



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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**Home Office, Ministry of Justice and  
Foreign & Commonwealth Office**

# Managing and removing foreign national offenders

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Home Office, Ministry of Justice and  
Foreign & Commonwealth Office

# Managing and removing foreign national offenders

Report by the Comptroller and Auditor General

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to be printed on 20 October 2014

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National Audit Act 1983 for presentation to the House of  
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB  
Comptroller and Auditor General  
National Audit Office

17 October 2014

Our study examines whether the bodies involved are achieving value for money for the taxpayer for the £850 million we estimate they spend on the management and removal of foreign national offenders each year.

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# Contents

**Key facts** 4

**Summary** 5

**Part One**

The scale of the UK's FNO problem 12

**Part Two**

Preventative measures  
and early action 20

**Part Three**

Maximising early removal 27

**Part Four**

Strategic oversight of  
foreign national offenders 38

**Appendix One**

Our audit approach 45

**Appendix Two**

Our evidence base 47

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## Key facts

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**12,250**

foreign national offenders in England and Wales, serving in prison or living in the community after prison pending removal action, end of March 2014

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**5,100**

foreign national offenders removed from the UK, 2013-14

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**£850m**

our estimate of public spending on managing and removing foreign national offenders, 2013-14

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- 10,650** foreign nationals in the prison estate in England and Wales at 31 March 2014, of which 2,600 were on remand or not sentenced
- 30%** proportion of arrested foreign nationals on which police carried out an overseas criminal record check through the ACPO Criminal Records Office, 2013-14
- 1 in 25** foreign national offender files arriving at the Home Office to start processing for removal which have sufficient identity documents
- 139** number of days foreign national offenders are removed from the UK after the end of their sentence in 2013-14, on average
- 146** prison days saved as a result of foreign national offenders being removed as part of early removal schemes in 2013-14, on average
- 37%** proportion of foreign national offenders removed from the UK which were part of early removal schemes, 2013-14
- 4,200** foreign national offenders living in the community pending removal at the end of March 2014
- 1 in 6** foreign national offenders living in the community that had absconded at the end of March 2014
- 151** Departmental estimate of foreign national offenders released from prison without being considered for deportation, January 2009 to March 2014

# Summary

**1** The government aims to remove as many foreign national offenders (FNOs) as quickly as possible to their home countries, to protect the public, to reduce costs and to free up spaces in prison. At the end of March 2014, there were 10,600 foreign nationals in the prison estate in England and Wales – about 1 in 8 of all prisoners – from over 150 countries. Various public bodies work together to achieve removal:

- The Home Office (the Department) has overall responsibility for removal.
- The Ministry of Justice (the Ministry) and the National Offender Management Service (the Agency), manage offenders in custody and negotiate international agreements on prisoner transfers.
- The Foreign & Commonwealth Office manages relations with foreign governments to speed up removals.

**2** In recent years the government has put more effort and resources into managing and removing FNOs from the UK. This is largely in response to problems identified in 2006 when the Department found that 1,013 FNOs were released without having been considered for deportation, even though some had committed serious offences. The Committee of Public Accounts (the Committee) criticised the Department for systemic failure in managing FNOs and for weak strategy and controls, silo working and ineffective caseworking.

**3** This report assesses the opportunities for improving the process for removing FNOs and the actions which the government could take which are within its control to make better progress. Overall we evaluate whether the public bodies involved are making enough progress in improving FNO management and removals for the effort and resources deployed.

## Key findings

### Overall progress and barriers to improvement

**4 Overall progress since 2006 on reducing the foreign national prison population in the UK has been slow despite increased resources and tougher powers.** The number of foreign nationals in the prison estate in England and Wales has remained fairly constant with an increase of 4% from 10,231 to 10,649 between 2006 and 2014. After an initial surge following the issues identified in 2006, removal numbers peaked at 5,613 in 2008-09 and have not matched that level since. This is despite an increase in the number of staff within the Department working on FNO casework from less than 100 in 2006 to over 900 in 2013-14, and tougher domestic legislation on immigration rules (paragraphs 1.4 to 1.6).

**5 Removing FNOs from the UK continues to be inherently difficult and public bodies involved have been hampered in their efforts by a range of barriers, although poor administration has still played a part.** The number and speed of removals can be restricted by law – typically the European Convention on Human Rights and EU law on the free movement of persons. Until recently, FNOs had 17 grounds for appeal that could delay removal. Administrative factors also form barriers with some FNOs exploiting legal and medical obstacles to removal. Many overseas countries are unwilling to receive FNOs back home. However, lack of joint working and administration errors have often led to missed opportunities for removal (paragraphs 1.7 to 1.9).

**6 A new 2013 cross-government FNO action plan aims to deliver greater progress and tackle barriers.** Recognising that despite increased resources and effort progress has been slower than expected, in 2013, the first cross-government strategy for FNOs was developed – the FNO action plan. This aims to increase removals by 1,000 over 3 years (from 4,600 to 5,600) and reduce the number of FNOs in the UK by 2,000 over the same period. The plan aims to improve preventative measures, improve caseworking and amend the law to tackle barriers (paragraphs 1.10 and 1.11).

#### Preventative measures and early action

**7 Before December 2012, the government did relatively little to tackle the problem of potential FNOs entering the UK. The action plan has focused efforts on this aspect of prevention, but lacks a sufficiently structured and informed approach which may limit progress.** Current information held in the UK on foreign nationals who have committed serious crimes in their own countries is less complete than most European countries. The Department has new initiatives in place to remedy this, such as connecting to the Schengen Information System in December 2014 and making better use of other intelligence databases. It has also changed its regulations so that some low level European criminals removed from the UK cannot return for 12 months. Progress on modernising the Department's Warnings Index – its border information system – has been slow, however. We found that elements of the action plan were not sufficiently joined up and lacked the cost information needed to know whether investment in prevention initiatives is effective (paragraphs 2.3 to 2.6, 4.11).

**8 Opportunities at police stations and in court to facilitate and speed up FNO removals later in the process and reduce costs are being missed, although a new scheme to embed immigration officers in police stations looks promising.** Identifying FNOs early, including obtaining relevant documents such as passports, is crucial to speeding up removal at a later stage and managing the risk posed by the FNO while in prison. But police officers often do not undertake the checks and searches needed when they suspect someone of being a foreign national. We estimate that £70 million could be saved each year if all early identification opportunities were seized and acted upon. Operation Nexus, a scheme launched in London in 2012 and extended to other areas, to raise awareness among the police of these issues appears effective and is being rolled out more extensively (paragraphs 2.7 to 2.15).



**9 Similarly, the Department and the Agency are not maximising opportunities to improve the likelihood of early removal when an FNO enters prison.** Thirty-five per cent of foreign nationals in prison are held within 14 designated FNO prisons, with dedicated immigration officers working with FNOs and prison staff. The Department asserts that this model increases FNO removals but at present has no evidence to support this. On our prison visits we noted several factors hampering the earlier removal of FNOs including: poor use of IT; lack of integration between immigration and prison staff; slow interaction with FNOs when they first enter prison; and a failure to use available legislation which could act as a deterrent for FNOs who refuse to comply with the removal process. Furthermore, the Agency's process for referring new FNOs to the Department is cumbersome and slow, preventing caseworkers making a start on the removal process at the earliest opportunity (paragraphs 2.17, 2.18, 2.20 and 3.7).

#### Maximising early removals

**10 Although removals have fallen since 2008-09, they increased 12% over the last 2 years, largely because of a change in the Department's approach to deportation.** Removals increased from 4,539 in 2011-12 to 5,097 in 2013-14 following concerted caseworking efforts and a change in the Department's approach after April 2013 to ensure that all FNOs are considered by a central team for removal, not just those who met the deportation criteria. In 2013-14, the Department was able to remove around 300 additional FNOs as a result of the latter change (paragraphs 3.4 to 3.7).

**11 The time taken to deport FNOs is reducing but there is considerable opportunity to further speed up the process.** It took the Department an average of 319 days in 2013-14 to deport an FNO once it had decided to do so, down from 369 days the previous year. We noted, however, that delays in starting cases, over-reliance on form-filling, delays in communicating with FNOs in custody and inefficiency in processing cases once under way are having a detrimental impact on speeding up removals. The FNO action plan includes proposals to improve the productivity of the Department's casework, but robust management information to support this is unavailable (paragraphs 3.12 to 3.14 and 3.16).

**12 There is considerable scope for the Department to make more use of early removal schemes which would save money for the taxpayer.** Thirty-seven per cent of FNOs removed in 2013-14 left as part of the Early Removal Scheme which returns them to their home country before they would otherwise be released from prison. We estimate that this saved £27.5 million by reducing the average number of days spent in prison by 146. But still the average FNO is removed 139 days after their release from prison. Those not removed during their Early Removal Scheme window are removed an average of 327 days after their release date. We found that caseworkers target an FNO's release date rather than their earliest removal date. Use of the Facilitated Returns Scheme, which supports early removal by providing an FNO up to £1,500 on their return to their home country on the condition that they comply with the removal process, has halved in recent years following a policy decision to reduce the value of the payment (paragraphs 3.17 and 3.18).

**13 The Ministry expects the use of Prison Transfer Agreements (PTAs) to increase from 2015, but its assumptions look overly optimistic.**

The use of PTAs is rare, largely because the majority of the 107 agreements currently in place rely on the consent of the FNO. They were used on average only 39 times per year over the last 4 years. The FNO action plan predicts significant growth in the number of removals through this process: EU states are due to introduce compulsory PTAs, which do not require the prisoner's consent, by the end of 2014. The Ministry's impact assessment of the EU PTA identified a potential 4,400 additional removals over 10 years and estimated net savings of around £110 million as a result. However, this calculation may be optimistic, particularly as many EU countries have not yet implemented the agreement and others have temporary exemptions (paragraphs 3.19 and 3.20).

**14 The number of failed removals has reduced from 2,200 in 2010-11 to 1,400 in 2013-14 but a significant number still fail because of poor administration.**

The declining number of failed removals indicates the Department is managing this part of the process better. Our analysis of failed removals in 2013-14, however, found that over a third might have been avoided through increased coordination of the bodies involved, fewer administrative errors and better, more timely information being available (paragraph 3.21).

**15 The Department believes that a key barrier to removal will be overcome as it implements the 2014 Immigration Act.**

Only 1 in 7 appeals by FNOs was successful in 2013. Yet appeals are an increasing factor in preventing the Department from removing an FNO and are resource intensive. The 2014 Immigration Act will reduce the number of rights of appeal open to FNOs from 17 to 4. The Department anticipates that appeals will reduce significantly as a result (paragraph 3.22).

**16 The Department's progress since 2006 in managing and removing FNOs who have completed their prison sentence is limited and it does not know how many have been released without being considered for deportation since 2006.**

There are around 4,200 FNOs living in the community pending deportation. At the end of March 2014, more than 1 in 6 FNOs living in the community (760) had absconded, up 6% since 2010. Furthermore, 395 absconders have been missing since before 2010, of which 58 are high harm individuals. The Department's work to trace absconders is matched by the inflow of new cases. Despite the 2006 crisis, the Department does not hold records on the number of FNOs that were released without being considered for deportation before January 2009, after which it believes 151 FNOs were released without consideration (paragraphs 3.24 to 3.28).

## Strategic oversight of FNOs

**17 The government’s strategic oversight of FNOs is improving but the FNO action plan lacks sufficient coherence.** While the FNO action plan is still relatively new, (see paragraph 4.3) the greater collaboration it has introduced has had a galvanising effect on activity, increased joint working between teams and has helped tackle some of the more difficult barriers to FNO removal. But the plan does not prioritise actions effectively and there are no clear links between actions, resulting change and impact on removal. FNO governance has been bolstered by the introduction of a new steering group and new directors to lead the action plan, but this work is hindered by over-complicated arrangements in the Department (paragraphs 4.3, 4.4 and, 4.7 to 4.10).

**18 The Department and the Ministry do not use cost data to manage FNOs, and do not have a good understanding of the costs involved.** Without this basic cost data it is difficult for the government to make informed decisions on where it can maximise opportunities for improvement. In the absence of robust data we undertook a detailed costing exercise and estimate that in 2013-14 public bodies spent £850 million (in a range of between £770 million and £1,041 million) on FNOs. The average cost of managing 1 FNO is therefore around £70,000 per year (paragraphs 4.11 to 4.13).

## Conclusion on value for money

**19** The government’s progress in managing and removing FNOs since 2006 has been slower than we would expect, particularly given the increased resources and effort dedicated to this. This is reflected in the numbers as the FNO population in prison has increased slightly and while removals are now increasing this is largely due to a change of approach in 2013. While the barriers to removal are considerable, some of these are within the control of the public bodies involved and we have identified various, relatively straightforward and inexpensive opportunities to make progress which are not being maximised. In particular, the focus on preventative measures and early action is promising but the government has only just started to exploit these options.

**20** To achieve value for money in the future the government needs to build on the momentum created by the FNO action plan. In particular it needs to know the cost attached to managing FNOs so that it can allocate resources in a more effective way.

## Recommendations

**21** We have categorised our recommendations to highlight those we think are more easily achievable and straightforward and those which will take longer to implement.

- a** **The Department should build on the FNO action plan by evaluating fully the preventative and early intervention measures trialled so far and investing further in these where appropriate.** In particular, early evidence suggests the Department should build its plan to prevent more FNOs from entering the UK at the border through better information and application to the Warnings Index over the next 2 years. It should, in partnership with the police, also invest in better police training and capacity for dealing with foreign nationals at police stations. Together, the Department and the Agency need to work out the optimal prison model for removing FNOs and expand this. They should evaluate process efficiency and joint working arrangements within prisons to further speed up FNO removals.
- b** **The Department needs to develop and standardise its approach to casework.** The Agency's referral process for new prisoners hampers the Department starting its casework at the earliest opportunity so as to target FNOs more quickly. The Department should analyse failed removals to reduce those within its control and should track the impact of the Immigration Act on appeals. It should prioritise work to improve casework productivity and better align the Department's processes with schemes to increase take-up of early removal.
- c** **The Department needs to improve its oversight of FNOs released into the community at the end of their sentence.** The Department needs to strengthen resourcing in its trace and locate team to ensure sufficient effort is focused on tracking absconders, notably prioritising high harm individuals. It also needs to work with other public bodies involved to improve collective search processes. Transparent accountability to Parliament on this issue is essential and the Department needs to ensure it reports progress accurately and fully.
- d** **The 3 departments must ensure that, when developing the FNO action plan, actions and dependencies are aligned to optimise success, and governance structures are streamlined.** The departments should undertake a critical review of the FNO strategy and ensure the action plan prioritises FNO categories and that this prioritisation feeds down into caseworking decisions. The plan should also reflect the dependencies between actions and more explicitly link actions to outputs and outcomes. The plan should be aligned with departmental priorities and governance simplified so that clearer lines of accountability are established.

- e In the longer term, the departments need to work together to develop accurate management information and establish a costing model for FNOs.**  
The departments should put in place systems to ensure they have good quality and complete cost information for all stages of the FNO process. They should then start to allocate resources to actions based on impact.
- f Senior leaders within the departments need to encourage and develop a long-term joint working culture on FNOs.** While joint working has improved over recent years, the bodies involved have missed opportunities to coordinate working and share data and information effectively. Senior leaders in these organisations need to ensure that they align their FNO objectives, join-up systems where possible and ensure staff understand their collective responsibility for the FNO problem.

# Part One

## The scale of the UK's FNO problem

**1.1** The government aims to remove as many foreign national offenders (FNOs) as possible to their home countries quickly, for public protection, to reduce costs and to free up spaces in prison. At the end of March 2014, there were 10,649 foreign nationals in the prison estate in England and Wales, about 1 in 8 of all prisoners, from more than 150 countries.<sup>1</sup> The largest contingents come from Poland, the Irish Republic and Jamaica (**Figure 1**).

**1.2** In the past the government managed the removals process poorly. In 2006, the Department found that over the previous 6 years it had released 1,013 FNOs into the community without considering whether they should be deported from the UK. The Department subsequently provided conflicting and inaccurate data to the Committee of Public Accounts (the Committee) about the nature and numbers of the individuals involved. The Committee later concluded that systemic failure in the Department's management of FNOs, including core problems of weak strategy and controls, silo working and ineffective caseworking, was responsible for the failure.<sup>2</sup>

**1.3** In response, the government announced it would improve FNO management and increase resources.<sup>3</sup> Over the years public bodies developed an interdependent process (**Figure 2** on page 14), involving a number of organisations:

- The police identify potential FNOs on arrest and secure identification documents.
- The courts sentence foreign nationals and provide information to other bodies.
- The Home Office (the Department), has overall responsibility for removals, processes casework and arranges removals to foreign countries.
- The Ministry of Justice (the Ministry) and the National Offender Management Service (the Agency) are responsible for foreign nationals in prison and for negotiating international agreements on prisoner transfers.
- The Foreign & Commonwealth Office manages relations with foreign governments with the aim of accelerating returns.

1 At the end of March 2014, 9,849 (92%) of foreign nationals in the prison estate in England and Wales were detained in prison, the remaining 800 (8%) were held within NOMS-run Immigration Removal Centres.

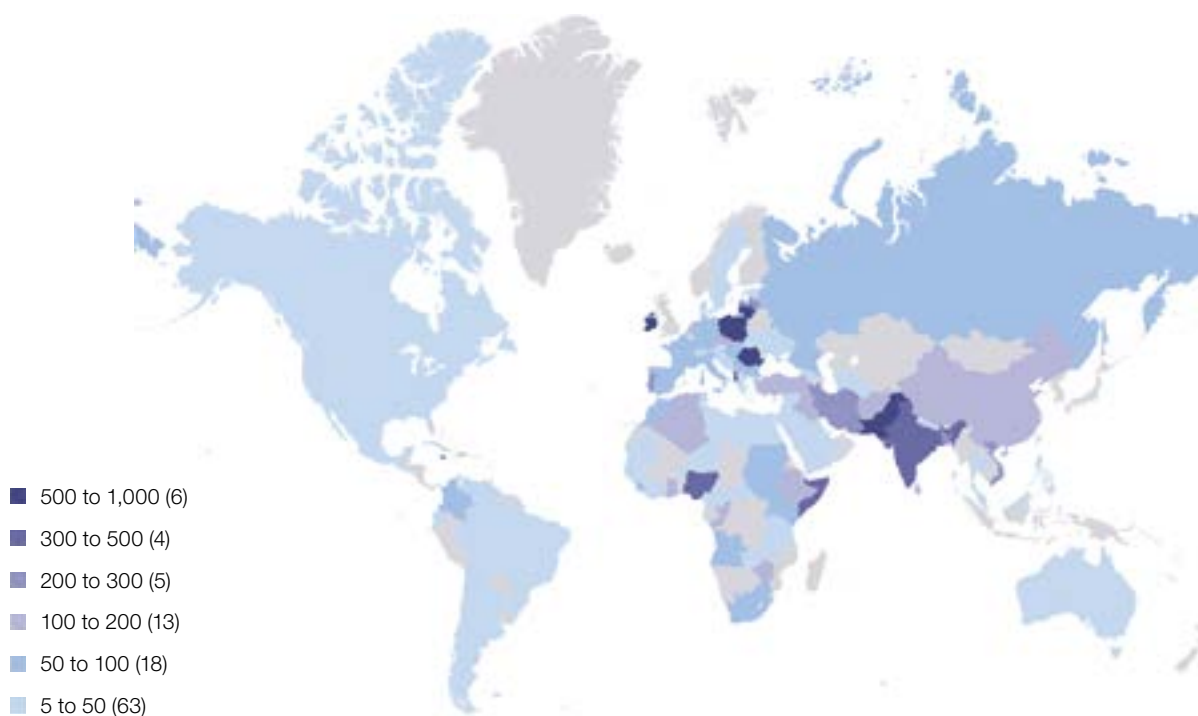
2 *Home Office Resource Accounts 2004-05 and, Follow-up on Returning Failed Asylum Applicants*, HC Committee of Public Accounts, Sixtieth Report of Session 2005-06, HC 1079, July 2006.

3 *Treasury Minute on the Sixtieth Report from the Committee of Public Accounts 2005-06: Home Office Resource Accounts 2004-05 and follow up on returning failed asylum applicants*, HM Treasury, Cm 6959, November 2006.

**Figure 1**

Nationalities of foreign nationals in the prison estate in England and Wales

Foreign nationals are from over 150 countries



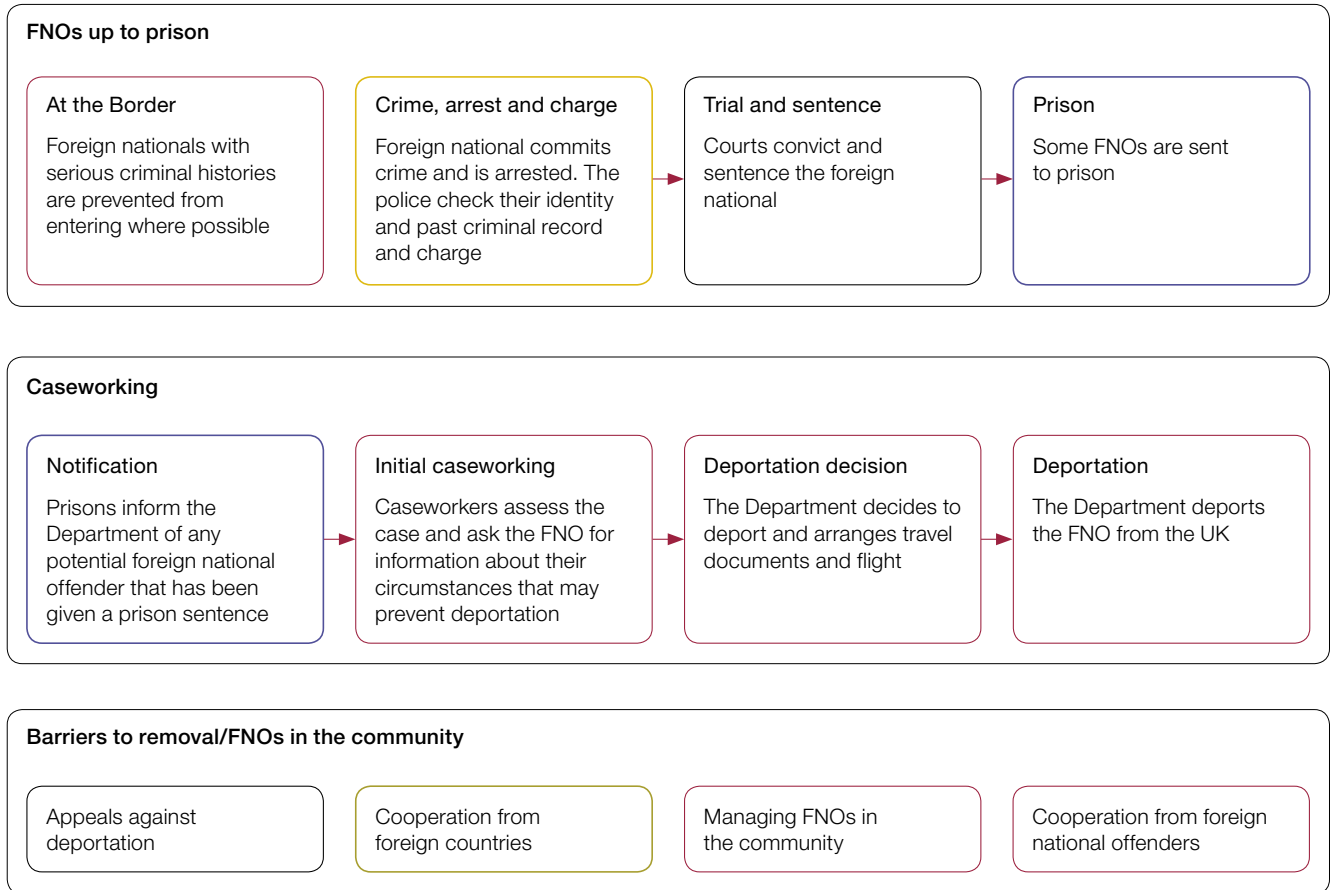
Ten largest nationalities	2010-11	2011-12	2012-13	2013-14
Poland	682	780	862	898
Irish Republic	700	732	744	778
Jamaica	811	902	783	711
Romania	496	505	671	588
Pakistan	474	509	466	522
Lithuania	415	459	460	518
Nigeria	634	559	545	468
India	412	418	408	423
Somalia	375	447	465	417
Albania	156	182	212	303

**Note**

1 Data correct at the end of March for each year. Number of foreign nationals within the prison estate which are recorded as each nationality.

Source: National Audit Office analysis of Agency data

**Figure 2**  
Simplified process of removing an Foreign National Offender (FNO)



- Home office
- Police
- National Offender Management Service
- FCO
- HM Courts & Tribunals Service

Source: National Audit Office analysis



**1.4** The number of staff working on FNO casework grew from less than 100 in 2006 to 550 by 2010, and there are over 900 today. In the absence of good cost data across the public bodies involved, we estimate that in 2013-14 the government, including the police, spent £850 million (in a range of between £770 million and £1,041 million) on managing and removing FNOs. We estimate this is about £100 million more than is spent on managing a comparable number of UK national prisoners. The resources now dedicated to managing FNOs are therefore extensive.

**1.5** The Department has toughened domestic legislation and its own immigration rules. It has transformed its approach from seeking to deport FNOs only where it was considered in the public good to do so and having given considerable weight to those with family ties in the UK – to, by 2013, seeking to deport any FNO serving 12 months or more in custody, and those on shorter sentences where their offending caused serious harm or who were persistent offenders (**Figure 3**).

**1.6** However, despite developing management processes, increasing resources and toughening powers, by 2013 the number of FNOs in prison and those deported from the UK remained broadly unchanged from 2008 (**Figure 4** overleaf).

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### Figure 3

#### Major changes to immigration legislation: 2006 to 2012

Date	Change
Jul 2006	All FNOs should be considered for deportation whether a court recommended it or not.
Sep 2007	The then Prime Minister declared that any FNO convicted of firearm offences or serious drug crimes would be subject to a deportation order, regardless of sentence length (known as the 'Bournemouth commitment').
Oct 2007	The Borders Act 2007 stated that deportation of all FNOs convicted in the UK of an offence and sentenced to at least 12 months imprisonment would automatically be considered conducive to the public good, and in these cases the Secretary of State is obliged to make a deportation order (24 months for European Economic Area FNOs).
May 2012	Conditional cautions are introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which allow foreign nationals to accept a caution instead of being prosecuted if they comply with removal from the UK. In December, additional changes to legislation are made so those removed using conditional cautions cannot re-enter the UK for at least 5 years.
Jul 2012	Immigration rules amended to clarify the circumstances in which an FNO may be eligible to remain in the UK under Article 8 of the Human Rights Act (right to respect for family and private life); setting out clear criminality thresholds beyond which an offender will normally be deported.
Dec 2012	Immigration rules are changed to allow the Department to curtail leave to remain if a foreign national commits an offence within 6 months of entering the UK.

Source: National Audit Office document review

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**Figure 4**

## Foreign nationals in the prison estate and removed since 2006

Performance has remained broadly unchanged since 2008

Financial Year	Foreign nationals in the prison estate <sup>1</sup>	Foreign national offenders removed from the UK
2005-06	10,231	Not available
2006-07	11,168	2,856
2007-08	11,371	4,468
2008-09	11,283	5,613
2009-10	11,367	5,471
2010-11	10,745	5,367
2011-12	11,127	4,539
2012-13	10,725	4,722
2013-14	10,649	5,097

**Notes**

1 As at the end of the financial year for England and Wales.

2 At 30 June 2014 there were 10,834 foreign nationals in the prison estate.

Source: National Audit Office analysis of Department and Agency data

**Restrictions in removing FNOs from the UK**

**1.7** In part, the lack of progress in deportations has been due to factors considered by the Department to be outside its control. Not all FNOs could be removed because of legal and diplomatic restrictions, for example:

- removals could be prohibited by law – typically the European Convention on Human Rights and EU law on the free movement of persons. The law also prevented the removal of many European Economic Area (EEA) nationals as it afforded a significantly higher protection to them than for non-EEA nationals;
- there were legal prohibitions on removal for other groups, such as FNOs subject to extradition proceedings;
- the law restricted the speed with which FNOs could be removed and provided FNOs with 17 grounds on which to appeal against removal. Some FNOs have been able to exploit these rights, relying on inconsistent or inaccurate court judgments; and
- other diplomatic agreements have restricted removal, for example for Irish citizens because of the close ties with the UK.

**1.8** Attempts have also failed because some FNOs try and frustrate the police, the Department and the Agency's attempts to prove their identity throughout their time in the criminal justice system. The Department's efforts to obtain travel documents from the relevant embassy can also be challenging either because embassies do not want to provide them, or are very slow and inconsistent in doing so.

**1.9** Equally, failure and delay have also occurred because the public bodies involved did not manage some cases properly, by missing opportunities to remove FNOs because of poor coordination or administration. In many complex cases, a combination of factors has caused prolonged failure to remove an FNO (**Figure 5** on pages 18 and 19).

### **The 2013 FNO action plan**

**1.10** Recognising that government collectively could do much more, in 2013, the National Security Council challenged the Department, the Ministry, including the Agency, and the Foreign & Commonwealth Office to work together more effectively, with a particular focus on increasing the number of FNOs removed from the UK and reducing the FNO population in prison and the community.

**1.11** In response, in June 2013, the 3 departments established the first overarching FNO strategy – the FNO action plan – with the overall aim to increase removals from 4,600 in 2012-13 to 5,600 in 2015-16, and to reduce the stock of FNOs by 2,000 over the same period. The plan, which is still evolving, has outlined around 40 actions covering:

- reducing the number of FNOs entering the country and the criminal justice system;
- increasing removals by improving the deportation and removal process, and engaging more actively with overseas countries to facilitate returns; and
- changing the law where possible to increase removals and make the UK a tougher environment for FNOs.

**1.12** The plan also identifies 17 priority countries, based on the volume of FNOs currently in the UK from each country and an assessment of the level of difficulty of removing them. Each priority country has an individual plan, which considers country-specific barriers to removal, such as poor information sharing or difficulty of obtaining travel documents. Each has been assigned a lead Minister from 1 of the 3 departments, to both champion it and challenge progress against it.

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**Figure 5**

## A complex, non-compliant case

<b>Period</b>	<b>Actions</b>
1980 to 1986	The foreign national enters the UK, initially as a visitor and then extends his stay as a student.  In 1986, his right to be in the UK expires, but the public authorities took no action over the next 14 years to remove him from UK.
2000	He is convicted of 3 counts of indecent assault of a female under 14 and sentenced to 18 months imprisonment and 10 years on the sex offenders register.  The Department took no action to remove him from the UK.
2003 to 2005	He applied for indefinite leave to remain in the country and this is granted.
Nov 2005 to Jun 2006	In November 2005, he is arrested for indecent exposure. In June 2006, he is sentenced to 21 months imprisonment and 10 years on the sex offenders register.
May 2007	While in prison, the Department informs him of its intention to deport him for the first time.  He starts to appeal the decision on the basis that deportation would breach his human rights to family life.
May 2007 to Jul 2008	He makes 3 unsuccessful appeal hearings to the immigration tribunal, High Court and Royal Courts of Justice. The Department won each appeal, so issued a deportation order against him.  He applied for a judicial review of his case and supplied 'new evidence' as part of this, which the Department subsequently rejected.
Jul 2008 to Oct 2010	The Department allowed the FNO a further appeal on his case, so he withdrew his judicial review application. He won the appeal in November 2008, but the Department then applied for a High Court review, which the Department won in January 2010.  He continued to appeal against deportation – 3 more hearings in different courts. The court rejected each appeal.
Oct 2010 to Dec 2011	In October 2010, he applies to the European Court of Human Rights to try to stop removal proceedings and provides 'new evidence' against deportation. European Court rejects his case in November 2011. He presents further 'new evidence', which the Department rejects in December 2011.  In November 2010, he fails to attend an interview for travel documents with his High Commission as he was unwell.
Jan 2011 to Dec 2012	In January 2011, he presents 'new evidence' to the Department to challenge the deportation order. In July 2011, Department rejects it and carries on with the order.  Nevertheless, courts allowed him to appeal again 3 times. When all these failed, he applied for a judicial review in December 2012.
Jan 2013 to Mar 2013	Department detains him in an Immigration Removal Centre and insists he attends an interview with his High Commission for travel documents. He refused to comply and stopped taking his medication. The Department has to release him as a doctor assessed him as unfit for detention.  He then complies with a travel document interview in March 2013; the same month that his judicial review was refused. With travel documents in place, the Department can now deport him.
Apr 2013 to Aug 2013	Attempted removal failed in April 2013 as the FNO did not attend his reporting centre due to poor health. He was detained by police in August 2013.

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**Figure 5** *continued*

## A complex, non-compliant case

Period	Actions
Sep 2013 to Nov 2013	<p>The Department makes a further 3 attempts to deport him, but fail due to reported illness on each occasion. An immigration officer reports that he is advising other foreign nationals in the detention centre how to avoid deportation.</p> <p>After receiving representations on his behalf, the High Commission refuses to provide the travel documents required, reversing the earlier decision.</p> <p>His application for a High Court injunction is granted based on medical reports, which suspends deportation process. The Department was not represented at the hearing due to a lack of available personnel.</p>
Nov 2013 to Jan 2014	<p>In November 2013, he applies for another judicial review but the court refuses in January 2014.</p> <p>In January 2014, the High Commission reissues travel documents and the Department attempts to deport, but fails as he refused food and drink and a doctor assessed him as unfit shortly before the flight; despite another doctor at Immigration Removal Centre assessing him fit that morning.</p>
Jan 2014 to Mar 2014	<p>He applies for asylum and provides further 'new evidence'. The Department rejects both.</p> <p>Another removal is attempted in March, but fails when the High Commission withdraws Emergency Travel Documents based on his past medical history.</p>
April 2014 to Now	<p>He submits for judicial review oral hearing in April which, along with a lack of travel documents, is still delaying deportation.</p>

Source: National Audit Office analysis of Departmental case file

## Scope of this report

**1.13** This report examines each part of the FNO process, taking into account the work of the action plan so far. We have assessed whether wider management is working coherently and effectively, and whether the public bodies involved are maximising removals within their control for the £850 million we estimate they spend each year. We also review whether progress in improving the management of FNOs since 2006 is in line with the Committee's expectations. The report covers:

- Preventative measures and early action (Part Two).
- Maximising early removal (Part Three).
- Strategic oversight of FNOs (Part Four).

## Part Two

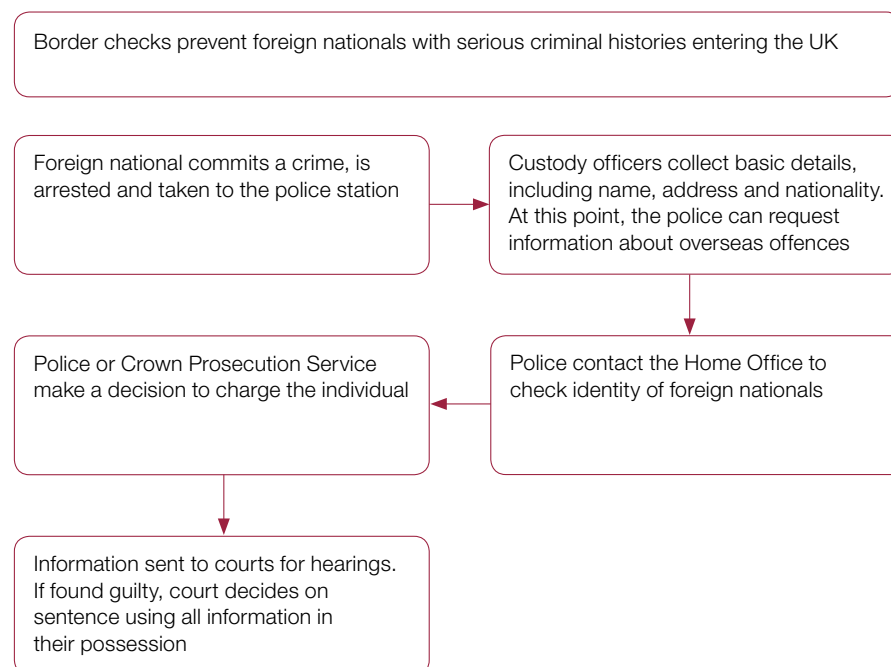
### Preventative measures and early action

**2.1** It is crucial that information on an FNO's identity and circumstances is collected as early as possible to speed up removal. This part looks at the success of prevention activity and early action initiatives from when a potential FNO enters the UK to their imprisonment. We examine how well the bodies involved are performing and whether the FNO action plan is proving effective in focusing on preventative activity.

**2.2** **Figure 6** shows the current process from the arrival of an FNO in the UK to when a court sentences them to prison.

**Figure 6**

Managing foreign national offenders from the border to courts



Source: National Audit Office analysis

## **At the border**

**2.3** One important way of reducing the number of FNOs is to stop serious foreign criminals from entering the UK in the first place. The government collectively did relatively little in this area before December 2012. One of the 3 main objectives of the FNO action plan is to prevent those who have committed, or are likely to commit, a criminal offence from entering the UK.

**2.4** The Department and other relevant bodies are beginning to work more closely in assessing the usefulness of available databases in improving intelligence. It has also made changes to immigration regulations, so that visitors to the UK with previous criminal histories can now be removed from the country and barred from re-entering for 12 months. However, other work has been delayed, such as modernising the Warnings Index (the Department's border IT system) which has proved more difficult than expected.

**2.5** Beyond some practical difficulties, progress is also being hindered because the action plan lacks a sufficiently joined-up and structured approach. The plan lists 8 actions within its prevention objectives, but milestones, dependencies and expected impact on removal numbers for each are not clear. For example, the plan states that some actions will have no impact on removal numbers over the next 3 years. For others the impact is not known, but no other measures of success are defined. There also appears to be a risk of overlap, for example, one action is to strengthen intelligence on overseas criminals looking to enter the UK, and another, led by a different Departmental team, is to gather information and conduct mapping activity on overseas criminals.

**2.6** The action plan lacks detail on the current baseline for FNO information systems, and specifically how to fill gaps and make improvements. For example, current information held in the UK on foreign nationals who have committed serious crimes in their own countries is less detailed or complete than most European countries. This is because the UK is 1 of 4 countries in the European Economic Area which has not connected to the Schengen Information System (now known as SIS 2). This is a system of warning alerts about foreign nationals, sent to SIS members. The UK is due to connect to the system in December 2014, but the plan does not mention this or the predicted impact on prevention and other work that public bodies are undertaking.

## **At police stations and courts**

**2.7** Custody police officers are responsible for establishing a detainee's identity on arrest (including their nationality) by taking fingerprints and checking biographic details against the Police National Computer (PNC) and local intelligence databases. Where they suspect the person to be a foreign national they should carry out further checks, for example searching immigration databases.

**2.8** In practice, these immigration checks and searches are rarely done. As regards checks, custody officers could bolster their information on foreign nationals' identity, nationality and criminal histories, by checking:

- Departmental immigration databases, so that those foreign nationals without permission to be in the UK can be identified. There is no automatic link between 'Livescan' – the UK custody fingerprint system used to interrogate the PNC – and the Department's immigration databases, except now in London. In many police forces, few of these checks are carried out;
- the ACPO Criminal Records Office (ACRO),<sup>4</sup> for example through the European Criminal Record Information System (ECRIS), can obtain foreign nationals' criminal histories in overseas countries. Police currently only check around 30% of foreign nationals through ACRO; and
- other overseas criminal databases, such as Interpol '24/7' – no data exists on their use but senior police officers told us that few checks are made.

**2.9** Often officers are also unaware of the special search powers available (under the Borders Act 2007) to search homes or workplaces, and do not realise the importance of securing identity information. We found cases where police disposed of confiscated FNO identity documents, such as passports.

**2.10** As a consequence of not doing these checks, opportunities to obtain early information on an individual's identity, nationality and criminal history are often lost. This can have significant ramifications later for managing and removing FNOs:

- **Police:** the information could help identify foreign nationals that have no right to remain in the UK, and lead to FNOs' detention and removal. Police could also identify serious overseas criminals e.g. sex offenders, even if they are arrested for minor offences, by updating the PNC proactively with intelligence from overseas.
- **Courts:** decisions on bail arrangements and sentencing, including the use of conditional cautions, which were introduced in 2012 to prevent costly prosecutions. These allow courts to require an offender to leave the UK and not return within a specified period in return for not being sent to prison. Before 2013-14, such cautions were only used twice, but in 2013-14, 17 were successfully used.
- **Probation Service:** to work with FNOs at the right time and in the right way.
- **Prisons:** helping the Agency determine the most appropriate prison for each FNO.
- **Casework:** helping the Department's casework teams make effective and efficient decisions on deportation or removal. We found only 1 in 25 of the case files we reviewed at the Department had accurate identity documents. The Department has to then locate these documents before beginning to process a case, wasting time and resources.

4 Association of Chief Police Officers (ACPO).



## Operation Nexus and the action plan

**2.11** In October 2012, the Department and the Metropolitan police service launched Operation Nexus to improve the identification and removal of immigration offenders, including FNOs, by embedding immigration officers at a sample of custody suites in London. Operation Nexus aims to improve police awareness of immigration issues and encourage joint working to remove high harm individuals and trace absconders. In June 2013, the project was extended to the West Midlands, and recently to Manchester and Scotland.

**2.12** Early indications are that Operation Nexus is working well in London, with more immigration offenders being identified and deported as a result. The Independent Chief Inspector of Borders and Immigration conducted a review of Operation Nexus in early 2014. A draft report was sent to the Department in June but it has not yet set a publication date for the final report.

**2.13** The action plan aims to roll out Operation Nexus to all police forces within 2 years, and spread best practice on managing FNOs to all police forces through the College of Policing. It also aims to increase the use of conditional cautions, by providing better guidance and training for senior police officers.

**2.14** Other ongoing work also looks promising. ACPO is attempting to improve the speed with which overseas checks are conducted by reducing internal processing times and by signing agreements with non-EU countries to speed up response. Currently there is on average a 10 day turnaround for an ACRO check, which, when set against the average 6 hour time between charging and court appearance in the UK, means that even when police use the database to make checks, the information often arrives too late.

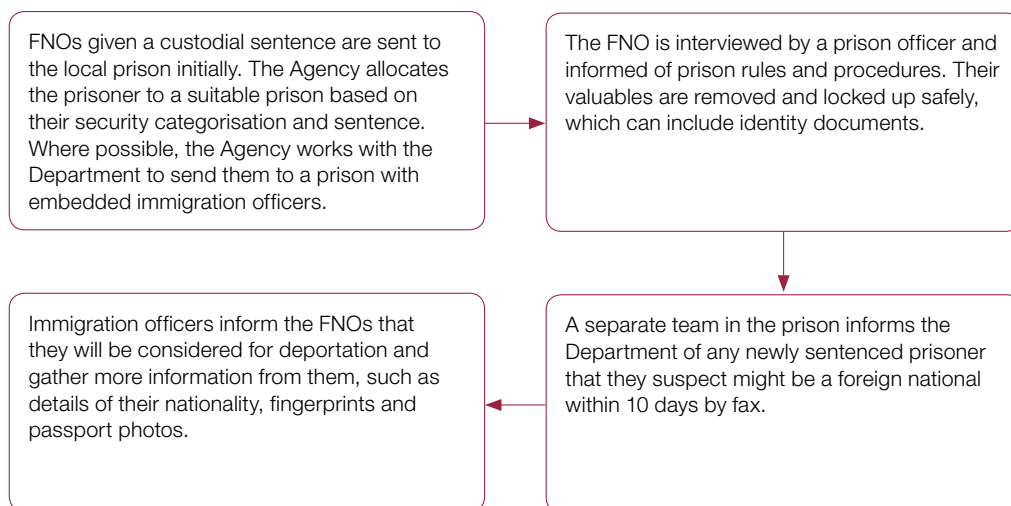
**2.15** The lack of robust performance and cost information makes it difficult to estimate the additional number of FNOs that could be removed, or savings that could be made, if all the opportunities to gather early accurate information on FNOs were seized and acted upon. In 2013-14, 1 in 3 of the ACRO checks performed by police forces on EEA nationals in custody showed a previous criminal history, of which many were serious. Based on this data and the new rules on removing FNOs, at a conservative estimate, we calculate that, net of additional investment, at least £70 million of costs could be cut each year from better use of databases and information by police forces.

## On entering prison

**2.16 Figure 7** overleaf shows the process from when an FNO arrives in prison after being sentenced, to when the prison notifies the Department of their arrival. For public bodies, gathering information on the FNO's criminal history should be a priority at this stage. It is important to persuade new prisoners to comply with immigration and removal requirements to secure their earlier removal, where appropriate, particularly as FNOs can go to great lengths to frustrate the Department's work to remove them.

**Figure 7**

## Managing foreign national offenders within prison



Source: National Audit Office analysis

**2.17** Once sentenced, the Agency places FNOs in prisons across the country following standard allocation practices for all prisoners, based on their security categorisation and their sentence. Where possible, lower harm FNOs are allocated to 1 of 14 designated ‘category C’ prisons, including 2 FNO-only prisons in Maidstone and Huntercombe, where immigration officers can work closely with the Agency and FNOs to facilitate the deportation process. At the end of June 2014, 3,450 FNOs (35% of the foreign nationals in prison) were in these designated prisons (**Figure 8**). Of these, 992 (10% of foreign nationals in prison) were in the FNO-only prisons.<sup>5</sup>

**2.18** The Department told us that this approach increases FNO removals. However, we could not validate this because neither the Department nor the Agency collect relevant performance information. The performance of designated FNO prisons is measured in the same way as those with predominantly British populations, despite working towards a very different outcome on the prisoner’s release. Also, the number of FNOs held in each prison does not correspond to the amount of immigration officer resources invested. Some large FNO populations in non-designated prisons have little relative coverage, and others have none at all.

**2.19** The action plan acknowledges the need to establish whether more prisons should be designated FNO prisons. However, with other pressures in the prison estate, the Agency is reluctant to change its prison model unless the Department proves the benefits of designated FNO prisons. The Department plans to produce a report by the end of 2014.

5 These figures excludes Immigration Removal Centres.

## Figure 8

### Foreign nationals within the prison estate

Foreign nationals are held in over 120 prisons and immigration removal centres across England and Wales

#### Type of prisons

- FNO-only prison (2)
- Hub prison (7)
- Spoke prison (5)
- Immigration Removal Centre (3)
- Other prison holding FNOs (104)

#### Number of Foreign National Offenders in prison

- 500 to 1,000 (2)
- 300 to 500 (5)
- 200 to 300 (6)
- 100 to 200 (24)
- 50 to 100 (24)
- 0 to 50 (60)



#### Notes

- 1 The population of FNO-only prisons consists only of foreign national offenders categorised as having a realistic prospect of being removed.
- 2 Hub prisons have Home Office immigration officers embedded within the prison.
- 3 Spoke prisons are visited regularly by Home Office immigration officers, but they are not embedded.

Source: National Audit Office analysis of Agency data

**2.20** From our prison visits we concluded that the work of immigration officers in prisons, while dedicated and often helpful for FNOs' understanding of the rules, was hampered by:

- **A lack of mobile IT devices connected to Departmental/Agency and other IT systems and databases.** There is too much reliance on paper-based systems, form filling and outdated IT when dealing with FNOs, causing confusion and delays. The Department has recently introduced mobile IT devices in HMP Pentonville and is planning to roll them out in other prisons soon.
- **Insufficient join-up between immigration officers and prison staff to make the most of opportunities to speed up FNO removals.** They often work in separate quarters, cannot use each others' IT systems, and often do not use available legislation to mandate compliance with the travel documentation process when it is the only remaining barrier to their removal.<sup>6</sup> Cultural barriers are a root cause of this silo working, which is more prevalent in some prisons than others.
- **A lack of urgency.** Even in designated prisons, immigration officers only interact with FNOs during certain time slots each week, and first meetings can be many days after FNOs enter prison. These limitations risk missing opportunities to speed up removal.

**2.21** Wider work within the action plan is exploring how to deter potential FNOs by making the UK a tougher environment, including strengthening powers to encourage FNOs to comply with immigration requirements. As yet there is no plan to analyse whether such action would result in more cost-effective removal overall.

<sup>6</sup> Under Section 35 of the Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004, an individual can be required to take specified action if the Secretary of State thinks that it will, or may, help in securing a travel document for them, and that the possession of that travel document will help remove them from the UK. The Department can prosecute an individual if they fail, without a reasonable excuse, to comply with any of the specified actions they are given under this section. If found guilty, the maximum sentence is 2 years imprisonment and/or a fine.

# Part Three

## Maximising early removal

**3.1** Successfully removing FNOs depends on good joint working, careful diplomacy and efficient casework, as well as appropriate use of available powers. Increasing the number of FNOs removed from the UK while they are in prison is the main focus of the action plan, making up half its listed actions.

**3.2** This part looks at how successfully the public bodies involved maximise the number of FNOs removed from the UK, including the schemes in place to help remove them more quickly and the impact of the action plan so far on casework efficiency and removals. We also look at the effectiveness with which the Department is tracking and removing those FNOs it detains or releases into the community at the end of their sentence.

### Targeting foreign national offenders for removal

**3.3** The action plan defines the current FNO population as all foreign nationals who have been given a custodial sentence, including those serving in prison, held in immigration removal centres, or released into the community, and excludes foreign nationals on remand. At 31 March 2014, this figure amounted to 12,250 (**Figure 9**).

#### Figure 9

##### Population of foreign national offenders 2011-2014

The population of foreign national offenders has remained fairly constant

	31 March 2011	31 March 2012	31 March 2013	31 March 2014
<b>Current population</b>				
Foreign nationals in the prison estate	10,745	11,127	10,725	10,649
(Less those on remand, non-criminals, recalls and fine defaulters, but including those as time served in either prison or immigration removal centres) <sup>1</sup>	(1,815)	(2,166)	(2,177)	(2,646)
FNOs living in the community	3,772	3,943	4,002	4,247
<b>Total FNO population</b>	<b>12,702</b>	<b>12,904</b>	<b>12,550</b>	<b>12,250</b>

#### Note

<sup>1</sup> These are categories of foreign nationals which are not eligible for immigration action. For instance, foreign nationals on remand have not yet been convicted of an offence so cannot be removed.

Source: National Audit Office analysis of Department and Agency data

**3.4** The Department considers all foreign criminals for deportation, but only attempts to deport those who either a court recommends should be removed from the UK, or, if not, those meeting the criteria of: non-EEA nationals sentenced to prison for at least 12 months (as a single sentence or in aggregate), or any sentence for a drug offence;<sup>7</sup> or EEA nationals sentenced to prison for at least 24 months, or 12 months for a sexual, drug or violent offence.<sup>8</sup> Before May 2013, the Department treated FNOs who did not meet the criteria ('non-criteria' FNOs) as any other immigrants with no right to stay in the UK – its local immigration teams removed around 1,000 each year (administrative removal), but did not systematically pursue them all for removal.

### Widening the target

**3.5** In May 2013, as part of the action plan, the Department began systematically targeting all FNOs, regardless of whether they were criteria or non-criteria. In April 2013, the Department established a Removals Casework team to enforce removal of non-criteria FNOs, taking over from the local immigration teams. The Department also changed its regulations so that low-level EEA criminals administratively removed from the UK for abuse of treaty rights or fraud were prevented from returning for 12 months.<sup>9</sup>

**3.6** The inclusion of all non-criteria FNOs in the referral process helped the Department increase the number of administrative removals by 26% in 2013-14, and, as deportations remained about the same as the previous year, the total number of removals in the year increased by 8% (**Figure 10**).

7 Other than possession.

8 EEA offenders with shorter sentences can be deported where the individual represents a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".

9 Deported FNOs and non-EEA nationals administratively removed cannot return to the UK for up to 10 years, whereas those administratively removed before May 2013 could return immediately.

**Figure 10**

## Flow of foreign national offenders

After declining, the number removed from the UK rose 12% over the last 2 years

	2010-11	2011-12	2012-13	2013-14
<b>Inflow</b>				
FNOs sentenced to immediate custody	no data	12,340	12,063	10,667
FNOs referred to Criminal Casework <sup>1</sup>	6,452	7,326	6,874	10,786
Of which are:				
Criteria referrals	4,068	4,552	4,217	4,001
Non-criteria referrals	2,384	2,774	2,657	6,785
<b>Outflow</b>				
Removals	5,367	4,539	4,722	5,097
Of which are:				
Deportations	3,583	2,940	3,066	3,027
Administrative removals	1,623	1,362	1,339	1,685
Other removals <sup>2</sup>	161	350	317	385
Other conclusions <sup>3</sup>	1,232	1,114	1,079	1,069

**Notes**

- 1 Prior to April 2013, the Agency referred non-criteria removals to the Department's local immigration teams.
- 2 FNOs who have been extradited, have been repatriated (i.e. via a Prison Transfer Agreement), or have left the UK voluntarily through other means.
- 3 FNOs whose deportation order was not pursued, for example because their appeal or asylum application has been granted, they are British or Irish, or otherwise they are not eligible for deportation.

Source: National Audit Office analysis of the Department's data

**Processing removal**

## The referrals process

**3.7** In order to start processing both deportation and removal, the Department relies on the Agency to notify it of any FNOs entering prison. Neither the Department nor the Agency kept full central records of the number of notifications (known as referrals) sent to local immigration teams before May 2013. However, the current referrals process, while better than in 2006, is less than robust. This increases the potential for delays and mistakes, for example:

- **Referrals are too slow:** the 10-day target (up from 5 days before April 2014) to notify the Department of a potential FNO is often missed – of the 50 cases we reviewed which were referred to the Department between January and March 2014, 19 (38%) took longer than 10 working days. In some cases, FNOs were only referred on the day of their release.<sup>10</sup>

<sup>10</sup> Usually because the FNO was released from court when sentenced as they had effectively served their sentence on remand. A separate process is in place for those released directly from court without going to prison.

- **Inaccurate referrals:** as part of each referral, the Agency is responsible for calculating an FNO's earliest date of removal. We found it was inaccurate or missing from the initial referral in 38% of the cases we reviewed, with the date on the form being wrong by 8 days on average.<sup>11</sup> The action plan has no plans to improve this part of the process.
- **Old technology:** referrals are submitted as paper forms that are faxed to the Department and then manually entered into the Department's records system, as the Agency and Department's IT systems are incompatible.

**3.8** Once the Agency notifies the Department of a new potential FNO, the Department checks whether the FNO should not be deported or removed, either because they are actually British or are restricted for any other reason. Historically, the Department rules out about 1 in 4 referrals at this point. The Department's central team then checks whether the case meets the deportation criteria or not and passes the file to the appropriate team to process (**Figure 11**).

### The challenge of removing FNOs

**3.9** Removing FNOs is difficult, and in the past the deportation process was more complicated and time consuming than the administrative removal process. Nine hundred staff work in deportation teams, including 800 within criminal casework, against just 49 staff in removals casework, even though the latter accounted for a third of total removals in 2013-14. We estimate the Department's total administrative cost of processing FNOs in 2013-14 was £97 million, or £19,000 per removal.<sup>12</sup> But because the Department does not collect detailed cost data relating to team performance, it is difficult to break this figure down further (see **Figure 16**).

**3.10** Caseworkers face a tough challenge to remove the many FNOs who are non-compliant or whose country of origin do not want to receive them. In these cases, it can be very challenging to obtain Emergency Travel Documents (ETDs), which are needed for removal. ETDs are issued by embassies or high commissions at the Department's request. Most caseworkers, and the key actions of the 17 country plans, are focused on increasing their delivery speed and quality, through providing documentation such as proof of identity, and better diplomatic relations with embassy personnel or the relevant governments.

**3.11** This work is often slow and painstaking. It often requires ministerial engagement on a trip to the country concerned, which may be some time in the future. Meanwhile, the country's FNOs may be going to great lengths to conceal their identity or appealing against removal at every opportunity. Succeeding in removing such FNOs can demand considerable determination and persistence from caseworkers.

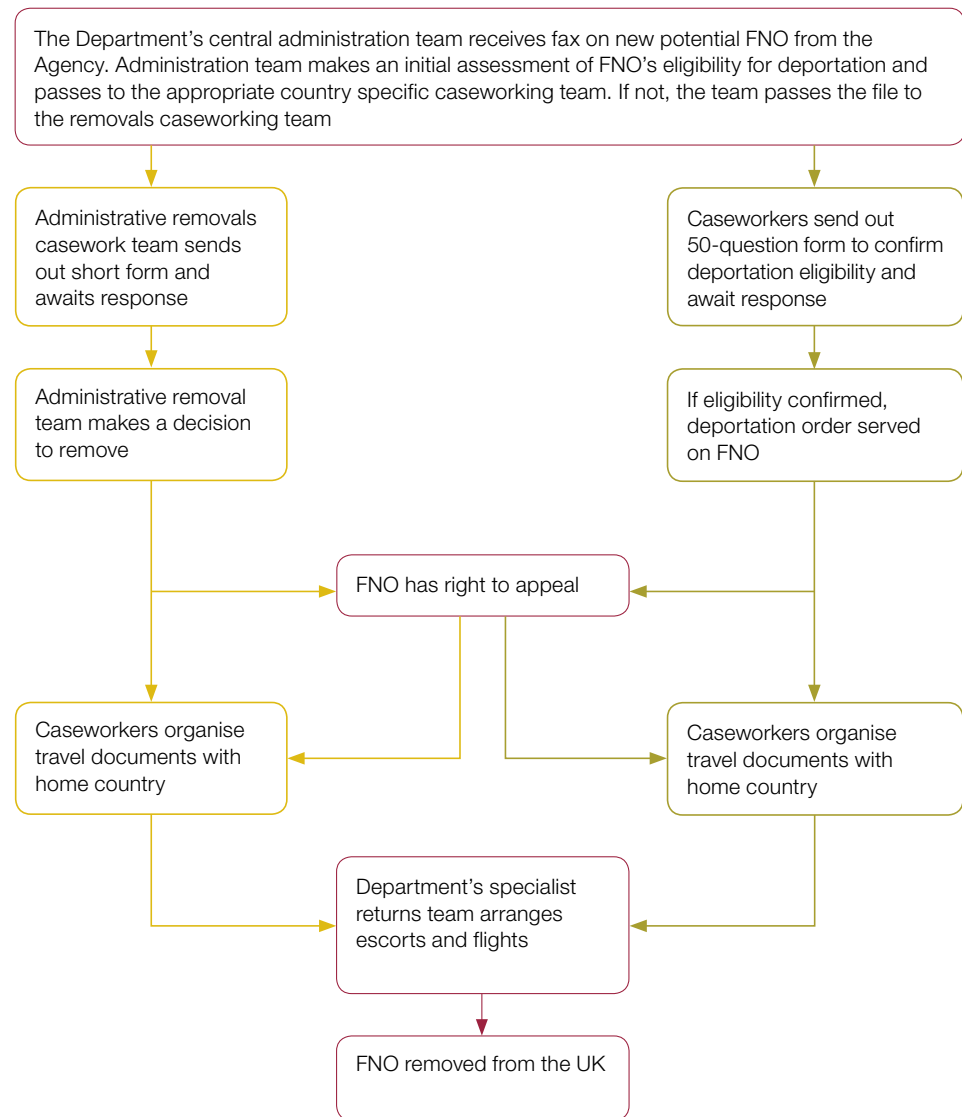
<sup>11</sup> The reasons for dates being inaccurate or missing varies and includes: administrative errors when completing the form, delays in receiving information from the courts and small calculation errors.

<sup>12</sup> £97 million divided by 5,097 removals in 2013-14.



**Figure 11**

The process for removing a foreign national offender



- Both administrative removal and deportation
- Administrative removal
- Deportation

Source: National Audit Office analysis

## Removals performance

**3.12** Against this challenging background, removal speed has nevertheless increased recently. Overall, it took an average of 319 days in 2013-14 to remove the 5,097 FNOs from the UK once the decision to do so had been made, down from 369 days to remove 4,722 FNOs in 2012-13. Lack of data makes it difficult to gauge performance and whether the improvement is due to the increase in administrative removals in 2013-14.

**3.13** We found some ongoing problems with caseworking efficiency, which point to the potential for further improvements:

- **Unnecessary delays in starting cases.** The Department does not make a decision whether to deport FNOs until 18 months before their earliest removal date from prison, following a judicial review ruling. The Department applies this to all cases, but only needs to do so for cases sentenced before 1 August 2008.
- **Inefficient FNO information gathering.** In order to consider deportation, the criminal casework teams ask criteria FNOs to complete a 50-question form. This takes on average 32 days to send out, and almost half of FNOs do not respond. The removals casework team use a shorter form which achieves better results.
- **Communication delays.** Caseworkers rely on prison and immigration officers based within prisons to pass key documents to FNOs. But FNO surgeries often take place just once a week and completed forms can get lost or delayed.
- **Processing delays.** Of the 52 cases we reviewed of FNOs successfully removed, 20 (38%) had avoidable processing delays, including 7 where the Department did not work on the case for an average of 76 days, and a further 6 cases where delays were caused by administrative errors.

**3.14** Better data and management information would help improve the process throughout. The data currently collected, such as the number of cases removed each month, is not detailed or robust enough to help inform managers how to improve processes. The Department initially under-reported the number of FNOs removed in 2013-14 by 528, although quality assurance exercises later corrected this.

**3.15** Another systemic problem is the lack of prioritisation of casework. Cases are only prioritised on the basis of release, not removability or cost-benefit. This means that some of the most non-compliant cases, which consume large resources and have little chance of success, are pursued at the expense of cases that would cost less to administer and are more likely to result in removal and greater savings overall.

**3.16** The action plan recognises the data weaknesses and has started 3 projects to improve the quality and granularity of data capture and reporting.

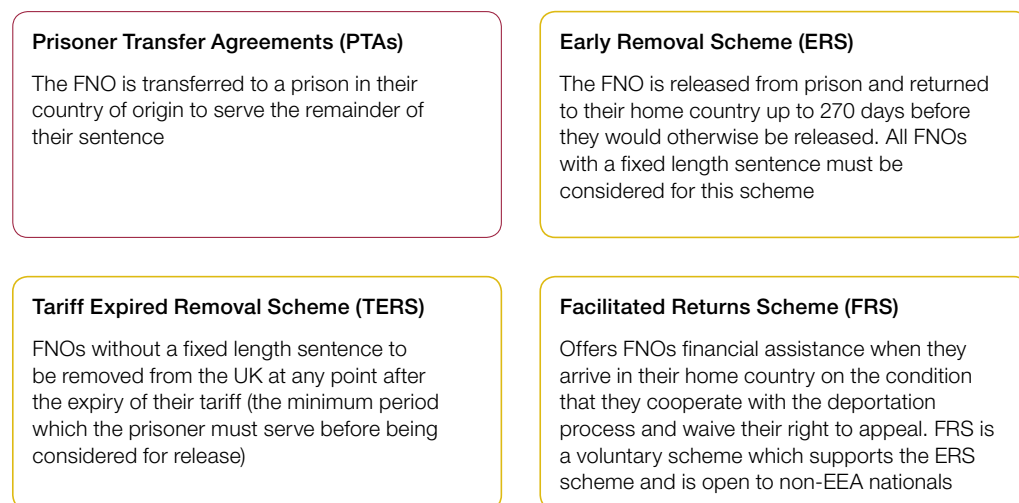
## Early Removal Schemes

**3.17** There are 4 main ways through which the government can facilitate or encourage an FNO to leave the UK before the end of their sentence (see **Figure 12** and **Figure 13** overleaf). Thirty-seven per cent of FNOs removed in 2013-14 left as part of the Early Removal Scheme, saving an estimated £27.5 million by reducing the average number of days spent in prison by 146.

**3.18** In 2013-14, the average FNO was removed from the UK 139 days after release from prison and those not part of early removal schemes were removed an average of 327 days after their release. This means there is considerable scope in principle to increase the use of the schemes. We estimate that if all FNOs were removed as part of the Early Removal Scheme, total savings would be £105 million a year. Even if some of these savings could not practicably be achieved, we found weaknesses that if addressed could help the Department realise a significant proportion of these savings, for example:

- Caseworkers we met cited the FNO's release date from prison as their target for removal, rather than the earliest point of removal, despite the Department's policy to target the latter.
- The Facilitated Returns Scheme, which gives FNOs up to £1,500 on return to their home country on the condition that they comply with procedures for removal, is often given to non-compliant FNOs. The Department has not analysed the relationship between the amount paid and compliance. Some years ago a higher amount led to twice the number taking up the scheme.

## Figure 12 Early Removal Schemes



- Agency run scheme
- Department run scheme

Source: National Audit Office document review

**Figure 13**

Performance of schemes to encourage FNOs to leave the UK

	2010-11	2011-12	2012-13	2013-14	Proportion removed in 2013-14 (%)
<b>Scheme take-up</b>					
Prison Transfer Agreement	43	34	42	38	1
Early Removal Scheme	1,788	1,725	1,940	1,887	37
Facilitated Returns Scheme <sup>2</sup>	2,432	1,741	1,666	1,347	26
Tariff Expired Removal Scheme <sup>1</sup>	n/a	n/a	156	83	2
Other <sup>3</sup>	1,100	1,040	919	1,737	34
<b>Total removals</b>	<b>5,367</b>	<b>4,539</b>	<b>4,722</b>	<b>5,097</b>	<b>—</b>

**Notes**

- 1 The Tariff Expired Removal Scheme was set up in 2012.
- 2 The Facilitated Returns Scheme runs in parallel to the Early Removal Scheme, so has been excluded from total figures to avoid double-counting.
- 3 Others relate to FNOs removed from the UK, but not under 1 of the 4 schemes listed above.

Source: National Audit Office analysis of Department and Agency data

**Prison Transfer Agreements**

**3.19** The UK currently has 107 Prison Transfer Agreements (PTAs) with countries around the world. On average, only 39 FNOs per year are removed through PTAs. The majority of PTAs are voluntary and rely on the consent of FNOs. But there are few incentives for FNOs to agree as prison conditions and release arrangements can be less favourable in other countries, and many PTAs were signed to enable the return of British Nationals from overseas. However, the action plan predicts that there will be significant growth in this number because transfers between EU states will no longer require the FNO's consent by the end of 2014 when all Member States are expected to have implemented the EU PTA. The Ministry's impact assessment identified a potential 4,400 additional removals over 10 years and estimated net savings of around £110 million as a result.<sup>13</sup>

<sup>13</sup> Estimate of additional FNOs removed from the UK ranged from 3,000 to 6,400, with a main estimate of 4,400. Estimate of net benefit ranged from £20 million to £170 million, with a main estimate of £110 million. *Impact Assessment: MOJ 180 – The Prisoner Transfer Framework Decision, Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union*, HM Government, Cm 8897, July 2014.

**3.20** These expected benefits may be optimistic. Over the last 4 years, the number of British nationals returned to UK prisons through these agreements has been broadly double the number of FNOs removed from the UK. Many EU countries have not yet implemented the EU PTA. For example, Polish nationals represent a large number of FNOs in UK prisons, but due to concerns about capacity, Poland will not be required to receive compulsory transfers until December 2016.

### Failed removals

**3.21** When the Department is ready to remove an FNO, it sets removal directions and arranges escorts and travel. The number of failed removals has fallen from 2,297 in 2010-11 to 1,453 in 2013-14. However, 36% of failed removals in 2013-14 were the result of factors considered by the Department to be within its control (**Figure 14** overleaf).

**3.22** Appeals by FNOs, which account for over a quarter of failed removals, take an average of nearly 400 days to complete, but only 1 in 7 is successful (321 of 2,441 in 2013). This wastes considerable administrative time and resources, particularly as the number of appeals lodged by FNOs has risen 28% since 2010-11. As part of the action plan, the Department has sought to reduce the number of grounds for appeal through the Immigration Act 2014 from 17 to 4. The Department plans to implement many of the Act's provisions in late October 2014, but since July appeals against a refusal of a human rights claim can now be heard outside the UK. Once fully implemented, the Act could help realise significant savings.

### FNOs at the end of their sentence

**3.23** There are currently around 5,600 FNOs who have completed their sentence but remain in the UK while the Department tries to deport or remove them. About 1,400 are detained in prison or an immigration removal centre, largely because they are appealing against their deportation, are not complying with the deportation process, or the Department has not made a decision on their case. In addition, some are waiting for ETDs – 136 had been waiting more than 12 months at the end of March 2014.

**Figure 14**

## Causes of failed removals in 2013-14

**Considered by the Department to be within its control**

Barrier	Problem	Number of cases
Administrative: Documentation	Travel documentation did not travel with FNO or not available at port	35
Administrative: ETD/EU Letter	Emergency Travel Document, EU Letter or other documentation needed to transport FNO not available	159
Administrative: Escorts	Department failed to arrange necessary escort in UK or receiving country	15
Administrative: Notice	FNO not given sufficient notice of deportation/removal	45
Administrative: Tickets	Tickets for travel not booked	7
Administrative: Other	Other issues with the Department's administration of case	173
Administrative: Risk	Failure to complete the Risk Assessment Form	11
Flights	Flight overbooked or immigration quota reached	5
Representations	FNO submitted appeal within 28-day deadline but not yet processed/resolved by the Department	73
<b>Total</b>		<b>523</b>

**Considered by the Department to be outside its control**

Barrier	Problem	Number of cases
Administrative	FNO has outstanding criminal case or not yet finished prison sentence, time due to arrive in home country inappropriate	41
Alternative Departure	Departure date rescheduled, FNO left UK voluntarily or has applied for Assisted Voluntary Return scheme	88
Contact Management	FNO failed to report or absconded	18
Disruption	FNO became disruptive at place of detention, port or during transit, Department unable to access port/detention centre/immigration removal centre, or country circumstances prevented removal	182
Escorts	Escort required to transport FNO either within the UK or the receiving country, but unavailable, late or not booked	74
Flights	Flight booked but booking failed, flight cancelled or operator refused to transport FNO	145
Medical	FNO deemed medically unfit to fly	59
Representations	FNO (or representative acting on their behalf) submitted appeal outside 28-day deadline, asylum/leave to remain/human rights claim, injunction, judicial review, or representations received from medical professional, MP or other government departments	323
<b>Total</b>		<b>930</b>

Source: National Audit Office analysis of Department data

**3.24** At 31 March 2014 a further 4,247 FNOs were living in the community, having been released at the end of their sentence.<sup>14</sup> A separate Departmental team manages this group of FNOs and continues to work on cases until the FNO has either been granted permission to stay in the UK or has left the country. This is both challenging and time consuming; over two-thirds of those living in the community were released from prison more than 2 years ago.

**3.25** Not all FNOs released into the community comply with the restrictions on their reporting requirements, for example, reporting to a police station or immigration centre every week. In these cases, and where their current whereabouts is unknown, FNOs are reclassified as absconders and referred to a separate team within the Department which undertakes checks and searches to find them. At the end of March 2014, 1 in 6 FNOs living in the community (760) had absconded, up 6 % since 2010. Over half of these (395) have been missing since before 2010, of which 58 are high harm offenders.

**3.26** The Department traced 190 absconders in 2013-14, up 17% from the previous year. But it identified a broadly equal number of new absconders. Cases are put on hold for up to 2 years if the initial investigation fails to find the FNO. We identified 2 factors which hinder the team's work:

- **lack of resources:** the team consists of 11 staff, 10 of which are junior grade, with a caseload of over 700 FNOs, more than double the average caseload of similar teams in the Department; and
- **bureaucratic restrictions:** the number of searches of relevant databases administered by other departments can be limited – for example, HM Revenue & Customs currently only accepts 250 requests per month, which must be made individually, by fax or email, wasting time and resources.

**3.27** The Department does not have complete records on how many FNOs have been released without consideration for deportation since 2006. The Department provided data to us in April 2014, which it later found to be wrong. Its latest estimate is that 151 FNOs were released into the community without consideration between January 2009 and March 2014, although we could not reconcile this to the amounts it reported to the Home Affairs Select Committee over the same period, where there are different definitions and there appear to be duplications and regular reporting only started in 2012. The Department does not know the number between July 2006 and January 2009 as it did not keep records.

**3.28** Separately, the Department reports the number of FNOs within the cohort of 1,013 released before 2006 that it has been unable to trace to the Home Affairs Select Committee (currently 44). It does not report the number in this cohort which it had traced but subsequently lost contact with (currently 12).

<sup>14</sup> FNOs can be released into the community at the end of their sentence if: an Immigration Judge has granted bail; a court has ordered their release; or the Department decides that deportation is not possible within a reasonable timescale and grants their release. Some of those living in the community are supervised by the probation service.

# Part Four

## Strategic oversight of foreign national offenders

**4.1** This part reviews the overall coherence of the government's strategy for improving FNO management and increasing removals. It looks at the governance and oversight of FNOs and whether, taking into account some of the missed opportunities and issues set out in Parts Two and Three, there are system level and strategic improvements that would help progress.

**4.2** To be most effective in tackling the FNO problem the government's overall strategy needs to:

- set out clear objectives and defined measures of success, which are reflected in Department and team plans, so that teams understand priorities and act consistently and coherently;
- set out the activities needed to meet each objective, taking account of dependencies between processes and teams;
- have a governance structure with clear accountability lines between senior managers and teams; and
- generate robust performance and cost information for managers to measure cost-effectiveness of activity and allocate resources to their most productive use.

### **The government's FNO strategy**

**4.3** The FNO action plan is now the overarching strategy for FNOs and includes activity within the Department, Ministry, Agency and the Foreign & Commonwealth Office. While the plan is still relatively new, there is evidence that the greater collaboration between the relevant public bodies since its introduction has resulted in a galvanising effect on activity, increased joint working between teams and started to tackle some of the more difficult barriers to FNO removal. Furthermore, many senior managers we spoke to feel that they have a better understanding of the FNO process as a whole and their role within it, as a result of the plan.



**4.4** However, to underpin its importance and further boost effective joint working, the action plan could be better embedded in Departmental business plans and be more explicit about the priority of an FNO's removal. For example, it is not clear how the Department's FNO objectives align with the action plan and its priority compared to other work. The Department's Executive Management Board does regularly discuss FNOs, but they were only mentioned in the Department's business plan for the first time in 2013 and only as a sub-issue of one of the Department's 23 objectives. The Department also has no FNO input or impact indicators.

**4.5** The action plan prioritises the 17 countries with large volumes of FNOs and with specific barriers to removal that need to be tackled. But beyond this the plan does not outline priorities for different types of FNO removal (eg seriousness of offence, removability, or country of origin), relying on existing guidance. We found that caseworkers prioritise removal on the basis of release dates, even though cases are rated for seriousness of offence and removability when first assessed.

**4.6** Progress against the various actions in the action plan are monitored regularly, but success is measured in terms of removal and FNO stock numbers, which by themselves do not take account of the complexity of the process and that many actions have no direct or immediate effect on removals. Such factors as the time a removal takes or its relative complexity is not measured, which could help calibrate achievement of the teams involved.

**4.7** Furthermore, we found that there is little analysis underpinning the removal numbers in the plan, and not sufficiently clear links between actions, resulting change and impact on removal. More widely, there needs to be better sequencing of actions according to their dependency on other actions being successful. For example, one action is to assess how border IT can be updated to take account of new information databases, while another is to understand the nature of what information is potentially available, and another is to audit how effectively current intelligence is used. The first is dependent on the others' results, but this is not made clear in the plan.

## **Governance and accountability**

**4.8** FNO management and responsibility for implementing the action plan is shared between many teams within the 3 departments each reporting to their own Directors and Directors General. In 2013, the 3 departments responded to the National Security Council by appointing a separate Departmental Director to act as Senior Responsible Owner (SRO) of the action plan, supported by new SROs from the Ministry and the Foreign & Commonwealth Office. Together the SROs regularly advise the National Security Council on progress. Within their own departments, however, they have different managerial roles:

- Within the Department: the SRO provides coordination, challenge and support of action plan work across the Department's policy and operations teams. In doing this work the SRO is deliberately light touch, using influence only as they have no formal line management responsibility.
- Within the Ministry, the SRO is responsible for policy but not operations. The latter is covered by a separate team which reports to its own Director General.
- Within the Foreign & Commonwealth Office, the SRO is responsible for both policy and operations.

**4.9** One of the responsibilities common to all three SROs is to hold teams to account for their progress in fulfilling the commitments in the FNO action plan. To help achieve this, a new FNO steering group, consisting of mainstream directors, senior officials and SROs now meets regularly to monitor progress. Influence is brought to bear on underperforming teams at these meetings, and some directors told us they found this new process helpful.

**4.10** However, in the Department in particular, the large number of directors and oversight boards involved in the FNO process inherently hinders the SRO's accountability role, as structures are opaque and too complicated (**Figure 15** on pages 42 and 43). Our July 2014 report, *Reforming the UK border and immigration system*, noted the 6 oversight boards and 3 committees operating across the Department's immigration directorates together pose a risk of duplication and poor risk management.<sup>15</sup> And the report also found that, despite the number of bodies, cross-directorate working is still immature.

<sup>15</sup> Comptroller and Auditor General, *Reforming the UK border and immigration system*, Session 2014-15, HC 445, National Audit Office, July 2014.

## Costs and performance information

**4.11** The Department and the Ministry do not use cost data to manage FNOs, and do not have a good understanding of the costs involved. Without this basic data on cost it is difficult for the government to make informed decisions about where it can maximise opportunities for improvement.

**4.12** In the absence of good data, we undertook a detailed costing exercise and estimate that, in 2013-14, public bodies spent £850 million (in a range of between £770 million and £1,041 million) on FNOs, with relatively more costs incurred after conviction (**Figure 16** on page 44). Because of the significant administrative costs of removing FNOs, we estimate that the equivalent cost for managing a similar number of UK national prisoners is about £100 million less.

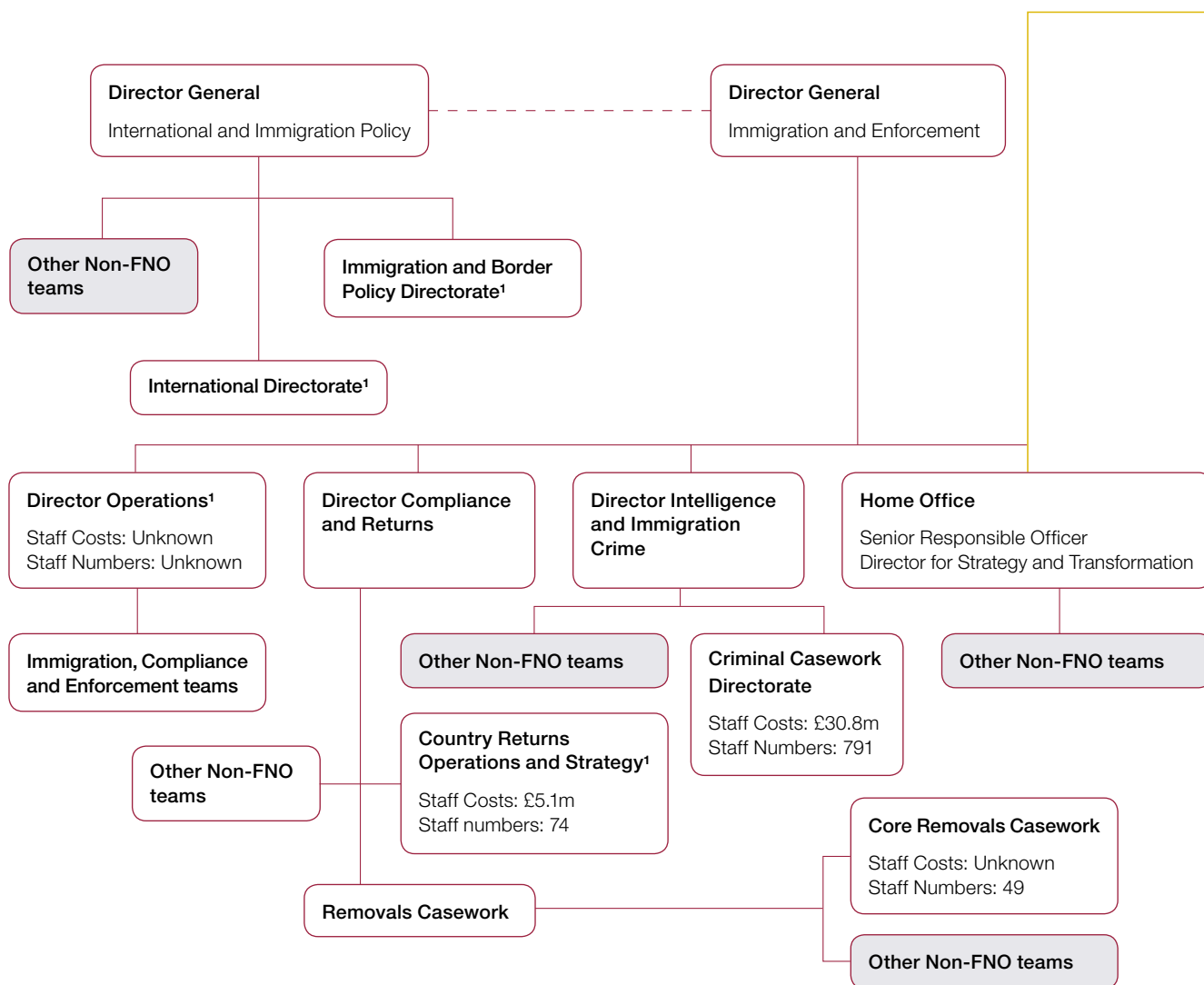
**4.13** Based on our analysis, the average cost of managing 1 FNO is around £70,000 per year.<sup>16</sup> This figure is likely to be much higher for FNOs in custody than those released into the community, but the lack of robust or granular data makes costing different FNO groups impossible.

<sup>16</sup> These are the full costs of managing an FNO, as this report focuses on the management and removal of foreign nationals within the entire criminal justice system. In our report *Managing the Prison Estate* we state that the cost of keeping 1,000 prisoners was £28 million a year. This includes only the prison estate costs.

**Figure 15**

Governance arrangements across FNOs

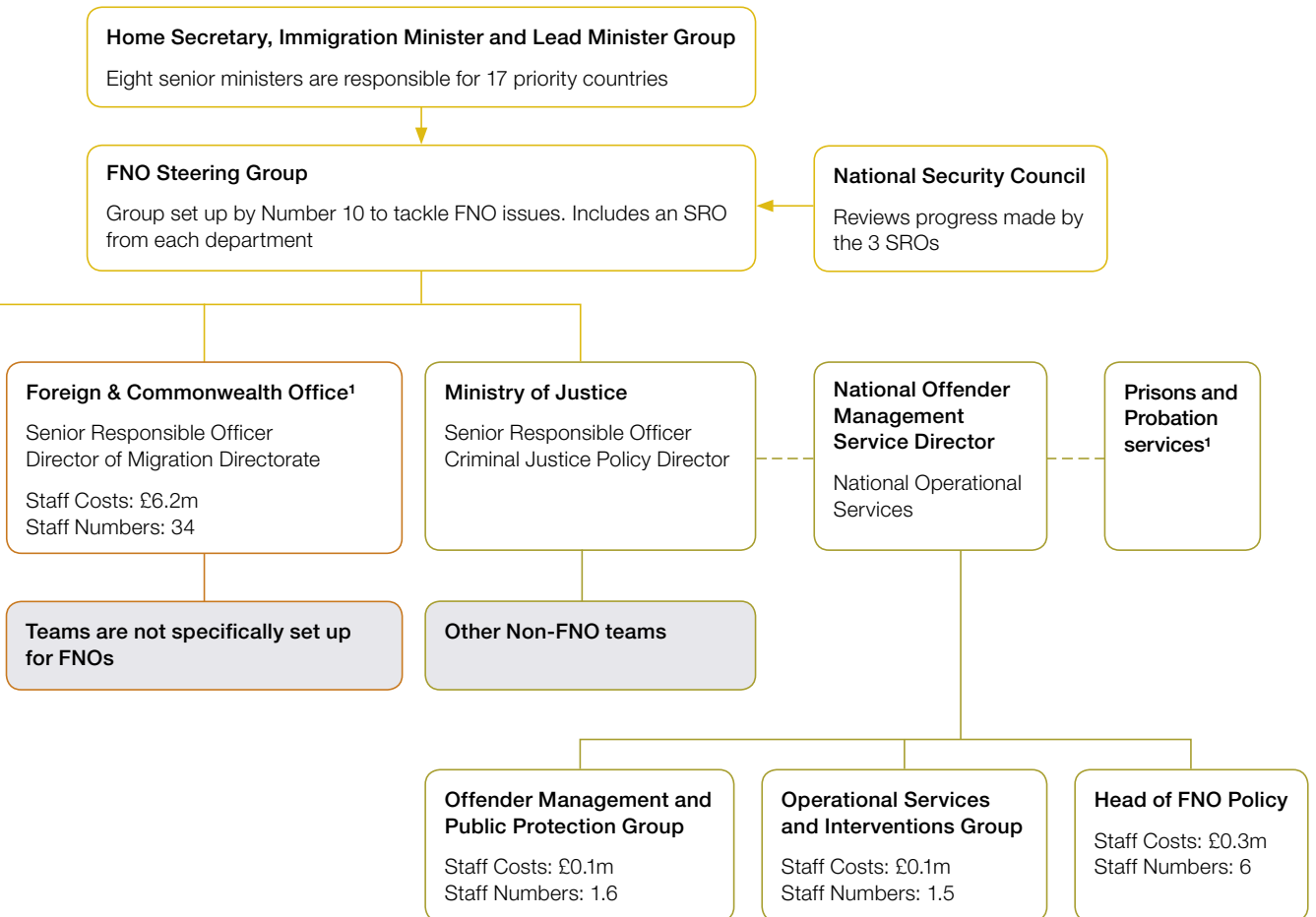
Governance arrangements within the Department are over-complicated



**Notes**

1 These teams work on other activities, so only a proportion of the staff and costs are spent managing FNOs.

2 All staff numbers and costs relate to the 2013-14 financial year.



**Figure 16**

Estimated cost of administering FNOs in the UK, 2013-14

	<b>Lower estimate (£m)</b>	<b>Most likely estimate (£m)</b>	<b>High estimate (£m)</b>
Costs up to conviction <sup>1</sup>	266.0	346.8	536.8
Costs after conviction <sup>2</sup>	503.6	503.7	504.4
<b>Total costs</b>	<b>769.6</b>	<b>850.5</b>	<b>1,041.2</b>

**Notes**

- 1 Estimate of police costs (£148 million), courts and Crown Prosecution Service costs (£119 million) and legal aid costs (£81 million) from processing a foreign national crime up to sentence.
- 2 Estimate of the costs incurred once an FNO has been sentenced and includes administration costs incurred by the Department, Agency and the Foreign & Commonwealth Office (£99 million), as well as prison and detention costs (£403 million).
- 3 For all costs, Appendix Two provides more detail on methodology.

Source: National Audit Office analysis

# Appendix One

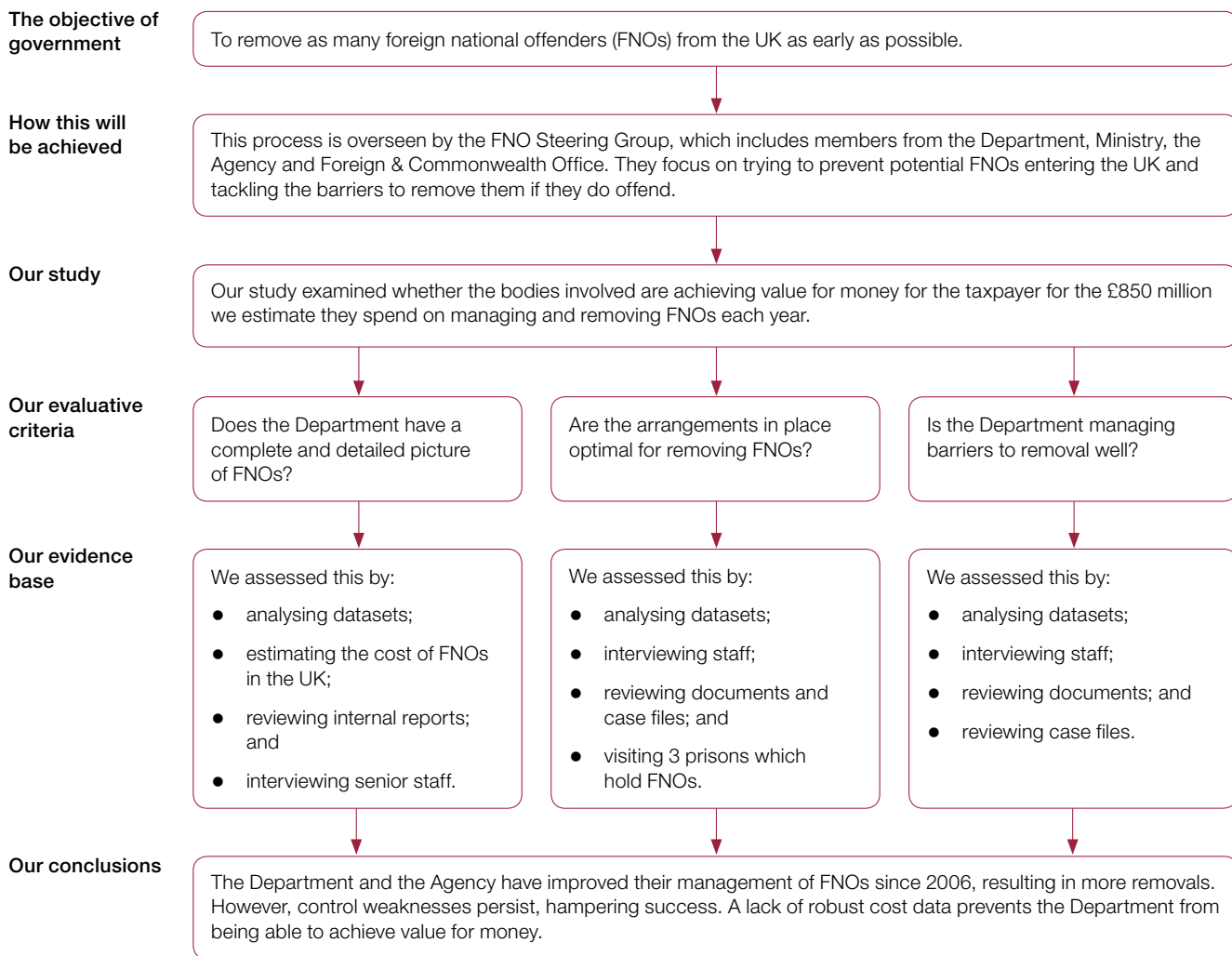
## Our audit approach

**1** This study examined whether the approach adopted by the Home Office (the Department), Ministry of Justice (the Ministry), the National Offender Management Service (the Agency) and the Foreign & Commonwealth Office to managing and removing foreign national offenders (FNOs) delivers value for money. We reviewed:

- whether the Department had a complete and detailed picture of FNOs;
- whether the arrangements in place were optimal for removing FNOs from the UK. This included whether the governance arrangements were clear, whether processing cases was efficient and how the various schemes to remove FNOs were working; and
- whether the departments were managing the barriers preventing them from removing FNOs well.

**2** Our audit approach is summarised in **Figure 17** overleaf. Our evidence base is described in Appendix Two.

**Figure 17**  
Our audit approach





# Appendix Two

## Our evidence base

- 1 We reached our conclusions after analysing evidence between April and August 2014. Our audit approach is outlined in Appendix One.
- 2 We assessed the Department's understanding of FNOs in the UK.
  - We analysed the Department's data on the number of FNOs in the UK.
  - We reviewed management information and performance data used by the Department.
  - We interviewed senior staff involved in the management of FNOs.
- 3 We performed financial analysis to assess the cost of FNOs:
  - The Department does not have detailed information on the cost of FNOs. Therefore, we estimated how much the government spends managing FNOs using published statistics and financial statements, along with information from our interviews and data analysis.
  - We used 3 methodologies, depending on the level of available data:
    - Where there is good data available on unit costs and FNO numbers, we validated the data based on independent analysis and case file reviews, and once satisfied of its accuracy, used the data to calculate detailed costs. We used this methodology for calculating prison and other detention costs, as robust data is available on average cost per prison place per year.
    - Where there is a lack of data on unit costs, we use the published financial accounts for 2013-14 to apportion the total costs according to the number of staff involved in managing FNOs. This is used in the calculation of administration costs.
    - Where there is some cost data which is not broken down by foreign nationals, we use information from a variety of sources, including our interviews with stakeholders, published data and our review of case files, to estimate the proportion of the costs which relate to FNOs. We use the proportion of the FNOs in prison, adjusted to remove foreign nationals detained after their sentence from the population, to estimate the proportion of costs that relate to FNOs. This is used in the calculation of police, courts, Crown Prosecution Service and legal aid costs.

- Our intention is to estimate the full costs of foreign national offenders in the criminal justice system for the UK as a whole in 2013-14. Data is not available for many of the elements which would provide precise calculations. Our estimates do not include the social costs of the crimes committed by FNOs. We have calculated a range around our estimate by varying the most sensitive data using historic data changes; for instance, varying the proportion of FNOs in prison by the highest and lowest proportion between 2010 and 2014.
- 4 In order to assess the governance arrangements in place:
- we reviewed minutes and documents from the various boards overseeing the management of FNOs; and
  - we interviewed senior staff members from the 3 departments to gain a better understanding of how the governance arrangements worked and how they had evolved.
- 5 We assessed the administrative process of removing an FNO from the UK:
- we reviewed a sample of 122 case files from the first quarter of 2014. Our sample included 50 cases which had been referred to the Department in that period, 52 which had been removed, 10 that were in prison and 10 which were in the community. We were looking at the timeliness and accuracy of the processing;
  - we walked through each stage of the process with staff from the Department; and
  - we visited 3 prisons. One was a FNO-only prison (HMP Maidstone), another was a prison designated for handling FNOs (HMP Wandsworth – a ‘hub’ prison), and one was a normal prison with no special arrangements with the Home Office (HMP Pentonville).

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