

Small Boats Issue – Home Office policy / process review

The following report is provided to give a background to the migrant issues historically and to address the specific questions highlighted as a briefing prior to meeting with ministers.

Section 1

History

The concern by ministers in relation to the perceived “small boat” threat has been in play for several years and this issue was also one of the precursors that saw the development of the JMOCC. Prior to the JMOCC it was the small boat working group to which HMCG were involved.

Prior to the events of Christmas Day 2018 where there were approximately 100 migrants found making the transit, the number of previous incidents were relatively low and managed primarily through the tasking of RNLI vessels. However, given the incident on Christmas day, the then Home Secretary demanded the return of Border Force vessels from the Mediterranean and the remaining UK Border Force assets to start delivering a high visibility deterrent in the channel.

This activity commenced and the Border Force operation for this is Op Deveran. This is managed through the Border Force maritime command and MCC based in Portsdown Hill with HM Coastguard officers in the NMIC working very closely with them.

To accompany this, senior officials within Immigration Enforcement commenced the delivery of a cross government “Gold Group” looking at the migrant issues following the Home Secretary requesting the setting up of this group and declaring the migrant issue a major incident. The number one objective for this group was the safety of lives. HMCG were not invited to this group as it was primarily a Home Office initiative, however we were back briefed by Border Force.

Politically, the migrant issue has been of interest with the government coming under pressure from MP’s based in Kent and Sussex. Of course, HMCG were required to attend a Parliamentary Select Committee to provide evidence together with the National Crime Agency, Kent Police and latterly Border Force who presented on a separate day.

It should be noted that until recently given the events and impacts of COVID-19, most migrant movements across the channel were by commercial freight. However with the reduction in trade and movements of vessels across the channel, there has been a steep increase in the movement of migrants making the transit on “red and amber days” (agreed terminology as an assessment of days were the weather may be favourable for migrants to make the journey).

HMCG work and liaise with Border Force on these issues through the NMIC but we also chair an operational meeting reviewing migrant incidents with Border Force and the RNLI. These meeting occur weekly and in extremis a couple of time a week.

Question 1 - Where are the HO coming from, why is this important to them?

Given the rapid increase in the movement of migrants across the channel, the new immigration minister has been very vocal with his departments in demanding that better options to stop migrants be considered. At a meeting of his senior officials on Friday 1st May he has in effect stated that he does not want to see Border Force assets operate as a “taxi service picking up people from the county line”.

Prior to that meeting he demanded that his officials look at a range of issues from legislative change to more forceful interdiction options culminating in migrants being returned to France. As a consequence, LPP the JMISC commissioned by the DG Border Force to look at maritime interdiction options. We have been involved in LPP tactical

meetings as well as other specific meetings with **LPP** who's observations and comments to **LPP** are listed at **Section 2**.

From the Immigration Ministers meeting on the 1st May, I am told by Border Force that he wants a response by Wednesday 6th May to the following three scenarios.

1. What can the French do to intercept or allow UK government vessels to interdict suspected migrant vessels in French Territorial water (Note: It has been confirmed to me by email, that the French deal with all migrant incidents as SOLAS)
2. How easy would it be to shadow the migrant vessels and offer to rescue them when underway but advise that they will be returned to France or wait until they breakdown and then rescue and return them to France.
3. Consider law enforcement options to interdict the vessel on suspicion that a facilitator is on board and then take them back to France.

We are told by Border Force that the minister is being advised by officials who have no maritime experience nor understand the risks in operating in the English Channel.

Additionally, Border Force are considering taking on the charter of a vessel called Ocean Osprey which is currently used by the MMO. It is anticipated that any "rescued" migrants would be taken to that vessel and then moved to France.

Question 2 - What is our position on their suggestions?

The position of HMCG is such that whilst we will support a return of migrants to France following a SAR to which migrants are on a Border Force vessel (noting we will not use RNLI or our air assets to return rescued migrants to France) as per our previous position in the development on Operation Bowthorpe. We do not wish to support the use of any interdiction tactics that would naturally increase the risk to migrants at sea.

Currently, the rescue of migrants is in a permissive environment with compliant responses by migrants to rescuers. However, any known change to this practice would see a similar response by migrants to government vessels seen in French waters. The French have seen migrants pour fuel over themselves and threatened to set light to themselves if approached by a French vessel, threatened to jump into the water and even puncture sponsons of their ribs.

Our strategic position is listed within the submission at **section 3**.

Identified internal issues:

1. This current work has strongly highlighted the weaknesses of current Coastguard legislation given that we operate to international law and convention. The Coastguard Act 1925 is poor in terms of detail and not fit for the current role that HMCG deliver against both nationally and internationally.
2. The drive by Home Office ministers to consider either legislative change or a change in operational posture by Border Force is one that operationally could see a little mission creep by both Border Force and the JMSC.
3. Our work with AFATAG may be compromised and require amending.
4. We need to be mindful that mariners internationally expect a common delivery of a SAR service. Whilst accepting that migrants are not generally mariners per se, any change to operational delivery could see us out of kilter with rescue services internationally.
5. If Border Force and Home Office ministers decide that the Safety of Life fully sits with HMCG and withdraw their assets because of the perceived "taxi service", what does that mean for HMCG in the use of RNLI vessels for all incidents when internally they have many feral teams who do not agree that migrant incidents are in fact SAR.

Question 3 - Where can we be helpful but also articulate our hard lines?

Our position in terms of previously stating that we would support a return at sea (Op Bowthorpe) to which HMCG have retained primacy for the SAR and the determination of an appropriate Place of Safety has not changed.

The main caveat to this is such that if there are clear medical issues on board then the role of HMCG would be direct the vessel to a UK Place of Safety to allow for rapid medical intervention.

We do not agree that any conflating of a SAR role and Law Enforcement role would work, but we are happy to engage in any discussion that does not include increasing the risk to persons on overcrowded vessels.

Question 4 - Anything else you can think of that would be of interest to Brian and I on our discussion with Minister?

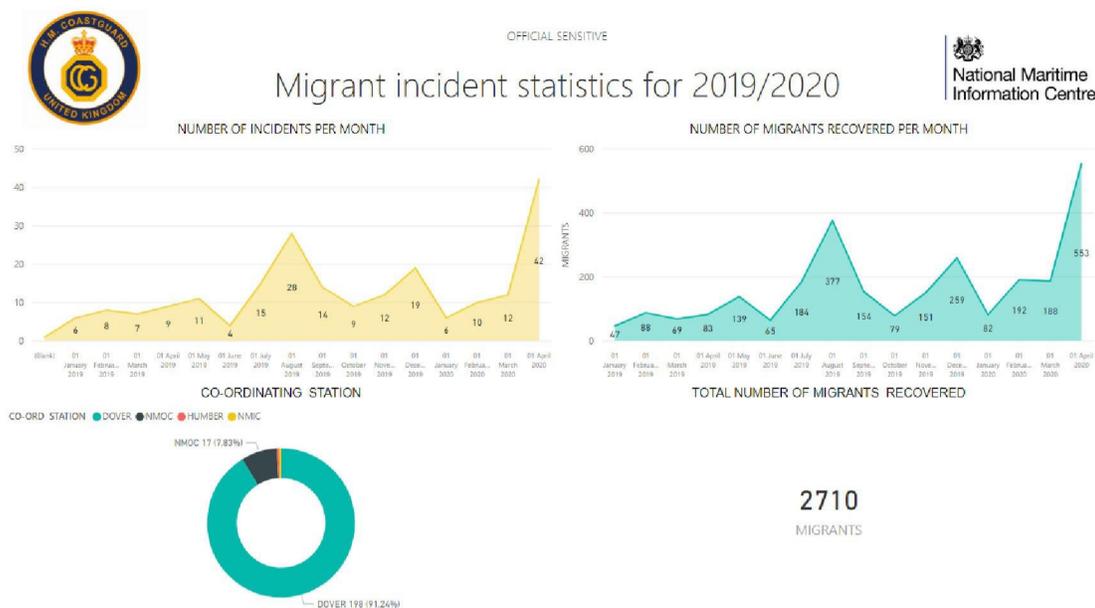
The JMSC have set several dates aside to tabletop discussion on maritime tactics which is going to culminate in a live trial exercise in Plymouth on the 25th May. The proposed issues are within the enclosed word document attached.

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The police currently are not keen to be involved in this level of work and they also have a paucity of asset.

Noting of course, our coordination has seen thousands rescued with no recourse from any authority such as the MAIB on our response.

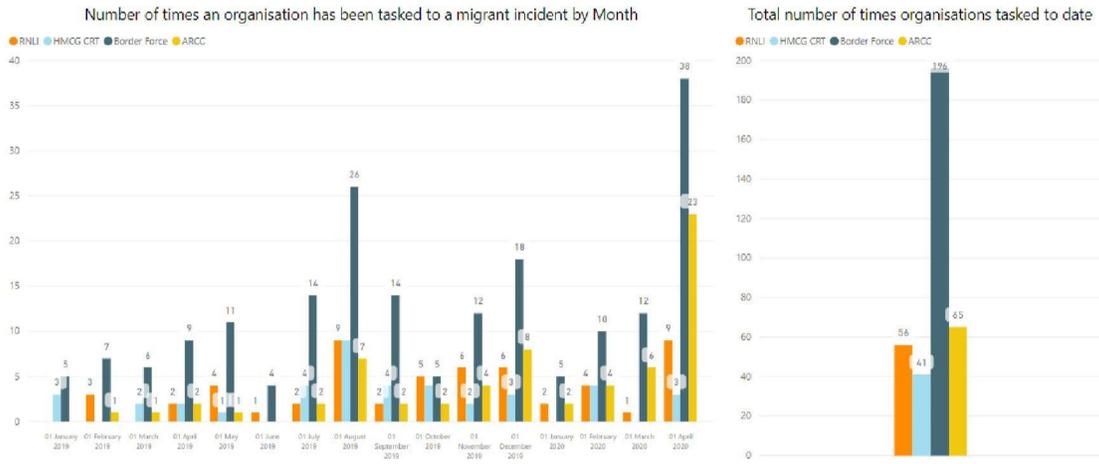
The number of migrant incidents to date for the period 2019/20 are as follows:



The assets deployed to these incidents are as follows: (Noting the volume of BF vessels deployed compared to RNLI)



Migrant incident statistics for 2019/2020



Section 2 – Legal Opinion

LPP

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Section 3 – Draft Submission to Secretary of State.

The following is the draft of the collated observations by HMCG, DfT legal and the DfT themselves. This will likely be submitted to the DfT today (4th May) for onward transmission to the Sec of State.

Briefing Note

Maritime and Coastguard Agency: Small Boats

Maritime and Coastguard Agency (HM Coastguard) operational duties in the context small boat migrant incidents

- The fundamental role of HM Coastguard (HMCG) is to prevent loss of life at sea by coordinating Search & Rescue (*SAR) in a region covering approximately 2 million square miles. **HM Coastguard is also an emergency service as defined within the Civil Contingencies Act 2004**
- The UK organisation for SAR is derived from the UK Government's adherence to the following international Conventions:
 - Convention on the High Seas (1958)
 - Convention on the Law of the Sea (UNCLOS) (1982)
 - Convention on Safety of Life at Sea (SOLAS) (1974)
 - International Convention on Maritime Search and Rescue (1979)
 - Convention on International Civil Aviation (Chicago 1944) (Annex 12)
- MCA is therefore under legal obligation to comply with SOLAS and UNCLOS
- **MCA has primacy as the coordinating party for Search and Rescue under the SOLAS convention.** The service which Coastguard deliver is mandated through the Coastguard Act 1925.
- **HMCG is responsible for the initiation and coordination of civil maritime search and rescue within the UK SAR area. This includes the mobilisation, organisation and tasking of adequate resources to respond to persons in distress.**
- HMCG class all **suspected** migrant incidents as vessels in distress **(not an enforcement activity)** given identified factors such as: vessel overloaded, no maritime experience onboard, transiting second busiest waterway in the world, – risk to migrants themselves and other mariners, 50% of those on migrant vessels not wearing any lifejackets and general channel sea conditions. HMCG then coordinate the response using **'declared assets'** such as the RNLi and independent lifeboats, HMCG air assets and **'additional assets'**, which include Border Force vessels who make themselves available to HMCG for SAR purposes due to their ability to help, their proximity to the incident, or the information they may be able to provide which could lead to a successful outcome of

the SAR operation. As such, **the tasking of BF vessels to migrant incidents is considered against any other asset availability and suitability based on HMCG's professional assessment of the incident against issues such as - risk, rescue asset capability and asset location.**

Legal considerations of enforcement and return at sea of the occupants of small boats

LPP

Maritime and Coastguard Agency operational concerns and comments:

- Were legislation created that introduced the ability of law enforcement officers to interdict migrant vessels at sea, this would likely **conflict with UK's obligations under SOLAS. Of particular concern is the fact that a UK Act of Parliament is Supreme and would take precedence over international obligations, therefore taking primacy over MCA obligations under UNCLOS and SOLAS. As such HMCG require absolute assurance that they retain complete primacy for the coordination and response to all SAR incidents and that existing legislation applicable to HMCG is also amended to reflect retention on that primacy in UK law.**
- If more than one tasking authority oversees the response to small boats (i.e. under SOLAS and enforcement), this introduces risk **and ambiguity** to the HMCG standard operating procedures underpinning SAR. **Consequently, competing agency processes could increase delay, assumption and risk to life.**
- **It is counter-intuitive to SAR principles to introduce tactics at sea that would increase risk to the safety and welfare of persons onboard small boats. As the coordinating authority in the UK for SAR, HMCG believe that they may be forced to accept a vicarious liability for activity, injury or even fatalities as a result of a tactic delivered by another authority which is not part of recognised SAR response procedures internationally. This is not accepted by the MCA/HMCG.**
- The delivery of any enforcement tactics at sea undermines the role of the trained Coastguard Search Mission Coordinator (international requirement).
- The proposed tactical and legal framework considered by the Home Office makes no reference to the support of casualties that require urgent medical assistance. A return to France would increase time and subsequently may have an impact on the casualty. As such HMCG believe that all incidents

in the UK Search and Rescue region that require medical intervention must not permit the return of the casualty to France if HMCG determine that the UK is the quickest and safest option.

- HMCG must retain absolute autonomy to declare and agree the most appropriate Place of Safety given the requirements of international law. The Place of Safety will not be declared by any vessels master.
- Essentially in a SAR incident the casualty wants to be rescued. **Deploying a direct and aggressive tactic makes it a law enforcement issue (not SAR) but with the added risk that this intervention could turn into SAR to which HMCG take over.** This again creates delay with the most appropriate assets then needing to be deployed post law enforcement activity, creating additional and unnecessary risk to life.
- It is vital going forward for all parties to maintain dialogue with MCA and DfT.