



**Home Office**

**HOME OFFICE RESPONSE TO THE  
INDEPENDENT CHIEF INSPECTOR'S REPORT:**

**Inspection of Juxtaposed Controls  
November 2012 – March 2013**

# THE DEPARTMENT'S RESPONSE TO RECOMMENDATIONS FROM THE INDEPENDENT CHIEF INSPECTOR'S (ICI) REPORT ON THE JUXTAPOSED CONTROLS

**The Department thanks the Independent Chief Inspector for his report on the juxtaposed controls and for providing this report in advance of publication.**

- 1. Recommendation 1:** That the Home Office maintains adequate audit trails and undertakes necessary assurance procedures to ensure that:
  - passenger interviews are conducted in accordance with existing policy and guidance;
  - accurate records are maintained in cases that involve the detention of passengers to demonstrate that the duration of detention is lawful and appropriate;
  - file records are created and retained in all cases in line with guidance; and
  - case records fully justify and evidence the rationale for decision making.
- 2. Recommendation 2:** That the Home Office ensures there is a single set of guidance which is consistently applied regarding the completion of paperwork in all refusal cases.

## **2.1 Border Force accepts recommendations 1 and 2.**

2.2 Border Force officers perform a critical role in ensuring border security at the primary border control, determining who should be allowed into the UK without further consideration and who merits closer attention. An officer will consider a number of factors in determining eligibility for entry to the UK, including nationality, passenger behaviour and their response to questioning, previous immigration or criminal history, authenticity of travel documentation and the possession of appropriate entry clearance where required.

2.3 Detailed interviews are conducted by Border Force officers to help inform landing/refusal decisions where queries cannot readily be resolved with simple checks and where passengers need to provide further information to satisfy Border Force officers about their intentions. These interviews give passengers the chance to explain their circumstances, address inconsistencies raised and respond to queries about items found in their possession. To facilitate this process, passengers may be issued with an IS81 form informing them that they are required to submit to further examination and providing information regarding the legal powers used.

2.4 The inspection team observed officers conducting passenger interviews during the onsite phase of the inspection and commented that in general the conduct of the interviewing officer was satisfactory. However, the inspection team reported that in these observed cases and in the majority of case files sampled where interview records were reviewed, Border Force officers were not complying with internal guidance and passengers had not been asked to sign interview records; and interviewing officers were not signing and annotating interview records appropriately or passengers had not been invited to add anything to the interview record that they thought may have been of assistance.

- 2.5 The inspection team found that in all cases where they were able to assess decision quality, the decision to refuse a passenger leave to enter was correct. However, in around a third of the cases reviewed, there was insufficient information contained in the case file provided to assess the quality of the decision either due to the case file being an incomplete copy or the notes on the Case Information Database (CID) being too brief for the inspection team to fully understand the reason for the decision.
- 2.6 The inspection team also raised concerns regarding record keeping pertaining to the detention of passengers beyond an initial four hour period permitted by the issue of the IS81 form. The inspection team reported that it was difficult to assess the legitimacy of any period of detention that had occurred beyond this four hour period due to a lack of recorded information pertaining to the extended detention and to the issuance of the appropriate notice in these circumstances; an IS91R form.
- 2.7 Border Force has a comprehensive training programme to ensure that its officers operate professionally adhering to applicable legislation, designated powers and internal guidance. Management assurance systems are in place to ensure that officers comply with this framework. However, this assurance process has failed to identify the inconsistencies in case management processes identified by the inspection team.
- 2.8 Work to consider what data is recorded on passengers who are the subject of further examination before being granted entry is already being taken forward. Border Force has also taken immediate action to reissue the guidance and instructions pertaining to these areas of concern to Border Force officers. In addition a thorough review of “end to end” case management and assurance processes has been initiated and remedial action will be implemented to address identified shortfalls in performance.
- 2.9 Target date for the completion of the review is 31<sup>st</sup> October 2013.
- 3. Recommendation 3:** That the Home Office ensures that all staff operating at juxtaposed locations are fully aware of their jurisdiction and are deployed effectively throughout the UK control zone.
- 3.1 Border Force accepts this recommendation.**
- 3.2 Following a change to the site layout in Coquelles, vehicles that have passed through the Border Force tourist controls can either be directed by Eurotunnel to the shuttle or to the Passenger Terminal Building according to their scheduled departure time. The Passenger Terminal Building lies outside the UK control zone and Border Force is therefore unable to exercise any control activity in this area. Site security, including in this area, is entirely the responsibility of the French authorities and Eurotunnel.
- 3.3 Border Force is aware of certain instances where so called clandestine “fence jumpers” have been encountered in the area of the Passenger Terminal Building or the vehicle boarding lanes having gained access to the Eurotunnel site by climbing over the perimeter fence. However, these areas are monitored on CCTV via Eurotunnel surveillance cameras. The French authorities, who together with Eurotunnel are responsible for site security, will attend and arrest those involved.
- 3.4 Whilst vehicles exit the UK control zone when they are directed to the passenger Terminal Building, all vehicles re-enter the UK control zone when they return for

boarding. All Border Force officers have control powers in this area including the boarding lanes and platforms.

3.5 The inspection team expressed a concern that some Border Force officers interviewed during the on site inspection were unsure of where the UK control zone extended to and in particular, whether or not they had control powers within the boarding lanes; and some stated that as they had not received the necessary level of Personal Safety Training, they did not believe that they could work in the boarding lanes.

3.6 Border Force regularly discusses site security with Eurotunnel and the French authorities, promptly raising any issues or concerns with them for action. Border Force also closely monitors illegal entry attempts resulting from site intrusion both in the areas where security is the responsibility of Eurotunnel and the French authorities, and in the UK control zone and will continue to deploy its staff according to identified trends and intelligence.

3.7 Border Force will continue to only deploy officers to work in the boarding lanes if they have the required training and skills to carry out duties effectively according to legislation and designated powers. Border Force has taken immediate action to reissue guidance to staff regarding the limits of the current UK control zone.

**4. Recommendation 4:** That the Home Office improves the effectiveness of the Civil Penalty scheme by:

- ensuring the level of penalty imposed is appropriate and consistent with the examples set out in the guidance to implement the Code of Practice; and
- extends the use of the automated payment process by credit or debit card.

#### **4.1 Border Force accepts this recommendation.**

4.2 The Immigration and Asylum Act 1999 details the circumstances under which a civil penalty notice may be issued to persons and carriers who are responsible for carrying clandestine illegal entrants through the UK border. The person responsible may be required to pay a penalty up to a maximum of £2000 per clandestine illegal entrant, with the level of penalty set following consideration of the specific circumstances in each case.

4.3 The civil penalty scheme is underpinned by a Code of Practice, which defines the level of penalty that can be imposed in a given set of circumstances and sets out what is expected of hauliers and their employees in preventing the carriage of clandestine illegal entrants. Border Force officers who detect clandestine illegal entrants in port gather evidence and initiate penalty proceedings, with the level of penalty set at a later date following the consideration of the facts of the case and with reference to Border Force internal guidance.

4.4 The Independent Chief Inspector's annual report in 2009 identified several concerns regarding the operation of the civil penalty scheme. His 2009 pilot inspection of the freight operations at the juxtaposed controls made several recommendations regarding improving the efficiency of the scheme, which included implementing a strategy to improve the efficiency and effectiveness of the civil penalty scheme; managing the scheme effectively to drive performance;

and taking immediate steps to recover debts, either through seizure of vehicles or through civil recovery methods.

4.5 During this inspection, the inspection team reported that the operation of the civil penalty scheme had improved significantly since the 2009 reports. Debt recovery had been prioritised and between 2009 and 2012 around £4.64m was collected. Border Force had also introduced intelligence-led operations to target vehicles that were the subject of previously unpaid penalties. One such operation had resulted in the recovery of more than £600,000 and the detention of around 160 vehicles between 2010 and 2012.

4.6 The inspection team reported that in the files sampled, Border Force was not setting penalties consistently in line with the ranges detailed in internal guidance and that the penalties set were not remotely close to the £2000 maximum.

4.7 When setting the level of penalty, Border Force officers consider a range of factors including the specific evidence and circumstances pertaining to cases, relevant internal guidance and the Code of Practice. Border Force identified, during evaluation meetings conducted in October and November 2012, that improvements to the consistency of the penalty setting process were required and measures at a national level to improve consistency in penalty setting are ongoing.

4.8 Border Force has taken the decision to bring the two units responsible for the setting and collection of penalties together under the same management command to improve the effectiveness and efficiency of the administration of the scheme and this restructure is expected to take place in August 2013. We have also initiated work to formally review the *Clandestine Illegal Entrant - Codes of Practice* to improve the effectiveness of the regime and this will include consultation with haulage industry partners which is likely to take several months to complete.

**5. Recommendation 5:** [As this recommendation is redacted from the published report, the Department is not publishing its response in this document. The response has been communicated to the Chief Inspector separately.]

**6. Recommendation 6:** That the Home Office establishes suitable detention facilities at St Pancras

**6.1 Border Force accepts this recommendation in part.**

6.2 St Pancras was not initially designed with the intention of conducting full immigration controls at that location with a requirement for supporting detention facilities. All immigration controls were previously either conducted onboard trains or at the juxtaposed stations of Brussels, Paris, Lille and Calais Frethun with only customs checks conducted at St Pancras, for which there are customs custody facilities.

6.3 Enhancements to border security checks, which were introduced in November 2011, resulted in the cessation of onboard controls and the commencement of full static controls at St Pancras on services from Marne La Vallee and seasonal services. This has increased the numbers of passengers who are now detained at St Pancras for immigration purposes. No contractors are present at the station to oversee the detention of passengers, therefore this role falls to Border Force staff. It is accepted

that the current facilities of converted interview rooms which can be used to detain those subject to further examination, including a room which can be used for families and unaccompanied minors, is insufficient.

6.4 Border Force has previously considered whether to introduce contractors at St Pancras to oversee detainees and to build a specially designed holding room. However, it was decided that the cost of introducing such facilities and associated contractors needed to be balanced against the expectation that the numbers being detained will reduce as a result of operational and wider political initiatives, thereby leaving the facilities underutilised. As a result a decision was taken not to progress work towards new facilities with the significant associated cost.

6.5 The numbers of people detained at St Pancras are expected to further reduce as a result of operational initiatives underpinned by agreement at political level with Belgium and France. However, Border Force will commence work to scope the viability and cost of putting in place enhanced detention facilities as a contingency should this not prove to be the case.

**7. Recommendation 7 :** That the Home Office reconsiders its current approach regarding the fingerprinting of clandestines to ensure that it operates the most effective method of protecting the UK border against clandestine entry.

#### **7.1 Border Force accepts this recommendation.**

7.2 The chief inspector commented that he found it surprising that people detected by Border Force attempting to enter the UK concealed in freight vehicles, are no longer fingerprinted at Calais and Coquelles. Also, that the arrangements introduced in 2010, whereby these individuals are handed directly to the French authorities for formal processing, have not been reviewed to ensure that they continue to represent the most effective method of protecting the UK border from clandestine entry, and continue to outweigh the benefits of Border Force capturing the biometric data and maintaining records of these individuals.

7.3 The inspection team reported that should an individual previously detected in France, ultimately reach the UK and claim asylum, proof of their previous detection in France would potentially be a highly significant point regarding the credibility of their asylum claim, evidencing their failure to take the opportunity to claim asylum in a safe country.

7.4 Border Force acknowledges that fingerprints can serve as evidence of a clandestine illegal entrant's previous presence in France and that this information could provide potentially beneficial information to a case decision maker should the individual eventually enter the UK and claim asylum. However, this information is generally of limited value in helping to secure their removal from the UK. This needs to be weighed against the fact that the formal detaining, processing and fingerprinting of a very high volume of clandestine illegal entrants detected at the ports of Calais and Coquelles is lengthy and adversely impacts Border Force's ability to focus on high priority freight searching activity to detect and prevent clandestine illegal entrants from ever reaching the UK, a priority highlighted by the inspection team in other areas of this report.

7.5 Border Force often detects large numbers of clandestine illegal entrants in single events or multiple events over a relatively short period of time. The formal

processing and fingerprinting of clandestine illegal entrants is dependant upon the provision of adequate detention facilities to ensure the safety of both the individuals concerned and Border Force officers, but also to ensure that public order issues do not result from the detention of often large groups of individuals. The decision to implement the current arrangements resulted from the fact that detention facilities were not in place in Calais and this remains the position. Whilst detention facilities exist in Coquelles, they were deemed as unfit for purpose with a recommendation that they should be closed or completely refurbished/rebuilt following a joint inspection by the HM Chief Inspector of Prisons and the Contrôleur Général des Privation de Liberté in November 2012.

7.6 However, Border Force accepts that it would be appropriate to review its approach to the fingerprinting of clandestine illegal entrants detected in freight vehicles at the juxtaposed controls.

7.7 Target date for completion of the review is 31<sup>st</sup> December 2013.