

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(24)JAN02 – Immigration
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1 ISSUE

1.1 The Council is asked to consider some minor changes to the guidelines and sign off the package of guidelines ready for consultation in March.

2 RECOMMENDATION

2.1 That the Council discuss and agree the minor changes and sign off the guidelines.

3 CONSIDERATION

3.1 Now that the Council has considered all of the guidelines in this project a few minor amendments are proposed to ensure consistent language is used throughout. The office has also recently tested some of the guidelines in a transcript exercise to inform the resource assessment. In carrying out this exercise it became clear that some factors may not be clear enough.

3.2 In addition, the Court of Appeal has recently set guidance for courts sentencing Facilitation cases in the absence of sentencing guidelines. Considering this guidance, the Council may wish to include of a couple of additional factors.

Facilitation Guideline (s25 and 25A Immigration Act 1971)

3.3 The facilitation guideline was the first guideline that the Council considered in this project. The agreed version is attached at **Annex A** pages 6-10.

3.4 The first factor in high culpability is 'leading role in a commercial activity'. It may be that the Council intended that this factor relates to group activity where the offender plays a leading role but that is not clear from the wording of the factor. In the recent transcript exercise the following case was discussed:

R v Kuznecovs

“Mr Kuznecovs, you had been stopped by Border Force officers driving your Latvian cab and trailer, in which you had two Albanians secreted in the cab, one man and one 17 year old woman. These were illegal immigrants. This was a one-off incident in which you stood to gain 400 euro.”

3.5 In the exercise the offender was categorised as B as the offender’s culpability falls between the factors described in A and C. However, there was discussion amongst those testing the guidelines that the top Culpability A factor might apply with the wording as it currently is. The offender was a leading role and the activity was for commercial purposes.

3.6 If the Council considers that this factor is aimed at group activity, thus eliminating the possibility that cases such as Mr Kuznecovs would be included, then the factor could be amended to ‘leading role in a group activity carried out for commercial purposes’.

Question 1: Does the Council want to amend the culpability A factor to ‘Leading role in a group activity carried out for commercial purposes’?

3.7 The second factor in category A is ‘Sophisticated nature of offence/ significant planning’. Since developing this guideline the Council has discussed and agreed a guideline for the offences of knowingly entering/ arriving in the UK without leave/ valid entry clearance (ss 24(B1) and 24(D1) Immigration Act 1971). In that guideline a similar factor appears but is worded ‘Sophisticated planning by the offender beyond that which is inherent in the offence’. Would the Council like to adopt that wording in the Facilitation guideline?

Question 2: Would the Council like to amend the second factor in the Facilitation guideline to ‘Sophisticated planning by the offender beyond that which is inherent in the offence’.

3.8 A recent Court of Appeal case, R v Ahmed [2023] EWCA Crim 1521 set out general guidance to assist courts in sentencing Facilitation cases in the absence of a definitive Sentencing Council guideline. The majority of that guidance is reflected in the factors currently within the draft Facilitation guideline however there are a couple of areas which are not covered by the guideline.

3.9 The first is a consideration of whether the offender’s primary motivation was to obtain asylum. The Court commented that:

“...in an appropriate case it may be relevant to take into account the circumstances which might be relied on as arguable grounds for claiming asylum, i.e. where the offender’s

principal concern was to gain entry to the UK as an individual with the assistance given to others being a collateral purpose.”

3.10 Indeed, when the Council recently discussed the content of the guideline for the offences under ss 24(B1) and 24(D1) Immigration Act 1971 it was agreed that a factor relating to asylum should be included in these terms; ‘Offender fled persecution or serious danger’.

3.11 Does the Council want to include a similarly worded factor in the Facilitation guideline?

Question 3: Does the Council want to include a factor reflecting the offenders possible asylum grounds within the guideline, and if so at Step 1 or 2?

3.12 The guidance in R v Ahmed also refers to a number of aggravating factors that may be considered in a relevant case, including previous attempts to enter the UK. In the ss 24(B1) and 24(D1) Immigration Act 1971 guideline, the Council included the following aggravating factors:

- Previously deported, removed or extradited from the UK or deprived of UK citizenship
- Previous history of failed applications for leave to enter/ remain in the UK or for asylum (if not already taken into account at step 1)

3.13 The Council might want to include the same factors in the Facilitation guideline?

3.14 Another possible aggravating factor referred to in the Court of Appeal case was ‘the involvement of others (particularly children)’. The Council might, therefore want to add this to the aggravating factors in the Facilitation guidelines, and possibly into the ss 24(B1) and 24(D1) Immigration Act 1971 guideline.

Question 4: Does the Council want to add the two aggravating factors relating to previous removals and failed entry applications to the Facilitation guideline?

Question 5: Does the Council want to add an aggravating factor relating to the involvement of others to the Facilitation and/ or ss 24(B1) and 24(D1) Immigration Act 1971 guideline?

Sign Off

3.15 All of the guidelines are attached at **Annex A** as follows:

Knowingly Enters the UK Without Leave/ Knowingly Arrives in the UK Without Valid Entry Clearance	S24(B1) and s24(D1) Immigration Act 1971	Page 1-5
Facilitation Assisting Unlawful Immigration to the UK Helping Asylum Seekers to Enter the UK	S25 and s25A Immigration Act 1971	Page 6-10
Breach of Deportation Order	S24(A1) Immigration Act 1971	Page 11-15
Deception	S24A Immigration Act 1971	Page 16-20
Possession of False Identity Documents etc with Improper Intention	S4 Identity Documents Act 2010	Page 21-25
Possession of False Identity Documents etc Without Reasonable Excuse	S6 Identity Documents Act	Page 26-29

Question 6: Is the Council content to sign these guidelines off ready for public consultation in March?

4 EQUALITIES

4.1 The Council has not yet considered the equalities data for the offences created by the Nationality and Borders Act 2022. Data on the demographics for the following offences are presented below:

- Breaching a deportation order – 24(A1) Immigration Act 1971
- Knowingly entering the UK without leave – 24(B1) Immigration Act 1971
- Knowingly arriving in the UK without valid entry clearance – 24(D1) Immigration Act 1971

Breaching a Deportation Order

4.2 Only around 20 offenders were sentenced for this offence between June to December 2022. The majority of these offenders were male (90 per cent representing 18 offenders). Almost all male and female offenders were sentenced to immediate custody (1 male offender received a suspended sentence).

4.3 Due to the majority of offenders' ethnicities not being recorded or known, volumes for each ethnicity group are too low to draw any useful comparisons.

Knowingly entering the UK without leave

4.4 Fewer than 5 offenders were sentenced for this offence between June and December 2022, all of whom were male, however their ethnicities were not recorded or not known.

Knowingly arriving in the UK without valid entry clearance

4.5 From June to December 2022, around 120 offenders were sentenced for this offence. Almost all offenders (97 per cent) were male. For both males and females, the majority of offenders received an immediate custodial sentence and a small proportion received a suspended sentence (however females accounted for fewer than 5 offenders).

4.6 Ethnicity is not known for around 39 per cent of offenders. Immediate custody was the most common outcome across all known ethnicity groups. Although there were small differences in ACSL between the ethnicity groups, each of these groups include fewer than 30 offenders. This means that the ACSLs are more sensitive to small changes in volume.

Overall

4.7 With the information available, there does not appear to be any substantial differences in sentencing between groups for these offences that would require the Council to take action at this stage. The Council can ask questions at consultation to seek views on this area from consultees.

5 IMPACT AND RISKS

5.1 We will publish a resource assessment alongside the consultation. This will be circulated to Council members alongside the consultation document. The resource impacts for each offence are summarised below.

5.2 For assisting unlawful immigration to the UK (s25), a sample of 18 transcripts of Crown Court judges' sentencing remarks from 2022 were analysed to understand the possible effects of the combined s25 and s25A guideline on sentencing practice. Based on the transcript analysis, the (mean) average custodial sentence length (ACSL) is estimated to increase by around 1 year 4 months under the draft guideline (the ACSL of the transcript sample after any reduction for guilty plea was 3 years 8 months and this increased to 5 years when cases were sentenced using the draft guideline). This is anticipated to lead to a potential requirement of around 50 additional prison places. The transcript analysis indicated that the largest impacts would arise from the most serious cases i.e. cases falling into the highest categories of the sentence table, as intended. Notably, for cases that fell within A1, the sentences imposed under the draft guideline were up to 6 years higher than the original sentences imposed.

5.3 The estimate of 50 additional prison places is based on the volume of offenders sentenced in 2022, which is notably lower than the volumes in previous years (around 90 offenders were sentenced in 2022, compared to 140 in 2021). It is difficult to predict future trends in volumes. However, if volumes were to increase, the impact on prison resources would also increase.

5.4 For the offence of helping asylum-seekers to enter the UK (s25A), although transcript analysis has not been conducted, it is anticipated that there will be a limited impact on prison and probation resources due to the very low volumes (fewer than 5 offenders were sentenced in 2022).

5.5 The Council will be aware that the s25 and s25A offences were amended by the Nationality and Borders Act 2022 (NABA), to increase the statutory maximum sentence from 14 years to life. It was therefore anticipated that sentences would go up. The Council agreed that it was clearly parliament's intention that offenders receive higher penalties for these offences, however the Council considered that the main increases should be for the most serious offences (A1 and B1). This appears to have been achieved by the draft guideline.

5.6 Analysis of a sample of 16 transcripts of sentencing remarks for possessing false identity documents etc with improper intention (s4) from 2022 indicated that there would be a limited impact overall on prison and probation resources under the guideline. The transcript analysis suggested a small increase in ACSL of around 1 month (from 11 months to 12

months under the draft guideline), potentially requiring fewer than 5 additional prison places overall. The majority of cases included in the sample fell into culpability C (12 out of 16) and none fell into culpability A. However, this is in line with current sentencing practice as most offenders receive custodial sentences much lower than the statutory maximum of 10 years (84 per cent of immediate custodial sentences in 2022 were 12 months or less, after any reduction for guilty plea).

5.7 For the offence of deception (s24A), it is anticipated that any impact on prison and probation resources will be limited due to low volumes of offenders sentenced (around 10 in 2022). For possessing false identity documents etc without reasonable excuse (s6) and the offences created under NABA, it is difficult to estimate the impact of the guidelines due to a lack of data available on how current cases would be categorised. The majority of offenders are sentenced at the magistrates' courts, which means any evidence from transcripts is unlikely to be representative of the different types of offending and limits its usefulness in understanding the resource impacts of the guidelines. Additionally, as the offences created under NABA came into force in June 2022, less than a year of data is currently available.

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Knowingly enters the United Kingdom without leave

Knowingly arrives in the United Kingdom without valid entry clearance

**Immigration Act 1971 section 24(B1)
Immigration Act 1971 section 24(D1)**

Triable either way

Maximum: Four years' imprisonment

Offence range: High level community order – 3 years' custody

STEP ONE**Determining the offence category**

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Significant role played (more than simply a passenger) • Sophisticated planning by the offender beyond that which is inherent in the offence • Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Offender fled persecution or serious danger • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Seeking to enter/ arrive in order to engage in criminal activity • Exploited/ put pressure on others
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 18 months - 3 years' custody	Starting Point 18 months custody Category Range 9 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 -18 months' custody
Category 2	Starting Point 18 months' custody Category Range 9 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 -18 months' custody	Starting Point 6 months' custody Category Range High level Community Order – 8 months' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Previously deported, removed or extradited from the UK or deprived of UK citizenship

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum (if not already taken into account at step 1)

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX

Ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Facilitation

Assisting unlawful immigration to the United Kingdom

Immigration Act 1971 section 25

Helping asylum-seeker to enter the United Kingdom

Immigration Act 1971 section 25A

Triable either way

Maximum: life imprisonment

Offence range: High-level community order – 16 years' custody

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STEP ONE**Determining the offence category**

CULPABILITY	
A- High Culpability	<ul style="list-style-type: none"> • Leading role in a commercial activity • Sophisticated nature of offence/ significant planning • Significant financial gain/ expectation of significant financial gain
B- Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Non – commercial activity • Minor role in group activity • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved a high risk of serious injury or death • Facilitating large numbers of individuals to illegally enter/ arrive in the UK • Exploited/ put pressure on others
Category 2	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved some risk of serious injury or death • Facilitating small numbers of individuals to illegally enter/ arrive in the UK • Facilitating large numbers of individuals to remain unlawfully
Category 3	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 16 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody
Category 3	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody	Starting Point 18 months' custody Category Range 12 months' custody – 2 years' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offending conducted over a sustained period of time
- Abuse of position of trust
- Recruited others to take part in offending (unless already taking into account at step 1)
- Significant risk of injury or death to those seeking to rescue individuals

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Limited understanding of scale of activity

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The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Breach of Deportation Order

Immigration Act 1971 section 24(A1)

Triable either way

Maximum: Five years' imprisonment

Offence range: 6 months' – 3 years 6 months' custody

STEP ONE**Determining the offence category**

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Breached order shortly after its imposition • Has previously breached a deportation order • Sophisticated method of breach
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Complied with order for lengthy period of time • Involved due to coercion or pressure • Unsophisticated nature of conduct

HARM	
Category 1	<ul style="list-style-type: none"> • Committed new serious offence(s) • Returned with the intention of committing further serious offence(s) • Been in the UK in breach of a deportation order for a lengthy period
Category 2	All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' 6 months' custody Category Range 2 - 3 years 6 months' custody	Starting Point 2 years' custody Category Range 1-3 years custody	Starting Point 1 year 6 months' custody Category Range 6 months' – 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1-3 years custody	Starting Point 1 year 6 months' custody Category Range 6 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 months' – 1 years' 6 months custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Use of false documents (where not charged separately or taken in account at step 1)

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

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The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Deception

Immigration Act 1971 section 24A

Triable either way

Maximum: Two years' imprisonment

Offence range: Band C fine – 20 months' custody

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STEP ONE**Determining the offence category**

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Sophisticated nature of the offence or significant planning • Multiple or repeated deceptions
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Unplanned or limited in scope • Unsophisticated nature of conduct • Offender's responsibility substantially reduced by mental disorder or learning disability • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Deception results in lengthy period of stay
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 15 Months custody	Starting Point 12 months' custody	Starting Point 6 months' custody
	Category Range 10-20 months' custody	Category Range 9 - 18 months' custody	Category Range High Level CO -9 months' custody
Category 2	Starting Point 12 months' custody	Starting Point 9 months' custody	Starting Point High Level CO
	Category Range 9 - 18 months' custody	Category Range 6 - 12 months' custody	Category Range Band C fine – 6 months custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Involvement of others through pressure, influence
- *Use of false documents (where not charged separately or taken in account at step 1)*

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

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If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

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In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

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Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

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The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Possession of false identity documents etc with improper intention

Identity Documents Act 2010 section 4

Indictable Only

Maximum: 10 years' imprisonment

Offence range: High level community order- 8 years' custody

DRAFT

STEP ONE**Determining the offence category**

CULPABILITY	
D-	<ul style="list-style-type: none"> • Possession of a large number of documents used for commercial scale criminal activity • Substantial financial gain or expectation of substantial financial gain • A leading role where offending is part of a group activity • Sophisticated nature of offence or significant planning
E-	<ul style="list-style-type: none"> • Possession of multiple documents intended for the use of others • Financial gain or expectation of financial gain • A lesser role where offending is part of a group activity
F-	<ul style="list-style-type: none"> • Possession of one or two false documents for own use • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Document(s) used or intended for use to evade immigration controls
Category 2	<ul style="list-style-type: none"> • Document used or intended for use to assist criminal activity (other than that described in category 1 or 3) • Document used or intended for use to evade responsibility for criminal activity other than that described in category 1 or 3) • Document used or intended for use to falsely demonstrate a lawful right to drive in the UK
Category 3	<ul style="list-style-type: none"> • Document used or intended for use to obtain rights, services or benefits [such as employment, accommodation, bank accounts etc]
Category 4	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	<p>Starting Point 7 years' custody</p> <p>Category Range 5 – 8 years' custody</p>	<p>Starting Point 3 years' custody</p> <p>Category Range 2 – 4 years' custody</p>	<p>Starting Point 2 years' custody</p> <p>Category Range 18 months – 30 months years' custody</p>
Category 2	<p>Starting Point 3 years' custody</p> <p>Category Range 2 – 4 years' custody</p>	<p>Starting Point 18 months' custody</p> <p>Category Range 1 – 2 years' custody</p>	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>
Category 3	<p>Starting Point 18 months' custody</p> <p>Category Range 1 – 2 years' custody</p>	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6 - 12 months' custody</p>
Category 4	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6 - 12 months' custody</p>	<p>Starting Point 6 months' custody</p> <p>Category Range High level CO - 9 months' custody</p>

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Offending conducted over a sustained period
- Involvement of others through pressure, influence
- Offender not lawfully present in the UK (unless taken into account at step 1)
- Abuse of position of trust

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Limited understanding of scale of activity

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX

Ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Possession of false identity documents etc without reasonable excuse

Identity Documents Act 2010 section 6

Triable either way

Maximum: 2 years' imprisonment

Offence range: Band C Fine – 18 Months' custody

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STEP ONE**Determining the offence category**

CULPABILITY	
G-	<ul style="list-style-type: none"> • Possession of multiple documents • Possession of any apparatus, article or material that could be used to make multiple documents
H-	<ul style="list-style-type: none"> • Possession of a single document • Possession of any apparatus, article or material that could be used to make a single document

HARM	
Category 1	<ul style="list-style-type: none"> • Passport, other immigration document, or a document that can be used instead of a passport • Apparatus, article or material is capable of making a passport or other immigration document
Category 2	<ul style="list-style-type: none"> • Driving licence • Apparatus, article or material is capable of making a driving licence

STEP TWO**Starting point and category range**

Harm	Culpability	
	A	B
Category 1	<p>Starting Point 12 months' custody</p> <p>Category Range 9 - 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6-12 months' custody</p>
Category 2	<p>Starting Point 6 months' custody</p> <p>Category Range High Level Community Order -9 months' custody</p>	<p>Starting Point High Level Community Order</p> <p>Category Range Band C fine – 6 months custody</p>

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offending conducted over a sustained period
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Possession due to coercion or intimidation
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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