Memorandum to the Home Affairs Committee

Post-Legislative Scrutiny of the Immigration, Asylum and Nationality Act 2006

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by the Secretary of State for the Home Department
by Command of Her Majesty

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INTRODUCTION

1. This memorandum provides a preliminary assessment of the Immigration, Asylum and Nationality Act 2006 (Ch.13) ("the 2006 Act") and has been prepared by the UK Border Agency for submission to the Home Affairs Select Committee. It is published as part of the process set out by the previous Government in the document *Post Legislative Scrutiny – the Government's Approach* (Cm 7320), published in March 2008. The current Government has accepted the need to continue the practice of post-legislative scrutiny as supporting the coalition aim of improving Parliament's consideration of legislation.

OBJECTIVE OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

2. The objective of the 2006 Act was to deliver proposals requiring primary legislation which were contained in two strategy documents published by the previous Government, namely:

- "Controlling our borders: Making migration work for Britain", the Home Office five year strategy for asylum and immigration, published in February 2005, and
- "Confident Communities in a Secure Britain", the Home Office Strategic Plan, 2004-2008, published in July 2004.

3. Consequently, the main emphasis of the 2006 Act was on facilitating better enforcement and transparency of the immigration and asylum system, including strengthening the border. Key provisions tackled exploitation of the immigration appeals process; combatted illegal working by introducing a civil penalty for employers; and increased powers to collect and share information as part of the e-Borders programme, including extending the power to take biometrics and the verification of information in passports and visas.

4. The 2006 Act also supplemented the wider counter terrorism strategy by, for example, amending the British Nationality Act 1981 to enable action to be taken against those whose presence in the UK is not conducive to the public good and to make it clear that the 1951 Refugee Convention did not afford protection to those linked to terrorism.

Commencement

5. Sections 10, 30, 43, 48, 56 and 57 came in to force on 16 June 2006. Section 45 came in to force on 30 June 2006. Sections 1,2, 3, 5, 6, 7, 11, 19, 23, 27, 28, 29, 40, 41, 42, 46, 49, 53 to 55 and 59 came in to force on 31 August 2006. Section 9 came in to force 13 November 2006. Section 58 came in to force on 4 December 2006. Section 50 came in to force on 31 January 2007. Sections 8, 51 and 52 came in to force on 30 April 2007. Sections 20 and 32 came in to force on 5 November 2007. Sections 15 to 18 came in to force on 28 February 2008. Sections 21 and 22 came

in to force on 29 February 2008. Sections 31, and 34 to 39 came in to force on 1 March 2008. Section 47 came in to force on 1 April 2008 along with section 4, but only in so far as it relates to applications made under the Points Based System. Sections 12,13, 33, 44 have not come in to force.

Supporting documents

- Annex A lists relevant publications.
- Annex B lists the Commencement Orders for the 2006 Act.
- Annex C lists all secondary legislation made under the 2006 Act, other relevant secondary legislation and codes of practice issued under the 2006 Act.
- At Annex D is the 2007/8 Monitor's Report on authorised persons under section 40 of the 2006 Act.

APPEALS

Section 1: Variation of leave to enter or remain & Section 3: grounds of appeal

6. Section 1 amends the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") by inserting a section 83A; section 3 amends the 2002 Act by inserting section 84(4). Both concern the appeal rights of those recognised as refugees in the UK but who are considered to no longer need protection because their circumstances, or the position in their country of origin, has changed.

7. Section 83A provides a right of appeal for people no longer recognised as refugees but who are being allowed to stay in the UK on another basis. Section 84(4) stipulates that an appeal under section 83A must be brought on the grounds that removal would contravene the UK's obligations under the 1951 Refugee Convention. This ensures that someone can appeal against a decision that they are no longer a refugee, even if they have been granted leave on some other grounds.

Section 2: Removal

8. Section 2 came into force on 31 August 2006 and amended section 82(2)(g) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). This provides a right of appeal against the use of the power in section 10(1)(ba) of the Immigration and Asylum Act 1999 to remove a person whose leave has been revoked under section 76(3) of the 2002 Act as no right of appeal was provided for when this power was introduced by section 76(7) of the 2002 Act.

Section 4: Entry Clearance

9. Section 4 substitutes a new section 88A in the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to restrict full appeal rights against refusal of entry clearance to those seeking entry clearance as dependants and family visitors. Section 4 came into force on 1 April 2008 but only in so far as it relates to applications made under the points based system. Under section 4 (3) the Secretary of State must lay a report before Parliament about the effect of these changes within three years of commencement and this was done on 24 March 2011. The report, entitled "Removal of full appeal rights against refusal of entry clearance decisions under the points-based system" can be found at http://www.official-documents.gov.uk.

10. No regulations have been made under new section 88A (1) specifying persons with a right of appeal as visitors or dependants of persons in the UK. Appeal rights for family visitors are specified in section 90 of the 2002 Act and section 2 of the Immigration Appeals (Family Visitor) Regulations 2003.

Section 5: Failure to provide documents

11. Section 5 was brought into force on 31 August 2006 and inserts a new section 88(2) (ba) in the Nationality, Immigration and Asylum Act 2002. The effect is to restrict the right of appeal where a person fails to provide a medical certificate or a medical report in accordance with a requirement of the Immigration Rules. This amendment was made to ensure that those arriving from countries where particular diseases (e.g. tuberculosis) were rife could be removed quickly, thereby preventing additional burdens on the NHS. In the absence of a medical report confirming the applicant poses no risk, there remains a right of appeal from abroad against removal. The appeal is in the UK if the appellant claimed that the decision to remove breached the UK's obligations under the 1951 Refugee Convention or the Human Rights Act 1998.

Section 6: Refusal of leave to enter

12. Section 6 came into force on 31 August 2006 and substituted a new section 89 in the Nationality, Immigration and Asylum Act 2002 so that the only way a person refused leave to enter on arrival is entitled to a full in-country right of appeal is if they possessed an entry clearance and they seek entry for the same purpose as that specified in their entry clearance. This section prevents in-country appeals from those refused leave to enter solely on the grounds that they have an entry clearance when they are seeking entry for a different purpose. A person has a full right of appeal from abroad against refusal of leave to enter if leave to enter is being sought for a different purpose from that for which entry clearance was granted.

Section 7: Refusal of leave to enter

13. Section 7 came into force on 31 August 2006 and inserted a new section 97A in the Nationality, Immigration and Asylum Act 2002, requiring that an appeal against a decision to make a deportation order certified on national security grounds should normally only be brought from outside the UK. Where the appellant makes a human rights claim, the provision allows for this to be brought in-country unless the Secretary of State certifies that removal would not breach the UK's obligations under the ECHR. However, the clause provides for an in-country appeal against this certificate to the Special Immigration Appeals Commission.

Section 8: Legal Aid

14. Section 8 came into force on 30 April 2007 and amended section 103 D of the Nationality, Immigration and Asylum Act 2002. This gave wider powers to Immigration Judges when deciding whether to grant a costs order.

15. On the 15 February 2010 the Asylum and Immigration Tribunal transferred into the two-tier unified tribunal structure established by the Tribunals, Courts and Enforcement Act 2007. The changes meant that the retrospective funding order scheme was abolished and cost orders were no longer required which means that for most cases, where the judge refuses the application no funding will be claimable. Where the application is successful the costs of that application and subsequent appeal costs will be claimable subject to the usual Legal Services Commission funding requirements. The limited exceptions are - where an application for permission to appeal to the Upper Tribunal is: (a) being dealt with under the UK Border Agency detained Fast Track processes: or (b) has been lodged by the UK Border Agency. In these cases, reasonable costs may be claimed for work associated with the application, irrespective of whether permission is granted or not.

Section 9: Abandonment of appeal

16. Section 9 came into force on 13 November 2006 and amended section 104(4) of the Nationality, Immigration and Asylum Act 2002 so that it applies only to those who bring an appeal whilst in the UK, and allows appeals on asylum grounds to continue even if leave to enter or remain is granted. This amendment was made primarily to protect the appeal rights of refugees.

17. Under section 104(4) as originally drafted the grant of a period of leave to enter or remain in another capacity would have caused an appeal brought on asylum grounds to be treated as abandoned. The amendment permitted the appeal to be continued on asylum grounds only, so as to allow the courts to determine whether or not the person was in need of international protection and entitled to the benefit of the 1951 Refugee Convention.

18. The Asylum and Immigration Tribunal (Procedure) Rules 2005 were amended by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006 to reflect the changes to section 104 and these also came into force on 13 November 2006.

Section 10: Grants

19. Section 10 came into force on 16 June 2006 and repealed section 110 (grants to advisory organisations) of the Nationality, Immigration and Asylum Act 2002. Funding for two organisations, the Refugee Legal Centre (RLC) and Immigration Advisory Service transferred to the Legal Services Commission which put both organisations on the same footing as solicitors and other not-for-profit organisations.

Section 11: Continuation of leave

20. Section 11 came into force on 31 August 2006, it amended section 3C of the Immigration Act 1971 and inserted a new section 3D.

21. As originally drafted section 3C continued existing leave to enter or remain only until a decision had been made on the application under consideration. Leave continued beyond that by virtue of paragraph 17 of Schedule 4 to the Immigration and Asylum Act 1999. Paragraph 17 however did not apply to those who had been required to leave the UK within 28 days of the decision. Section 3C, as amended, makes it clear that leave is continued under this section while an appeal could be brought within the United Kingdom.

22. Section 3D rectifies an anomaly. Section 82(3) of the Nationality, Immigration and Asylum Act 2002 extended curtailed leave until any appeal was concluded. This meant those with curtailed leave could make an in time application for leave to remain with a further in-country right of appeal, thus encouraging unmeritorious applications and delaying removal. Under section 3D as amended, no further applications can be made once the curtailment decision has been taken, although the appellant cannot be removed until their appeal rights have been exhausted. Whilst this has reduced an individual's ability to make a new application and therefore delay removal, it does not prevent the making of further representations which still need to be considered before removal.

Section 12: Asylum and human rights claims: definition

23. Section 12 amended section 113 of the Immigration Nationality and Asylum Act 2002 ("the 2002 Act") to provide revised definitions of asylum and human rights claims. It has not been brought into force.

24. The intention of this amendment was to reflect in the 2006 Act the current law, in particular that an asylum or human rights claim made in grounds of appeal is an asylum or human rights claim for the purpose of section 92(4)(a) of the 2002 Act. However the AIT's judgment in SS (Turkey) 2006 UKAIT 00074 changed that position. The AIT judgement concluded that where a notice of appeal was lodged with the AIT rather than the Secretary of State, any asylum or human rights claims made in the

grounds of appeal had not been made to the Secretary of State and did not therefore constitute an asylum claim under section 113 of the 2002 Act. The recent Court of Appeal judgment in ZA (Nigeria) 2010 EWCA Civ 926 confirmed that the UK Border Agency's original interpretation of section 113 is correct, so it has not been necessary to commence this section.

Section 13: Appeal from within the United Kingdom: certification of unfounded claim

25. Section 13 amended section 94 of the Immigration Nationality and Asylum Act 2002 to enable the Secretary of State to make regulations to limit the requirement to certify clearly unfounded asylum and human rights claims, if the person had a specified type of leave when the claim was made. This has not been brought into force as the current focus is on strengthening these provisions, not limiting them.

Section 14: Consequential amendments

26. Section 14 contains consequential provisions.

EMPLOYMENT

Section 15: Penalty; Section 16: Objection; and Section 17: Appeal

27. Sections 15 – 17 were commenced on 28 February 2008 and enabled the Secretary of State to impose a civil penalty on those employing illegal migrant workers, with rights of objection and/or appeal against it. Section 15(2) and (7) enable the Secretary of State to make an order prescribing the maximum penalty. The Immigration (Employment of Adults subject to Immigration Control) (Maximum Penalty) Order 2008 (SI 2008/132) 2008 came into force on 29 February and set the maximum at £10,000 per illegal worker employed.

28. A key objective of the civil penalty regime was to ensure that employer responsibilities were aligned with the Points-based system and the roll-out of Biometric Residence Permits. Comprehensive Guidance for Employers on Preventing Illegal Working was published in February 2008 (updated in November 2010) with Summary Guidance published in April 2009 (updated in December 2010).

29. Prior to introduction of the civil penalty, illegal working was punishable by criminal sanction only and there had been just 30 convictions in the previous 10 years. The civil penalty offered a more proportionate and effective response. Where there is evidence of illegal working, a Notice of Potential Liability is served on the employer by UK Border Agency Immigration Officers. The matter is then referred to the UK Border Agency Civil Penalty Compliance Team (CPCT) who must take account of the relevant code of practice (see below) and apply the legislation fairly and

consistently to determine the level of penalty. Over 6000 penalties have been issued since introduction.

30. Codes of practice were published in February 2008, as required under sections 19 and 23, (see below), which were the subject of a public consultation between 15 May and 7 August 2007 as well as a specific consultation with the Commission for Racial Equality, the Equality Commission for Northern Ireland and bodies representing employers and workers. Both codes are available on the UKBA website and are listed in Annex A.

31. Approximately 70% of employers object to a civil penalty and 10% of these result in cancellation at that stage. In 2009, a court ruling determined that the Secretary of State did not have discretion over the statutory deadline for responding to objections, therefore the CPCT had to implement a new system to ensure more robust management. Due to 137 objections passing the deadline it was necessary to write-off £1.7 m worth of penalties.

32. Around 12% of employers appeal (10% lodge both an objection and an appeal) to the courts and on average, 73% of appeals are found in favour of the Secretary of State.

Section 18: Enforcement

33. Section 18 came into force on 28 February 2008 and enabled the Secretary of State to recover an illegal working civil penalty debt. The appointment of debt recovery agents has improved performance of debt recovery. In the first year following introduction £1.3m was collected, compared to £4.3m in the second year and £6.9m in the 2010/11 financial year.

Section 19: Code of Practice

34. Section 19 came into force on 31 August 2006 and required the Secretary of State to make an order bringing into force a code of practice specifying factors to be considered when determining the amount of civil penalty to be imposed for employing an illegal migrant worker. The Immigration (Restrictions on Employment) Order 2007 (SI 2007/3290) was laid before Parliament on 22 November 2007 which, amongst other things, brought into effect the Code of Practice for Civil Penalties for Employers.

Section 20: Orders

35. Section 20 was commenced on 5 November 2007 and made provision for the content of orders made under sections 15, 16 or 19 as well as the necessary Parliamentary process. The Immigration (Restrictions on Employment) Order (SI 2007/3290) came into force on 29 February 2008 and apart from bringing into force the Codes of Practice, specified how an

employer may be excused from paying a section 15 penalty, what documents they needs to check in order to establish whether a person has a right to work and the objection procedures regarding the penalty.

36. Employers have expressed concern at the number of different documents that a prospective employee may present (these are specified in Annex A to SI 2007/3290) and these are kept under permanent review by UKBA as the Biometric Residence Permits programme is rolled out. UKBA is committed to simplifying and improving both the documents and support services available to employers to make these checks more straightforward.

Section 21: Offence; and Section 22: Offence: bodies corporate, &c

37. Sections 21-22 came into force on 29 February 2008 and retain a criminal sanction against employers who knowingly employ an illegal worker.

38. There have been 12 prosecutions since the commencement of these sections. The UK Border Agency regularly review enforcement strategies including prosecution. A strategic review is underway to ascertain how we can make the best use of these powers.

39. In many cases where a prosecution under sections 21 or 22 would be viable, the Crown Prosecution Service will advise charges for facilitation under s25 of the Immigration Act 1971 rather than the IANA 2006 s21 offence. Section 25 carries a 14 year tariff and reflects the level of harm often associated with employers who are complicit in illegal working. Updated instructions have recently been issued to UK Border Agency enforcement teams to improve joint working and ensure the early involvement of specialist immigration crime teams where either illegal working or facilitation offences are indicated.

Section 23: Discrimination – Code of Practice

40. Section 23 came into force on 31 August 2006 and requires the Secretary of State to issue a code of practice specifying what an employer must do to avoid contravening race relations legislation, whilst seeking to avoid a section 15 civil penalty or section 21 criminal prosecutions. The 'Prevention of Illegal Working, Guidance for Employers on the avoidance of unlawful discrimination in employment practice while seeking to prevent illegal working' was brought in to force by SI 2007/3290 on 29 February 2008.

41. The UK Border Agency recommends that employers check the documents of all employees and are unaware of any racial discrimination issues arising since the implementation of the regime.

42. Research conducted in December 2009 found that 50% of employers currently employed overseas staff; this represented an increase of nearly 20% on research undertaken prior to the implementation of the civil

penalty. This indicates that employers have not been dissuaded from employing overseas workers and have not adopted a more discriminatory approach to recruitment as a result of the civil penalty regime.

Section 24: Temporary Admission, &c

43. Section 24 came in to force in February 2008 and provides that an employer is not liable to a penalty under section 15and commits no offence under section 21 if he employs someone who does not have leave to enter or remain, but has been granted temporary admission or release and has permission to take up employment.

Sections 25 and 26

44. Sections 25 and 26 contain interpretation and repeals provisions relevant to sections 15 to 24.

INFORMATION

45. The information sections generally support the strategic aim of a fully integrated, intelligence-led immigration control that captured travel-related information electronically through a single point to check passengers in/out of the UK, thus enabling the border agencies (police, immigration, revenue and customs) to undertake appropriate interventions. (The Home Affairs Committee have previously considered e-Borders, see the Third Report of the Session 2009-10, The e-Borders Programme, published on 15 December 2009).

Section 27: Documents produced or found

46. Section 27 came into force on 31 August 2006 and amended paragraph 4 of Schedule 2 to the Immigration Act 1971 by inserting new sub-paragraphs (4) & (5) and repealing paragraph 4(2A). These provisions contributed to a fully integrated border control by enabling UK Border Agency officers to retain and examine documents found on passengers during examination.

47. Section 27 also enabled the UK Border Agency to use new technology to check the biometrics (fingerprints and photograph) of the person presenting a document (e.g. passport, biometric enabled visa or biometric residence permit) against linked records, to establish whether they were the rightful holder. Biometrics collected through the e-Borders, Secure ID and e-Gates programmes combined with information in other travel documents and airline booking information are checked against UK databases to identify those who present a known immigration or security threat so that appropriate action can be taken by the border agencies.

48. Guidance for passengers on fingerprint checks at the border is on the UKBA website (see Annex A) and a UK Border Agency leaflet, ‘Fingerprint checks at the border” is distributed at ports.

Section 28: Fingerprinting

49. Section 28 came into force on 31 August 2006 and extended section 141 of the Immigration and Asylum Act 1999 so that fingerprints could be taken (and stored) from anyone detained for examination at the border, whether on arrival or departure, under paragraph 16 of schedule 2 to the Immigration Act 1971. Previously section 141(7) (d) only permitted fingerprints to be taken from a person who had been arrested, but in the majority of cases someone detained at the border is not arrested. Section 28 therefore assists the UK Border Agency and police in the early identification of people making multiple applications in a variety of identities. Furthermore, the amendment enabled Detention Custody Officers to take fingerprints from those held in short term holding facilities.

Section 29: Attendance for fingerprinting

50. Section 29 came into force on 31 August 2006 and amended section 142(2) of the Immigration and Asylum Act 1999 by inserting new subsections (2) and (2A) so that asylum seekers and their dependants may by notice be required to attend for fingerprinting not less than three days from the date of the notice on a specified day, at a specified time of day and during specified hours at a specified place. The notice period for others required, for immigration purposes, to attend for fingerprinting remains at seven days from the date of the notice.

Section 30: Proof of right of abode

51. Section 30 was brought into force on 16 June 2006 and substituted a new section 3(9) in the Immigration Act 1971, so making four changes to the way someone seeking to enter the UK could prove they had the right of abode. Before this amendment someone could prove right of abode by means of:

    - a UK passport describing him as a British citizen;
    - a UK passport describing him as a citizen of the UK and Colonies having the right of abode in the UK; or
    - a certificate of entitlement.

52. When the British Nationality Act 1981 came in to force, citizens of the UK and Colonies became British citizens, British overseas territories citizens or British Overseas citizens. The reference to citizens of the UK and Colonies in section 3(9) of the 1971 Act was therefore obsolete and the section 30 amendment removed it.The section 30 amendment also clarified that the holders of UK passports were British subjects with the right of abode.

53. Subsections (c) and (e) reflected changes made by the Identity Cards Act 2006 (repealed by the Identity Documents Act 2010).

Section 31: Provision of information to immigration officers &
Section 32: Police Powers - passenger and crew information

54. Section 31 came into force on 1 March 2008, amending paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971 so that the Secretary of State may make an order enabling an immigration officer to routinely require a carrier to provide passenger, crew or service information.

55. Section 32 came into force on 5 November 2007, enabling the police to collect passenger data for their purposes. Section 32 broadens the information acquisition powers available under the Terrorism Act 2000.

56. The consequent Immigration and Police (Passenger, Crew and Service Information) Order (SI 2008/5) came into force on 1 March 2008. SI 2008/5 specifies the type of information that may be requested by immigration officers or the police from carriers as being Advance Passenger Information (API) (also known as Travel Document Information (TDI)) and Other Passenger Information (OPI) (also known as Passenger Name Records (PNR)) and service data. The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2007 (SI 2007/3579) came into force on 2 January 2008 and modified section 31 and 32 so that the amendments to paragraphs 27 and 27B of Schedule 2 to the 1971 Act could be applied to Channel Tunnel trains, this is reflected in SI 2008/5.

57. This means passenger, service and crew data can be captured once by the National Border Targeting Centre (NBTC) and checked against UK Border Agency and other law enforcement agencies' watch lists. The NBTC has been instrumental in intercepting more than 8,400 criminals.

<u>e-Borders and European Law</u>

58. e-Borders is the electronic system for carrying out checks on passengers before they begin their journey to the UK. In April 2009, a question was raised with the European Commission regarding e-Borders' compatibility with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within Member States (the Free Movement Directive) and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Directive).

59. On 17 December 2009 the Commission stated that it is compatible with European free movement law and the data protection directive for e-Borders to collect API from carriers registered in Member States operating on intra-EU routes, subject to the system operating in accordance with assurances given by the UK Border Agency. The Commission referred to six assurances, including "passengers who are EU citizens or their family members will not be refused entry/exit or incur sanctions in any way on

the basis that their passenger data is unavailable to the UK authorities for whatever reason"; and "carriers will be instructed by the UK authorities not to deny boarding to travellers… who do not communicate API data to the operator, and that the provision of API data to operators is neither compulsory nor is made a condition of purchase and sale of the ticket."

60. Since December 2009 the UK Border Agency and the Commission have been working towards a mutual understanding as to how e-Borders can operate to strengthen UK and EU security without impacting on free movement.

61. Regarding data protection, the Commission agreed in December 2009 that it is lawful for e-Borders to collect API on EEA routes and for this to be transmitted to the UK, subject to the approval of each Member State's Data Protection Authority. The UK Border Agency continue to work closely with individual Member State Data Protection Authorities to secure acknowledgement that law enforcement and the fight against terrorism, smuggling and other offences constitute a public and legitimate interest for the purposes of the Data Protection Directive, so that API data can be transmitted.

Section 33: Police Powers – freight information

62. Section 33 enables a police superintendent to require freight data in respect of ships, aircraft and vehicles arriving (or expected to arrive) in or leaving (or expected to leave) the UK for national security, counter-terrorism and crime detection purposes. The Secretary of State may make an order specifying a kind of freight information that can be required. This provision has not been commenced.

63. The Office for Security and Counter Terrorism are considering whether data provided via the UK Border Agency's Freight Targeting System (a data portal providing a real time risk assessment enabling the targeting of high risk goods) is sufficient or whether, in the light of the aviation security review which followed the 2010 East Midlands Airport bomb plot, section 33 should be commenced.

Section 34: Offence

64. Section 34 was brought into force on 1 March 2008. it creates offences and prescribes the sanctions available to the courts following the conviction of anyone failing to comply with a police request as set out in sections 32 and 33. These sanctions are equivalent to those available to the courts regarding those who fail to comply with an immigration officer's request for information made under section 27 of the Immigration Act 1971. Although there have been no prosecutions under this provision, the potential sanction has encouraged carrier compliance with police requests. Subsection (1) provides the carrier with a reasonable excuse defence for non-compliance.

Section 35: Power of Revenue and Customs to obtain information

65. Section 35 was brought into force on 1 March 2008 and amended section 35 of the Customs and Excise Management Act 1979 ("the 1979 Act"), putting beyond doubt that ships and aircraft must satisfy, before arrival in the UK, the reporting requirements of the Commissioners' Directions. Carriers have cooperated in providing timely passenger information so it has been unnecessary to amend the Commissioner's Directions (18 October 2001) on Passenger Information. However, the amendment to section 35 of the 1979 Act enables enforcement via the Commissioner's Directions, should it be necessary.

Section 36: Duty to share information

66. Section 36 was brought into force on 1 March 2008 and requires passenger, crew, service and freight information to be shared between the border agencies for specified purposes. Section 21 of the Borders, Citizenship and Immigration Act 2009 amended section 36 so that it applies to designated customs officials, immigration officers, the Secretary of State in so far as the Secretary of State has general customs functions or functions relating to immigration, asylum or nationality, the Director of Border Revenue and any person exercising functions of the Director.

67. The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008 (SI 2008/539) came into force on 1 March 2008. SI 2008/539 specifies the information which the border agencies must share where it is likely to be of use for immigration, customs or police purposes. This is essential for joined-up border management as it enhances the ability to identify those who present a threat and enables an appropriate, co-ordinated and proportionate operational intervention regarding those suspected of involvement in terrorism, smuggling, illegal migration and other crime.

68. Information is held at the National Border Targeting Centre who share it between the border agencies as necessary.

Section 37: Information sharing: code of practice

69. Section 37 came into force on 1 March 2008 and requires the Secretary of State and the Treasury to issue one or more Codes of Practice on the use of information shared under section 36 and which must be brought into force by means of an order. The Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) Order 2008 (SI 2008/8) brought The Code of Practice on the Management of Information shared by the Border and Immigration Agency (now the UK Border Agency), Her Majesty's Revenue and Customs and the Police into force on 1 March 2008. This Code sets out what may be shared, how, for what purposes, with what safeguards (e.g. compliance with the ECHR and the Data

Protection Act 1998) and the sanctions which may be imposed for misuse of data.

70. The Secretary of State and the Treasury must review the Code from time to time. A review conducted in December 2008 found that HMRC and immigration officers had agreed processes and safeguards in line with the Code. The police have guidelines for their use of the e-Borders system (e.g. limited to serious offences and people who are on "wanted" lists). Additionally, National Border Targetting Centre managers regularly monitor processes and a record is kept of these checks. The HMRC Enforcement Systems Management Team audits and monitors Freight Targeting System usage, supported by local management checks.

71. Under the Data Protection Act 1998, individuals can request access to personal information held by e-Borders by making a written 'Subject Access Request', this process is described on the 'requests for personal information' page of the UKBA website (UKBA acts as the single point of contact for all the border agencies).

Section 38: Disclosure of information for security purposes

72. Section 38 came into force on 1 March 2008 and provides a discretionary power for the Secretary of State, chief officers of police and HMRC to disclose information obtained or held by them in the course of their functions to the security and intelligence agencies to the extent that it is likely to be of use for their purposes. Section 38 was amended by section 14 of the Police and Justice Act 2006 (although that amendment has not been brought in to force) and it was repealed on 27 November 2008 by Schedule 1, paragraph 4 of the Counter-Terrorism Act 2008, as the creation of a new information sharing gateway made the provisions in section 38 redundant.

73. The targeted disclosure of information supports the wider counter terrorism strategy and initiatives to combat serious and organised crime. Section 38(4) enabled the Secretary of State and the Treasury, by order, to specify the powers under which information obtained can be disclosed. The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008 (SI 2008/539) came into force on 1 March 2008 and specifies travel related information which the border agencies must share with each other where it is likely to be of use for immigration, revenue and customs, or police purposes. The order also specifies that the border agencies may disclose this information to the security and intelligence agencies if it is likely to be of use for certain security purposes. This underpins the data sharing required under the e-Borders programme and other joint working arrangements to secure the border.

Section 39: Disclosure of information to law enforcement agencies

74. Section 39 came into force on1 March 2008 and enables a chief officer of police to share information that has been obtained in accordance with sections 32 or 33 to police services in Jersey, Guernsey, the Isle of Man and foreign law enforcement agencies. Most existing data sharing gateways enable border agencies to exchange information with each other to fulfil their own statutory function rather than for joint purposes. Section 39 supports the level of joint working necessary under the e-Borders and the Border Management Programme. The capacity to disclose information is fundamental to the ability of the border agencies to identify border traffic which poses a risk.

Section 40: Searches: contracting out

75. Section 40 came into force in August 2006 and enabled the Secretary of State to authorise a person or class of persons to search ships, aircraft and vehicles for those whom an immigration officer might wish to examine, and to search and detain anyone apprehended. This enabled the appointment of Authorised Search Officers (ASO), employed by private contractors, to search vehicles at the juxtaposed controls to prevent clandestine entry to the UK. Previous legislation only enabled Immigration Officers to do such work.

76. Following a tendering process, a contract was awarded to Eamus Cork Solutions (ECS), a French company, who started work in October 2006 at the Port of Calais. A contract was also awarded to Wagtail Ltd, a British company who provide body detection dogs; their dog-handlers are ASOs and work alongside ECS and UK Border Agency staff in the control zone. ASOs are accredited individually following security screening and a comprehensive and ongoing training programme, which is refreshed annually. Continuing accreditation depends on achieving the required level of proficiency.

77. ECS undertake the final examination of vehicles as they wait to board ferries. They are the 3rd component in a layered port system which also incorporates a security control run by the Port Authority/French Police (PAF) and the UK Border Agency freight examination operation. Initially ECS provided an escort facility to deliver all clandestines detected to a UK Border Agency holding facility but the PAF now collect all clandestines from the place they were apprehended. When clandestine entrants are detected, the period of detention has been substantially below the 3 hour limit established by section 40.

78. The use of private contractors has allowed the deployment of Immigration Officers to duties which match their skills and made a significant contribution to the strengthening of the UK border.

Clandestines detected by ECS/Wagtail, 2007-10

2007	1,885*
2008	2,575*
2009	2,393*
2010	1,595**

** Lower figure reflects the effectiveness of French Government measures to reduce the clandestine population concealed around Calais Port and in restricting the flow of clandestines crossing France en route to Calais

79. The ECS contract expires in 2011 and the UK Border Agency has initiated a tendering process to identify a partner to commence work in September 2011.

Section 41: Section 40: supplemental

80. Section 41 was brought into force in August 2006 and places an obligation on the Secretary of State to appoint a Crown Servant to monitor and inspect how the powers of persons (other than constables or HMRC officers) authorised under section 40 are exercised, investigate any allegations against the ASOs and report to the Secretary of State. Section 41 also enables authorisation for specified periods and for it to be revoked or suspended, furthermore it makes it a criminal offence to abscond from detention or to obstruct or assault an ASO.

81. The first Crown Servant monitor, Ian Delvalle (HMRC) was appointed on 2 July 2007 and his 2007/8 Report is at Annex D. His successor, Judith Sweatman (HMRC) was appointed on 16 June 2010 and will submit her first report shortly.

Section 42: Information: embarking passengers

82. Section 42 was brought into force in August 2006 and amended paragraph 3 of Schedule 2 of the Immigration Act 1971 making the powers to examine embarking passengers consistent with those applied when examining passengers on arrival. Prior to this amendment the power to examine on embarkation was limited to establishing whether or not the person was a British citizen and if not, to establish their identity and nationality, it did not permit officers to enquire about the person's immigration status or undertake further examination or detain them. This amendment makes it easier for the UK Border Agency to identify and if necessary take immigration and customs offenders on embarkation. It also enhances the UK Border Agency's contribution to the counter terrorism effort by identifying those of interest to the security agencies.

83. Since 1998, embarkation controls have been conducted on a targeted, intelligence-led basis, with enhanced co-operation between the border agencies. They can be established at short notice at most ports, including in response to urgent security alerts, as was the case following the London terrorist attacks in July 2005.

CLAIMANTS AND APPLICANTS

Section 43: Accommodation

84. Section 43 was commenced in June 2006 and amended the Immigration and Asylum Act 1999 ("the 1999 Act") in response to the substantial increase of failed asylum seekers and their dependants in receipt of support under section 4 of the 1999 Act.

85. Section 43(1) & (2) amended section 99 of the 1999 Act enabling Local Authorities to provide support under section 4 following arrangements made by the Secretary of State; section 99 had previously only covered the support provided under sections 95 and 98 of the 1999 Act. However, section 99 of the 1999 Act has not been commenced. The UK Border Agency has devolved the provision of subsistence support to a private sector provider, delivering the provision of accommodation through a range of public and private sector providers. Section 99 gives the UK Border Agency the option to arrange for Local Authorities to provide asylum support if the need arises.

86. Sections 43(3) amended section 118(1)(b) of the 1999 Act and enables local authorities to use their existing housing powers to grant tenancies or licences to occupy to those supported under section 4; section 118(1)(b) was previously limited to the provision of support under section 95.

87. Sections 43 (4),(5) and (6) amended housing legislation throughout the UK, making it more consistent by removing entitlement to protection from eviction for those supported under section 4 and ensuring that recipients did not acquire secure tenancy rights; sections 43 (4),(5) and (6) were previously limited to the provision of support under section 95.

88. Section 43(7) inserted section 4(10) and (11) in the 1999 Act enabling the Secretary of State to make regulations permitting a section 4 supported person to be provided with specified facilities or services and for vouchers to be issued which could be exchanged for goods or services. The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 (SI 2007/3627) commenced on 31 January 2008 and specified the types of additional services and facilities, and the relevant amounts, which supported persons may apply for. The regulations recognised that section 4 supported persons require further services or facilities that are above and beyond those which can be provided in the form of ordinary section 4 support. Guidance on the provision of this support is available on the UKBA website. Section 4 voucher support was replaced by the Azure pre-payment card on 15 February 2010.

Section 44: Failed asylum-seekers: withdrawal of support

89. Section 44 enables the Secretary of State to repeal, by order, paragraph 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 and section 9(1)(2) and (4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It has not been commenced.

90. Paragraph 7A enables the Secretary of state to withdraw support under section 95 of the Immigration and Asylum Act 1999 from families whose asylum application has been refused, their appeal rights are exhausted and the Secretary of State certifies that they have not taken reasonable steps to leave the UK voluntarily. In 2005 a pilot project tested these powers with families being offered assisted voluntary return. The results suggested that withdrawal of support was ineffective as a standalone measure and it was decided that this power should no longer be exercised by the Secretary of State and the power should therefore be repealed, although this has not yet been done.

Section 45: Integration Loans

91. Section 45 was brought into force on 30 June 2006 and amends section 13 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("the 2004 Act") to bring it into line with the policy of granting limited leave to refugees. It also enables the extension of loan eligibility to categories of migrant other than refugees. The Integration Loans for Refugees and Others Regulations 2007 (SI 2007/1598) came into force on 11 June 2007 and were made under section 13 of the 2004 Act, as amended by section 45. They specify that refugees, those granted humanitarian protection and the dependants of those categories are eligible to apply for integration loans. This ensures that people who are given leave to remain on humanitarian grounds are treated in the same way as refugees.

Section 46: Inspection of detention facilities

92. Section 46 came into force on 31 August 2006 and extended the statutory oversight of HM Chief Inspector of Prisons (HMCIP) to include immigration short-term holding facilities (STHFs) and the escort arrangements for detained persons. This made the oversight of STHFs and escort arrangements consistent with the position of immigration removal centres, which were made subject to HMCIP oversight by section 152(5) of the Immigration and Asylum Act 1999. It regularised HMCIP's previous voluntary oversight of STHFs and escort arrangements, which started in April 2004 (STHFs) and May 2005 (escorts). STHFs and escort arrangements are included in HMCIP's rolling inspection programme.

Section 47: Removal: persons with statutorily extended leave

93. Section 47 was brought into force on 1 April 2008 and is part of the 'one stop' appeals system under which all decisions against which an applicant has a right of appeal can be considered in the same appeal. It sought to streamline the previously separate rights of appeal against a refusal to vary leave and against a decision to remove a person from the UK. It provides that, where a person has continuing leave to enter or remain in the UK, while they may lodge an appeal against a refusal to vary leave (or against curtailment or revocation of leave), the Secretary of State may make a decision that a person should be removed from the UK (against which they may appeal). It means that both appeals can then be heard together and that, if dismissed, the person has exhausted their appeal rights and can be removed from the UK.

94. Section 47 is a discretionary power. The timing of variation and removal decisions has been considered by the courts (e.g. TE (Eritrea) v SSHD [2009] and Mirza & Ors v SSHD [2010]), which confirmed that the Secretary of State is under no obligation to make a decision on removal at the same time as a decision to refuse variation of leave.

Section 48: Removal: cancellation of leave

95. Section 48 was brought into force on 16 June 2006 and sought to simplify the process for removing those unlawfully in the UK by amending section 10(8) of the Immigration and Asylum Act 1999. Notification of a decision in accordance with that section invalidates any leave to remain in the United Kingdom which was previously given to the person. Prior to this amendment leave was invalidated only at the point at which removal directions were given under section 10.

96. This reflected the change to appeal rights made by section 82 of the Nationality, Immigration and Asylum Act 2002, which provided a right of appeal against the notice of a decision to remove a person from the UK by way of directions rather than against the decision to serve removal directions.

97. Section 48 has helped to expedite the removals process, and ends any entitlement to work or to access public funds from the point at which a person is served with the decision that they are to be removed from the UK, rather than at the point at which they are issued with removal directions.

98. The Court of Appeal confirmed in RK (Nepal) v SSHD [2009] that the invalidation of leave under section 10(8) of the 1999 Act did not attract a separate right of appeal.

Section 49: Capacity to make nationality applications

99. Section 49 came into force on 31 August 2006 and inserts a new section 44A in the British Nationality Act 1981 enabling the Secretary of State to waive the requirement that those seeking to naturalise, renounce citizenship or resume citizenship following renunciation, be "of full capacity". Prior to this the UK Border Agency had no discretion regarding "full capacity" which led to applications being refused even where it was in the applicant's best interests to grant (if the applicant met all other relevant criteria). By establishing the discretion to waive the requirement that a person is not of full capacity, the UK Border Agency is able to comply with disability discrimination legislation.

Section 50: Procedure

100. Section 50 partially came into force on 31 January 2007, enabling the Secretary of State to prescribe in the Immigration Rules the forms, procedures, information and documents required when making an immigration related application, as well as the consequences of non-compliance.

101. Section 50(4) amended section 41(1) of the British Nationality Act 1981 so that the Secretary of State's regulation-making powers could specify the consequences of failing to comply with sections 41(1)(a)-(i) of the British Nationality Act 1981. These cover matters such as determining whether a person has sufficient knowledge of English, attendance at a citizenship ceremony and cancelling certificates following deprivation.

102. Regulations made under amended section 41(1) include The British Nationality (General & Hong Kong) (Amendment) Regulations 2007 (SI 2007/3137), The British Nationality (General) (Amendment) Regulations 2009 (which made regulations under section 41(1) (a) and (b) only) and The British Nationality (General) (Amendment) Regulations 2010 (which made regulations under section 41(1) (ba) and (bb) only.)

103. Section 50(5) amended section 10(2) (c) of the Nationality, Immigration and Asylum Act 2002 so that regulations made under section 10 regarding certificates of entitlement enabled the Secretary of State to specify what information should accompany an application.

Section 51: Fees and Section 52: Fees: supplemental

104. Sections 51 and 52 came into force in April 2007 with the aim of consolidating and expanding the UK Border Agency's fees and charging powers and to ensure that they do not prejudice other powers under section 1 of the Consular Fees Act 1980 and any other power to set a fee. This has enabled the UK Border Agency to set and amend fees for processes and services in connection with entry, further leave to remain, settlement and nationality. The UK Border Agency reviews its fees

structure at least annually with the agreement of the Treasury. The various fees order and regulations made under section 51 and 52 are included in Annex C.

MISCELLANEOUS

Section 53: Arrest pending deportation

105. Section 53 was brought into force on 31 August 2006 and amended paragraph 2(4) of Schedule 3 to the Immigration Act 1971 in order to clarify the circumstances in which the powers of arrest under paragraph 17 of Schedule 2 to the 1971 Act arise in deportation cases. The amendment made clear that, for the purposes of deportation cases, the power to arrest (with and without a warrant) is available as soon as the Secretary of State has issued a notice of decision to deport, even though the notice is yet to be given to the prospective deportee. Although not commonly used, section 53 has been successfully applied in suitable cases.

Section 54: Refugee Convention: construction & Section 55: Refugee Convention: certification

106. Sections 54 and 55 came into force on 31 August 2006. Under section 54 the definition of "acts contrary to the purposes of the United Nations" in Article 1(F)(c) of the 1951 Refugee Convention was construed as including acts of terrorism and incitement to commit acts of terrorism (this clarification did not change the legal position). Section 55 enabled the Secretary of State to certify that appellants in such cases were not entitled to protection so that exclusion from the 1951 Refugee Convention was dealt with at appeal as an initial consideration and thereby not take up tribunal time considering irrelevant matters. Since implementation 111 cases have been certified under section 55 of which 59 have been appealed, 43 appeals have been dismissed.

Section 56: Deprivation of citizenship

107. Section 56 came into force on 16 June 2006 and amended sections 40(2) and 40A (3) of the British Nationality Act 1981 ("the 1981 Act") to replace one of the existing grounds for deprivation of British nationality. Previously, section 40 of the 1981 Act provided that a person could be deprived if they had done something "seriously prejudicial to the vital interests of the United Kingdom or a British overseas territory". The new wording specifies that "the Secretary of State is satisfied that deprivation is conducive to the public good". The aim was to be able to deprive someone of British citizenship where, for example, they had engaged in unacceptable behaviour regardless of whether or not this amounted to seriously prejudicial conduct. There remains a safeguard that a person cannot be deprived of British nationality if, in consequence, he would become stateless.

108. This change brought deprivation of nationality criteria in line with those for deportation. In both cases, consideration of what was or was not "conducive to the public good" is informed by the list of "unacceptable behaviours" published on 24 August 2005.

109. This power has been used in a few cases but its effectiveness should increase as the UK Border Agency is developing a new policy which will consider what threshold should be set following conviction.

Section 57: Deprivation of right of abode

110. Section 57 was commenced on 16 June 2006 and inserted a new section 2A in the Immigration Act 1971. This was part of the Government's strategy to combat certain unacceptable behaviours, including the fomenting, justification or glorification of terrorism. Under new section 2A the Secretary of State may remove a right of abode in the UK where:

a) such a right derived from possession of citizenship of another Commonwealth country, and
b) she is satisfied that it would be conducive to the public good for the holder of the right to be removed or excluded from the United Kingdom.

Section 58: Acquisition of British Citizenship

111. Section 58 came into force on 4 December 2006 as part the Government's strategy to combat certain unacceptable behaviours, including the fomenting, justification or glorification of terrorism. Section 58 was repealed by section 47 of the Borders, Citizenship and Immigration Act 2009 and inserted as section 41A of the British Nationality Act 1981.

112. The intention was that those eligible to apply to receive British nationality by registration should be subjected to a statutory requirement of satisfying the Home Secretary that they are of good character. Previously such a requirement applied only to those seeking to acquire British nationality by naturalisation. The registration route is for those people –minors, certain persons already holding a form of British nationality, and certain persons with ancestral connections to the UK- whose particular circumstances are deemed to merit varying degrees of exemption from the full rigours of the naturalisation process. An exception is made where an application is made under one of the provisions for stateless persons, thus ensuring UKBA meets its obligations under the 1961 UN Convention on the Reduction of Statelessness (the convention does not allow disqualification on character grounds). Those under the age of 10 are also exempt from this requirement.

113. Between 4 December 2006 and 30 November 2010, 345 people applying for registration were refused because they were not of good character.

114. "Good character" is not defined in law. Changes to how this is assessed were made in January 2008, when the Home Secretary stated that she would not normally expect to grant citizenship if a person had an unspent conviction.

Section 59: Detained persons: national minimum wage

115. Section 59 came into force on 31 August 2006 and exempted detained persons from the national minimum wage in respect of work done in pursuance of immigration removal centre rules. Prior to this, such detainees were not provided with opportunities to undertake paid activities and both HMCIP and the Prisons and Probation Ombudsman had recommended this be remedied.

116. It was necessary to exempt immigration detainees in removal centres from the national minimum wage (as was already the case for prisoners and immigration detainees held in prisons) because they may have been regarded as "workers" for the purposes of the National Minimum Wage Act 1998 if they performed any paid activity and, as such, would have been entitled to receive the national minimum wage. This would not have been financially viable, nor would it have reflected the true economic value of the work undertaken.

117. Following the exemption, all removal centres provided opportunities for detainees to undertake paid activities. This has enhanced detainee welfare, with the consequential benefits for removal centre security and has been commended by HMCIP and Independent Monitoring Boards.

General

Sections 60 to 64 and the schedules

118. These contain consequential provisions such as the commencement, repeals and citation provisions.

ANNEX A

Relevant publications

1) **Immigration, Asylum and Nationality Act 2006**

http://www.legislation.gov.uk/ukpga/2006/13/contents/enacted

2) Explanatory Notes: Immigration, Asylum and Nationality Act 2006
http://www.legislation.gov.uk/ukpga/2006/13/notes/contents

2) "Controlling our borders: Making migration work for Britain", published in February 2005.
http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf

3) " Confident Communities in a Secure Britain" the Home Office Strategic Plan, 2004-2008, published in July 2004.

http://www.archive2.official-documents.co.uk/document/cm62/6287/6287.htm

4) Home Affairs Committee, Third Report on the e-Borders programme, 2009-10

http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/170/17002.htm

5) Codes of practice for preventing illegal working

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/ .

6) Guidance for passengers on fingerprint checks

(http://www.ukba.homeoffice.gov.uk/travellingtotheuk/Enteringtheuk/fingerprint-checks-at-border/)

ANNEX B

Immigration, Asylum and Nationality Act 2006: Commencement Orders

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 1) Order 2006 (SI 2006/1497) (16 June 2006).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 2) Order 2006 (SI 2006/2226) (31 August 2006).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 3) Order 2006 (SI 2006/2838) (13 November 2006).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 4) Order 2007 (SI 2007/182) (31 January 2007)

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 5) Order 2007 (SI 2007/467) (7 March 2007).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 6) Order 2007 (SI 2007/1109) (30 April 2007).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 7) Order 2007 (SI 2007/3138) (5 November 2007).

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 7) (Amendment) Order 2007 (SI 2007/3580) (1 March 2008)

- The Immigration, Asylum and Nationality Act 2006 (Commencement No. 8 and Transitional and Saving Provisions) Order 2008 (SI 2008/310) (1 April 2008)

ANNEX C

Secondary legislation made under the Immigration, Asylum and Nationality Act 2006

- The Immigration and Nationality (Fees) Order 2007 (SI 2007/807) came into force on 15 March 2007.

- The Immigration (Employment of Adults subject to Immigration Control) (Maximum Penalty) Order 2008 (SI 2008/132) came into force on 29 February 2008.

- The Immigration (Restriction on Employment) Order 2007 (SI 2007/3290) came into force on 29 February 2008.

- The Immigration and Nationality (Fees) (Amendment) Order 2008 (SI 2008/166) came into force on 29 January 2008.

- The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 (SI 2007/3627) came into force on 31 January 2008.

- The Immigration and Nationality (Cost Recovery) Amendment Regulation 2008 (SI 2008/218) came into force on 29 February and 1 April 2008.

- The Immigration and Nationality (Fees)(Amendment) Regulations 2008 (SI 2008/544) came into force on 29 February 2008 and 1 April 2008.

- The Immigration and Police (Passenger, Crew and Service Information) Order (SI 2008/5) came into force on 1 March 2008.

- The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order (SI 2008/539) came into force on 1 March 2008.

- The Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) Order 2008 (SI 2008/8) came into force on 1 March 2008.

- The Immigration and Nationality (Fees) (Amendment No. 3) Regulations 2008 November 2008 (SI 2008/3017) came into force on 27 November 2008.

- The Immigration and Nationality Cost recovery fee amendment No3 Regulation 2008 (SI 2008/2790) came into force on 27 November 2008 and 1 February 2009.

- The Immigration and Nationality (fees) (amendment) Order 2009 (SI 2009/420) came into force on 6 March 2009.

- The Immigration and Nationality (Fees) Regulations 2009 came into force on 6 April 2009.

- The Immigration and Nationality (Cost Recovery Fees) Regulations 2010 (SI 2010/228) came into force on 6 April 2010.

- The Immigration and Nationality (Fees) Regulations 2010 (SI 2010/778) came into force on 6 April 2010.

- The Immigration and Nationality (Cost Recovery Fees) (No.2) Regulations 2010 (SI 2010/2226) came into force on 1 October 2010.

- The Immigration and Nationality (Fees (No.2) Regulations 2010 (SI 2010/2807) came into force on 22 November 2010

- Immigration and Nationality (Cost Recovery Fees) Regulations 2011 (2011/790) came into force on 6 April 2011

- Immigration and Nationality (Fees) Regulations 2011 (2011/1055) came into force on 6 April 2011

Other relevant secondary legislation

- The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2007 (SI 2007/3579). SI 2007/3579 amends paragraph 1(11) (r) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993. Paragraph 1(11)(r) modifies paragraphs 27 and 27 B of Schedule 2 to the Immigration Act 1971 (as amended by s.31 of the 2006 Act and section 32 of the Immigration and Asylum Act 2006) so that police and immigration powers to require information from carriers can be applied to rail operators.

- The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 (SI 2007/3627) came into force on the 31 January 2008 and were made under sections 4(10) and (11) of the Immigration and Asylum Act 1999, as amended by section 43(7) of the Immigration Asylum and Nationality Act 2006.

- The Integration Loans for Refugees and Others Regulations 2007 (SI 2007/1598) came into force on 11 June 2007 and was made under section 13 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, as amended by section 45 of the Immigration Asylum and Nationality Act 2006.

- The British Nationality (General & Hong Kong)(Amendment) Regulations 2007 (SI 2007/3137) came into force on 3 December 2007 and were made under under section 41(1) of the British Nationality Act 1981 as amended by section 50(4) of the Immigration Asylum and Nationality Act 2006.

- The Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006 (SI 2006/3145) came into force on 21 December 2006 and were made under section 10 of the Nationality, Immigration and Asylum Act 2002 as amended by section 50(5) Immigration Asylum and Nationality Act 2006.

- The Asylum and Immigration Tribunal (Procedure) Rules 2005 were amended by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006 to reflect section 9 changes, these came into force on 13 November 2006.
  http://www.opsi.gov.uk/si/si2006/20062788.htm

Codes of Practice issued under the Immigration, Asylum and Nationality Act 2006

- The Code of Practice on the Management of Information Shared by the Border and Immigration Agency, Her Majesty's Revenue and Customs and the Police was laid before Parliament on 10 January 2008 and came into force on 1 March 2008 via SI 2008/8.
- The Prevention of Illegal Working, Civil Penalties for Employers, Code of Practice was laid before Parliament on 22 November 2007 and came into force on 29 February 2008, via SI 2007/3290.
- The Prevention of Illegal Working, Guidance for Employers on the avoidance of unlawful discrimination in employment practice while seeking to prevent illegal working, Code of Practice was laid before Parliament on 22 November 2007 and came into force on 29 February 2008, via SI 2007/3290.

ANNEX D

Exercise of Powers by Authorised Persons

The Immigration, Asylum & Nationality Act 2006, Section 41

MONITOR'S REPORT FOR 2007/8

Ian Delvallé

HM Revenue & Customs

London

CONTENTS

INTRODUCTION

Since being appointed as the monitor of authorised persons under Section 40 of The Immigration, Asylum & Nationality Act 2006, the UK Border Agency (UKBA) has been created with the merger of the Border & Immigration Agency, UK Visas and part of HM Revenue & Customs. However, for the period of this report, the responsible agency was the Border & Immigration Agency (BIA) and the report refers to that agency throughout.

Background

Juxtaposed controls are those whereby the UK and France undertake an immigration control in the other's country before passengers embark. Thus, UK immigration checks are undertaken in various ports in France.

Section 40 of The Immigration, Asylum & Nationality Act 2006 (IAN) allow the search powers of Border & Immigration Agency (BIA) Officers to be transferred to authorised and properly trained private contractors who are known as Authorised Search Officers (ASOs) who operate under individual certification of the Minister of State. These ASOs act independently of BIA and are authorised to search vehicles and any person they detect and detain and escort such persons to the nearest immigration detention facility. An extract of the relevant legislation is at Appendix A.

Role of Monitor

In accordance with section 41 (1) of the Immigration, Asylum and Nationality Act 2006 BIA were required to appoint a Crown servant to monitor the exercise of power; inspect the way in which the powers are being exercised and to investigate and report to the Secretary of State any allegation against the authorised person.

- Monitor twice yearly the exercise of power and the way the powers are being used.
- Provide an annual audit of the contractors' records, particularly records of vehicles screened, personnel records, training records; records of clandestine detections, risk assessments, incident reports/investigations.
- Provide an annual report for the Secretary of State detailing the progress of the contractor highlighting any recommendations.
- Monitor that the Key Performance Indicators are being met in accordance to those set out in the tender documents (Appendix A).

My role is not to question whether the contracting out of freight searching provides value for money.

Details of ECS and organisation

In the ports of Calais and Dunquerke, the contract for Authorised Search Officers was awarded to a French company called ECS (Eamus Cork Solutions).

ECS are currently staffed with 41 Authorised Search Officers, supported by 9 Authorised Search Assistants.

The search teams cover a 24/7 pattern of attendance working an average of 35 hours per week.

Each search team consists of a team leader and two other search officers. One of these search officers could be an Authorised Search Assistant.

Two search teams are normally deployed on every shift. Occasionally a third team will be deployed when available at high-risk times - mid week late shift into nights.

Training

Search Officers are trained by the NPIA (National Policing Improvement Agency) based at Ryton in the UK. This training covers their legal powers, first aid, vehicle search methods including health and safety, and restraint/handcuffing techniques. The training leads to formal accreditation.

The training is a pass/fail event and at the end of training successful candidates are accredited and receive a first aid certificate.

Refresher training is undertaken annually and is held over two days in Calais and Dunkerque.

All Search Officers and Assistants are CTC vetted and are therefore able to work in higher risk and sensitive areas.

Search Officers are issued with a letter of authority to perform search, detention and custody procedures. These letters are issued by a BIA Assistant Director and renewed on an annual basis.

Although Search Officers are trained in restraint and handcuffing, they do not carry handcuffs due to a problem with French legislation.

The Search Officers have been specifically trained in the combined use of the following technologies:

- Carbon dioxide detection

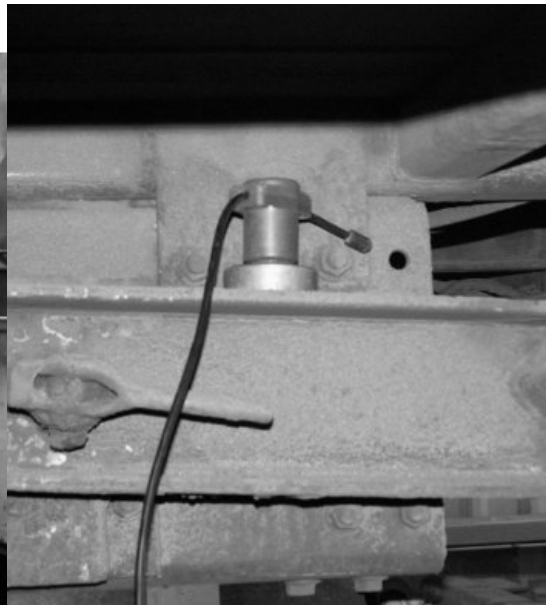
  This technology determines the carbon dioxide levels in the interior of the trailers of heavy goods lorries by inserting a sensor under the tarpaulin covering of the vehicle.

- Heartbeat detector

  This equipment uses seismic technology that is capable of detecting the instantaneous movements generated by the beating of the heart.

- Millimetre wave imaging system.

  This equipment uses a Millimetre wave imaging system that is capable of detecting a human presence in a covered vehicle in motion.



Authorised Search Assistants support the teams, but their duties are limited to the examination of vehicle exteriors and use of the CO2 probe. They are not authorised to enter vehicle loads or cabs, and are unable to undertake detention procedures or rub down searches.

Authorised Search Assistants do not receive formal accredited training. They are mentored and managed by the Authorised Search Officers, and can be identified by the wearing of an orange armband.

Detention Facilities

ECS use a British registered minibus supplied by BIA, which is used for the secure transfer of clandestines from the place of detection to the ECS holding area. The procedure is that clandestines are subject to a rub down search prior to transfer. I can confirm that this procedure was carried out whilst I was there. The minibus can carry a maximum of six clandestines and was adapted specifically for this purpose, with barred windows and secure seating. Search Officers examine the interior on a regular basis to locate and secure pointed or sharp edge weapons.

A small porta cabin, managed by ECS, is used as a clandestine holding area. This room is used for the completion and issue of the BIA form ASO 100 - Notice to Detainee (from an authorised search officer).

Once processed, clandestines are moved from this room and then handed to the control of nearby Group 4 Security.

Group 4 Security securely retains Clandestines until they are returned to French control by the PAF (Police Aux Frontières – the French border police). They are secured in a large new porta cabin designed to hold a maximum of 18 clandestines. Basic facilities are available including two porta toilets located in a secure area attached to the room.

Group 4 Security conducts a second rub down search of clandestines as a part of their security procedures. They maintain comprehensive records on those detained including a holding log, briefing log and daily occurrence record.
There have been no reported escapes since the use of the new portakabin, and improved security to the toilet facilities.

BIA is planning a purpose brick built detention facility, however timescales are still not known.

Monitor Activity

May 2007

On 11 May 2007, I visited the BIA operation at the Port of Calais on a preliminary visit. I met senior BIA officials and Joel Rose, the ECS Contract manager.

Following a tour of the facilities I witnessed an ECS team of four working at the berth side examining accompanied lorries.

At the BIA offices in the port, I examined the forms and returns that are prepared to record the activities of the search teams and inspected the detention facilities.

This was basic consisting of a portakabin surrounded by a temporary fence. Two clandestines were in custody awaiting the arrival of the PAF. They had no complaints about their treatment. I was informed that it was planned to create a more substantial structure in the near future.

On 17 May 2007, I spent the day at the National Police Improvement Agency facility in Ryton where an ASO training event was underway.

There were ten aspiring ASOs on the course and they were being instructed by two experienced UK trainers. The course is residential and run under ACPO guidelines. Two interpreters provided simultaneous translation to ensure there were no language difficulties.

I observed several sessions throughout the day including a warm up session leading to handcuffing techniques and personal safety training techniques.

In the afternoon there was a role play exercise involving search, detention and safe escorting procedures.

The trainers displayed a high degree of professionalism and all the students were enthusiastic and attentive.

The event I witnessed will be followed by further refresher training delivered in situ in France.

At the time of this inspection 45 ASOs had been trained with five referred for further training mainly due to health and fitness issues.

March 2008

On 25 March 2008 my inspection team, comprising experienced Customs search officers, carried out an unannounced technical inspection of the Calais operation.

The team confirmed that ECS were required to comply with the health and safety regulations employed by BIA. They examined a Risk Assessment Record - Freight Searching at Calais Berths provided by BIA, and a further document identifying

operating procedures and safe systems of working. All the relevant documents had been translated into the French language.

At the freight vehicle loading areas adjacent to the ferry berths, the team identified the work location of the two ECS search teams.

Although the freight movements were relatively light at the middle of the day, the working practices of the team were observed for approximately 40 minutes.

All search officers were wearing high visibility vests or jackets, and steel toe capped safety boots. **The vests appeared a bit dirty and tatty and should be examined and replaced when required.**

One Search Officer was responsible for the control of the vehicle, and the completion of a comprehensive vehicle search record. The control officer stood in front of the vehicle and ensured that the driver was aware of their presence.

Two Search Officers used the CO2 probes when examining curtain trailers (soft sided vehicles), followed by a brief examination of the vehicle underside.

The CO2 probes have been issued by BIA to ECS. Search Officers also use torches, knives and telescopic ladders to gain access to trailers.

The team saw a few vehicles being opened for a brief visual examination, and Officers examining empty flat bed vehicles.

Search Officers may remove a company seal from a trailer, but not a Customs seal. The Douane (French Customs) are contacted under these circumstances. Search Officers may replace company seals, and are required to issue a seals notice ASO 200.

It was noted that the examination method deployed was rapid, allowing for the maximum number of vehicles to be screened. **The team questioned the balance between quantity and quality, and the potential for search officers to open some trailer lockers and examine tractor unit air dams (windbreak on the top of the unit).**
The Chief Immigration Officer on duty agreed that this was part of the ECS vehicle search remit, and reminded the search team of this fact.

Drivers remain in their vehicles throughout the examination and it was confirmed that it was rare for a drivers cab to be examined, as this was partially the remit of BIA.

Vehicles are not chocked for the examination, **which causes a potential health and safety risk when combined with the fact that the driver remains in his cab.** Health and safety should not be compromised for quantity; however, there have been no reported accidents or near misses involving moving vehicles. Provided a control officer remains in place at the front of the vehicle, we belief that this is a safe system of working. **The absence of a control officer could lead to serious injury or fatality.**

The team established the procedures undertaken by ECS on the discovery of clandestines within a vehicle. The second search team is notified of the detection by radio handset and return to the ECS office to collect the secure minibus. The duty Chief Immigration Officer is also notified.

An additional BIA search team is regularly deployed to work in the freight loading lanes. They are therefore able to respond quickly to requests for assistance.

The search teams, minibus and BIA staff meet at the vehicle. The duty CIO assesses the situation and makes a decision to either allow the vehicle to proceed, or return the vehicle to the BIA freight examination area. This is dependent on the ease of clandestine removal, nature of the load and antecedent BIA history of the driver and/or haulier.

BIA and ECS have a good working relationship with the PAF. They are based locally and will often accompany them when removing and securing clandestines.

The ECS team leader hand delivers the vehicle search records to the duty CIO at the end of each shift. The CIO completes a comprehensive report including results, statistical information and any other comments or observations.

The reports are securely retained locally for three months and then sent to the BIA Civil Penalties Unit for analysis.

The duty CIO is responsible for the ECS teams deployed during their shift. They have regular contact and monitor the activities of the teams, and are available to address complaints and problems. No complaints have been received.

July 2008

An unannounced audit of the records of ECS was undertaken on 28/07/08.

Shift reports for June 2008 were examined in detail and their correctness verified.

A selection of shift reports from other periods was compared to the monthly analysis spreadsheet to confirm that all data had been correctly transferred.
The Escort Log was compared to the monthly analysis spreadsheet. There were no irregularities.

It was established that the administrative function for the ASOs is performed by a subsidiary company of ECS called FIONA. The FIONA offices are located in Loon Plague.

FIONA retains a detailed personnel file for every ASO, past and present. A copy of each file is also held by UKBA in the freight office. Several of these were chosen at random and taken for later comparison.

At the FIONA offices in Dunkerque the corresponding staff files of those previously selected from the UKBA freight office were examined and compared. There were no irregularities.

The FIONA staff files are comprehensive and well maintained.

A number of other files were selected at random and it was confirmed that they each contained the following original documentation:

- ASO letter of authority signed by UKBA Assistant Director.
- ASO training attainment record and training certificate.
- Confirmation of current security clearance.
- PAF (Police Aux Frontier) offender record check.
- Record of sickness/absence and related medical certificates.
- Request for leave or change of shift.

Recommendations

1. Personal Protective Equipment e.g. high visibility vests or jackets, and steel toe capped safety boots. should be regularly examined and replaced when required.

2. Search officers should open some trailer lockers and examine tractor unit air dams (wind break on the top of the unit).

3. Consideration should be given to ensuring that vehicles are chocked during examination if the driver remains in his cab.

Conclusions

During the period of my monitoring I have not been advised of any complaints against the contractor or his employees.

The results achieved by ECS are impressive and a clear indication of the success and effectiveness of the contract. Objectives and performance indicators have been clearly identified, managed and reported. The standard of vehicle examination may have been sacrificed for numbers, however the results obtained using this method of working are excellent.

A few concerns have identified and these should be addressed .

The use of Authorised Search Assistants should continue to be closely monitored by BIA. Section 40 of the Immigration, Asylum and Nationality Act 2006 confers powers and responsibilities to Authorised Search Officers. The use of assistants as an **additional** resource is to be commended, however ECS is a commercial company who should not delegate any powers or responsibilities to a cheaper service provider.

I am content that

- ECS generally carry out their procedures in a professional manner.
- The standard of ECS operational record keeping is impressive.
- UKBA manages the ASO contract effectively.

Acknowledgements

I would like to express my gratitude to all the UKBA staff and staff of Eamus Cork Solutions for their co-operation in assisting me to fulfil my function as monitor.

40 Searches: contracting out

(1) An authorised person may, in accordance with arrangements made under this section, search a searchable ship, aircraft, vehicle or other thing for the purpose of satisfying himself whether there are individuals whom an immigration officer might wish to examine under paragraph 2 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: administrative provisions).

(2) For the purposes of subsection (1)—

(a) "authorised" means authorised for the purpose of this section by the Secretary of State, and

(b) a ship, aircraft, vehicle or other thing is "searchable" if an immigration officer could search it under paragraph 1(5) of that Schedule.

(3) The Secretary of State may authorise a specified class of constable for the purpose of this section.

(4) The Secretary of State may, with the consent of the Commissioners for Her Majesty's Revenue and Customs, authorise a specified class of officers of Revenue and Customs for the purpose of this section.

(5) The Secretary of State may authorise a person other than a constable or officer of Revenue and Customs for the purpose of this section only if—

(a) the person applies to be authorised, and

(b) the Secretary of State thinks that the person is—

(i) fit and proper for the purpose, and

(ii) suitably trained.

(6) The Secretary of State—

(a) may make arrangements for the exercise by authorised constables of the powers under subsection (1),

(b) may make arrangements with the Commissioners for Her Majesty's Revenue and Customs for the exercise by authorised officers of Revenue and Customs of the powers under subsection (1), and

(c) may make arrangements with one or more persons for the exercise by authorised persons other than constables and officers of Revenue and Customs of the power under subsection (1).

(7) Where in the course of a search under this section an authorised person discovers an individual whom he thinks an immigration officer might wish to examine under paragraph 2 of that Schedule, the authorised person may—

(a) search the individual for the purpose of discovering whether he has with him anything of a kind that might be used—

(i) by him to cause physical harm to himself or another,

(ii) by him to assist his escape from detention, or

(iii) to establish information about his identity, nationality or citizenship or about his journey;

(b) retain, and as soon as is reasonably practicable deliver to an immigration officer, anything of a kind described in paragraph (a) found on a search under that paragraph;

(c) detain the individual, for a period which is as short as is reasonably necessary and which does not exceed three hours, pending the arrival of an immigration officer to whom the individual is to be delivered;

(d) take the individual, as speedily as is reasonably practicable, to a place for the purpose of delivering him to an immigration officer there;

(e) use reasonable force for the purpose of doing anything under paragraphs (a) to (d).

(8) Despite the generality of subsection (7)—

(a) an individual searched under that subsection may not be required to remove clothing other than an outer coat, a jacket or a glove (but he may be required to open his mouth), and

(b) an item may not be retained under subsection (7) (b) if it is subject to legal privilege—

(i) in relation to a search carried out in England and Wales, within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),

(ii) in relation to a search carried out in Scotland, within the meaning of section 412 of the Proceeds of Crime Act 2002 (c. 29), and

(iii) in relation to a search carried out in Northern Ireland, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

41 Section 40: supplemental

(1) Arrangements under section 40(6) (c) must include provision for the appointment of a Crown servant to—

(a) monitor the exercise of powers under that section by authorised persons (other than constables or officers of Revenue and Customs),

(b) inspect from time to time the way in which the powers are being exercised by authorised persons (other than constables or officers of Revenue and Customs), and

(c) investigate and report to the Secretary of State about any allegation made against an authorised person (other than a constable or officer of Revenue and Customs) in respect of anything done or not done in the purported exercise of a power under that section.

(2) The authorisation for the purpose of section 40 of a constable or officer of Revenue and Customs or of a class of constable or officer of Revenue and Customs—

(a) may be revoked, and

(b) shall have effect, unless revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation.

(3) The authorisation of a person other than a constable or officer of Revenue and Customs for the purpose of section 40—

(a) may be subject to conditions,

(b) may be suspended or revoked by the Secretary of State by notice in writing to the authorised person, and

(c) shall have effect, unless suspended or revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation.

(4) A class may be specified for the purposes of section 40(3) or (4) by reference to—

(a) named individuals,

(b) the functions being exercised by a person,

(c) the location or circumstances in which a person is exercising functions, or

(d) any other matter.

(5) An individual or article delivered to an immigration officer under section 40 shall be treated as if discovered by the immigration officer on a search under Schedule 2 to the Immigration Act 1971 (c. 77).

(6) A person commits an offence if he—

(a) absconds from detention under section 40(7) (c),

(b) absconds while being taken to a place under section 40(7) (d) or having been taken to a place in accordance with that paragraph but before being delivered to an immigration officer,

(c) obstructs an authorised person in the exercise of a power under section 40, or

(d) assaults an authorised person who is exercising a power under section 40.

(7) But a person does not commit an offence under subsection (6) by doing or failing to do anything in respect of an authorised person who is not readily identifiable—

(a) as a constable or officer of Revenue and Customs, or

(b) as an authorised person (whether by means of a uniform or badge or otherwise).

(8) A person guilty of an offence under subsection (6) shall be liable on summary conviction to—

(a) imprisonment for a term not exceeding 51 weeks, in the case of a conviction in England and Wales, or six months, in the case of a conviction in Scotland or Northern Ireland,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(9) In relation to a conviction occurring before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in subsection (8) (a) to 51 weeks shall be treated as a reference to six months.

Appendix B: KEY PERFORMANCE INDICATORS

Assisted Freight Searching Performance

- 100% provision of service provider personnel per shift

Searching of Persons & Escorting Performance

- 100% provision of service provider personnel per shift
- 100% provision of appropriate male/female gender personnel
- Less than 5% of the number of detainees held escape
- 100% of all escape incidents reported immediately to the Duty Chief Immigration Officer
- Written reports for 100% of escape incidents to be submitted to the Duty Chief Immigration Officer within 24 hours of the incident occurring using a template provided by UKIS
- 100% of all detainees are asked to confirm their name as being that on the notice
- 100% of property bags are sealed, endorsed with the content owners name, handed over to and signed for by PAF or Holding Room Staff at the time of handing over the detainees
- Complaint handling procedures and log in place ensuring that 100% of all complaints and injuries are noted and where such injuries were already present when initially apprehended written confirmation is received from an ASO of that fact.
- 100% Where a detainee sustains injuries following initial apprehension the nominated Duty Chief Immigration Officer must be informed within 30 minutes and a full report submitted within 1 hour using a template provided by UKIS
- 100% Medical Health reports provided for UKIS when Pompier has been engaged within 1 hour of the detainee being given medical assistance using template provided by UKIS
- 100% Adherence to UKIS operational instructions with regard to the detection, search and escorting of children
- 100% Medical assistance for any clandestine within the providers care sought immediately the need arises.

Freight Searching Performance

- 100% provision of service provider personnel per shift
- Where vehicle seals are intentionally broken 100% completion and issue of a seal notice to drivers
- 100% issue of detention notice to each detainee found
- 100% issue of vehicle security notice to UKIS
- 100% record of every vehicle examined
- 100% such records provided to UKIS for each 24 hour period
- Less than 5% of vehicles examined contain clandestines upon arrival in the UK
- The service provider to investigate 100% all failures to detect clandestines and provide report to UKIS within 12 hours using template provided by UKIS

- 60% of vehicles to be examined per 24hrs
- 100% The UKIS nominated duty Chief Immigration Officer informed within 15minutes of the detection of a child.

Training Performance

- The provider must have the training capability to ensure that trained replacements are available and thus maintain the required staffing levels of authorised searchers.
- 100% the provider must maintain a record of the training attainments of each employee

Support

- 100% a vehicle fit for purpose to convey those detained must be available at all times
- 100% a vehicle fit for purpose to escort freight vehicles to other locations within the UK control zone as directed by a UKIS Official
- 100% all vehicles and equipment must be checked daily
- 100% The provider must ensure that risk assessments and safe systems of work to UKIS standards are maintained and that ASOs are fully conversant with them. Records [UKIS Template] of accidents and dangerous occurrences must be kept. An annual Health and Safety audit must be completed [UKIS Template}
- 100% The provider must comply with any request made by the Monitor to provide access to records or staff.
- 100% All complaints must be recorded and brought to the notice of UKIS within 24 hours.

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