



House of Commons
Home Affairs Committee

**Follow-up of Asylum
Cases and e-Borders
Programme:
Government Response
to the Committee's
Twelfth Report of
Session 2009–10**

Second Special Report of Session 2010–11

*Ordered by the House of Commons
to be printed 7 September 2010*

HC 457
Published on 16 September 2010
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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The current staff of the Committee are Elizabeth Flood (Clerk), Joanna Dodd (Second Clerk), Elisabeth Bates (Committee Specialist), Sarah Petit (Committee Specialist), Darren Hackett (Senior Committee Assistant), Sheryl Dinsdale (Committee Assistant), Ian Blair (Committee Assistant) and Alex Paterson (Select Committee Media Officer).

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Report

On 7 April 2010 the Home Affairs Committee published its Twelfth Report of Session 2009–10, *Follow-up of Asylum Cases and e-Borders Programme*, HC 406. The Government's response to the Report was received on 27 July 2010, and is published as an Appendix to this Special Report.

In the Appendix, the Committee's original conclusions and recommendations are in bold text and the Government's response in plain text.

Government Response

Introduction

Normally, we would have published the Government's response on e-Borders, the transcript of the oral evidence from UKBA and the written evidence without comment, not least as we have no time to launch any further inquiries owing to the imminence of the general election. However, we were struck by the fact that, despite the assurances given by the Government in their responses to our original reports, the subsequent evidence we have received reinforces and, in some areas, increases the concerns we felt at the end of last year. None of these issues will be resolved within the next few months, and all will have a serious impact on thousands of people. We believe it appropriate that we should briefly draw them to the attention of our successor Committee in the next Parliament, and we urge our successors to seek an update on them as early as possible. (Paragraph 3)

A Written Ministerial Statement was made on 22 July 2010 in which the Immigration Minister, Damian Green, announced the termination of the e-Borders contract with the prime supplier, Raytheon Systems Limited. The Minister has made it clear that the e-Borders programme remains a priority and the Government is committed to enhancing e-Borders capabilities in a timely and cost-effective way. We will now seek alternative providers to secure the key benefits that the contract has so far been unable to deliver and this work will be undertaken as a matter of urgency.

Parts of the Programme were running at least 12 months late and Raytheon has been in material breach of the contract since July 2009 for failing to meet contracted milestones. However those parts of the e-Borders programme that have already been delivered—the software for the collection of data in advance of travel, the technology to enable carriers to feed information into a central hub, and the National Border Targeting Centre—should continue to run as normal.

The e-Borders programme is a key element of the Government's strategy to deliver robust border controls. E-Borders protect the UK against the threats of international terrorism, serious cross-border crime and illegal immigration. It is a key part of a much improved and necessary ability to screen people before they arrive at the UK border, speed up processes for legitimate travellers and to target those who pose harm.

Specifically, e-Borders mean we can:

- Reduce the threat to the UK from international terrorist attack by identifying known terrorist suspects or their associates before they travel
- Disrupt organised cross-border crime and identify fugitives from justice. So far, e-Borders, and its pilot system, has led to the arrest of over 6,300 people, including murderers and rapists
- Identify those who have abused the immigration system—watchlist checks will also identify people who have overstayed their visas, been deported or excluded from the UK

- Create automatic exit checks
- Manage our resources in a more effective and co-ordinated way, reducing the time spent on those who are not a threat

The use of technology to collect passenger data is progressing rapidly across the world and is well advanced in the border management programmes of our closest international partners. Over 40 other countries have legislation in force for the collection of Travel Document Information (TDI), including USA, Spain, Bahrain, UAE, Cuba, Australia, Canada, China, India, and France. In response to the terrorist attacks of 2001, the USA accelerated its collection of TDI and established both the National Targeting Centre and the Terrorist Screening Center.

E-Borders has already delivered significant benefits to the border and security agencies, providing the ability to collect data on all routes in and out of the UK; and the establishment of a multi-agency 24/7 operation at the National Border Targeting Centre. It is currently tracking approximately 50% (over 114m per annum) of all passenger movements using their TDI. This currently is provided by 122 air carriers (out of 140) on over 2,500 routes.

The Chief Inspector of UKBA has confirmed our fears that the historic caseload of asylum applications will not be cleared by the deadline and that a new backlog of cases is growing up. We look forward to the UKBA presenting our successors with clear, realistic proposals for dealing with both these problems, even if that means an acknowledgement that current targets cannot be met. (Paragraph 6)

By the end of May 2010 the UK Border Agency had concluded 277,000 legacy cases. This represents an increase of 68% on our performance over the previous period and we are continuing to improve.

The Agency has a strategy and internal action planning to support its target of concluding the rest of the backlog of legacy cases by summer 2011. The transparency of our reporting to Parliament on our progress has been acknowledged by the Independent Chief Inspector and we plan to continue with this. We have also agreed to issue a report to the Public Accounts Committee when the legacy caseload is concluded in summer 2011.

In respect of backlogs, increased flexibility for regions on how they deploy staff and the creation of a Supervisory Framework within which Regions must prioritise work are designed to address this very issue. The Supervisory Framework works on the premise that each Region will still need actively to manage all asylum claims that are over six months old. It sets out some parameters according to which Regional Directors must prioritise work on these cases and stipulates a regular reporting mechanism for Regional Directors to account for the management of the entirety of their unresolved caseload. Within these parameters and the reporting mechanism Regional Directors are afforded a significant degree of autonomy as to the prioritisation of this caseload. Each of our six regions knows the number, and name, of the un-concluded cases they have. Each region can say whether those cases are awaiting a decision, are in the Appeal System, or are awaiting removal. The Supervisory Framework has allowed regional asylum leads to ensure active management of caseloads that have exceeded six months. Increased flexibility for the regions has also

allowed the establishment of Out of Service Standard Teams who are a dedicated resource for this caseload.

We have been, and remain, focused on building a sustainable level of case conclusions performance and ensuring that there is a clear plan for dealing with all Asylum claims whether they fall inside or outside the service standard. The published statistics for the first quarter 2010 show that the number of cases (excluding dependants) recorded as awaiting an initial decision was 5,100 at the end of March 2010 compared to 12,900 at the end of March 2009.

We know, too, that there is more that can be done and that is why we have committed to undertaking a review of the Protection system. This will include a comparison of international systems to consider whether particular countries operate individual elements of the process more efficiently than the UK. We are in the process of drafting terms of reference for this review which will then be submitted for Ministerial agreement. It is planned that the review will report in March 2011.

Given the slow progress so far in discussions with the maritime and rail sectors on the e-borders project, and the number of practical problems (some technical, others to do with a physical inability to send data) experienced by the aviation industry even during and after roll-out, we remain sceptical about whether UKBA will be able to solve the remaining problems swiftly. We note that there is still, in Mr Clark's words, the need for "a conversation with the Commission" to clarify what is required in order to make the programme compatible with freedom of movement; and, despite the continuing negotiations, UKBA was unable to inform us of any specific progress on the national data protection issues with individual Member States. We remain of the view that the current timetable will be impossible to achieve, and it is still not clear whether all or some intra-EU travel will have to be omitted from the programme, either on freedom of movement or on national data protection grounds. (Paragraph 14)

We note the Committee's concerns about the delivery timescales. As already stated, the prime supplier, Raytheon, has been in breach of contract since July 2009, with critical parts of the programme already running at least 12 months late. This, and the ongoing discussions with the European Commission on free movement, has meant that the programme has not progressed as planned.

The Committee is aware that a challenge was made to the European Commission regarding the compatibility of e-Borders with EU law, specifically on free movement of people and data protection, and that this has inhibited our ability to agree the solution design with the maritime and Eurotunnel sectors. On progress with the maritime sector, we continue to work with ferry and port operators to explore practical options for collecting data.

We are also taking forward plans to improve the effectiveness and efficiency of the coach clearance operation at Calais through advanced screening of passenger data. Using passenger data gained in advance on a voluntary basis from selected low risk coach operators through maritime carriers, we plan to pilot full screening checks through the National Border Targeting Centre in advance and minimise Calais checks to areas of identified risk.

We are also pleased to report that a maritime carrier has gone live on their e-Borders trial routes. E-Borders receive data from them relating to their passengers in line with that received from air carriers. We have worked closely with the carrier to ensure that the requirement to collect and submit data does not impact on their business process or their time in port.

EU freedom of movement

We are continuing to engage strongly and closely with the Commission on the full implications of the Free Movement Directive for e-Borders. Officials are working with the Commission in order to arrive at a common understanding of what precisely carriers are allowed to collect and share with e-Borders under Community law. UK and Commission officials met on 18 June and we hope to reach a mutual understanding shortly.

We are confident that e-Borders can operate in a way which does not impact on free movement, whilst not placing unacceptable limits on the UK's ability to protect its border and that of the wider EU.

The free movement Directive applies where EEA nationals and their family members are travelling within the EEA. All other passengers, including EEA nationals entering the UK from outside the EU will be required to give data in advance.

EU Data Protection

The European Commission has stated that there can be a basis under the Data Protection Directive for the transmission of TDI data by air carriers to our e-Borders system, subject to the approval of the Member State Data Protection Authority.

We continue to work closely with individual member states 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 TDI data can be transmitted.

In addition we are actively working with colleagues across Government to achieve a European Union Passenger Name Record (EU PNR) Directive which will provide a EU wide legislative framework for the collection of Passenger Name Record/Other Passenger Information data. To this end we are actively coordinating a cross-Whitehall group and lobbying strategy which ensures that we use every opportunity to put across the case for an early EU PNR Directive that includes provision for the collection and processing of data relating to intra-EU flights.

We note that UKBA has recently provided the Chamber of Shipping with the information we had previously asked it to supply about the UK's discussions with the European Commission. This is helpful, but we consider it would be still more helpful to involve the carriers in the imminent meeting between UKBA and the European Commission so that they have a much clearer idea of what the Commission believes EU law actually requires in practical terms. (Paragraph 15)

It was the intention of the UK Border Agency to have a meeting with the EU which included a sub-group of carriers.

The EU declined this joint meeting, and advised that it would only meet with the UK Border Agency team. The sub group was advised of this in advance of the meeting in March. The UK Border Agency team therefore met carriers in the sub group prior to the meeting with the Commission in order that carriers' views could be understood and relayed to the Commission. A carrier impact paper was produced informed by views from the aviation industry, including the sub group that covered implications for the systems air carriers currently have in place. The paper was used at the meeting with the Commission in lieu of having carrier representatives present.

We note the Government's strongly-held view that the e-Borders project is vital to the security of the UK's borders, in terms of combating illegal immigration, serious crime and terrorism. This being so, the fact that so many major difficulties with the programme remain to be resolved causes us serious concern. We recommend our successors to keep a close watching brief on this programme. (Paragraph 16)

The Coalition Government supports e-Borders and is committed to delivering a system that will provide security to the UK border from the threats of illegal immigration, serious crime, and international terrorism by checking passenger movements against UK Border Agency and police watchlists.

Following termination of the contract with Raytheon, the Government will seek alternative providers to secure the key benefits that the contract has so far been unable to deliver, and this work will be undertaken as a matter of urgency. In the meantime, security and immigration checks carried out by the UK Border Agency will continue as normal. We will ensure that the Committee is kept up-to-date on progress against the matters covered in this response.