home Office concerning immigration-related legislation and policy. We spoke to:

- the Driver & Vehicle Licensing Agency;
- the Department of Health & Social Care and NHS England;
- the Department for Education;
- the Department for Work & Pensions;
- HM Revenue & Customs;
- the Foreign & Commonwealth Office;
- HM Treasury;
- Cifas; and
- the Independent Chief Inspector of Borders and Immigration.

9 We also consulted with our internal experts in operational and process management to better understand the impact of issues around case processing, quality assurance and process improvement we observed. We also considered our previous reports on the Home Office and its operations.

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