

Consultation stage resource assessment

Immigration offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

Scope

The guidelines for immigration offences apply only to adults. This assessment therefore considers the resource impact of the draft guidelines on prison and probation service resources. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment discusses six draft guidelines covering the following offences:

- Assisting unlawful immigration to the UK, Immigration Act 1971 (section 25)
- Helping asylum-seekers to enter the UK, Immigration Act 1971 (section 25A)
- Deception, Immigration Act 1971 (section 24A)
- Possessing false identity documents etc with improper intention, Identity Documents Act 2010 (section 4)
- Possessing false identity documents etc without reasonable excuse, Identity Documents Act 2010 (section 6)
- Breaching a deportation order, Immigration Act 1971 (section 24(A1))
- Knowingly entering the UK without leave, Immigration Act 1971 (section 24(B1))
- Knowingly arriving in the UK without valid entry clearance, Immigration Act 1971 (section 24(D1))

Separate draft guidelines are proposed for the offences of deception, possessing false identity documents etc with improper intention, possessing false identity documents etc without reasonable excuse and breaching a deportation order. However, a single draft guideline is proposed to cover the offences of assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK. There is also one draft guideline covering the offences of knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance. The statistics are provided separately for each of these offences in the 'Current sentencing practice' section.

The offences of breaching a deportation order, knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance came into force in June 2022 under the Nationality and Borders Act (NABA). Therefore, the data presented for these offences in the 'Current sentencing practice' section only cover the period June to December 2022.

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. For more details see the 'Further information' section at the end of this document.

Rationale and objectives for new guideline

There have previously been no guidelines for these offences. The development of guidelines for these offences is in accordance with the Council's aim to develop guidelines where they are absent to improve consistency in sentencing and provide guidance for sentencers.

In June 2022, the Nationality and Borders Act (NABA) came into force. This increased the statutory maximum sentences for the offences of assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK, from 14 years' custody to life imprisonment. The legislation also introduced several new offences including breaching a deportation order, knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance.

The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice. For assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK, the combined draft guideline is intended to increase sentencing severity, particularly for the most serious cases. This is to reflect the recent increase in the statutory maximum sentence for these offences.

The Council is consulting on new sentencing guidelines for these offences, for use in all courts in England and Wales.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to better understand the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of it.

Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks, references to case law, relevant news articles and sentencing data from the MoJ Court Proceedings Database (CPD). For more information on this data source please see the 'Further information' section at the end of this document. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that are in line with the Council's intentions.

During the consultation stage, some small-scale research will be conducted with a group of sentencers, to explore if the draft guidelines work as anticipated. This

research may also provide some further understanding of the likely impact of the guidelines on sentencing practice.

Detailed sentencing statistics for the offences covered by the draft guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Assisting unlawful immigration to the UK

In 2022, around 100 offenders were sentenced for assisting unlawful immigration to the UK, and all of these were sentenced in the Crown Court. The majority of offenders (84 per cent) received immediate custody. A further 15 per cent received a suspended sentence order and the remaining 1 per cent were 'Otherwise dealt with' (see the 'Further information' section for more details).

The statutory maximum sentence for this offence increased to life imprisonment in June 2022; prior to this, the statutory maximum sentence was 14 years' custody. For those sentenced to immediate custody in 2022, the (mean) average custodial sentence length (ACSL) after any reduction for guilty plea was 3 years 1 month. All offenders received a sentence of 8 years or less in 2022, after any reduction for guilty plea.

Helping asylum-seekers to enter the UK

The offence of helping asylum-seekers to enter the UK is very low volume. In 2022, fewer than 5 offenders were sentenced and all offenders received an immediate custodial sentence.

The statutory maximum sentence for this offence increased from 14 years' custody to life imprisonment in June 2022. Due to the small number of offenders sentenced each year, the ACSL has been provided for the last five years combined. Between 2018 and 2022, the ACSL was 3 years 11 months. All offenders sentenced to immediate custody received a sentence of 8 years or less, after any reduction for guilty plea.

Deception

Deception is a very low volume offence, with around 10 offenders sentenced in 2022. Around 89 per cent of offenders were sentenced to immediate custody and the remaining 11 per cent received a suspended sentence order.

The statutory maximum sentence for this offence is 2 years' custody. Due to the small number of offenders sentenced each year, the ACSL has been calculated for the last five years combined. During the period 2018 to 2022, the ACSL was 11 months, and all offenders received a sentence of 18 months or less, after any reduction for guilty plea.

Possessing false identity documents etc with improper intention

In 2022, around 190 offenders were sentenced for possessing false identity documents etc with improper intention. This is an indictable only offence and can only be sentenced in the Crown Court. The majority of offenders were sentenced to immediate custody (72 per cent). A further 20 per cent received a suspended sentence order and around 6 per cent received a community order. The remaining

offenders were 'Otherwise dealt with' (1 per cent), received a fine (1 per cent) or a discharge (1 per cent).

The statutory maximum sentence for this offence is 10 years' custody. Of those who received immediate custody in 2022, the ACSL was 9 months. The majority of offenders receive a sentence of 1 year or less, after any reduction for guilty plea (in 2022, around 84 per cent of immediate custodial sentences were 1 year or less).

Possessing false identity documents etc without reasonable excuse

Around 70 offenders were sentenced for possessing false identity documents etc without reasonable excuse in 2022. The majority of offenders (62 per cent) were sentenced in the magistrates' courts. The most common sentence outcomes in 2022 were immediate custody (26 per cent of offenders) and fines (25 per cent). Around 20 per cent received a community order and a further 20 per cent received a suspended sentence order. The remaining offenders received a discharge (4 per cent) or were 'Otherwise dealt with' (4 per cent).

The statutory maximum sentence for this offence is 2 years' custody. Of those who received immediate custody, the ACSL in 2022 was 4 months and all offenders received a sentence of 12 months or less, after any reduction for guilty plea.

Breaching a deportation order

The offence of breaching a deportation order came into force in June 2022. Around 20 offenders were sentenced from June to December 2022 and the majority of offenders were sentenced in the magistrates' courts (70 per cent). Nearly all offenders received an immediate custodial sentence (91 per cent). The remaining offenders received a suspended sentence order (4 per cent) or were 'Otherwise dealt with' (4 per cent).

Between June and December 2022, the ACSL was 7 months. All offenders who received immediate custody were sentenced to 2 years or less, after any reduction for guilty plea. The statutory maximum sentence for this offence is 5 years' custody.

Knowingly entering the UK without leave

The offence of knowingly entering the UK without leave came into force in June 2022. During the period June to December 2022, fewer than 5 offenders were sentenced. All offenders received a custodial sentence (75 per cent were immediate and 25 per cent were suspended).

As fewer than 5 offenders were sentenced to immediate custody from June to December 2022, the ACSL has not been provided. The statutory maximum sentence for this offence is 4 years' custody. All offenders who received immediate custody were given a sentence greater than 6 months and up to and including 12 months, after any reduction for guilty plea.

Knowingly arriving in the UK without valid entry clearance

The offence of knowingly arriving in the UK without valid entry clearance came into force in June 2022. Around 120 offenders were sentenced between June and December 2022. The majority of offenders were sentenced in the magistrates' courts

(91 per cent). All offenders received a custodial sentence; around 89 per cent were immediate and 11 per cent were suspended.

The statutory maximum sentence for this offence is 4 years' custody. The ACSL during the period June to December 2022 was 8 months. Almost all offenders (97 per cent of those sentenced to immediate custody) received a sentence of 12 months or less, after any reduction for guilty plea.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impacts of the new guidelines are measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels have been considered.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, research will be undertaken with sentencers during the consultation period, which may provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the draft guidelines available on the [Sentencing Council consultations webpage](#).

Overall impacts

Overall, it is estimated that the combined guideline for assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK may increase custodial sentence lengths. This could lead to a total requirement of around 50 additional prison places.

For the offence of possessing false identity documents etc with improper intention, it is anticipated that there may be a small increase in sentence levels, potentially requiring fewer than 10 additional prison places. For deception, it is anticipated that there may be a limited impact on prison and probation resources, as a result of the guideline.

For the other offences (possessing false identity documents etc without reasonable excuse, breaching a deportation order, knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance), it is difficult to estimate the impact of the guidelines due to a lack of data available on how cases would be categorised.

Assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK

There is currently no guideline for the offences of assisting unlawful immigration to the UK and helping asylum-seekers to enter the UK. The draft guideline is a combined guideline covering both offences, consisting of three levels of culpability and three levels of harm. The sentencing ranges have been set with the expectation that sentencing severity would increase for the most serious cases. This is to reflect the recent increase in the statutory maximum sentence from 14 years' custody to life imprisonment. The sentencing table in the draft guideline ranges from 12 months' to 16 years' custody.

All starting points in the sentence table are custodial and this is in line with current sentencing practice. In 2022, almost all offenders received either an immediate custodial or a suspended sentence (around 99 per cent for assisting unlawful immigration to the UK and all offenders for helping asylum-seekers to enter the UK).

Analysis of a sample of Crown Court judges' sentencing remarks for assisting unlawful immigration to the UK was undertaken to understand the possible effects of the guideline on sentencing practice. The transcript sample reflected a range of sentencing outcomes but is not necessarily representative of all cases.

Based on an analysis of 18 transcripts from 2022 for the offence of assisting unlawful immigration to the UK, it is estimated that the draft guideline is likely to result in an uplift in sentences. The ACSL within the sample of transcripts was 3 years 8 months and analysis indicated a possible increase to 4 years 11 months under the draft guideline (after any reductions for guilty plea). Therefore, the transcript analysis suggests a potential increase in ACSL of around 1 year 3 months under the draft

guideline. As a result, it is estimated that the draft guideline may lead to a requirement for around 50 additional prison places for the offence of assisting unlawful immigration to the UK.

The above estimate is based on the volume of offenders sentenced in 2022, which is notably lower than the volumes in previous years (around 100 offenders were sentenced in 2022, compared to 140 in 2021). It is difficult to predict future trends in volumes. However, if volumes for this offence were to increase in future, the impact on prison resources from the guideline would also increase.

Given the offence of helping asylum-seekers to enter the UK is very low volume (fewer than 5 offenders were sentenced in 2022), it is expected that there would only be a limited impact on prison and probation resources for these cases.

Deception

No guideline currently exists for the offence of deception. The draft guideline consists of two levels of culpability and two levels of harm. The sentence table ranges from a fine to 20 months' custody.

Five of the six starting points in the sentence table are custodial and this is broadly in line with current sentencing practice. In 2022, all offenders sentenced received a custodial sentence (either suspended or immediate). Since volumes for deception are very small (around 10 offenders were sentenced in 2022) and the statutory maximum is relatively low, it is anticipated that any impact on prison and probation resources will be limited.

Possessing false identity documents etc with improper intention

There is currently no guideline for possessing false identity documents etc with improper intention. The draft guideline consists of three levels of culpability and four levels of harm. The sentence table ranges from a community order to 8 years' custody.

Since all starting points in the sentence table are custodial, it is anticipated that some offenders who are currently receiving a non-custodial sentence may receive custody under the draft guideline. However, this is likely to impact a small proportion of offenders only (around 7 per cent received a community order, discharge or a fine in 2022). Furthermore, a community order is included in the lower end of the sentence range in category C4, so it is possible that a small proportion of offenders will continue to receive these outcomes.

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the guideline on sentencing practice. The transcript sample reflected a range of sentencing outcomes but is not necessarily representative of all cases.

Based on an analysis of 16 transcripts from 2022 for the offence of possessing false identity documents etc with improper intention, it is estimated that there may be a small increase in ACSL of around 1 month under the draft guideline. The ACSL of the transcript sample increased from 11 months to 12 months, after any reductions for guilty plea. Due to the combined effect of the small increase in ACSL and a potential shift in sentence outcome for some offenders who are currently receiving non-

custodial sentences, overall, it is estimated that the draft guideline may lead to a requirement for fewer than 10 additional prison places.

The transcript analysis also suggested that most cases would fall within lesser culpability (where the starting points range from 6 months' custody in category C4 to 2 years' custody in category C1). This is broadly in line with current sentencing practice as most offenders receive short custodial sentences. In 2022, around 84 per cent of immediate custodial sentences were 12 months or less, after any reduction for guilty plea.

Possessing false identity documents etc without reasonable excuse

There is currently no guideline for possessing false identity documents etc without reasonable excuse. The draft guideline consists of two levels of culpability and two levels of harm. The sentence table ranges from a fine to 18 months' custody.

The majority of offenders are sentenced in the magistrates' courts (62 per cent in 2022) and sentencing remarks are only available for the Crown Court. This means that any evidence from transcripts is unlikely to be representative and limits its usefulness in understanding the resource impacts of the guideline. However, given the low statutory maximum and all custodial sentences being in the range for suspension (under 2 years), it is anticipated that there will not be a substantial impact on prison resources as a result of the guideline.

Breaching a deportation order

No guideline currently exists for breaching a deportation order. The draft guideline consists of three levels of culpability and two levels of harm. The sentence table ranges from 6 months' to 3 years 6 months' custody.

As this offence came into force in June 2022, there is currently limited evidence available to confidently anticipate what the impact of the guideline may be on prison and probation resources (only around 20 offenders were sentenced between June and December 2022).

Knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance

There is currently no existing guideline for the offences of knowingly entering the UK without leave and knowingly arriving in the UK without valid entry clearance. The draft guideline is a single combined guideline covering both offences, consisting of three levels of culpability and two levels of harm. The sentence table ranges from a community order to 3 years' custody.

These are relatively new offences and, therefore, there is a lack of data available to understand how cases would be categorised under the guideline. The majority of offenders were sentenced in the magistrates' courts (all offenders for knowingly entering the UK without leave and 91 per cent for knowingly arriving in the UK without valid entry clearance). Since sentencing remarks are not available for the magistrates' courts, any evidence from transcripts is unlikely to be representative of the different types of offending. As a result, the transcripts can only be of limited use in understanding the impact of the guideline and it is not possible to reliably estimate the impact on prison and probation resources.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines come into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for the various immigration offences have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers due to be carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in this consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data in this report align with figures published in the Criminal Justice System statistics quarterly: December 2022 publication (CJSQ) which was originally published in May 2023. Since then, the CJSQ publication has been revised to reflect changes to the underlying data, which have not been reflected in these statistics. As such, the latest MoJ published statistics will not match the statistics in this report. Further information on changes to MoJ's data processing can be found in the [changes and revisions section](#) of the latest publication.

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Methodology

Where a resource impact has been calculated, volumes of sentences have been adjusted in line with 2022 volumes. For the offence of assisting unlawful immigration to the UK and possessing false identity documents etc with improper intention, it has been assumed that offenders would be released half-way through their sentence.

Data are not available to estimate how many suspended sentence orders would continue to be suspended under the guidelines, however, the estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the guideline, provided the sentence length was within the range for suspension (between 14 days and 2 years).

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding. Prison impact estimates have been rounded to the nearest 10 prison places.