Independent Chief Inspector of Borders and Immigration

# An inspection of the use of Border Force customs examination powers to search baggage in the absence of passengers

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Any enquiries regarding this publication should be sent to us at

Independent Chief Inspector of Borders and Immigration,
5th Floor,
Globe House,
89 Eccleston Square,
London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

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## Our Purpose

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

## Our Vision

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

# Contents

# Foreword from John Vine CBE QPM
## Independent Chief Inspector of Borders and Immigration

The use of the legislative power to examine a passenger's bags without their knowledge requires authorisation and justification. It is an intrusive power, but one that is necessary to protect UK border security.

I found it reassuring to see a high success level in an activity that, while intrusive, is clearly used proportionately to protect the UK border. However, again I found that there needs to be more activity in the customs area, particularly in relation to activities that are not visible to the public.

I found that the available guidance was inconsistent, resulting in marked regional variations in procedures, standards, and the application of these powers.

I again found that record-keeping, management assurance and consistency of operation were lacking. The Home Office needs to ensure that, as a national organisation, its staff are operating to consistent national standards: standards that are fully supported by current, easily-accessible and detailed guidance.

I have made four recommendations for improvement.

**John Vine CBE QPM**
**Independent Chief Inspector of Borders and Immigration**

# 1 - Executive Summary

1.1 Section 159 of the Customs and Excise Management Act 1979 allows Border Force staff to examine passengers' bags when the passenger is not in attendance. S.159 itself provides wider powers, but this inspection focuses on the use of the power to examine goods in the absence of the passenger. Use of this power protects the UK border, and requires authorisation from a member of staff in a management grade. This inspection examined the efficiency and quality of Border Force's authorisation and record-keeping process.

### Positive Findings

1.2 Our file sampling found that the overall success rate, i.e. those occasions when prohibited or restricted goods were found during S.159 examinations, was high (33%) and that the use of this power was being exercised necessarily and proportionately. Staff were enthusiastic, capable, and committed to protecting the UK border.

*Use of this power was being exercised necessarily and proportionately*

1.3 We found occasions where the quality of record-keeping by operational staff, specifically relating to the quality and accuracy of notebook entries, was exceptional. We are hopeful that such standards will become more commonplace as Border Force's development of national guidance progresses.

### Areas for Improvement

1.4 While record-keeping was generally of an acceptable standard, it was disappointing to find that national assurance procedures did not include S.159 examinations. This was despite Border Force accepting a recommendation on record-keeping within our recent inspection of Birmingham Airport.[1] We found, for example, that Luton airport had been operating these baggage examinations without any authorisation procedures or assurance from managers. This error was not recognised, despite the Home Office re-issuing guidance in March 2013.

*National assurance procedures did not include S.159 examinations*

1.5 The guidance available regarding the use of S.159 powers was not located in a single location, was inconsistently worded and was not comprehensive. Although each airport was operating efficiently, they were all operating to different standards, and with slightly different systems in more than one area of responsibility. Up-to-date, consistent and easily accessible guidance is important in ensuring staff's understanding of what the law allows them to do.

1.6 In relation to joint operations, we found that the available guidance made no mention of the steps that operational staff should consider when undertaking such work. We were surprised to discover that Border Force staff employed to deliver national standards through training had differing opinions on some subjects and had delivered inconsistent messages to the staff they had trained. This was also illustrated by local managers instructing staff to ignore the national training that they had recently received and to adopt local standards instead.

1 http://icinspector.independent.gov.uk/all-security-checks-are-being-completed-at-birmingham-airport-but-there-is-room-for-improvement-says-chief-inspector/

1.7 The Code of Practice governing these powers needed to be re-worded to provide more clarity on how these powers were exercised. The Home Office also needs to ensure that Border Force branding is up-to-date, as one of the airports we inspected was still using a form created in 1992, which bore the HM Customs and Excise branding.

# 2 - Summary Of Recommendations

**We recommend that the Home Office:**

1. Ensures that:
   - urgent guidance updates are issued and communicated via consistent means;
   - substantive guidance is updated as soon as possible after urgent updates are issued; and
   - urgent updates are withdrawn from staff access once substantive guidance is amended (but are retained for corporate memory purposes).
2. Ensures that the training delivered to staff is consistent and that local managers are made aware of, and follow, nationally agreed standards when instructing staff in the performance of their duties.
3. Negotiates with HMRC (the owners of the Code of Practice) to ensure that the Code of Practice for S.159 searches is revised to more-accurately portray the activities that are undertaken by Border Force staff, within the legislation.
4. Updates its guidance for S.159 baggage searches to include details on how to handle confidential material and how joint operations are undertaken.

# 3. The Inspection

## Purpose and aim

3.1 This inspection examined the efficiency and quality of Border Force's authorisation and record-keeping process for baggage examinations conducted in the absence of the passenger as permitted by Section 159 of the Customs and Excise Management Act 1979 (S.159) and as amended by S.117 of the Finance Act 2008.

3.2 The inspection examined the risk assessment, authorisation and note-keeping process for S.159 baggage examinations, but not the conduct of the examinations themselves, other than identifying procedures to be followed if damage was caused to passengers' baggage.

## Background

3.3 S.159 powers are used by Border Force to examine passengers' bags when the passengers are not in attendance. S.159 is employed to counter smuggling risks, and requires any Border Force office using these powers to be authorised by a member of staff at Higher Officer (HO) level or above.

3.4 The use of S.159 baggage examinations was examined as part of the short-notice inspection of Birmingham Airport, published in February 2013. This inspection found that conflicting and sometimes out-of date guidance was in place governing the use of these powers. Ineffective assurance and central record-keeping processes also meant that senior managers had no way of ensuring that this activity was taking place appropriately. We subsequently made two recommendations which the Home Office accepted. They were to ensure that:

- there is a single source of operational guidance; that it is maintained and kept up-to-date, incorporating any changes made by Interim Operational Instructions quickly and effectively; and
- managers undertake regular and effective audit and assurance activity to make sure that staff are complying with policy, guidance and legislation that cover their work activities.

3.5 These recommendations led to revised guidance for S.159 searches being published to staff on 1 March 2013. This guidance contained a Code of Practice for the conduct of these examinations, which, although published on HMRC's website, was not published on the 'UK Border Agency'[2] website. The Code of Practice is reproduced at Annex B and contains more detail on how and why these examinations take place.

3.6 This inspection identified whether the revised guidance had resulted in authorisation and assurance processes being implemented to provide better governance concerning the use of this power. We therefore examined the four required standards that Border Force's guidance implemented, namely that S.159 baggage searches:

- needed to form part of pre-planned activity based on a risk assessment;
- needed to be authorised at Senior Officer (SO) level prior to the arrival of particular high risk flights;

2 This website had not been rebranded since UKBA became a substantive part of the Home Office.

- required two officers present during any examination; and
- required a notebook record to be kept even if nothing was found.

3.7 We also sought to examine whether, as permitted by the guidance, any S.159 searches that were not part of a pre-planned and risk-assessed SO authorisation, were appropriately authorised and recorded by operational staff and their HO-level managers.

### Methodology

3.8 The Chief Inspector's inspection criteria[3] were used to assess the efficiency and effectiveness of Baggage Examination in the Absence of the Passenger under the themes of:

- **Operational Delivery**:
  - Customs and immigration offences should be prevented, detected, investigated and where appropriate, prosecuted; and
  - Resources should be allocated to support operational delivery and achieve value for money.
- **Safeguarding Individuals**:
  - Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.
- **Continuous Improvement**:
  - The implementation of policies and processes should support efficient and effective delivery of border and immigration functions; and
  - Risks to operational delivery should be identified, monitored and mitigated.

3.9 The inspection consisted of a preliminary analysis of statistics, requested from the Home Office, itemising the number of S.159 baggage searches undertaken across a number of UK international airports between 1 April and 30 September 2013.[4] Figure 1 refers to the statistics initially provided by Border Force.

**Figure 1: Number of S.159 baggage searches authorised and conducted by Border Force between 1 April and 30 September 2013 (inclusive)**

| | |
|---|---|
| Birmingham | 89 |
| Bristol | 0 |
| Cardiff | 28 |
| East Midlands | 0 |
| Edinburgh | 35 |
| Glasgow | 6 |
| London Luton | 0 |
| Manchester | 184 |
| Newcastle | 0 |

Note: This data represents local management information, correct at the time of the inspection.

3 Revised criteria were published in February 2013 and can be found at: http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Inspection-Criteria.pdf

4 Gatwick and Heathrow were excluded from this inspection because, in the previous three years, eight separate inspections have impacted upon their operations.

3.10 We then compared and contrasted regional variations, selecting three airports for on-site inspection of their records – Edinburgh, Luton and Manchester. Our on-site visits took place on 10 and 11 December and 16 to 18 December 2013. By choosing three airports with differing levels of activity, we aimed to identify issues that would be relevant across all Border Force locations where S.159 activity might be undertaken.

3.11 We conducted a familiarisation visit to London Gatwick to inform the scoping for our inspection. Although this location was not inspected, we noted that all S.159 examinations undertaken were authorised in advance by a member of staff at SO level, as outlined in the Code of Practice (Annex B).

3.12 Figure 2 records the interviews and focus groups we conducted with 26 staff while on-site.

**Figure 2: Staff engagement, by grade**

| Grade | No. of people interviewed |
|---|---|
| Regional Director (RD) | 1 |
| Assistant Director (AD) | 3 |
| Senior Officer (SO) | 5 |
| Higher Officer (HO) | 5 |
| Executive Officers (EO) | 12 |
| **Total** | **26 staff** |

3.13 In advance of arriving on-site, we asked each airport to prepare copies of authorisation records, risk assessments and notebook pages relating to S.159 examinations. We also asked for statistics showing the number of detections of prohibited and restricted material[5] made during these searches, together with the number of arrests that resulted.

3.14 File sampling took place on-site, assessing a minimum of 25% of recorded uses of this power per airport, up to a maximum of 50 records. We excluded scrutiny of any enforcement activity or passenger interaction resulting from S.159 baggage examinations.

3.15 The inspection team provided feedback on high-level emerging findings to the Home Office on Friday, 20 December 2013. The inspection identified four recommendations which are provided on page 7 of this report.

5 Goods liable to forfeiture.

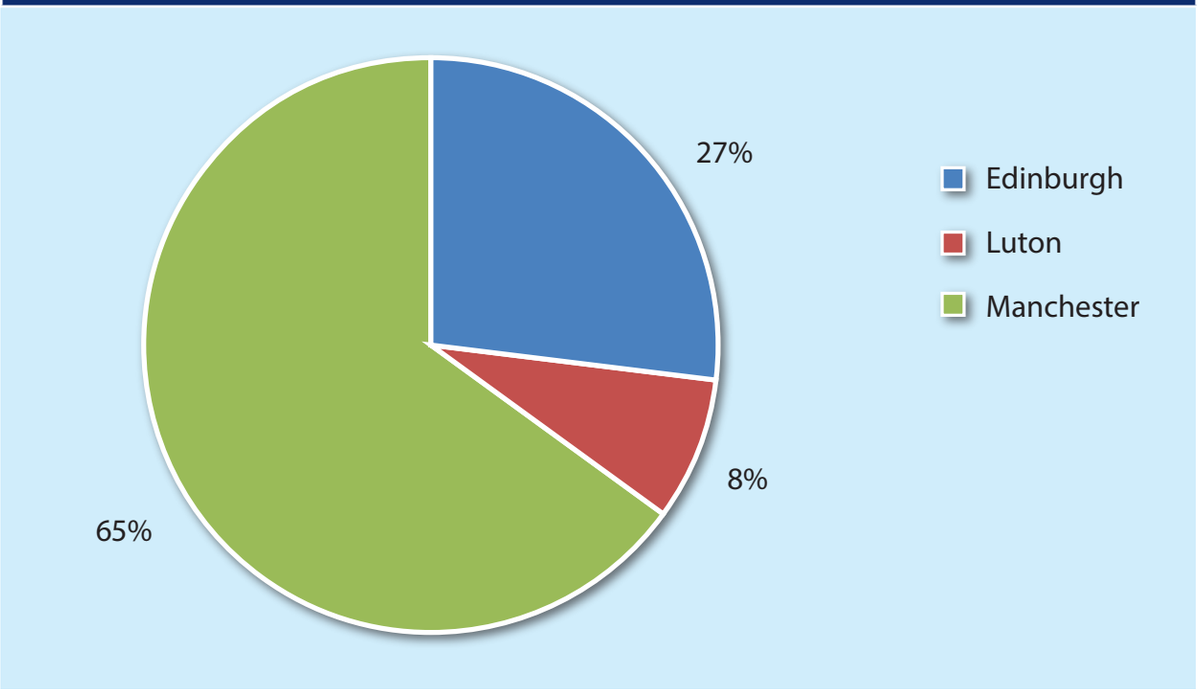
# 4. Inspection Findings – Operational Delivery

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

4.1 We found that the Home Office had not kept statistics on the use of S.159 powers or the level of success that resulted. However, our file sampling analysis in relation to the three selected airports found that the success rate (i.e. where prohibited or restricted material was seized or detained) was approximately 33% (26 out of 77 sampled cases). This was a high success rate, particularly in light of the 2.89% success rate identified in our inspection of Border Force Freight Operations.[6] This level of success indicated this power was being utilised proportionately, as shown in Figures 3 (detections) and 4 (types of material seized) respectively.

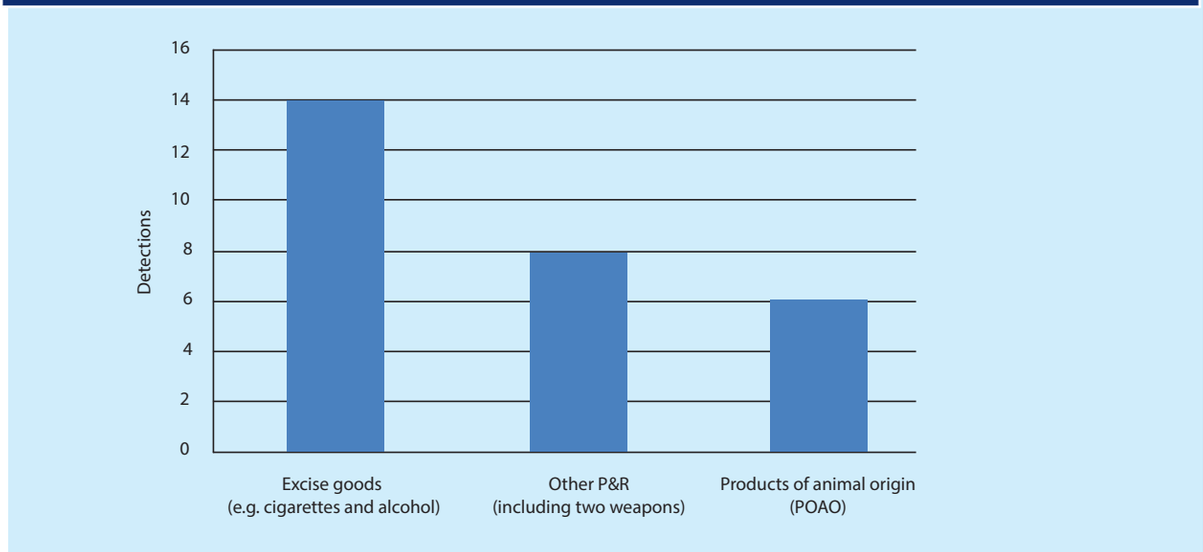
*This level of success indicated this power was being utilised proportionately*

**Figure 3: Successful interventions, by airport, as a percentage of the 26 sampled cases where prohibited and restricted material were detected**




6 http://icinspector.independent.gov.uk/wp-content/uploads/2013/11/An-Inspection-of-Border-Force-Freight-Operations-FINAL-PDF.pdf

**Figure 4: Types of material seized across all three airports**




Note: Two examinations resulted in the seizure of more than one type of material.

4.2 S.159 powers at the three selected airports were mostly employed for mishandled or unclaimed baggage, rather than for activities commonly associated with 'tarmac teams',[7] as observed during our familiarisation visit to Gatwick Airport.

4.3 Managers at all airports admitted that they had not regularly or specifically assured the activities of staff undertaking this work, other than when conducting assurance relating to notebooks. At Luton, there was an admission from the senior staff that while such instances would have been rare, the absence of any assurance activity meant that S.159 baggage examinations might have taken place without authorisation, although no evidence was available to substantiate this.

4.4 Accordingly, Luton's initial statistical return to us indicated that S.159 had not been used in the six-month period of our documentary examination. However, when on-site, we were told that a retrospective scrutiny of records had identified two occasions when this power was used, although there may have been others where no notebook record was created. Edinburgh Airport also subsequently revised its statistical return to us, stating that the power had been used 30 times rather than 35. It is cause for concern that the recommendation in the Birmingham Airport inspection report in February 2013, concerning the need for managers to undertake regular and effective audit and assurance activity, had not been actioned here.

## Resources should be allocated to support operational delivery and achieve value for money.

*S.159 baggage examinations might have taken place without authorisation*

4.5 Staff told us that the prioritisation of managing immigration queues had led to a reduction in the use of S.159 powers, especially as none of the airports we visited had tarmac teams. This was consistent with findings from our inspection of Stansted Airport.[8] We had expected to find greater deployment to S.159 activities and were pleased to note that Luton was planning to introduce more flexible resources in early 2014. Senior staff were hopeful that this would allow regular actions to address the risks mitigated by S.159 powers, including those activities more often associated with tarmac teams.

7 'Tarmac teams' search aircraft, undertake customs activity in areas that are not accessible to the public and assist in mitigating customs risks away from the usual red, blue and green customs channels that passengers have to go through.
8 http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-Border-Force-Operations-at-Stansted-Airport.pdf

# 5. Inspection Findings – Safeguarding Individuals

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

### Code of Practice

5.1 The published Code of Practice (Annex B) includes the wording 'Officers use many techniques to search and examine baggage including X-ray, scanners, specialised probes, detector dogs and searches by hand.' None of the staff whom we spoke to considered that S.159 activity was undertaken unless a passenger's bag was actually opened: i.e., S.159 authority was not required when x-raying or scanning baggage, or using detector dogs. We agree with this viewpoint because techniques such as these are not intrusive to passengers' property.

5.2 Reference to examination techniques that do not require S.159 authorisation within the Code of Practice (Annex B refers – Introduction & Purpose of the Code) was seen as potentially confusing for members of the public and operational staff, who might read the document and draw incorrect conclusions. To prevent confusion, we believe that the Code of Practice should be revised to portray more accurately the activities that are undertaken by staff under this legislation. We therefore make the following recommendation:

**We recommend that the Home Office:**

Negotiates with HMRC (the owners of the Code of Practice) to ensure that the Code of Practice for S.159 searches is revised to portray more accurately the activities that are undertaken by Border Force staff under this legislation.

### Risk

5.3 Managers and staff were able to list the high-risk flights that regularly arrived at their locations but, due to the absence of available resources and pre-planned activity for S.159 examinations, no regular tarmac activity occurred. Assistant Directors (ADs) and SO staff at all three airports thought that opening a bag before it was in the possession of the owner was unnecessary in the majority of cases. They believed that waiting until after the owner had collected their bag reduced the risk of forensic contamination of evidence and lowered the risk of allegations that Border Force had interfered with the bag and its contents.

5.4 Accordingly, none of the three airports we inspected had adopted a system for the pre-authorisation of S.159 examinations by SOs, despite the Code of Practice stating that this would be the most common method of undertaking and authorising such activity. The impact of this was that no risk assessments for this activity were prepared or used at any location we inspected.

*No risk assessments for this activity were prepared*

5.5 A prevalent opinion expressed by senior staff at all three airports was that 'blanket' pre-authorisation procedures, based upon a flight's country of origin, were inconsistent with proportionate use of S.159 powers. Instead, all three airports operated a system whereby staff requested HO authorisation at the time when the bag was to be examined, justifying each individual request on an ad-hoc basis. However, the concerns expressed by these senior managers, regarding 'blanket' pre-authorisation procedures, had not been raised centrally with the team who dictate policy in this area; they had simply chosen not to use this system of approvals. We consider that the absence of risk assessments was problematic.

5.6 Staff at Edinburgh told us that they would be content to examine material they considered to be 'confidential' during a S.159 baggage examination, although none had been encountered during the period of our inspection. Examples of confidential material discussed during staff focus groups included passengers' personal medical records and legally privileged correspondence.[9] The Home Office Code of Practice for Intrusive Surveillance and Property Interference[10] states 'Authorisations under the 1997 Act likely to result in the acquisition of knowledge of matters subject to legal privilege, confidential personal information or confidential journalistic material require (other than in urgent cases) the approval of a Surveillance Commissioner'. It also states that authority is required at Strategic Director level when conducted by Border Force.

5.7 It is cause for concern that there was no S.159 guidance for those occasions when confidential material was found and that senior managers did not have to be informed, particularly in light of the authorisation level when other legislation is used to examine bags in the absence of the passenger.

*There was no S.159 guidance for those occasions when confidential material was found*

5.8 The majority of staff at all three airports were aware of the risks that unclaimed or misdirected bags presented and understood why the majority of S.159 examinations were performed on bags such as these. However, we were unable to find a reason why S.159 examinations conducted upon this sort of baggage (where the risk to the border was clearly established) were not the subject of 'blanket', pre-authorised activity as permitted by the guidance.

5.9 Operational staff were mostly in agreement that the presence of a member of staff from the baggage handling agent or airline was not sufficient to remove the need for a S.159 search to be authorised in accordance with the guidance, or for a second officer to be present to witness the search. When we raised this question with the central Home Office team with responsibility for policy in this area, they stated the contrary; however, no guidance had been issued to inform staff of this position.

### Joint Operations

5.10 During 2013, Home Office teams formerly responsible for criminal investigations were divided between Home Office Immigration Enforcement and the Border Policing Command of the National Crime Agency. However, while a memorandum of understanding (MOU) was being developed between the two organisations to clarify their respective roles and responsibilities, this had yet to be formally agreed and signed. We were told that an Interim Operational Instruction (IOI – used to notify staff of urgent changes to guidance) had been issued in the interim; however, when we subsequently saw a copy of the IOI, we noted that it was circulated by email and not published online (paragraph 6.3 illustrates the risks of circulating guidance in this way). As a result we were concerned that the absence of clear guidance could have led to confusion when Border Force assisted law enforcement partners, including the BPC.

5.11 Centrally, Border Force stated that other legal authorities[11] would be issued on a case-by-case basis

9 http://www.legislation.gov.uk/ukpga/1984/60/section/10
10 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97960/code-of-practice-covert.pdf
11 Police Act 1997 Property Interference or Regulation of Investigatory Powers Act (RIPA) 2000, Surveillance authority.

by the individual organisations concerned, when S.159 powers were not appropriate to be used. However, guidance was not available to assist operational staff in determining the correct procedures to follow in these cases. There was also no guidance to assist Border Force investigation teams to understand the differences between those times when S.159 could be used and those when other powers were required. This had led to confusion amongst staff, who gave us contradicting examples of when S.159 could be used and when other legal authorities might be required:

*Guidance was not available to assist operational staff in determining the correct procedures to follow*

- The central policy team stated that S.159 could be used for any baggage examination in the absence of the passenger, as long as it was for a valid customs reason, no matter which organisation requested the examination.
- Home Office Immigration Enforcement Criminal Investigation stated that, if the baggage search was for intelligence purposes (including for a valid customs reason), then use of S.159 was not appropriate and another legal authority was required.
- Operational staff stated that they did not expect to use S.159 when criminal investigators (from any organisation) requested assistance with baggage examinations in the absence of the passenger (whether for intelligence purposes or otherwise). In all such instances, they would have expected to be shown a RIPA or Police Act authority before any examinations were undertaken.

5.12 The absence of specific guidance relating to joint working had prompted operational staff to adopt a system that was at odds with the expectations of those who set policy in this area. The perception of operational staff was that the available guidance on this issue was incomplete and of little use when queries arose. It is difficult to disagree with this perception when we found such marked differences in what staff understood S.159 to permit.

*Guidance on this issue was incomplete and of little use*

**We recommend that the Home Office:**

Updates its guidance for S.159 baggage searches to include details on how to handle confidential material and how joint operations are to be undertaken.

# 6. Inspection Findings – Continuous Improvement

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

6.1 The guidance and Code of Practice issued to staff in March 2013 were drafted in 2008 by HMRC and issued to Border Force following our inspection of Birmingham Airport. The Code of Practice (Annex B) contains more detail than the substantive guidance does. While on-site, we were told that this guidance (located within the Border Force Operations Manual) had been supplemented by an IOI. We were unable to find the IOI anywhere on the Border Force or Home Office intranet sites and staff at the airports we visited also failed to locate it for us.

6.2 We requested a copy of the IOI from the Home Office centrally, noting that it was issued in November 2012 and bore the reference number BF 01 48 12. We were told that its contents matched those that were subsequently published in the Operations Manual in March 2013. It is therefore disappointing to note the following:

- IOI BF 01 48 12 included the detail 'Examining baggage without the owner present is part of a range of anti-smuggling techniques used by customs officials in Border Force but this practice engages Article 8 of the Human Rights Act (the right to respect for private life). It must not be undertaken lightly. You must be able to demonstrate you are acting in a proportionate and justified way'. This key wording and phraseology are not contained within the guidance.
- The IOI was circulated by email (distribution list unknown) – it was not published online.
- In 2012, we only found online published IOIs (with the 'BF 01' prefix), with the numbers 01, 05, 06, 16, 17, 21, 24, 25, 28 and 30 (IOIs are not deleted or cancelled when they cease to be extant). This suggests that the majority of Border Force IOIs were issued by email.

6.3 Circulating updated guidance using IOIs via email is a fast and effective method of circulating revised practice. However, relying simply on emails to communicate IOIs introduces additional risks, for example:

- they would not be seen by staff who joined the organisation after the email was circulated;
- the information they contained could be forgotten or would not be easy to find as time passed (as illustrated by staff being unable to locate it at the airports we visited); and
- if they were cancelled, there would be no guarantee that staff would not still rely upon the information, if they had retained a local copy.

*Circulating updated guidance using IOIs via email is a fast and effective method of circulating revised practice*

5.13 It is essential that information contained in IOIs is added to the online guidance within a set period of time, to ensure that it remains up to date and is easily accessible for all staff to refer to. Many staff we spoke with were not aware that this IOI had been published and expressed concerns about

what the IOI might have said and whether their actions were consistent with its requirements. In one location, staff had created local guidance for much of their activity, because they considered the available 'customs' guidance was insufficient.

**We recommend that the Home Office:**

Ensures that:

- urgent guidance updates are issued and communicated via consistent means;
- substantive guidance is updated as soon as possible after urgent updates are issued; and
- urgent updates are withdrawn from staff access once substantive guidance is amended (but are retained for corporate memory purposes).

6.4 We recognise that the Home Office is currently undertaking a project to ensure that Border Force staff guidance is current, accurate and easily-accessible. This is a positive development.

6.5 In one location, we found that, if a S.159 examination resulted in damage to a passenger's baggage, then a pro-forma detailing how the passenger should apply for compensation was placed inside the bag for the owner's attention. The form used was a version created in 1992, which bore the HM Customs and Excise name and portcullis marking. This could confuse passengers and such documents should not be used in the future.

### Risks to operational delivery should be identified, monitored and mitigated.

6.6 The Home Office had issued a 'Standards' document which set out the minimum assurance standards that both operational and non-operational Border Force staff should seek to achieve in order to ensure efficiency, effectiveness and consistency. This document dictated the minimum levels of management assurance that must be undertaken.

6.7 We could not assess the effectiveness of management scrutiny and assurance of S.159 activity at any of the airports, because the Standards document did not make any reference to these examinations. Managers at Luton recognised this deficiency and notified their central assurance team of the oversight, but not until after our inspection was announced. In light of the recommendations in our Birmingham Airport report some nine months earlier, it is disappointing that this was not noticed sooner.

*We could not assess the effectiveness of management scrutiny and assurance*

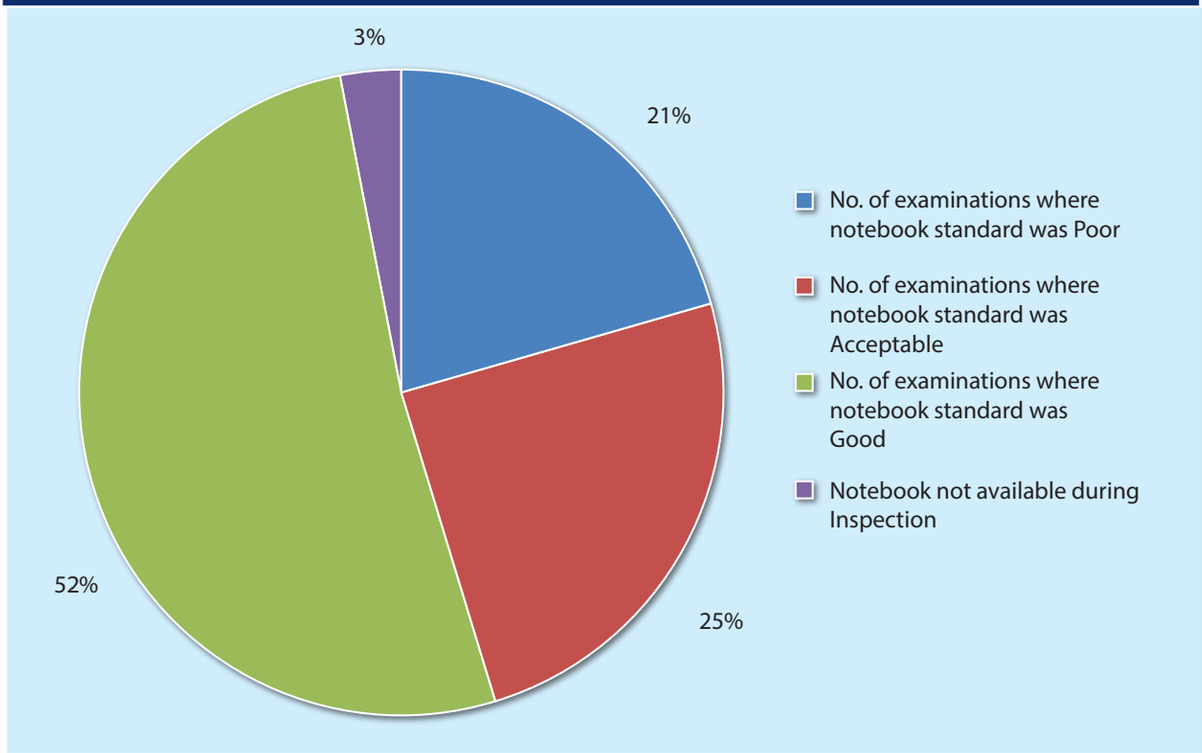
6.8 There were marked differences in the completion standards of notebooks from officer to officer. While overall standards were acceptable, it was disappointing to note that the notebooks completed to a good standard had not been used by managers as a best practice guide for all staff. In this respect, assurance activity was not leading to an increase in performance or standards.

### Notebooks

6.9 Operational staff had been issued with, and regularly used, official Border Force notebooks to record their day-to-day actions. We examined a total of 77 staff notebooks, solely in relation to the pages that detailed S.159 baggage examinations. Overall we found that notebook completion was generally good, as set out in Figure 5.

*Overall we found that notebook completion was generally good*

**Figure 5: Quality standards of notebooks across all three airports**




Note: Notebook standards were graded based upon inspectors' assessments of the extent of each officer's compliance with Border Force notebook guidance.

6.10 However, we identified a number of repeated errors. They included:

- 53% (41) where the HO authorisation details were not recorded by the officer undertaking the examination;
- 22% (17) where no second officer had signed the examining officer's notebook;
- 18% (14) where no legislation was quoted; and
- 15% (12) where insufficient detail of the examination was included.

(some notebooks contained multiple errors, hence these figures do not total 100%)

6.11 We also found some variation in the standards of notebooks within the same airport – Figure 6 refers.

**Figure 6: Airport A case study - Differing S.159 notebook and examination standards at the same airport**

**The first examination notebook:**

- contained no detail to justify the S.159 examination of the bag, or the extent of the examination that was conducted;
- did not quote the legislation that the examination was conducted under;
- did not bear the name or signature of the second officer who was required to be in attendance (and no notebook from any second officer was provided to us); and
- did not bear a signature from a member of staff at HO level to indicate that the search was authorised (neither did the HO maintain their own notebook record of any authorisation being granted).

**The second examination notebook:**

- fully justified the reasons for requesting a S.159 examination;
- detailed the time when the authorisation was sought and granted, and by whom (subsequently including that HO's signature in the notebook as corroboration);
- provided full details as to the extent of the physical examination of the bag;
- quoted the relevant legislation that the examination was performed under; and
- included the name and signature of the second officer who was present.

**Chief Inspector's comments:**

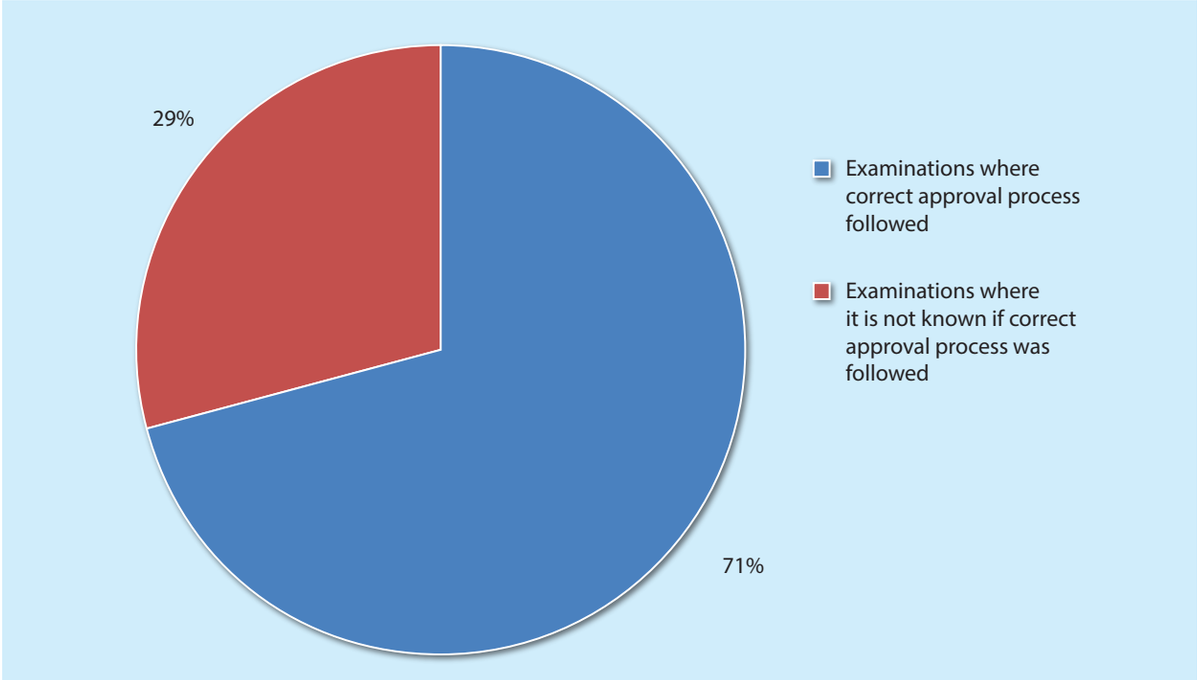
- It is difficult to understand how such divergent notebook standards can occur in the same location in relation to the same activity.
- It is clear that management assurance has not prompted managers to recognise that staff should work to consistent standards, or prompted any exchange of knowledge or expertise between staff.

6.12 At Edinburgh, unlike other locations, HO staff who authorised S.159 searches were not creating their own notebook records to contemporaneously detail the time when their authorisation was given. Instead, they subsequently signed the examining officer's notebook to corroborate the activity undertaken. In some instances, we found that the HO had signed the officer's notebook but had not printed their name, or the date and time when the notebook was signed. These omissions breached notebook guidance.

*There was nothing to indicate that authorisation was sought*

6.13 This method of retrospective authorisation would be considered acceptable if the officer completing the notebook made a note of the time when the authorisation was sought and given (by radio or telephone), and recorded the name of the HO who provided the authorisation (as per the second notebook in the previous case study). These details were not always included in the notebooks we inspected, meaning that there was nothing to indicate that authorisation was sought, or approved by a HO, in advance of the S.159 examination taking place. As a result, we were unable to confirm whether the correct authorisation process was followed in many of the cases that we inspected. The authorisation figures for S.159 exams are illustrated in Figure 7:

**Figure 7: Cases where the correct authorisation approval was followed**




6.14 The inconsistency in authorisation procedures from airport to airport was based on how local practices had developed in the absence of specific guidance. No records were maintained and staff could recall no instances where requests for S.159 examinations were refused. Border Force might wish to review its authorisation procedures as a result of this.

6.15 Officers were not always recording the reasons why S.159 searches were considered necessary. When this was discussed with staff, it became apparent that some were unaware whether, if recorded, the reasons should be written on a separate, sensitive page of their notebook. The available guidance did not assist in solving this query.

*Officers were not always recording the reasons why S.159 searches were considered necessary*

6.16 We also found, during focus groups, that staff had an inconsistent understanding of the required notebook completion standards. This became of greater concern when we found that, within one focus group, the staff who disagreed on what was required were also employed as trainers. These staff members had been delivering training in notebook standards simultaneously, at different locations, to differing standards.

6.17 We also heard from staff who, on returning from recent training courses, were encouraged by their managers to ignore what they had just been taught, and to adopt long-established local practices instead. This was specifically reported to us in relation to the completion of notebooks.

**We recommend that the Home Office:**

Ensures that the training delivered to staff is consistent, and that local managers are made aware of, and follow, nationally agreed standards when instructing staff in the performance of their duties.

6.18 The majority of staff we spoke to were also unaware that guidance in relation to notebook completion had been revised and reissued in July 2013 (as detailed within our inspection of Stansted Airport). This demonstrates that the Home Office needs to do more to provide consistent training and guidance to staff, supported by effective assurance mechanisms to prevent inconsistencies or contradictions from occurring. It is essential that the Home Office rectifies this and prioritises the adoption of national standards.

*The Home Office needs to do more to provide consistent training and guidance to staff*

6.19 We are aware that a new quality assurance framework will commence in April 2014 and this will form a routine and significant part of frontline managers' responsibilities. It will be important for the Home Office to ensure that these assurance activities incorporate the findings we have set out here. For this reason we make no further recommendation.

# Annex A: Role & Remit of the Chief Inspector

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

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

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

On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and, under a new package of reforms, brought back into the Home Office reporting directly to Ministers. The Chief Inspector will continue to inspect UK immigration functions previously carried out by the Agency, border customs functions and contractors employed by the Home Office to deliver any of those functions.

# Annex B: Code of Practice

## Code of Practice for baggage examinations in the absence of the passenger

### Background

This guidance clarifies officers' powers to examine bags under S.159 of CEMA in the absence of the passenger. CEMA S.159, as amended by the Finance Act 2008, S.117, provides for any officer to open anything for the purpose of examining and taking account of goods. This includes passengers' baggage.

In 2008, to clarify our powers, HMRC received legal advice that a Code of Practice on the use of these powers should be introduced in respect of passengers' baggage, when the examination is conducted in the absence of the passenger.

### Purpose of the Code of Practice

To be compliant with Human Rights obligations, we must demonstrate that we use the powers in a proportionate manner and only when necessary to protect the UK from smuggling. The Code of Practice contains provisions and safeguards on the exercise of the power, authority levels and arrangements for oversight.

We have to be able to demonstrate a planned and targeted approach to this activity.

Therefore, the majority of searches will:

- need to form part of pre-planned activity based on a risk assessment;
- need to be authorised at SO level prior to the arrival of particular high-risk flights;
- require two officers present during any examination;
- require a notebook record to be kept even if nothing is found.

However, it is recognised that officers work in a fast-moving environment where quick decisions have to be made. Examinations may therefore take place outside of pre-planned activity, e.g. to check abandoned or unclaimed baggage. In these circumstances, a Higher Officer (HO):

- will need to authorise the search but a single Officer may undertake the examination;
- can authorise the search remotely, e.g. over a radio or mobile telephone link;
- will need to notebook it in the same way as the examination itself.

In very urgent cases where immediate action is necessary, such as to make an arrest or prevent a suspect evading controls, an Officer may search a bag without prior HO authority. However, the Officer must record the circumstances and justification for his actions and report the facts to a Higher Officer at the first opportunity.

## Introduction & Purpose of the Code

1. This Code of Practice sets out how Border Force officers and other authorised customs officers or officials examine passenger baggage at ports and airports when the owner is not present. It explains the circumstances in which the powers will be exercised and the safeguards that will be employed to ensure officers act in a lawful, proportionate and controlled manner.
2. Officers examine baggage at ports and airports to prevent the smuggling of drugs, firearms, offensive weapons and other prohibited and restricted goods and to ensure the right taxes and duties are paid at the border when they are due.
3. On some occasions officers may have to examine baggage without the owner being present. This includes examining bags which are abandoned or unclaimed, or bags in transit. When targeting very high-risk movements en route to the UK, it can include examining bags to identify prohibited and restricted goods, and revenue fraud, before bags are collected. Officers may also use specialist tools such as scanning and x-ray equipment or special probes to check for concealments built into the structure of a bag and to take a sample of the contents.

## What are the circumstances in which officers will open unaccompanied bags, and why?

4. In most cases bags are examined with the owner present. However, there are circumstances where this is not possible or practical. Examples include:
   - Abandoned or unclaimed bags – previous experience has shown that these often represent a frustrated smuggling attempt. Officers have to make sure that there are no prohibited or restricted goods contained in them, or goods liable to duty.
   - Bags in transit – officers may have reason to suspect that prohibited and restricted goods are present in the baggage, but in some cases it is not always practicable to reunite the bags with their owner for opening without causing delays and missed flights.
   - High-risk flights – smugglers will often employ techniques to bypass or evade customs controls such as employing a number of couriers on a single flight in an attempt to exceed officers' ability to stop them all. When these attempts are identified, officers carry out targeted checks on bags before they are delivered to the baggage carousel. Identifying suspect bags early in this way enables officers to identify and apprehend offenders.
   - Where officers suspect that one or more individuals, whether or not on a high-risk flight, may be engaged in smuggling.

## What allows you to do this?

5. The Customs and Excise Management Act 1979 Section 159 gives officers the ability to examine baggage and to take samples.

## What authority levels will be in place before bags can be searched without the owner present?

6. The search of bags from high-risk flights in the absence of their owners will be part of a pre-planned anti-smuggling operation. A Senior Officer will authorise the checks following a risk assessment prior to the arrival of particular flights.
7. Other situations may fall outside of planned activity. Officers work in a very fast-moving environment where quick decisions have to be made. Officers may need to check abandoned or unclaimed baggage to ensure it does not represent a smuggling threat. In these cases a Higher Officer will normally authorise the search. In urgent cases an officer may search a bag on his or her own authority. This would be where, in the officer's professional opinion, there is an imminent risk of an offence being committed or where any delay could result in suspects escaping or evidence of an offence failing to be secured. In these cases the officer will record the circumstances and report the facts to a Higher Officer at the first opportunity.
8. Any search of unaccompanied baggage will normally be carried out in the presence of at least one other officer. The witnessing officer can be a police officer assisting the Border Force officer. A single officer will only act alone in urgent cases, as defined above.

## How will bags be searched?

9. Officers use many techniques to search and examine baggage including X-ray, scanners, specialised probes, detector dogs and searches by hand. Only officers that have completed the appropriate training in the use of these techniques will be deployed on such activity.

## What records will be kept?

10. For pre-planned operations a record will be kept of the movement and the reason for the checks.
11. Each officer will keep a record in their official notebook of every bag they search or every bag they witness being searched and the outcome (even when nothing is found). Similarly, authorising officers will keep a record of authorities issued. These records have evidential status in the event that criminal proceedings result from the search. The records will be retained in compliance with the Criminal Procedure & Investigation Act 1996.

## What if damage occurs to the bag or its contents?

12. Officers have extensive experience in search techniques and undergo rigorous training before being deployed on operational activity. In the event that any damage is discovered prior to the search, e.g. because of airline handling, this will be recorded in the officer's notebook. Similarly, in the unlikely event that an officer accidentally causes damage to the bag or the contents, the details will be recorded in the officer's notebook and reported to the superior officer who authorised the search. Officers will notify a passenger if an officer damages their property.
13. In the event that a passenger wants to complain that their baggage has suffered damage as a result of a customs examination, the passenger may submit a claim to the Border Force Complaints Team, in the first instance. If the records show that an officer was the cause of the damage, compensation will be paid to the passenger in accordance with standard procedures.
14. A passenger may submit a claim by writing to the Border Force Complaints Team:

e-mail: borderforcecomplaints@homeoffice.gsi.gov.uk
or write to:
Border Force Complaints Team
Building 25
Priory Court
St Johns Road
Dover
Kent
CT17 9SH

## Is this activity in breach of the Human Rights Act?

15. No. These powers will only be exercised where it is necessary and proportionate to do so to protect the UK and EU border; to prevent and detect crime; or to address a risk to the UK revenue.

## Will passengers be able to find out if their bags have been searched in their absence?

16. No. It will not be routinely divulged whether an individual's bag has been searched because to do so could reveal operational practices that might assist smugglers in evading controls in the future

# Glossary

| Term | Description |
|---|---|
| **A** | |
| Assistant Director | Senior manager, equivalent to Grade 7. |
| **B** | |
| Border Force | Following the separation of Border Force and the UK Border Agency on 1 March 2012, Border Force became a Home Office operational command responsible for immigration and customs, including UK passport controls in France and Belgium. |
| Border Policing Command | Responsible for border security and tackling all serious, organised and complex crime threats before they reach the UK |
| **C** | |
| Class A drugs | Drugs which are designated as 'Class A' under the Misuse of Drugs Act. The most common Class A drugs are cocaine, ecstasy, heroin, LSD and magic mushrooms. |
| Commodities | Drugs, cigarettes, money. |
| Complaint | Defined by Border Force as 'any expression of dissatisfaction about the services provided by or for the UK Border Agency and/or about the professional conduct of UK Border Agency staff including contractors'. |
| Customs and Excise Management Act 1979 | The main legislation utilised by Border Force to effect customs controls at the border |
| Customs functions | Collecting and safeguarding customs duties and controlling the flow of goods, including animals, transport, personal effects and hazardous items, in and out of the UK. This function is carried out by Border Force staff. |
| **D** | |
| Deputy Director | Senior manager (subordinate to the Senior Civil Service, superior to Grade 7). |
| **E** | |
| European Economic Area (EEA) | The European Economic Area (EEA) was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association (EFTA) and the European Community, later the European Union (EU). |
| Executive Officer | Lower management grade, including Officer and Immigration Officer. |

| | |
|---|---|
| **G** | |
| Grade 7 | Senior manager (also known as 'Assistant Director') subordinate to Grade 6, superior to a Senior Executive Officer. |
| Grade 6 | Senior manager, subordinate to the Senior Civil Service, superior to Grade 7. |
| **H** | |
| Her Majesty's Inspector of Immigration (HMI) | The Border Force senior manager primarily responsible for legacy immigration staff. |
| Higher Officer (HO) | A management grade, subordinate to the Senior Officer, superior to the Immigration Officer. Equivalent grades exist within the Home Office, including Higher Executive Officer and Chief Immigration Officer. |
| Home Office | The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police. |
| **I** | |
| Independent Chief Inspector of Borders and Immigration | The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency and, more recently, Border Force. The Chief Inspector is independent of the UK Border Agency and Border Force and reports directly to the Home Secretary. |
| Interim Operational Instructions | A UK Border Agency operational guidance document which is circulated to staff, informing them of a change to their working practices. |
| **M** | |
| Management Information (MI) | Data on the basis of which management decisions can be made. |
| **N** | |
| National Crime Agency | The National Crime Agency leads the UK's fight to cut serious and organised crime, strengthen the UK border, fight fraud and cybercrime, and protect children and young people from sexual abuse and exploitation |
| **P** | |
| Police Act 1997 Part III | Legislation that regulates the powers of public bodies to enter onto, or interfere with, property or wireless telegraphy. |
| Police and Criminal Evidence Act (PACE) 1984 | PACE, and the PACE codes of practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing of arrested people. |

| R | |
|---|---|
| Risk Assessment | Process by which Border Force assesses the risk an operation poses to the public and staff. Will consider factors such as physical or organisational harm being caused, risk of litigation, or adverse community impact etc. The risk assessment is then used to introduce mitigation to limit or remove the risk. This may include cancelling the operation if the risk is too great. |
| Regulation of Investigatory Powers Act 2000 | Legislation that regulates the powers of public bodies to undertake surveillance and investigations |
| **T** | |
| Tarmac Teams | Tarmac teams search aircraft, undertake customs activity in areas that are not accessible to the public and assist in mitigating customs risks away from the usual red, blue and green customs channels. |

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| | |
|---|---|
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