



An inspection of the use of the power to enter business premises without a search warrant

October - November 2013



John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



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Our Purpose

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

Our Vision

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

Contents

Foreword from John Vine CBE QPM	2
1 Executive Summary	3
2 Summary Of Recommendations	5
3. The Inspection	6
4. Inspection Findings – Safeguarding Individuals	11
5. Inspection Findings – Operational Delivery	19
6. Inspection Findings – Continuous Improvement	24
Annex 1 Role & Remit of the Chief Inspector	26
Annex 2 Glossary	27
Acknowledgements	29

Foreword from John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



In certain circumstances, Home Office enforcement officers investigating immigration offences can enter business premises and make arrests without the need for a search warrant. In the 18 months prior to my inspection the use of this power had increased significantly. I therefore focused on whether the power was being exercised appropriately, in accordance with the law and Home Office guidance.

In almost two-thirds of the cases I examined, I disagreed with the decision made by an Assistant Director to authorise the use of this power. This was because of weak justifications or because the need for swift action was not supported by the evidence. I was also very concerned to find six cases where the power appeared to have been used unlawfully, primarily because either the authorising officer was not at the appropriate grade or the power was not used within the time-frame set out in the legislation.

There were significant inconsistencies in the use of this power between different enforcement teams. I was also concerned to find widespread non-compliance with Home Office guidance in relation to the use of this power. This included staff and managers failing to properly justify use of this power and ignoring the requirement to set out why search warrants were not sought in the first instance. In many instances the case for 'swift action' to counter the threat of immigration offenders absconding was simply not made, despite this being a condition set out in the guidance.

Many of the issues that I identified could have been detected through effective management oversight, but this had been completely lacking. However, during my inspection I found that senior managers were introducing a range of measures to improve performance and compliance in this area. The Home Office must ensure that its staff use all of their enforcement powers proportionately and in accordance with the law.

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

John Vine CBE QPM
Independent Chief Inspector of Borders and Immigration

1 - Executive Summary

- 1.1 Section 28CA of the Immigration Act 1971¹ provides Home Office staff with the power to enter business premises and make arrests without the need to obtain a Magistrate's search warrant. Information provided by the Home Office showed that the use of this power had increased significantly, rising from 843 times in 2012/13 to 1,049 times in the 2013/14 financial year, with six months of the year still remaining.
- 1.2 Home Office guidance instructs staff and managers about the process they should follow when considering either applying for or authorising this power. This guidance could be improved further by providing more clarity about the distinction between the thresholds for grounds to suspect against grounds to believe – a pre-requisite when considering the use of this power.
-
- The power may have been used unlawfully in six cases*
-
- 1.3 Our file sampling identified a number of serious failings. This included evidence that suggested that the power may have been used unlawfully in six cases, either because the authorising officer was not graded appropriately or because it was not used within the time-frame set out in legislation.
- 1.4 Just under two-thirds of the cases we examined lacked the required justification for the use of this power (59%). In a further seven cases there was insufficient information to enable us form an opinion (12%). We also identified significant variations in the level of use of the power by enforcement teams across the country. For example, in South London, the power was used in over two-thirds of its illegal working operations (69%), whereas East London only used it in 3% of its illegal working operations.²
-
- Just under two-thirds of the cases we examined lacked the required justification for the use of this power*
-
- 1.5 Our file sampling also identified:
- widespread non-compliance with the guidance, especially in relation to the steps that should be taken by staff and managers when considering either applying for or authorising this power; and
 - ineffective assurance processes which meant that senior managers had no assurance that staff were using the power in accordance with the legislation and Home Office guidance.
-
- Our file sampling also identified widespread non-compliance with the guidance*
-
- 1.6 The guidance stated that staff should always consider applying for a search warrant at a Magistrates' Court before seeking to apply to an Assistant Director³ (AD) to use this power. The guidance indicated that the power should typically only be used in cases where swift action was required, usually where there was an immediate threat of immigration offenders absconding. Where swift action was not necessary, the guidance was explicit that any request to use this power must set out those factors which precluded officers from seeking a search warrant to gain entry.

1 <http://www.legislation.gov.uk/ukpga/1971/77/section/28CA#commentary-c959089>

2 Figure 8 refers.

3 A senior manager with overall responsibility for an Immigration, Compliance & Enforcement Team. Also the minimum grade of staff for authorising use of the power under Section 28CA of the Immigration Act 1971

- 1.7 In contrast to the guidance, our file sampling only identified three cases (5%) where consideration of a search warrant was evidenced in the application to use this power. We also noted that the average time between a visit package⁴ being ready to support an enforcement operation and it actually taking place was 13 days. This meant that there was generally sufficient time to apply for a search warrant.
- 1.8 We examined the justification that was provided by staff when applying to use this power. In 13 cases (22%), we considered that the grounds were speculative. They did not provide sufficient information to reach the higher threshold of believing offenders to be on business premises, a requirement when considering the use of this power.
- 1.9 Management oversight regarding the use of this power was ineffective and no management information was collected. As a result, senior managers had very limited knowledge about how the power was being used in practice and this meant that they were unable to determine whether it had been used in a consistent way across various Immigration, Compliance and Enforcement (ICE) teams. Consequently they were unable to ensure that the power was being exercised lawfully and effectively.
-
- Senior managers had very limited knowledge about how the power was being used in practice*
-
- 1.10 Record-keeping was also an issue, particularly in relation to updating the IT system used by enforcement staff. Accurate record-keeping on this IT system is important, as it is used to produce management information for senior managers and Ministers.
- 1.11 Inadequate staff training was apparent across all enforcement grades, up to and including ADs. However, we do not accept that this issue itself was responsible for the widespread non-compliance that we identified, given that the guidance was available and should have been followed.
-
- Inadequate staff training was apparent across all enforcement grades*
-
- 1.12 Many of the issues that we identified in our sample of enforcement cases did not require a detailed knowledge of legislation or significant experience of enforcement-type activities. It was apparent that a significant number of staff and managers were either ignorant of the guidance or were choosing to ignore it.
- 1.13 During the course of our inspection, the Home Office moved quickly to address the issues that we identified. This was positive and demonstrated that the Home Office was, for the first time, starting to exert a much stronger grip on how the power was used by its staff.
-
- The Home Office moved quickly to address the issues that we identified*
-

⁴ An intelligence package for the enforcement visit. It contains details of the premises, potential immigration offenders and business owners and includes details of any individuals who have come to the previous adverse attention of the Home Office.

2 - Summary Of Recommendations

We recommend that the Home Office:

1. Updates guidance setting out what it defines as 'urgent' when staff are considering using this power.
2. Updates guidance providing greater clarity on the thresholds for using this power.
3. Improves the quality of record-keeping on the National Operations Database to provide better management oversight.
4. Conducts a full evaluation within six months to ensure that the Section 28CA power is being used appropriately.

3. The Inspection

Purpose

- 3.1 This short-notice inspection examined the efficiency and effectiveness of the Home Office's use of the power defined in Section 28CA of the Immigration Act 1971. This power, commonly referred to as an 'AD letter',⁵ allows Immigration Officers to enter and search business premises and make arrests without the need for a Magistrate's search warrant. The inspection focused on whether the power was being exercised lawfully and effectively, in accordance with legislation and Home Office guidance.

Methodology

- 3.2 This inspection measured the performance of the Home Office against three of the Independent Chief Inspector's inspection criteria, under the themes of:
- **Safeguarding Individuals** – Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose;
 - **Operational Delivery** – Customs and immigration offences should be prevented, detected, investigated and where appropriate, prosecuted; and
 - **Continuous Improvement** – The implementation of policies and processes should support efficient and effective operational delivery.
- 3.3 The Home Office was given one month's notification that this inspection would take place. This enabled us to:
- review management information reports detailing the use of this power by various enforcement teams across the UK;
 - request the policy and guidance that governed the use of this power; and
 - sample 59 enforcement files, for visits to business premises where this power was used, between 1 January and 31 August 2013.
- 3.4 The on-site phase took place between 4 and 13 November 2013, when we conducted inspection visits of Immigration, Compliance and Enforcement Teams⁶ (ICE Teams) in East and South London, Greater Manchester, Merseyside Lancashire & Cheshire, Wales, and Yorkshire and Humberside. These locations were chosen to enable us to compare and contrast performance between those teams that used the power frequently and those that did not. Figure 1 outlines the staff we interviewed during the inspection.

⁵ A letter given to business owners which sets out the power being used to enter their premises without a warrant, authorised by an AD.

⁶ ICE teams replaced former Local Immigration Teams (LITs) in April 2013.

Figure 1: Staff interviewed for this inspection

Director of Central Operations	1
Assistant Directors (AD)	7*
Her Majesty's Inspectors (HMI)	7
Chief Immigration Officers (CIO)	7
Enforcement Staff	25
Intelligence Staff	7
Total	54

Note: *Includes one member of staff who had recently been promoted to Deputy Director but was an AD authorising the use of the power during the period covered by the cases used in the file sample.

3.5 We provided feedback on high-level emerging findings to the Home Office on 19 November 2013. The inspection identified four recommendations for improvement.

Background

3.6 Section 28CA of the 1971 Immigration Act allows an Immigration Officer (or Police Constable) to enter and search any business premises, in certain circumstances, without a search warrant for the purpose of arresting a person for an offence under:

- Section 24 (illegal entry and similar offences);
- Section 24A (deception); or
- Paragraph 17 of Schedule 2 to the Immigration Act 1971 (administrative arrest of a person liable to detention under paragraph 16).

3.7 The power can only be authorised by a civil servant of the rank of at least Assistant Director and is generally used by ICE teams. These teams are part of the Home Office Immigration Enforcement Directorate. The power can only be exercised to the extent that is reasonably required for a purpose specified (i.e. arresting a person for one of the specified offences). Immigration Officers must have reasonable grounds for believing that the person whom they are seeking is on the premises, rather than a lower level of intelligence which would only provide grounds to suspect that they are on the premises.

3.8 The legal implication is that to have 'reasonable grounds to believe' requires a higher standard of supporting evidence than suspicion. Whilst it is not necessary to have substantial proof to 'believe' instead of to 'suspect', there is a clear implication that there must be more information available that turns suspicion into a belief that something is true.

3.9 It must always be the case that the principal purpose of the visit is to arrest suspected immigration offenders under Section 24, Section 24A or Paragraph 17 of Schedule 2 to the Immigration Act 1971 and not to serve a Notice of Potential Liability.⁷ The authorising officer (usually an AD) must take a number of factors into account when determining whether to authorise entry without a search warrant: They include:

- the urgency of the case, aligned with the risk that suspected offenders will abscond; and if the AD considers that there would be sufficient evidence to obtain a search warrant, but the procedure to obtain the search warrant would likely frustrate a successful operation; and

⁷ <http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/penaltiesemployers/>

- justifying the use of the power where there is insufficient urgency, but the threshold for the grant of a search warrant has been satisfied, setting out the factors which precluded them from seeking a search warrant to gain entry.

3.10 The power only covers entry to business premises. If there are separate residential areas, for example, a flat above a shop, these are not covered. Authority given by an AD will apply only to Immigration Officers. In mixed team operations, for example with the police, a separate letter signed by a Chief Superintendent is required to cover the entry of the police contingent, if other police powers are not being used.

Policy and guidance

3.11 The policy and guidance used by Home Office staff when considering and using this power is contained in Chapter 16 of the Enforcement Instructions and Guidance. The guidance makes clear that the Section 28CA power should not be exercised in circumstances where:

- an Immigration Officer suspects that there would be insufficient intelligence to obtain a search warrant for entry and arrest; or
- the basis for seeking authorisation to use the power is to avoid the associated charges which might be attached to an application for a search warrant or to alleviate pressure on Home Office resources more generally, rather than due to the urgency of the situation.

3.12 Where an application for a search warrant has been made but is subsequently refused on the basis of insufficient intelligence, the Section 28CA power must not on any account be exercised as an alternative means of entering and searching the property in order to arrest.

Process

3.13 The process for planning an enforcement visit typically follows the receipt of adverse information, which can originate from a number of sources, for example, case workers, field intelligence officers, other law enforcement agencies, or allegations from members of the public. When the information is analysed, it is turned into intelligence and a formal process of evaluation and tasking takes place. Figure 2 provides an example of this process.

Figure 2: Enforcement visit planning process



Note - In practice, the stage at which the power of entry to be used was considered was either step 4 or 5.

- 3.14 When authority is granted to enter and search business premises under the Section 28CA power, ADs must prepare and sign a letter notifying the employer accordingly. This letter should either be obtained before the visit takes place (dated no more than seven days in advance) or, in cases where oral agreement is given by the AD over the phone (for example where entry is unexpectedly refused), a copy of the letter should be sent to the business owner within 48 hours of the visit taking place. However, when verbal authority is granted by phone, the reasons for the AD's decision must be recorded in the officer's notebook.
- 3.15 To support assurance activities, the guidance recommends that staff requesting authority to search business premises using this power should:
- provide as much information as possible about the immigration offenders who they have grounds to believe will be on the premises;
 - set out the grounds for their application, detailing the results of specific checks undertaken and their results, including information about any previous visits to the address and any intelligence analysis that has been undertaken; and
 - state why a search warrant was not appropriate.

3.16 AD letters are only valid if they have been issued directly by a 'main nominated individual' or, in their absence, another nominated individual at AD level. They expire at the end of the period of seven days beginning with the day on which the authority is given. Guidance states that any unused letters must be returned to the AD within 21 days of date of issue.

4. Inspection Findings – Safeguarding Individuals

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

File sampling and analysis

- 4.1 We randomly selected a sample of 60 files for enforcement visit which had been carried out between 1 January and 31 August 2013. One file was excluded, as the power under Section 28CA had not been used to gain entry. This section provides detailed results and analysis of the files that we examined prior to the on-site phase of our inspection.
- 4.2 We examined these 59 cases to determine whether the officer authorising the use of the power was graded appropriately, whether the power was used within the time-frame set out in the legislation (seven days) and whether a search warrant had been considered before the use of the power was requested. We also assessed whether the power was used consistently across ICE teams, specifically examining:
- if the guidance was followed by staff and managers when applying for or authorising use of this power;
 - the timing of each stage of the process (i.e. was there a need for swift action which precluded applying for a search warrant); and
 - whether the outcome of the visit resulted in any arrests being made.
- 4.3 Overall our file sampling identified a number of serious failings with the way in which this power had been used by Home Office staff. This included concerns that the power may have been used unlawfully in six cases. We also found widespread non-compliance with guidance, ineffective performance reporting and extremely poor assurance processes. Figure 3 provides an overview of the findings of our sample.

We also found widespread non-compliance with guidance, ineffective performance reporting and extremely poor assurance processes

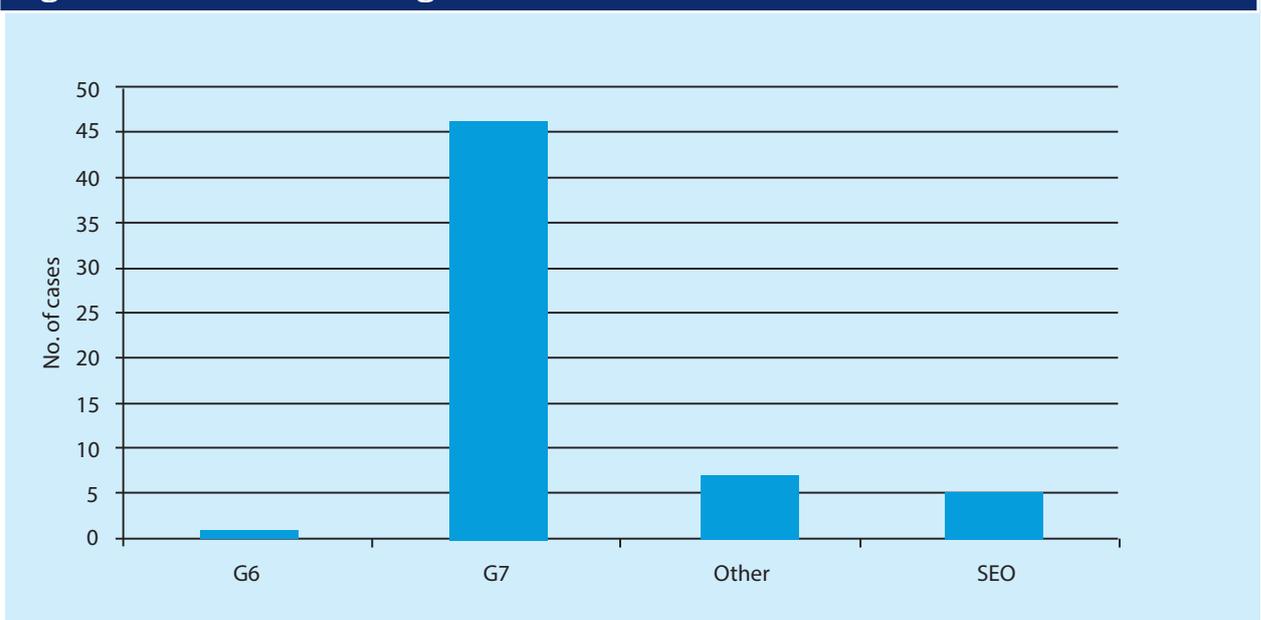
Figure 3: File sampling results

Finding	Number of cases from sample	% of total sample
Authority not granted by the appropriate grade	3	5%
Authority used out of time	3	5%
No evidence of a warrant being considered	56	95%
Insufficient justification for use of the power	13	22%
Use of the power that resulted in an arrest	38	64%
Was the use of the power justified?	17	29%

Grade of officer authorising Section 28CA power

4.4 Our file sample showed that only 47 cases (80%) provided clear evidence that the authority was issued by a civil servant of least the rank of AD – Figure 4 refers.

Figure 4: Grade of authorising officer



Note* - The 'Other' category relates to cases where it is unclear what the grade of the person was, or where the copy of the letter held in the file was not signed.

4.5 In five cases, the letters had been 'pp'd' or signed on behalf of the AD. However, in four of these cases, there was no appropriate audit trail in the file to show that authority had been granted by the AD. In the remaining case, the audit trail showed that authority had been granted by a person in the role of 'Acting AD'. In the remaining seven cases we found:

- three where the AD authorising letter was not held on the file;
- two where HM Inspectors, acting on behalf of an AD, had authorised the letters;
- one where the letter held on the file had been authorised but there was no appropriate audit trail to determine the rank or grade of the person applying the signature; and
- one where the authorising letter had no signature.

4.6 Our sampling established that in three of these cases the authorisations appeared to be unlawful, because they were signed by staff below the appropriate grade (AD). Staff told us that authority would be obtained from a lower grade member of staff in such cases when the AD was unavailable, for example, on annual leave. Staff were unaware of the implications of this practice.

Three of these cases the authorisations appeared to be unlawful

4.7 Home Office policy sets out that staff on lower grades only assume formal AD responsibilities when they are on a period of temporary promotion referred to as Temporary Cover Allowance (TCA), which has been running for at least three months. Staff covering ADs for short-term absences (annual leave, sickness etc.) are not afforded the same powers.

4.8 In the remaining cases we found that the Home Office was unable to demonstrate that this power was used appropriately at the correct grade, primarily because adequate audit trails had not been maintained. This was a disturbing finding, as the legislation is very clear on the authority levels required. Such a failure would normally result in a recommendation being made. However, we are aware that the Home Office tightened up the authorisation process during the course of our inspection. We comment further on this in the section on Continuous Improvement.

Time-frame for using power

4.9 Our sample found three cases (5%) where the AD authorisation letter had expired, but was still used. In each case, there was no evidence that the original authority was superseded by a later authority. It therefore appeared that the power was used unlawfully in these three cases.

The AD authorisation letter had expired, but was still used

Consideration of a search warrant

4.10 Guidance explicitly states that staff should set out, in their application to use the Section 28CA power, why a search warrant has not been applied for. However, we found that only three out of the 59 cases sampled (5%) had any evidence that a search warrant had been considered. This was a significant departure from the guidance and affected all regions and ICE teams in our sample.

We found that only three out of the 59 cases sampled (5%) had any evidence that a search warrant had been considered

4.11 Staff in one location cited problems with a Magistrates' Court as reasons why search warrants could not be sought, although we were not provided with any evidence to support this and senior managers later acknowledged that the Magistrates' Court was not a problem. In another location, staff told us that the court only provided one and a half hours' time each week for the Home Office to make applications for search warrants. Again we found no evidence that the AD in this location had sought to resolve this issue, but we were subsequently provided with evidence that a senior manager had written to the court service on 21 November 2013 in relation to this issue.

4.12 Staff in both of these locations indicated that the power was used routinely. In one of these locations, staff in a focus group told us that '*at one point we were doing all commercial visits on an AD letter*'. A further example was provided when another member of staff in the same location stated: 'if we haven't got enough for a warrant then we get an AD letter'.

4.13 This was in direct contravention of the guidance and demonstrated non-compliance by staff and managers, the former in making requests and the latter in authorising them. This was a significant failing. During the course of our inspection the Home Office recognised this issue and took immediate action to tighten up the authorisation process. We comment further on this in the section on Continuous Improvement.

4.14 In contrast, we found three locations where use of the power was appropriate and the authorisation process was compliant with the guidance. The Home Office must ensure that all ICE teams are complying with the guidance.

We found three locations where use of the power was appropriate and the authorisation process was compliant with the guidance

Justification for use of the power

4.15 Our file sampling found that the justification used by staff when requesting to use this power was weak. The quality of the justifications varied with the higher threshold of having reasonable grounds to believe not being met in many cases. In some cases, we considered that even the lower threshold of having reasonable grounds to suspect had not been met – this was a significant concern.

4.16 Guidance states that when applying for authorisation to use the power, officers must provide the grounds on which the application is based. This must include the following:

- date of intelligence checks;
- checks conducted and results;
- details of any previous visits to the address;
- details of any intelligence analysis;
- why a search warrant is not considered appropriate; and
- whether the Home Office has any grounds to believe that the business owner is knowingly involved in the employment of illegal workers.

4.17 The guidance is explicit in stating what information is required. Providing this information is not optional. However, our sampling frequently found that this information was not provided. For example, only three cases provided evidence that a search warrant had been considered and six cases (10%) had no intelligence report attached. This disregard of process and lack of understanding had led to the use of the power becoming routine in some ICE Teams.

4.18 In addition to the lack of adherence to guidance, we frequently found that the justification given for authorising the use of this power did not meet the threshold of belief that suspected immigration offenders were on the premises. Examples included:

- 13 cases (22%) where the justification was speculative, with grounds for the application being ‘to detect illegal working’ – this is outside the scope for using the power;
- four cases which used general analysis from an intelligence-based problem profile, which set out that previous results of visits to certain types of premises, for example, fast food outlets, had resulted in immigration offenders being encountered⁸/arrested – the problem profile was cited without any further specific intelligence or information about the target premises to support the higher threshold of having reason to believe; and
- one case which stated that the objective of the visit was ‘to serve a Notice of Potential Liability (NOPL) on the employer’ – the guidance is specific in stating that the Section 28CA power should not be used for this purpose.

4.19 Figure 5 provides a case study where the justification was weak and a lack of understanding was demonstrated, particularly in the use of general information held in problem profiles.

⁸ ‘Encountered’ people are those spoken to by enforcement teams during a visit but who have not committed any offences and are therefore not arrested, for example, EU nationals, British Citizens or Non-EU nationals who have provided documents to prove they are working legally.

Figure 5: Case study – Weak justification for use of power

The Visit:

- was tasked on 9 May 2013 and records contained no specific intelligence about the premises, the business owner or any individuals believed to be working illegally;
- records made reference that the owners had not paid tax but there was no evidence of any checks being made with Her Majesty's Revenue and Customs (HMRC);
- was conducted on 22 May – three people were on the premises at the time of the visit, all EU nationals, and no arrests were made.

Chief Inspector's Comments:

- The basis for the visit was speculative.
- The higher threshold of believing that persons (immigration offenders) were on the premises working illegally had not been met.
- Extra checks with HMRC could have enhanced the intelligence.
- There was sufficient time to apply for a search warrant.

Home Office Response:

- Intelligence seen by the AD was detailed about the owners of the premises and links they had to other properties where illegal working was taking place (no additional written evidence of this was provided to inspectors).
- The problem profile in use stated that premises of this type had produced success during previous immigration visits.
- Not sharing Information with HMRC regarding the alleged tax discrepancies was an oversight.

4.20 While we note that the problem profile indicated that premises of this type had produced success during previous immigration visits, this was not sufficient to support the use of the Section 28CA power in this case, particularly as there was sufficient time to apply for a search warrant.

4.21 We also found that an internal assurance visit to the Kent Local Immigration Team in April 2011 similarly identified the incorrect use of a problem profile to support an authorisation. It was therefore evident that poor justifications were already being used and had been highlighted previously. Whilst this issue was raised locally, there was no evidence of any follow-up activity or that the findings were shared nationally to highlight the lack of adherence with guidance. It is disappointing that while some assurance activity was being undertaken as long ago as 2011, it was not used to determine whether the problems identified went wider than this specific enforcement team.

Poor justifications were already being used and had been highlighted previously

4.22 In contrast to these areas of weakness, we found some good examples of justifications. In four cases, a named individual had been provided as well as their working hours. These were good grounds to achieve the higher threshold of belief. However, in each of these cases the use of the power was not justified, because the time available between the tasking of the operation and the actual date of the operation was sufficient to apply for a search warrant (8, 10, 18 and 24 days respectively).

4.23 We also considered the number of cases where a named individual was provided. Thirty-eight cases (64%) had a named individual on record, which was positive in terms of the guidance. However, one case highlighted the danger of relying solely on this information when it is provided anonymously by

members of the public. The visit was conducted and officers found that the subject of the allegation did not work at the premises and never had done. This proved that additional work is required to check and enhance intelligence before using it as grounds for applying for this power.

Administrative process

- 4.24 We examined the age of the intelligence that was used to support applications to use this power. The results varied significantly. We found that the age of intelligence ranged from seven days to 157 days, with the average being 47 days. This shows that there was sufficient time to apply for a search warrant rather than use the Section 28CA power. However, we recognise that the intelligence would have to proceed through a formal tasking process before being allocated to an enforcement team.
- 4.25 Intelligence that is 157 days old is unlikely to provide sufficient justification to have reasonable grounds to believe that immigration offenders are on particular business premises. Staff and managers provided their own views on the age of intelligence and stated that three months was a good cut-off period. They stated that this is the cut-off date used by magistrates when considering a search warrant. We believe that a consistent approach to the age of intelligence used to support the justification for using powers of entry should be considered by the Home Office.
- 4.26 We examined the role that intelligence teams played when enforcement visits were being planned. We believe that intelligence staff should provide more guidance to operational teams about the level of confidence in the intelligence and whether it supports reasonable grounds to suspect or reasonable grounds to believe. These are both important factors when deciding whether a power of entry is to be used. Whilst not making the tactical decision for operational staff, it would be useful and more effective if an informed opinion was provided by intelligence staff at an early stage.
- 4.27 We also examined the time between the date when the visit package was ready and the date of the operation. We assessed this because the guidance stated that the power should generally only be used in urgent cases. We therefore tested whether the Home Office had sufficient time to apply for a search warrant.
- 4.28 As with intelligence reports, the range of time varied significantly. In one case from Greater Manchester, the visit package was ready 143 days before the operation. In another case the visit package was ready 142 days before the operation (North London). The average time for the whole file sample was 13 days, which was sufficient time for consideration of a search warrant.
- 4.29 In South London, we found that the average time recorded between the visit package and the visit was one day. However, the date when the package was ready usually fell after the request was made for the authority to use the power, which was inconsistent with other ICE teams, indicating that the authority formed part of the visit package.
- 4.30 For this location, we considered the period between the tasking date and the date of the operation. We found that the shortest period between the two dates was one day and the longest 28 days. Overall, the average length of time between tasking and the date of the operation was 11 days, again providing ample time to obtain a search warrant. However, only one of the 15 South London cases we sampled showed any reference to a search warrant being considered. This was a serious failing and supports our finding that the use of the power had become routine in some locations.

The use of the power had become routine in some locations

4.31 Our analysis, together with the interviews we conducted with staff, demonstrated that time delays in the process meant that the power was being used even when there was no immediate urgency. This was contrary to the guidance. In order to ensure that this power is used appropriately, the Home Office should issue clear guidance regarding what may constitute ‘urgent’. This will ensure that staff understand when it is appropriate for this power to be used.

We recommend that the Home Office:

Updates guidance setting out what it defines as ‘urgent’ when staff are considering using this power.

Visit outcome

4.32 When using this power, officers must have reasonable grounds to believe that immigration offenders are on the premises and this is above the lower threshold of having reasonable grounds to suspect. We therefore assessed the outcomes of the visits, using the evidence within the files as well as checking the information recorded on the National Operations Database (NOD).

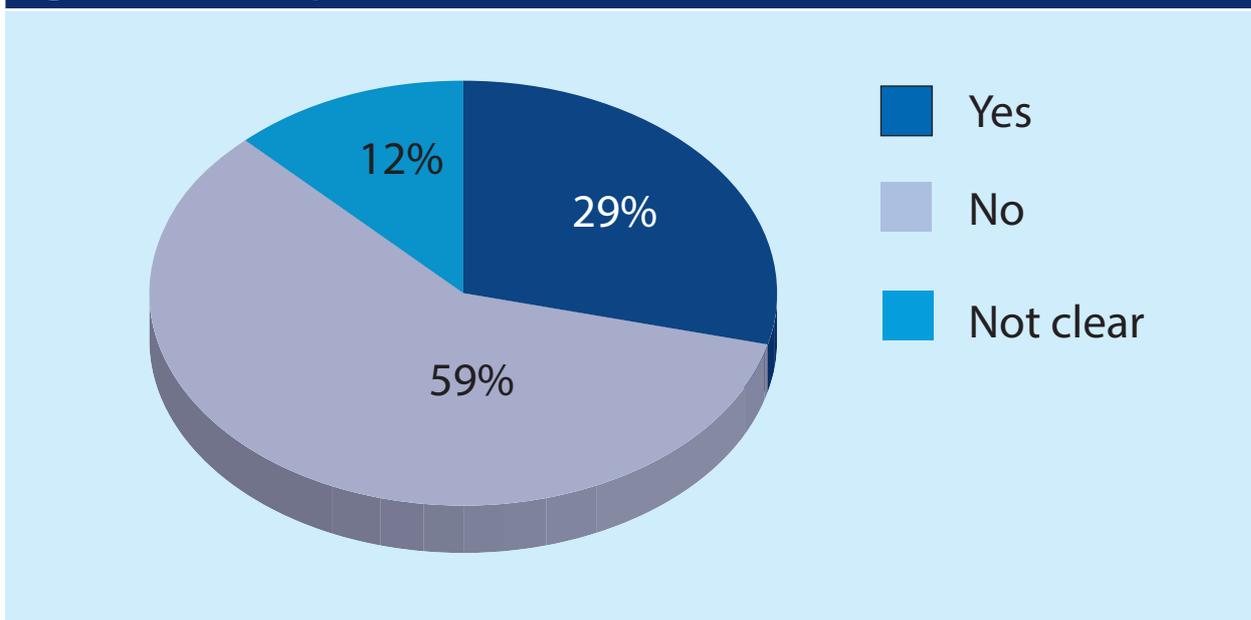
4.33 We found that at least one person was arrested in nearly two-thirds of the cases we examined (38 cases – 64%). In cases where a named offender was used as the justification, 14 cases (37%) resulted in the named offenders being apprehended. However, in seven of these cases we questioned whether the power should have been used, as there was sufficient time to apply for a search warrant.

Should the power have been exercised?

4.34 After examining the evidence available in each of the 59 cases we sampled, we judged that only 17 of the cases we sampled (29%) justified using this power. In 35 cases (59%), we disagreed with the AD decision and in a further seven cases (12%) there was insufficient information to enable us to form an opinion. The chart in Figure 6 shows the breakdown of the results of the sample.

We judged that only 17 of the cases we sampled (29%) justified using this power

Figure 6: Should the power have been exercised?



4.35 The case study at Figure 7 provides one example where we disagreed with a decision to use this power.

Figure 7: Case study – Inappropriate use of power to enter business premises

The visit:

- was tasked on 4 June 2013 with only general intelligence that illegal working might be taking place;
- was authorised with use of the power granted by a person below the relevant grade of AD;
- was conducted on 13 June 2013 and no arrests were made.

Chief Inspector's Comments:

- There was no consideration of a search warrant evident in the file.
- There were no named offenders or descriptions or any other evidence to support a reasonable belief that any person liable to arrest was on the premises.
- The search appeared to be unlawful, because authority was not provided by the appropriate grade.

Home Office Response:

- Agreed with our findings.

4.36 The Home Office must ensure that its guidance is being followed consistently across all ICE teams. Opportunities for increased consistency and effective control must be examined and any disparity in the guidance be removed. For example, the use of this power requires a higher threshold of belief, however, the internal controls in place are less than those required to apply for a search warrant, where the threshold is lower.

5. Inspection Findings – Operational Delivery

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

Performance management and assurance

- 5.1 Our sampling found that the management assurance activity taking place (either by ADs or other forms of internal assurance by other management grades) was ineffective in identifying the widespread non-compliance with guidance that our file sampling uncovered. A specific instruction at paragraph 34.2 of the guidance states that Immigration Officers ‘should obtain the authority of the CIO to make the application for the warrant’, meaning that an application for a warrant is reviewed by a line manager before the application is made at a Magistrates’ Court to use that power. For the use of the power under Section 28CA, there is no such instruction and an Immigration Officer can bypass their line manager and go directly to an AD to apply to use this power.
- 5.2 Prior to our inspection there was no process to produce or deliver performance management information on the use of this power. Information was not routinely collected to allow any comparison between the different powers of entry that were available to ICE Teams. As a result, senior managers were unable to assess whether the power was being used appropriately and in accordance with the legislation and guidance.
-
- There was no process to produce or deliver performance management information on the use of this power*
-
- 5.3 Management information provided by the Home Office for this inspection showed significant variations across ICE teams concerning the number of times this power was used. However, as no performance management information was being produced, senior managers were unable to explain the reasons for such variations. We also established that ADs had not been subject to any scrutiny regarding the use of this power.
- 5.4 We examined the differences that existed across ICE teams in the use of this power, compared against the use of Magistrate’s search warrants for the period between 1 April 2013 and 31 August 2013 – Figure 8 refers.

Figure 8: Section 28CA powers v. search warrants

ICE Team	Total no. of Illegal Working Visits	No. of visits with AD Letter	No. of visits where a search warrant was executed
East of England	358	111 (31%)	139 (39%)
Yorkshire & Humberside	351	116 (33%)	74 (21%)
Wales	311	0 (0%)	262 (84)
South London	301	207 (69%)	11 (4%)
Scotland	291	6 (2%)	28 (10%)
North East & Cumbria	194	37 (19%)	13 (7%)
East Midlands	180	72 (40%)	44 (24%)
South Central	180	14 (8%)	58 (32%)
Kent & Sussex	171	42 (25%)	89 (52)
Merseyside- Lancashire & Cheshire	167	75 (45%)	31 (19%)
East London	152	5 (3%)	11 (7%)
West Midlands	143	25 (17%)	9 (6%)
North London	140	42 (30%)	56 (40%)
West London	139	45 (32%)	77 (55%)
Greater Manchester	128	3 (2%)	74 (58%)
South West	109	5 (5%)	46 (42%)
Thames Valley & Surrey	106	8 (8%)	95 (90%)
Central London	90	47 (52%)	26 (29%)
Northern Ireland	57	0 (0%)	35 (61%)
Grand Total	3568	860 (24%)	1178 (33%)

5.5 This shows that almost a quarter of all illegal working visits made nationally used the power of entry under Section 28CA. Almost half of all ICE teams have used the power in more than 25% of their illegal working enforcement visits. If our sampling is representative, there is a significant risk that other ICE teams (those we did not inspect) are also using this power inappropriately.

Almost a quarter of all illegal working visits made nationally used the power of entry under Section 28CA

5.6 Figure 8 also shows that the use of this power varied widely across ICE teams. For example, while South London and Wales conducted a similar number of enforcement visits, the use of the S28CA power varied significantly. In Wales, guidance was followed and search warrants were obtained to facilitate a power of entry, while in South London the opposite was true. Staff at each of these locations confirmed this, with staff in South London stating that the use of the power without a search warrant was routine because it was easier to get a signature from the AD than it was to attend a Magistrates' Court.

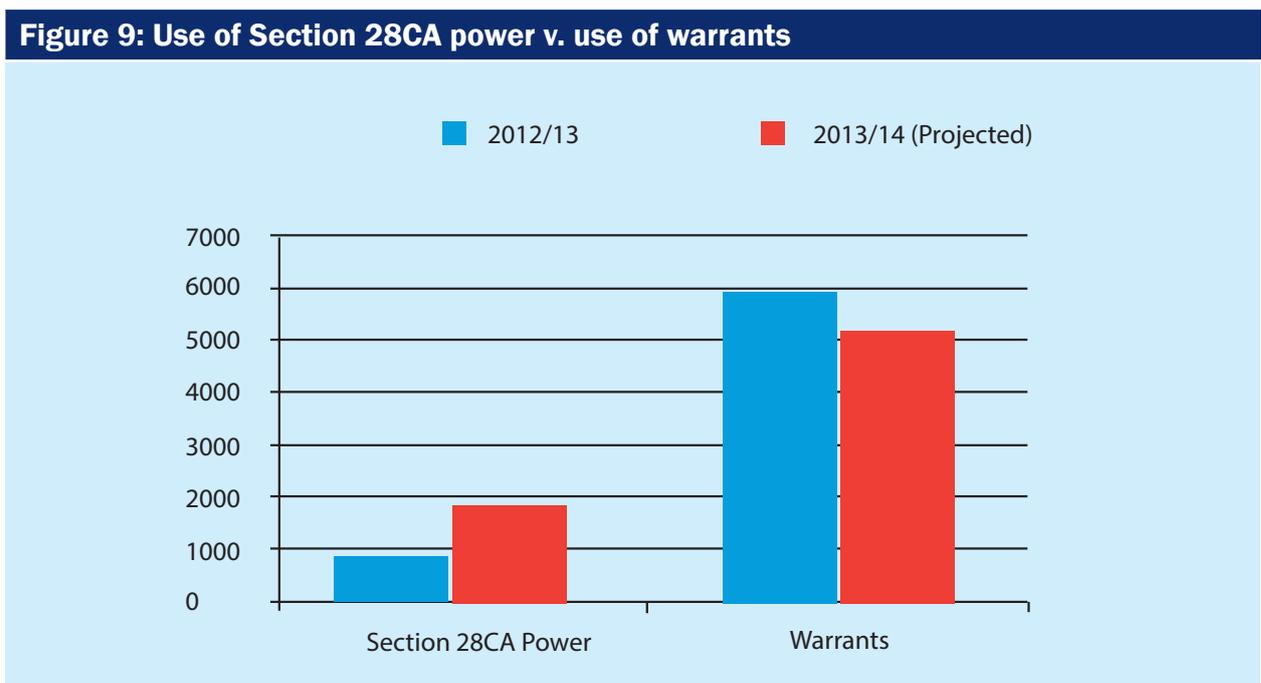
It was easier to get a signature from the AD than it was to attend a Magistrates' Court

5.7 During our inspection, senior managers had started to implement a range of measures to exert a stronger grip on the use of this power by their staff. This included taking action to improve adherence with the guidance and to develop a new performance report. We were provided with a copy of this report, dated October 2013, which captured the number of times the power was used by each ICE team, as well as the number of arrests that were made as a result.

Senior managers had started to implement a range of measures to exert a stronger grip on the use of this power by their staff

5.8 The report highlighted how much the use of the power had increased nationally. For the 2012/13 financial year, it was used 843 times. In the 2013/14 financial year, up to the end of September 2013, it had been used 1,049 times, an increase of 24% with six months of the current financial year remaining. Projected data for the remainder of the year shows that if the current trend continues, there will be a 113% increase in the use of the power.

5.9 In contrast, search warrants were used 5,850 times in the financial year 2012/13 and 3,046 times so far in 2013/14. If the current trend continues, the total number of search warrants for the current financial year will be approximately 5,220, a reduction of 10%. Figure 9 highlights the changes in the number of times that powers have been used, projected for 2013/14 compared to 2012/13.



5.10 The production of a new management information report, detailing the use of these powers, was a positive step forward. Used appropriately it should enable senior managers to get a much better understanding about when the Section 28CA power is used, together with the outcomes that are achieved.

Home Office guidance

5.11 The Enforcement Instructions and Guidance provides information about policy and processes for all enforcement activity. It includes a specific section on the use of the Section 28CA power, which instructs staff about the process they should follow when applying for or authorising the use of this power. However, the guidance could be further improved by including a much clearer distinction between the thresholds of having reasonable grounds to suspect and reasonable grounds to believe.

5.12 The need for this distinction was articulated by some of the staff we interviewed, who considered this was one of the reasons for the power being used inconsistently. While the guidance should be amended to provide better clarity on this point, we do not accept that this issue was responsible for the widespread non-compliance that we identified, especially amongst ADs, who were responsible for ensuring that the power was used appropriately.

We recommend that the Home Office:

Updates guidance, providing greater clarity on the thresholds for using this power.

Record-keeping

5.13 In our file sample, 56 files (95%) contained some evidence of justification. However, the existence of the justification did not always mean that sufficient records were kept. For example, in 13 of the cases we sampled (22%) the justification was weak and there was no additional information held on the file to support the view that officers had grounds to believe that immigration offenders were on business premises. We also found that:

- despite guidance stating that the search reference number should be included on the letter which is handed to business owners, only four letters in our sample contained this information (7%);
- one file included two separate operational orders, neither of which referred to the operation to which the file reference belonged;
- one file in which witness statements were made by officers had conflicting information about who authorised the use of the power; the same file included a justification stating that the premises was a restaurant when in fact it was a newsagent; and
- in one file, notebooks had not been completed correctly, for example, lines were left blank, and the same file had a witness statement which included the incorrect date of the operation.

5.14 As set out previously, we disagreed with the decision to authorise the power in 35 of the cases we examined (59%). It is therefore imperative that adequate records are maintained in order that decisions can be justified and challenges resisted.

It is therefore imperative that adequate records are maintained in order that decisions can be justified and challenges resisted

5.15 Our file sampling showed that the Home Office had conducted joint operations with either the Police or HMRC. As the power authorised by ADs only applies to Immigration Officers, the Police or HMRC are required to use their own powers of entry. In nine cases where we identified that a joint operation was conducted, there was no evidence that the Home Office had sought assurance from other agencies that they had their own authority to enter premises. The Home Office should develop a process to ensure that all correct authorities and powers are in place for joint operations.

5.16 We also examined the records held on the IT system (NOD), in particular the quality of information relating to the enforcement visit. This included the post-visit records, for example, persons encountered and the debrief record.⁹ We identified a number of problems, including:

- named targets were not always recorded; this is particularly important in cases where the power to enter without a search warrant is used because it supports the justification and adds more value in respect of reasonable grounds to believe;
- Police involvement not being recorded as a joint operation;
- persons being encountered (six cases), but the individual person records were not added or updated correctly; and

⁹ The process by which information is actively gathered and shared during routine operational work so as to increase information flows.

- full written debriefs were not always completed.

5.17 NOD is used to produce management information for both senior managers and Ministers, for example when answering parliamentary questions. Although each ICE Team had an individual assigned to a NOD data quality role, these discrepancies were not picked up. The Home Office should ensure that adequate oversight of data quality is improved.

We recommend that the Home Office:

Improves the quality of record-keeping on the National Operations Database to provide better management oversight.

5.18 We also examined the level of debriefing that was provided to ADs. We found varying levels and formality of debriefing, including:

- a formal debriefing at each tasking meeting;
- no debriefing at all; or
- ad-hoc requests by the AD to the officer in charge of the enforcement visit.

5.19 In order to complement the increased use of performance information, ADs would benefit from receiving a formal debrief of operations where they have authorised the use of the power. For example, in operations where no arrests are made, ADs need to understand why the desired outcome of the operation was not achieved and why the reasonable grounds to believe did not produce a result. This would ensure that future requests and justifications are appropriately considered before authority is given.

ADs need to understand why the desired outcome of the operation was not achieved and why the reasonable grounds to believe did not produce a result

6. Inspection Findings – Continuous Improvement

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

Training

- 6.1 ADs had received variable levels of training, depending on how long they had been in their role. Recently appointed ADs had received training on the use of this power during a two-day induction course which had been implemented in August 2013. We found that this training was inadequate, because it only provided an overview of the power and not a detailed instruction of what was required when the power was being considered. It was also clear that the training provided was insufficient in stressing to ADs the importance of using this power lawfully and in accordance with the guidance.
-
- The training provided was insufficient in stressing to ADs the importance of using this power lawfully and in accordance with the guidance*
-
- 6.2 Immigration Officers had received training on this power. However, this had formed part of their induction training when they were taught about all enforcement powers at their disposal.
- 6.3 At the time of our inspection, senior managers had recognised the deficiencies in the current training provided to ADs on the use of this power and a new training package had been developed. The new training package was mandatory for all ADs and included sessions on the:
- criteria for exercising the power;
 - thresholds for ‘belief’ and what constitute ‘reasonable grounds’;
 - consequences of non-compliance; and
 - the decision-making process overall.
- 6.4 This was a positive step and had the potential to deliver significant improvements in the use of this power. In addition, an instruction had been issued that only ADs who had attended the new training would be allowed to authorise staff to use this power.
- 6.5 We were told that the new-style training would also be delivered to staff at HMI and CIO grades, in order to increase their understanding of the power and highlight the consequences of non-compliance. This is important in making sure that the non-compliance we identified is eradicated.
-
- This is important in making sure that the non-compliance we identified is eradicated*
-

Improved oversight

- 6.6 Evidence was provided to inspectors that the use of all powers of entry was being reviewed by senior managers. An AD was tasked on 18 June 2013 with producing a report on the use of all powers. The report was delivered to the Director of Central Operations on 17 September 2013 and highlighted some of the inconsistencies that this inspection uncovered. The report provided three options to ensure greater consistency and improved assurance in the use of all powers. They were:
- do nothing;
 - create greater consistency in the short term; or
 - consider a full review of the use of all powers of entry (medium term).
- 6.7 Formal notification of this short-notice inspection took place on the 30 September 2013. We were pleased that some initial investigative work had commenced internally into the use of all powers of entry prior to receiving formal notification of the inspection. Our findings show that, whilst these investigations were ongoing, the use of the power under Section 28CA of the Immigration Act 1971 remained a significant issue in a number of the ICE teams that we inspected.
- 6.8 Following the notification of our inspection, the Home Office commenced work on implementing a range of measures to improve the level of management oversight and control in respect of this power. The new measures included:
- introduction of local records, including ‘Decision Sheets’ (a written record of each stage of the decision made by the AD to justify why the use of the power was authorised) and spreadsheets to record details of all requests made and whether they were granted or refused.
 - inclusion of data in the monthly performance report showing what powers of entry have been used and the number of arrests;
 - upward reporting of all instances where the authority has been used, enabling Central Operations to maintain a central record and conduct verification checks on a dip sample basis; and
 - development of a new training package (as mentioned previously).
- 6.9 A review of guidance was underway, but this work had not been completed at the time when we undertook the on-site phase of our inspection. Senior managers had also initiated dialogue with HM Courts & Tribunals Service (HMCTS) to resolve any issues with individual courts that might be deterring certain ICE teams from applying for search warrants. This dialogue included a suggestion that ADs should be invited to join Local Criminal Justice Boards¹⁰ (LCJB). Inclusion on these boards should provide lawyers and magistrates with a greater understanding of the enforcement activity carried by ICE teams and how they contribute to overall criminal justice activity.

The Home Office commenced work on implementing a range of measures to improve the level of management oversight and control in respect of this power

We recommend that the Home Office:

Conducts a full evaluation within six months to ensure that Section 28CA powers are being used appropriately.

¹⁰ LCJBs are a collective group involving criminal justice agencies, including HMCS and the police

Annex 1

Role & Remit of the Chief Inspector

The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency ('the Agency') was established by the UK Borders Act 2007 as to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in Section 23 of the Immigration and Asylum Act 1999, as amended by Section 4(2) of the Immigration, Asylum and Nationality Act 2006.

On 20 February 2012, the Home Secretary announced that Border Force would be taken out of the Agency to become a separate operational command within the Home Office. The Home Secretary confirmed that this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the Border Force.

On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same. The Chief Inspector is independent of the UK Border Agency and the Border Force, and reports directly to the Home Secretary.

On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and brought back into the Home Office, reporting directly to Ministers, under a new package of reforms. The Independent Chief Inspector will continue to inspect the UK's border and immigration functions, as well as contractors employed by the Home Office to deliver any of these functions. Under the new arrangements, the Department of UK Visas and Immigrations (UKVI) was introduced under the direction of a Director General.

Annex 2

Glossary

Term	Description
A	
Allegation	An allegation is a piece of information which brings to the attention of the Home Office a perceived breach of the immigration system, or the illegal importation of goods.
Arrest-trained officer	An officer, typically of Assistant Immigration Officer or Immigration Officer grade, who is designated as being able to use the police-like powers of arrest, and associated powers of entry, search and seizure. Must successfully complete an initial three-week training course and an annual two-day refresher training course.
Audit trail	Chronological list of events.
C	
Chief Immigration Officer (CIO)	Senior grade above Immigration Officer, management grade (equivalent to Higher Executive Officer)
D	
Director	A senior Home Office manager, typically responsible for a directorate, region or operational business area.
E	
Enforcement	A Home Office term used to refer to all activity that takes place within the UK to enforce the immigration rules. In addition to the work done by arrest teams, this includes areas such as asylum, citizenship, detention and removal.
Enforcement Action / Operation	Action taken within the UK (as opposed to being undertaken at the border) by trained Home Office staff, to locate and process suspected or known immigration offenders.
Enforcement Instructions and Guidance (EIG)	Guidance and information for officers dealing with enforcement immigration matters within the United Kingdom.
Enforcement Team	A team of Home Office officers who conduct operations in the field such as visits to employers of illegal workers.
G	
Grade 7	Senior manager, subordinate to Grade 6, superior to a Senior Executive Officer.
Grade 6	Senior manager, subordinate to the Senior Civil Service, superior to Grade 7.

H	
Her Majesty's Revenue and Customs (HMRC)	UK government department responsible for customs and taxation.
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
I	
Immigration, Compliance and Enforcement team (ICE)	An ICE team is a local team undertaking as many functions as practicable at a local level within an Immigration & Enforcement region. They focus on enforcement work and community engagement, although the functions of ICE Teams can vary between regions.
Immigration Law Enforcement	One of the two operational commands set up under the direct control of the Home Office in place of the UK Border Agency which was broken up on 26 March 2013. Since 1 April 2013 this department handles all immigration enforcement activity.
Independent Chief Inspector of Borders and Immigration	The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency and more recently, Border Force. The Chief Inspector is independent of the UK Border Agency and Border Force and reports directly to the Home Secretary.
Intelligence Unit	A team that collates and disseminates intelligence, usually for enforcement teams.
N	
National Operations Database (NOD)	Database used to record all enforcement operations undertaken by the Home Office.
Notice of Potential Liability (NOPL)	Where Home Office officers are successful in encountering illegal migrant workers, a 'Notice of Potential Liability' (NOPL) must be completed and issued to the employer or representative of the company.
O	
Officer In Charge (OIC)	Officer who has overall control of the arrest team, must be of at least Immigration Officer grade.
T	
Tasking and Coordination Group (TCG)	A system to prioritise threats, set objectives and plan resources and action at all levels of the organisation. In essence, a business process supported by intelligence.
W	
Warrant	A document issued by a Justice of the Peace (or a Justice of the Peace or Sheriff in Scotland), authorising officers to arrest a specified person, enter specified premises for the purpose of arresting a specified person, or enter specified premises for the purpose of searching for evidence.

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