



Foreign national prisoners:

A follow-up report

January 2007

Acknowledgements

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Introduction

In November 2006, we published a thematic report on foreign nationals, pointing to some long-term systemic failures, in both the prison and immigration services. One consequence of those failures had been the realisation, six months previously, that some foreign nationals had been released from prison without consideration of whether they should be deported.

As a consequence, all foreign nationals were assumed to be deportable. Foreign nationals who had been in open conditions, or were on licence in the community, were returned to closed prisons, even if their behaviour had been exemplary. The trawl was so indiscriminating that it included some British citizens (who are not deportable in any circumstances), Irish and EEA nationals (who are deportable only in limited circumstances), and those who had committed only minor offences, but had lengthy residence and family ties only in the UK.

Moreover, the absence of proper systems, which had led to the original crisis, left the immigration authorities entirely unable to cope with the volume of work now created. As a consequence, foreign nationals, suddenly and unexpectedly threatened with deportation, also found it impossible to find out what was happening to them, and were held in prisons and immigration removal centres far past their sentence expiry dates, even those who were desperate to return home. Their presence significantly contributed to the prison overcrowding crisis of late 2006.

These consequences became apparent both to us and to Independent Monitoring Boards (IMBs) after April 2006, and we communicated our concern to Ministers and officials. As a result of ongoing concerns during the autumn, we carried out some research, using information obtained by inspection visits, and gathered through surveys of IMBs. We are very grateful to all the IMBs which contributed, and to the National Council members who assisted. That information forms the basis of this follow-up report.

It describes, largely through the words of foreign national prisoners, detainees and IMB members, the anxieties, uncertainty, frustration and at times despair that many foreign national prisoners were experiencing. Those prisoners included people who had lived here since childhood, or were responsible for small children; as well as people who were clearly not deportable, or who were held on inaccurate information.

One stark indicator of their predicament was the increased prevalence of self-harm – which we had not found to be an issue in the research for the thematic review, a year earlier. Foreign nationals described feeling suicidal, due to the uncertainty of their position; and IMBs and establishments reported increased self-harm and suicide attempts.

Inspections and IMB information continued to catalogue these problems, at least until January 2007: as Appendix 1 shows. One inspection visit in late November illustrates this. Inspectors found one man on hunger strike because he wanted to return home, six months after his sentence expired. They also found a refugee, desperate not to return home, who was only told that he would not be deported on the day his sentence expired, and shortly after he had tried to hang himself. Meanwhile, immigration removal centres, too, faced increasing instability, with a large population of ex-prisoners, in similar uncertainty for considerable periods.

These are examples of a system whose dysfunctionality had serious personal costs for foreign nationals, and practical consequences for prisons and immigration removal centres. Considerable additional resources were provided to the Immigration and Nationality Directorate's Criminal Casework Team (now upgraded to a Directorate); but the inherited backlog, and the absence of proper systems, prevented any swift solution of the problem. Of

particular concern was the fact that immigration officials, operating at a distance and on paper, often seemed unaware of the human cost of this.

There are recent indications that some of the concerns in this and our previous report are at last being responded to. New arrangements have been put in place to recognise the special position of Irish nationals; earlier decisions on deportation are promised; and immigration officers are being deployed in some prisons. We will continue to monitor the effect on the ground of these changes. The treatment of foreign national prisoners over recent years has been an object lesson in systems and procedures that lack both efficiency and humanity. It is also an object lesson in the need to listen and respond speedily to the concerns of independent inspectors and monitors.

Anne Owers
HM Chief Inspector of Prisons

February 2007

1. Background

- 1.1 In November 2006 the Inspectorate of Prisons published a thematic review of foreign national prisoners¹, which was undertaken as a result of our long-standing concern about weaknesses in provision for this group. The review was based on in-depth one to one interviews with 85 staff and more than 170 foreign national prisoners across 10 prisons. It also involved a national survey of prison foreign national coordinators and analysis of Inspectorate survey results from almost 6,000 prisoners collected over a period of 18 months.
- 1.2 Across virtually every category and nationality of prisoner, the review identified three 'primary' problems: family contact, immigration and language. These issues were generally linked to numerous other problems, such as difficulties with accessing legal advice and resettlement services. In relation specifically to immigration, both staff and prisoners were frustrated at the lack of support and contact from the Immigration and Nationality Directorate (IND), and in all 10 prisons, staff complained that the formal channels of communication with IND's Criminal Casework Team (now renamed the Criminal Casework Directorate) usually did not work. Cases were often acted on at the last minute, with no warning or possibility of preparation. This in turn had a profound effect on the ability of foreign nationals to prepare for release and removal, and on the capacity of prison and probation staff to provide them with appropriate sentence planning and support. In short, we found a system in which both foreign prisoners and prison staff were being failed partly by shortcomings in IND, and partly by the lack of a coherent overall prison policy for work with foreign prisoners.
- 1.3 The report provided the most robust and wide-ranging evidence base on the situation of foreign prisoners that has ever been produced in this country. The importance of its findings and recommendations was thrown into sharp relief in May 2006, when it was revealed that a number of foreign prisoners who should have been considered for deportation were released without assessment. This led to a range of immediate measures to increase the control of foreign national prisoners, and changes in the way that they were managed between IND and the Prison Service. As the fieldwork for the thematic review was completed before May 2006, it was decided to conduct a further short study. The aims of this study were partly to validate the original findings in the new environment that now existed; and partly to examine the impact of the recent changes in IND and in prisons, on prisoners and ex-prisoners who were still held as detainees. We were particularly concerned to find out if genuine progress was being made to resolve the situation, or if the crisis born of a chaotic and inefficient system was simply being replaced with another crisis generated by a panicked and poorly planned reaction to the original problem.
- 1.4 The value of such a follow-up quickly became evident. One of the first consequences of the changes was that increased numbers of people were held in prisons following the end of their sentences while IND decided on what, if any, action was to be taken. Some foreign nationals held in open conditions were recalled to closed conditions with no warning and without individual risk assessment. At the same time, immigration removal centres (IRCs) began to receive growing numbers of ex-prisoners. Increasingly, the Inspectorate and the Independent Monitoring Boards (IMBs)² started to receive reports after May 2006, of problems arising from the pressure that IND and prisons were now under. The following case from a local prison was received in October 2006:

¹ HM Inspectorate of Prisons (2006) *Foreign national prisoners: a thematic review*. London.

² IMBs oversee every prison and immigration removal centre on an ongoing basis, and were therefore ideally placed to observe whether recent changes had occurred.

A South African prisoner climbed onto the railing of a landing with a noose around his neck. He was due to be released five days previously, but was being held because of unresolved immigration issues. Negotiators began to talk to him and he was persuaded to remove the noose but it became apparent that he also had razor blades in his mouth.

- 1.5 As a result of concerns about such cases, between August and November 2006, the Inspectorate, in partnership with IMBs, conducted a follow up investigation, the results of which are set out below³.

³ This short follow up investigation did not include Inspectorate interviews with women, but some IMB responses were from women's establishments.

2. Methodology

- 2.1 This follow-up investigation was completed in two ways. First, in August 2006 inspectors conducted a total of 22 in-depth interviews⁴ with 17 people detained solely under immigration powers and five serving foreign national prisoners. These interviews were carried out in a prison with high numbers of foreign nationals and detainees, and in an IRC with large numbers of ex-prisoners. Custody and immigration files were examined, and heads of residence, immigration staff and/or foreign national coordinators at the two establishments were also asked to fill in a questionnaire, and/or were interviewed.
- 2.2 Second, in September 2006, with the support of the IMB National Council, IMBs in all prisons and IRCs were sent a brief questionnaire⁵ asking about the impact, positive or negative, of the recent changes, and for relevant case studies. A total of 86 such questionnaires were returned⁶ between September and November 2006, and provided valuable wider evidence of the impact on foreign nationals and their families.
- 2.3 Consequently, there were both quantitative and qualitative elements to this follow-up investigation, although the detailed and illustrative accounts obtained by both the Inspectorate and IMBs were the most important sources of evidence. Many of the issues identified are also likely to have affected a far larger number of people than those to whom we spoke.

⁴ See appendix II for the interview proforma.

⁵ See appendix III for the questionnaire.

⁶ The anonymity of the questionnaires meant that it was not possible to establish how many were returned from IRCs (there are only 10 IRCs in total) and how many from prisons.

3. The process of detention

Reasons for detention and immigration status

- 3.1 Asked about the number of prisoners held in prisons after their sentences had expired during the previous six months, twice as many IMBs said it had increased as those who said it had decreased (22 responses to 11).

At present (August 2006), the figure is 19. The numbers have increased during the last six months because we believe (anecdotally) that the immigration service is at best slow and at worst not able to deal with these people. (IMB-32)

- 3.2 The majority of Inspectorate interviewees (12, 55%) were detained following completion of a custodial sentence. Two of the prisoners had been recalled on breach of licence and three had yet to complete the custodial parts of their sentences. Four of the detainees had been arrested at airports in connection with immigration matters, and one man had been returned to prison during his parole licence as a result of IND action, though he had not breached either parole or immigration conditions. Another detainee said he had been released too late to report for his probation appointment and immediately recalled. His account suggests that there was confusion in prisons about whether or not he should have been released.

I was paroled ... on 1 March 06 – should have been released early in morning, but was not released until around 4pm. It was then too late to report to probation in accordance with licence. So on 2 March I was breached and arrested then sent to [another prison]. Then I was sent to reception for release, but then the wing said I was a foreign national, not for release but a 'detainee'. (HMIP-19)

- 3.3 In one of the establishments visited by the Inspectorate, a large number of detainees had been released unconditionally by the Criminal Casework Directorate since May 2006. People are released unconditionally if they are living here lawfully and there is no basis to restrict their liberty. On further investigation, it was discovered that foreign nationals were being detained without screening to see if detention was warranted. The following groups were detained, including people who appeared to be inappropriately, and in some cases wrongly, detained:

- British citizens, Irish citizens and other European community citizens resident in the UK for many years.
- People who were detained before being served with a notice of decision to deport (which in some circumstances gives the power to detain). They could not appeal until they got their decisions, so they were effectively in a state of limbo.
- People detained without being given any reasons for detention (usually issued as a pro forma IS91R).
- People arriving from previous establishments with little information or documentation, which made it hard for immigration staff to explain their situation to them.

- 3.4 The IND casework information database (CID) was often not up to date and contradicted information in prison files. In one example found it looked as though someone was removable because there was no record of an outstanding appeal on CID, but then a copy of a faxed appeal was found buried in the prison file. The following examples illustrate the situation we found in the months following May 2006.

Case example – Unnecessary detention leading to security concerns

- 3.5 An Irish national (living in the UK for 22 years, since the age of 1) had been detained since 28 April, almost four months previously. His appeal against deportation was upheld by a tribunal on 1 August (the decision was only received at the IRC on 7 August). The Home Office did not appeal the decision. However, he was still detained on 15 August. Emails to CCD were ignored and the detainee was threatening to become disruptive and causing security concerns. He was eventually released on 16 August.

Case example – Unnecessary detention leading to food refusal

- 3.6 A detainee who wanted to return to his home country had been detained for over two months. Deportation paperwork was requested from CCD on the date of detention, 6 June, then requested again 10 days later. Eventually a notice of decision to deport arrived a month later. The detainee was very frustrated and on hunger strike about two weeks after the notice arrived. An emergency travel document application had been faxed three times. A deportation order was received more than two weeks after he began his hunger strike, but the travel document had still not arrived.

Case examples – Detention of British citizens

- 3.7 A British citizen whose nationality had not been confirmed by the date of his release was subsequently transferred from a prison to an IRC. His release papers were then sent to the prison he had just left. Six days later, the IRC requested his release papers. This request was repeated on two further occasions during the following 12 days. The papers were only received on 13 June, by which time he had been detained for almost two weeks.

A man who had become a naturalised citizen in the late 1980s was due for release from an open prison on 26 May. He was detained and moved to a closed prison and then to an IRC four days later. His release was not authorised for another two days (a week after he should have been released), even though his British nationality had been confirmed.

A British man was sent to an IRC the day after his release date in late May; he was detained for 13 days before being released.

Immigration notifications and legal advice

- 3.8 Five of the interviewees were subject to a judge's recommendation to deport. Only two (9%) of those interviewed had received the reasons for detention form IS91R, but the majority (16, 73%) had received a notice of intention to deport from IND, though this was not always accurate:

Both my first and second names were misspelled. It refers to a 'wife and three children in the UK', but I do not have a wife and children. It says I do not have enough close ties in the UK,

but does not mention my mother and brother who live and work here. It says the court recommended deportation, but I think that is wrong too. I wrote to IND in Norwich, again in Bullwood Hall, and again in Dover, to query these mistakes, but have received no reply.
(HMIP-4)

- 3.9 One man had received a decision telling him he was to be deported to Sri Lanka when he was originally from Somalia, and while most (15, 68%) had seen an immigration officer (IO) at some point during their detention, this was not always recently. Most interviewees were critical of the information they received and said they were generally told by the IOs that they did not know about their individual cases⁷. Just over half of the respondents (12, 55%) said they had received legal advice but only four (18%) had received a visit from an adviser. Only one person knew when he was to be deported, but he was still unaware of the reason why. All other respondents said they did not know the final decisions that had been made on their cases or dates of deportation.

⁷ It is likely that many of the staff described by the interviewees as 'immigration officers' may have been administrative officers working for IND. IND has largely replaced immigration officers in IRCs with relatively inexperienced administrative workers who are not the direct caseholders. Consequently, they are effectively relaying messages between caseholders and detainees and are unable themselves to answer queries. This has resulted in greater frustration among detainees and is documented in numerous IRC inspection reports.

4. The impact of detention

- 4.1 Unsurprisingly, the most prominent issue raised both in Inspectorate interviews and IMB reports was the frustration associated with detention of uncertain length, and lack of information about and delays in resolving immigration cases. Immigration uncertainty was strongly linked to all other reported problems (see appendix IV). The negative impact on families and, in particular, rising self-harm were strong themes running through the various concerns identified.

Lack of information and IND delays

- 4.2 Many of those interviewed by the Inspectorate described the frustration at not knowing when they were going to be released or deported. Our examination of prison and immigration case files confirmed that obtaining a response from CCD was a major problem, with numerous unanswered requests for information, action or decisions. Monthly reviews of detention were often missing or repetitive and uninformative. Frequently, detainees were keen to return home and were evidently cooperating with IND. IMB accounts also highlighted the impact not only on detainees and prisoners, but also on custodial staff. Eighteen (22%) of the IMB survey respondents commented on the lack of information they and detainees in their establishments received on immigration cases. This was often described in terms of a failure of the CCD (formerly the CCT):

The main difficulty at [training prison] appears to be getting information back to individual foreign national prisoners held at this prison. The source of the problem is IND. (IMB-26)

Foreign national prisoners feel frustrated that IND appear not to be dealing with their cases...it seems that IS91s are issued speedily, but with no information and no follow-up communication. (IMB-30)

Case example – Lack of information and action

- 4.3 Irish national who has lived in UK almost all his life, British mother, now awaiting deportation. He has been held since the April changes with no reason supplied. All enquires come up against a brick wall (CCT). (IMB-7)

Case example – Lack of information and action

- 4.4 One Jamaican prisoner was due for release [3 months earlier] and seems to have got lost in the system. CCT seem unable to keep faxed paperwork or registered papers. (IMB-21)

Case example – IND delays

- 4.5 It transpired that the Italian embassy had sent travel documents to the IND but they had failed to book a flight. As a result the papers became out of date and the process had to be started again. This understandably has caused the prisoner a lot of frustration and distress. (IMB-44)

- 4.6 One IMB report highlighted the fears of those facing a forcible return to their home country:

We have evidence that foreign national prisoners at [women's prison], with their legal advisers, try to slow down repatriation, as they are claiming refugee status and/or are fearful of return to home countries. The delays are of course not all the fault of IND or the Prison Service. Such individuals are often highly stressed and seem genuinely fearful of being repatriated to hostile regimes. (IMB-2)

Impact on establishments and staff

- 4.7 One IMB reflected on an increasing 'lack of confidence' among prison staff in the abilities and the effectiveness of the IND:

... apparently matters are even worse now with lots of new staff at IND, our staff being passed from pillar to post, and communications between offices being particularly bad. (IMB-53)

- 4.8 Other complaints were about the increased workload on staff trying to deal with IND requests for paperwork to be completed, which subsequently led to little or no obvious progress.

The main issue regarding recent relevant changes to foreign national prisoners/detainees are that as a Prison Service we are called upon to provide even more information about any individual, and this information is requested several times over, which is not only time consuming but also costly, considering documentation sent by fax can amount to 20-30 pages per individual, and is frequently 'lost' by the Criminal Casework Team in Croydon. (IMB-51)

- 4.9 Delays in the immigration process were mentioned by 11 (14%) IMBs as putting a considerable strain on custodial staff:

Huge amounts of resources [are] used to chase immigration for results. (IMB-10)

The time being taken to process the deportation of ex-prisoner detainees is longer than for other detainees. The bottle neck seems to occur because of the inadequacy of the CCT. This means ... facilities in the centre geared to a shorter stay are inadequate for detainees being held for much longer periods pending the CCT sorting out their case. (IMB-12 - IRC)

- 4.10 The impact of the recent changes on establishments' resources was frequently mentioned, and this highlighted both the difficulties that the situation was creating, and a continued lack of preparedness. An issue that was highlighted as a concern for IRCs alone was the integration of ex-prisoners with other detainees:

There is now a large number of ex-prison detainees at the centre who have knowledge of prison culture, which is very different to the culture previously prevalent at [IRC]. Ex-prisoners are accustomed to a prisoner-'screw' relationship which is light years away from the detainee-custody officer relationship where the detainees trust the DCOs and the relationship is based largely on trust not largely on authority. (IMB-12)

The former prisoners in the IRC bring with them the prison culture – more demanding, drug use, intimidation/assaults on staff, more likely to be removed due to intimidation and unsuitability. (IMB-57)

- 4.11 Although prison inspections have noted some improvements in terms of the development of foreign national policies and procedures, this was still an issue mentioned by some IMBs:

... a common complaint of foreign national detainees at [local prison], is that they do not receive alternatives to visits, either air mail letters or overseas telephone calls. This has been a known problem for over three years, and there is still no effective system to ensure that foreign national prisoners and detainees who are not receiving personal visits receive instead an overseas calling card or air mail letters. (IMB-3)

There is no specific support for foreign nationals/detainees whatsoever. (IMB-37)

Family concerns

- 4.12 The majority of Inspectorate interviewees (14, 64%) had family living in England and for 10 (45%) of them, they were their only family members; many had British partners and children with British citizenship. Ten (45%) interviewees had family abroad, but four of this number also had some family in the UK. Only six (24%) men solely had family who lived abroad and not in the UK. Of those with family in the UK, most could and did get visits from family members, although this was a rare occurrence for some:

... my mother has been able to visit once only because the journey is long and complicated. She cannot manage it by public transport as she does not speak much English. A friend drove her here for £150 (petrol plus time). She cannot afford that again. She was able to visit more often in Norwich. (HMIP-4)

- 4.13 Seven men (32%) said they had children, and four interviewees (18%) stated that they brought in the main family income and that their families, both in the UK and in home countries, were therefore financially reliant on them.

I have wife and three children aged 6, 4, 2, in Nigeria and my Mum lives with us. I am responsible for all of them. I can't even think about the impact. I am the breadwinner. No one is supporting my wife and children while I am here. My family are praying. (HMIP-11)

- 4.14 This latter interviewee had cooperated fully with IND and wanted to return home to his family as soon as possible, but had heard nothing and was not sure about when he would be deported. Most interviewees (82%) described the negative impact of detention and lack of information on worried family members.

It is mental torture. They drive you so mad because you cannot get information. Then, you cannot tell your family what is happening and everyone is upset... My father became ill – he has been hospitalised because of poor health. (HMIP-17)

- 4.15 The above interviewee, an EU citizen, was expecting to be released until shortly before the end of his sentence. He had stated at an early stage (13 months prior to his release date) that he would not appeal against his deportation and the prison had his passport ready for travel. He was given no explanation for the subsequent three months of detention he had experienced. Eight (9%) IMB survey responses specifically mentioned the distress caused to families by immigration delays:

Prisoners often have arranged transport for the day of release. For example, arranging for their family or friends to pick them up only to be told that they cannot be released because authority to do so has not been received from immigration. (IMB-13)

The apparent inability of the CCT and immigration to process these cases, giving prison staff sufficient time to address prisoners' legitimate concerns prior to discharge is indefensible. It has caused great distress to prisoners and families concerned. (IMB-24)

- 4.16 As the following case study shows, late and unexplained detention notifications could also have serious implications for the detainees involved and for their families:

Case example – Impact on families

- 4.17 Earlier this year a female prisoner was held who was serving a sentence. She had twins while in custody at [female local prison]. She was due to be released on 28/04/2006 but an IS91 was received late on 27/04/2006. The prisoner was told, and tried to commit suicide on this evening. Her husband, who was also serving a sentence, had been released into the community. However, his release was prior to the press release which caused the current reaction. (IMB-13)

Mental health and self-harm

- 4.18 All but three interviewees (86%) said the experience of open-ended immigration detention had left them feeling depressed and considering self-harm or suicide, and this issue pervaded both the Inspectorate interviews and IMB surveys. Some made a clear distinction between the impact of prison sentences and that of immigration detention.

I've never felt like self-harming before, even when I was in [two YOIs] before [adult local prison], but I thought about it after all this happened, after I got the notice of a decision to deport in May 2006. (HMIP-10)

- 4.19 This man experienced difficulty getting help to appeal against the notice of deportation and spoke of the stress his family were going through. Another interviewee vividly described the impact on him of the uncertainty in which he was living:

... feel like maybe suicidal if this goes on. Worried about future, finding it hard to sleep, pains in body, getting upset easily and feeling depressed. Just want an answer to immigration case. (HMIP-8)

- 4.20 One particularly distressed man who had been released into the community was suddenly returned to prison despite the fact that he had been complying with both his parole licence and immigration reporting conditions following release. His history of compliance, engagement with services and obvious vulnerability were not considered sufficient reasons to forgo detention. Prison and probation staff were extremely concerned about his mental state.

Mr. F had been in the UK since childhood. He was released in 2004 on parole licence after serving a sentence for his only offence [importation of drugs]. He was appealing against a decision to deport him. He was re-detained in July 2006, while signing on at an immigration office. He had always complied and was working throughout his time in the community. He was on licence and his probation officer confirmed that he had not missed appointments and had not been assessed as being in any way unreliable or dangerous. He had a history of mental health problems and was very concerned about his brother, who was himself mentally ill, and his mother, who had a serious physical illness. Shortly after being detained, Mr. F. made two serious attempts at suicide, and on both occasions was lucky to survive. (HMIP-22)

- 4.21 Similarly, IMB responses mentioned increasing levels of self-harm and challenging behaviour by detainees who were no longer willing to cooperate with custody staff until their cases were resolved. Five IMBs specifically mentioned attempted suicides or actual self-harm, sometimes severe. One noted that the attempt was a result of a prisoner not being told until the day before his release that he was to be detained, while another reported that a man who had been detained for almost a year had stated that he would commit suicide if his case was not finally resolved by Christmas 2006. This had an impact not only on detainees and families, but also on the custodial staff who were sometimes left to deal with extreme distress as well as challenging behaviour.

Case example – Self-harm as a result of IND delays

- 4.22 We have one foreign national prisoner, who came to [local prison] toward the end of March as a licence revokee. His sentence was completed in the end of May. Since that time he has been held on an immigration warrant awaiting deportation. The prisoner wants to go. Matters came to head on Monday 21 August when the prisoner made a serious attempt at suicide. The prisoner's MP is now involved and I have to say that [the prison] have been pressuring Immigration continuously. It is now 7 September, [the prison] is continuing to press, but he remains here. (IMB-62)

Case example – Depression as a result of IND delays

- 4.23 An Iraqi...sentence expired in January 2005...he has been very depressed. We on the IMB have tried desperately to get him back, but the IND has been unbelievably inefficient (lost faxes, staff changes, nobody accepting responsibility). He has signed two documents witnessed by us, accepting full responsibility if he is sent back to Iraq, and he desperately wants to return we have been told there is a chance he may be on a plane in the next few weeks but we will believe it when it happens. (IMB-41)

Case example – Mental disturbance and challenging behaviour during detention

- 4.24 An Ethiopian prisoner whose sentence expired in May 2005. He was transferred to us in June and has spent most of his time in the seg [segregation unit]. He is on a dirty protest and constantly urinates on the floor. He speaks no English, is constantly wet and wears only his boxer shorts. Seg staff are concerned that he may suffer from hypothermia as the weather changes. He has recently spent a week in healthcare but they say there are no issues as far as they are concerned. Immigration saw him at the beginning of August and said he would be removed within four to six weeks. The conditions in which he is living are appalling, albeit of his own making, and the ammonia smell in the seg unit is dreadful. Seg staff are having to work with this. (IMB-39)

- 4.25 Over half of Inspectorate interviewees (12, 55%) stated fear of returning to their country of origin was having a major impact on their feelings of well being. Some of the reasons given for such fears were that no family remained in their home country and that they had no knowledge or memory of the country because they had arrived in the UK as children. Two respondents

stated that their biggest worry was returning to a country in which they did not feel safe because of war or other problems.

I can be killed at any time if I return to Iran... would rather stay in detention for two years or 20 years than be returned to Iran where my life is in danger. (HMIP-19)

- 4.26 A member of staff in one of the fieldwork establishments noted that some inmates had self-harmed after the media reported the suggestion that all foreign national prisoners were to be deported. He also noted that as staff were not themselves aware of the truth of the matter, they could not reassure anyone.

Resettlement, sentence progression and lack of policy

- 4.27 A number of responses highlighted the impact of immigration delays on the ability of prisoners and detainees to progress through the system and make plans for the future. Other issues included the lack of clear procedures or policy to support detainees in prisons, which meant, for example, that they could be denied access to education, work and other activities.

Prisoners are made aware early in their sentences that there is a possible immigration interest in their case, yet up to and including the release day of the prisoner, the prison has to continually chase IND for an answer as to whether or not the person in question is going to be detained. This has a knock-on effect on a number of processes, such as: parole, HDC [home detention curfew]⁸, ROTL [release on temporary licence], and re-categorisation. Prisoners who would normally be eligible under the guidance and frameworks for these processes are being excluded after consideration, due to the fact that their immigration/deportation status has not been confirmed. (IMB-45)

Foreign nationals held at [YOI] beyond the end of their sentence under the Immigration Act pending deportation are treated as 'unconvicted' and lose access to education, work etc. (IMB-6)

Case example – Exclusion from regime

- 4.28 A recent in-house survey showed that there are many issues around the personal officer scheme which is not working for these young people and young offenders. Personal officers and liaison officers should present a coordinated approach. It is failing because the foreign national committee has been inoperative for half a year. A quarter of foreign nationals who could benefit from the IEP [incentives and earned privileges] scheme are missing out on education which does not cater for them. They are generally model prisoners who are willing to learn but who miss out on enhanced level and are not rewarded. (IMB-37)

⁸ Foreign nationals who are to be deported are also subject to the early removal scheme (ERS), which enables them to be deported up to 135 days before normal release dates. Very few references were made to ERS in either the direct interviews or the IMB survey responses. Information received separately from one IMB reflects the situation that inspectors have found, namely that the ERS is not working effectively and that few prisoners are removed early via the scheme.

Case example – Disrupted resettlement

4.29 We had a long-term prisoner who was working out prior to release who was returned (incorrectly) to closed conditions twice despite having the correct paperwork. He has now been released but it was very upsetting. (IMB-16)

4.30 There were some concerns over language barriers hindering the ability of prisoners to follow the rules and participate in the regime. Five per cent of IMBs commented on this.

Presently the only option is the translation telephone line which is extremely expensive and not very practical when trying to give instructions to prisoners. This becomes more difficult when a prisoner ends up in segregation, being even more isolated with possibly no idea what is going on. (IMB-14)

4.31 Over half (55%) of those interviewed were worried about the impact of unexpected detention on their employment. Out of 22 cases, 17 said they were employed in the UK, some employed others and others had made arrangements to return to work on their release dates.

Had own shop, rented property, and was employing three others. Now lost as could not pay rent while in prison. (HMIP-7)

4.32 One respondent had been granted asylum in the UK. He held bank accounts, had credit cards and was given permission to work. His job was held open for him to return to once he had completed his time in prison.

If released after four months [his sentence end date], I could have returned to work, not now, too long. (HMIP-8)

4.33 Two establishments recorded an increase in applications as an immediate effect of the transfers out of Ford open prison on 26 May 2006:

The arrival of 20 foreign national prisoners from Ford produced a lot of applications, however many were dealt with by the staff, e.g. sent from Ford with only the clothes they were standing up in. Many ask what is to become of them – answers are not forthcoming. (IMB-57)

Yes, some [of the increase in applications was] because of heavy-handed removal of prisoners from HMP Ford, others for lack of information. (IMB-7)

4.34 Foreign national prisoners were moved from Ford open prison as a result of concerns that they would abscond. Eleven had absconded during May 2006 while the foreign prisoners issue was a prominent news item and it was being reported that all foreign nationals would be deported. They were sent to closed conditions for a review of allocation, as directed by the Operational Policy Unit. One prisoner who had been in Ford for a year before being transferred to closed conditions, and then moved between four different closed prisons in the space of three months, wrote to the Inspectorate in September 2006 to describe his experience. He had lived in the UK for 36 years, was married to a British citizen and had British children and grandchildren.

Case study: Disrupted resettlement and impact on family

- 4.35 [Because of an] exceptional prison record I've earned a cat D status ... until ... May 2006. Over that period I worked more than 10 months outside the prison's fence. I've made approximately 24 town visits ... [in May] I have been taken from my bed by two officers and they told me 'You're a foreign citizen, we are sending you to a closed prison'. I had not been allowed to wash my mouth or being allowed to use a toilet ... For nine hours we had been confined in the bus without food or toilet facilities ... [The closed prison is] very far away from my home. There is no way my family could ... visit me ... I am living with uncertainty and unstable life ... not been able to see my family since ... May 2006.

5. Benefits of recent changes

- 5.1 When asked if there had been any positive benefits as a result of recent changes, more than twice as many IMBs said there had been none, compared with those who could identify some benefits (58, 67% to 26, 38%). Moreover, the vast majority of benefits mentioned were related to improved policy and procedures within prisons, identified by 21 (25% of respondents). No other issues were described as beneficial by more than one IMB. The improvements described included foreign national officers in prisons either being appointed or receiving a higher profile; and more contact between some establishments and IND.

We have a lead governor/PO appointed for foreign nationals, plus a specified clerk/OA in custody office (prisoner admin) and launched our FN policy in spring 2006, with good procedures. The FN focus group meets with prisoners at least quarterly, and are processing and dealing well with FN issues raised by the group. (IMB-2)

Changes made to operating practice, under the guidance of PSO 4630 Immigration and Foreign Nationals in Prisons, has clarified the process for identifying and processing foreign nationals in prisons. The changes have simplified what was a very complex set of instructions for identifying and reporting, making the process much easier to monitor. (IMB-45)

The clear policy of generally not allowing FN prisoners, who are likely to be deported, cat D status or ROTL on open conditions is helpful. (IMB-15)⁹

Yes [women's prison] now has two immigration officers at the prison every Wednesday. (IMB-33)

The changes have created a great deal more work for the foreign nationals clerk. However, she says the benefits are that the Criminal Casework Team is more proactive and systems have been put in place to aid communication. (IMB-61)

- 5.2 However, most responses followed the familiar themes of answers to other questions and negative outcomes from IND were described most frequently:

The immigration 'helpline' changes show no tangible improvement in our experience. Urgent faxes from the prison to named individuals, often duplicated, frequently remain unanswered, perhaps also when location changes occur immigration should inform their prison contacts, for continuity reasons, of the changed telephone and fax numbers. (IMB-24)

Not that we can see. IND visits the prison periodically and seems to listen but fail to follow up by communicating with the prisoners. (IMB-30)

- 5.3 Some of the positive outcomes were also couched in conditional language, indicating attempts at improvements as opposed to better actual outcomes. For example, one establishment noted that a new foreign national coordinator was a positive step, but went on to state:

[The foreign nationals coordinator]... does not seem to have received adequate support and training, possibly because of the hiatus in cover meant there was no opportunity for a

⁹ It is unclear what 'clear policy' is being referred to here as category D status and release on temporary licence are still at the discretion of the governor, who is required to consult with IND before making a decision. It is likely that this is simply the practice employed in that particular prison.

handover. There is lack of awareness about the particular needs of foreign national prisoners and matters of regime unique to them among landing staff. (IMB-3)

- 5.4 Another establishment commented on the new compulsory weekly list of foreign national prisoners that had to be posted and hoped that this would result in detainees being highlighted for action to resolve their cases.

6. The impact on IMB applications

- 6.1 The majority of IMBs (61) said they had not received an increased number of applications from foreign nationals since the recent changes. However, many did not monitor whether applications were from foreign nationals and their conclusions were therefore impressionistic. Others said that applications had not gone up, but that IMB members were more likely to be stopped as they walked around the prison.

Not a noticeable increase but there is now a general acceptance that information is not available. Deep scepticism and resentment is expressed at FN meetings, which are attended by a Board [IMB] member. (IMB-53)

- 6.2 Of those who said applications had increased (16 respondents), most mentioned a lack of information about immigration cases as being the primary reason for this:

There has been an increased number of applications concerning immigration status. We have to refer these to the IND whose standard reply is 'They will be informed in writing when there is some information'. This is a very unsatisfactory situation. (IMB-44)

- 6.3 One establishment saw a dramatic increase in the number of applications and described this and the recent changes as being 'a steep learning curve for the Board', which had led to many improvements in the effectiveness of their foreign national policy. Another establishment commented on the rise in applications being as a result of recent media coverage causing an increase in anxiety felt by the foreign national prisoners of fear of deportation.

Appendix I

Findings from inspections (September 2006 – January 2007)

Overall, more recent inspection reports reinforce earlier findings. In particular, they show continuing delays in IND action, a large number of detainees, many of whom have been held for many months, increased reports of self-harm among detainees, constant anxiety among foreign nationals in open prisons who fear a return to the closed estate with no notice, and general fear of removal among all foreign nationals.

1. Lack of information and IND delays

Summary of key issues: IND unresponsive, though prison making efforts to contact; lack of action prior to release date; frustration and self-harm

Young offender institution (YOI), 3-12 January 2007

IND were notified when a foreign national prisoner was received, and informed the establishment of who they wanted to see at their next scheduled visit. Brief notes from these meetings were provided to the foreign nationals coordinator. Eight foreign national prisoners were detained, one of whom had been held for approximately five months. One young man was told of his detention during the inspection, only one day before the end of his sentence.

Category C prison, 11-15 December

Sixteen detainees, one held since February (over 9 months), when his sentence had expired. But foreign national prisoners spoke very highly of the immigration clerk who chased up outstanding replies, had developed good contacts with the immigration services at Dover and coordinated arrangements for a fortnightly seminar with IND.

Category C prison, 11-15 December 2006

Decisions to deport, and authority to detain, were often only faxed by IND just before or on the day of release. Staff prepared licences in the normal way, although their efforts were undermined when IND notified them of continuing detention at such a late stage. In recent history, staff could remember no one being removed under the early removals scheme, no facilitated returns and only one individual repatriated.

Multi-functional prison, with closed and open side, and a YOI, 15-24 November

There were 12 detainees – we spoke with four and examined the files of another three: only one knew he would be detained before the last day of his sentence. The prison found it difficult to obtain answers from the CCD, but immigration staff at a local IND office were able to help in a few cases.

Combined category C and D prison, 6-10 November

Foreign nationals' clerk was efficient and followed up IND delays, but there were still six detainees.

Category C prison, 9-13 October 2006

Nine detainees, one held for five months post sentence. Almost every foreign national prisoner

we spoke to said they felt ill informed and that the prison did little to help them. Despite the persistent efforts of prison staff, links with IND were poor.

Category B prison, 9-13 October 2006

Seven post-sentence detainees. Only one detainee had seen an immigration advice worker but all were in need of advice and assistance. None had been unaware of the seriousness of their position until detention was imminent. Earlier advice and more assistance might have helped to minimise the number of detainees and length of detention. The prison quickly identified detainees and those who were coming close to their release dates and made links with local immigration offices, but was unable to get responses to case queries from the CCD.

Category B women's prison, 2-6 October 2006

Two post-sentence detainees, one detained for over five months. Her notice of intention to deport had arrived on the day of her expected discharge and subsequent appeal procedures had been slow. Neither of the current detainees had seen an independent immigration adviser.

YOI, 2-6 October 2006

The foreign nationals clerk had good procedures for ensuring that potential detainees were not overlooked. He had developed links with local immigration offices in Manchester and Liverpool, as he was often unable to contact the relevant staff in the central CCD to obtain information on case progress. He was proactive about contacting immigration staff, rather than waiting for them to contact the establishment.

2. Self-harm/psychological distress

Summary of key issues: linked to detention/immigration case; lack of consideration of language issues.

YOI, 3-12 January 2007

Late notification of detention was not uncommon, and caused frustration for both staff and the prisoner concerned. An indication of the levels of frustration was that two of the most serious incidents of self-harm in the previous year had involved foreign national prisoners.

Multi-functional prison, with closed and open side, and a YOI, 15-24 November

A refugee coming close to his release date had climbed on to a roof and threatened suicide because of fear of return. He was placed on suicide and self-harm monitoring, and as his date of release approached, prison staff made repeated efforts to obtain a decision from CCD, who claimed at one point to have lost the file. On the date of sentence expiry, the man was placed on constant suicide watch due to fears for his safety. In the late morning, he barricaded his cell door and tried to hang himself, but was saved by a prison officer. Fifteen minutes later, CCD rang to say they were not proposing to deport him. The prison then had to release him immediately, without any preparation, to travel over 100 miles to a hostel, with licence conditions he could not properly read.

Another man had been detained for over seven and a half months in various prisons, even though he was willing to return to his home country. He was on an open suicide monitoring form, as he had become very frustrated, and had refused to eat until his case was resolved. The delay was mainly because of problems with obtaining travel documents, but detention might have been avoided, or significantly reduced, if there had been earlier action by IND to resolve the problem.

Category C prison, 9-13 October 2006

38% of foreign nationals (compared to 19% of British nationals) said they had felt unsafe at

some time at Edmunds Hill; not due to victimisation or bullying but to the psychological pressure and anxiety of not knowing what was happening with regard to immigration action and having no control over their future. The number of foreign nationals subject to self-harm monitoring had increased in recent months.

3. Foreign nationals in open prisons returned to closed conditions

Summary of key issues: lack of individual risk assessment, anxiety and feeling unsafe

Open prison, 4-8 December 2006

The number of foreign national prisoners had dropped considerably, from around 130 at the start of 2006 to only 21 at the time of inspection. The decision to transfer foreign nationals back to closed conditions was not based on individual risk assessments, but taken solely on the basis of their nationality.

Some of the few foreign national prisoners who were there described being in a state of almost permanent anxiety about the prospect of a return to closed conditions with no notice.

Category B prison, 9-13 October 2006

Increase in number of foreign nationals, a number of whom had been transferred from open prisons (the prison was unable to provide exact numbers). We met several men who were confused and frustrated about being returned to closed conditions despite having complied with open prison regimes.

One man who had been released from prison in 2003 had not reoffended and had been working in a youth centre. He had a partner and two children, had been living in the UK for 18 years and had been to school in this country. He was detained in the prison while IND took deportation action as a result of an earlier offence.

4. Prison strategies

Summary of key issues: Generally improved (from low base), but still not as well developed as need to be to respond to the problems with IND

Category C prison, 30 October-1 November 2006

Strategies to deal with the needs of foreign national prisoners were poorly developed, and had not moved on significantly since the last inspection, though there were around 40 foreign nationals and their number was increasing.

Appendix II

Prisoner/detainee interview pro forma

Background to methodology:

Interviews will be held with 12 foreign national prisoners/detainees to establish the impact of recent changes (since May 2006) in practice and policy in relation to detention of foreign nationals.

These interviews will be held in one prison and one IRC. One inspector will conduct each interview. Interviews should be scheduled to take approximately one hour. As soon after completion as possible the notes should be typed into the proforma and saved on the shared drive. Original notes taken should be kept as evidence.

Information on interview:

Name of establishment:

Date:.....

HMI Prisons interviewer:

Prisoner/detainee location and category:.....

1. How old are you?	
2. What is your nationality?	
3. What is your main language?	
4. What is your ethnicity?	
5. How long have you lived in the UK? (What was your arrival date in the UK?)	
6. Have you been employed in the UK? If yes, for how long?	
7. How long have you been in this establishment?	
8. Where were you before being detained here? a) Prison (open?) b) Community c) An IRC (another)	

<p>9. Under what circumstances were you detained / transferred here? (i.e. Still serving a sentence or sentence expired? Released and re-detained?)</p>	
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<p>10. What has been the main impact on you of detention or change of status? Please give examples:</p>			
	Yes	No	Comments
Loss of work			
Feelings of depression/self-harm/suicide			
Immigration uncertainty			
Loss of self-respect/independence			
Fear of returning to home country			
Any other incident(s) in prison as a result of your detention			

<p>11. What has been the impact of your detention/change of status on your family?</p>	
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<p>12. Do you have family in the UK? If yes:</p>	
a) Where do they live?	
b) How long have they lived in the UK?	
c) Can they come to visit you here?	
d) How are they affected by your detention?	
e) Do they plan to remain in the UK, should you be deported?	
f) Anything else?	

13. If your family is abroad, If yes:	
a) Where do they live?	
b) Do you receive international call card or free call to contact them?	
c) Are they aware of your situation?	
d) Do you have problems contacting them due to time differences?	
e) Have you had a visit from friends since you have been here?	

14. Have you been convicted of an offence in the UK?	
a) How many convictions have you had?	
b) What is the longest sentence length that you have been administered?	
CURRENT/LAST CONVICTION: (state which) Was it an immigration offence (if so please specify, eg false documents)?	
1) What is your current/last sentence length? Did the court recommend deportation?	
2) Has that sentenced finished? When? Or When does your sentence expire?	
3) Were you released at the end of your sentence? If yes, a) When were you released? b) When were you detained following release? If no, a) How long have you been detained post-sentence?	

15. Are you aware of your immigration status?	
a) British Citizen b) Indefinite leave to remain c) Limited leave to remain d) Overstayer e) Asylum seeker	

<p>16. Have you received any documents from IND about your immigration status or decision notices? (Notice of decision to deport (which precedes DO) Deportation Order (signed by Minister) Reasons for detention (IS91R checklist) Other)</p> <p>If yes,</p> <p>a) When did you receive this documentation? b) Could you understand the documents?</p>	
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<p>17. Have you seen an immigration officer since recent detention/change of status?</p> <p>If yes,</p> <p>a) when? b) why? c) did the IO give you any explanation?</p>	
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<p>18. Have you received any form of immigration legal advice since your recent detention/change of status?</p> <p>a) have you received a visit from an adviser? b) have you received a letter from your adviser explaining your status and what is happening? c) if not, has anyone helped you get advice?</p>	
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<p>19. Do you know what to expect next? What are your main worries about what may happen next?</p>	
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Appendix III

IMB Questionnaire

Three main questions

1. Are there any particular issues arising in your establishment from the recent changes relevant to foreign national prisoners/detainees?

2. Are there any foreign nationals/detainees that you are particularly worried about? If so, can you give general information about their circumstances for possible publication as an anonymised case study, leaving out personal details that could identify the person? (*Please continue overleaf if necessary*)

3. Have the changes produced any benefits?

Two supplementary questions if information available

1. Have the number of applications to the IMB from foreign nationals/detainees gone up in recent months?

2. How many sentence expired detainees are there in your prison/IRC? Have the numbers gone up or down in the last six months?

Appendix IV

Consequences of detention as described in Inspectorate interviews

Factors influenced by detention	Number of interviewees that highlighted this as a main impact of detention
Immigration uncertainty	21
Depression/feelings of self-harm or suicide	18
Loss of work	12
Fear of returning to home country	12
Loss of self respect/independence	10
Any other incidents in custody	4