

Immigration Offences legal guidance

Annex: Table of Immigration Offences

This table sets out the most commonly prosecuted immigration offences
 For statutory defences: see the [Immigration Offences](#) legal guidance

False Documents			
<ul style="list-style-type: none"> Identity Documents Act 2010 (IDA) came into force 21/1/2011. For offences prior to that date, the IDA 2006 applies. Documentary offences will usually be prosecuted under the IDA rather than under the Forgery and Counterfeiting Act 1981 (FCA) or sections 24A or 26(1)(d) of the Immigration Act 1971 (IA): the IDA offences were introduced to combat the growing problem of identity fraud in organised crime and terrorism offences. Sections 4, 5 and 6 can be prosecuted if a “relevant event” occurred in England or Wales: Criminal Justice Act 1993 Part 1. This applies whether or not the defendant was in England or Wales at any material time, and whether or not he was a British citizen at any such time. s7 IDA defines what is meant by “identity document” in ss4-6 and includes an immigration document, a passport and a driving licence. 			
Category	Maximum Sentence	Statutory Defence?	Key Points
Possession of false identity documents etc with improper intention - s4 Identity Documents Act 2010			
Indictable only	10 years' custody	S31 Immigration and Asylum Act 1999 (IAA) S45 Modern	<ul style="list-style-type: none"> The s4 offence is more serious than the s6 offence, requiring an improper intention (using the document for identity fraud). In many cases it will be possible to infer the intent from all the circumstances of the case. In <i>R v Goodings</i> [2012] EWCA Crim 25856 the court emphasised the importance of the prosecution selecting the correct charge to reflect the true gravity of the conduct and not accepting a G plea to the lesser s6 offence, which does not properly reflect the evidence. The court also indicated that if a plea is taken to the

		Slavery Act (MSA)	<p>lesser offence, it would be improper for the prosecution to put the case on the basis that the defendant had the intention (of impersonating another person), and he cannot be sentenced on that basis.</p> <p>Sentencing</p> <ul style="list-style-type: none"> • See below the case of R v Heng Pit under the offence Obtaining leave by deception.
Apparatus designed or adapted for the making of false identity documents - s5 Identity Documents Act 2010			
Indictable only	10 years' custody	S45 MSA	<ul style="list-style-type: none"> • Apparatus is defined in s9 of the Act. <p>Sentencing</p> <ul style="list-style-type: none"> • See below the case of R v Heng Pit under the offence Obtaining leave by deception.
Possession of false identity documents etc without reasonable excuse - s6 Identity Documents Act 2010			
Either way	2 years' custody	S31 IAA S45 MSA	<ul style="list-style-type: none"> • This may be charged when there is insufficient evidence to prove an improper intention, required for the s6 offence.
Part 1 of the Forgery and Counterfeiting Act 1981 - ss 1, 2, 3, 4 and 5.			
Either way	10 years' custody	S31 IAA S45 MSA	<ul style="list-style-type: none"> • Sections 1 to 5 contain a number of offences relating to making, copying and use of specified false documents. • Passports and similar identity documents do not apply, as these are now covered by offences under the IDA 2010. • For further guidance on these offences, and on offences of forgery of specific items, see the legal guidance on Forgery and Counterfeiting. <p>Sentencing</p> <ul style="list-style-type: none"> • See below the case of R v Heng Pit under the offence Obtaining leave by deception.
Making etc a false registration card - s26A Immigration Act 1971			
Either way	2 – 10 years' custody	S45 MSA	<ul style="list-style-type: none"> • This Section creates a number of offences relating to the creation, possession and use of false or altered registration cards. These cards are issued by the Secretary of State in connection with a claim for asylum or support for former asylum seekers, temporarily unable to leave the UK. • Most cases will not be suitable for summary trial unless there are exceptional circumstances.

Possession of Immigration Stamp - s26B Immigration Act 1971			
Either way	2 years' custody	S45 MSA	<ul style="list-style-type: none"> Cases where any element of organisation or financial gain is involved are likely to be suitable for trial on indictment.
Failure to produce a passport			
Category	Maximum Sentence	Statutory Defence?	Key Points
Entering the UK without a passport - s2 Asylum & Immigration (Treatment of Claimants etc) Act 2004			
Either way	2 years' custody	S2(4) & (5) Asylum & Immigration Act 2004 S45 MSA	<ul style="list-style-type: none"> S2 creates two offences of not having an immigration document (usually a passport) at a leave or asylum interview, relating to the person and any dependant children. <i>Bei Bei Wang</i> [2005] EWCA Crim 293 reiterates Home Office guidance: <ul style="list-style-type: none"> ❖ The reason the offences were created was to deal with the problem of the destruction of documents. This disables the authorities from establishing where an entrant came from, in order to increase the chances of success of a claim or application and/or to thwart removal. ❖ It is not the intention of the offence to penalise those who never had an immigration documentation during the course of their journey to the UK, or those who use a false immigration document (for example a false passport) to travel to the UK and who produce that document on arrival. Charging: there is no requirement to await the outcome of an asylum application before making a charging decision: <ul style="list-style-type: none"> ❖ A person who is granted refugee status can still be guilty of the s2 offence. For instance, where the identity document is destroyed to delay the handling of the asylum application, even if the application is ultimately successful, the destruction could have made it more difficult to resolve. ❖ It was not the intention of Parliament when introducing this offence that a prosecution may be delayed while an administrative process is pursued. It was accepted that the defences available will protect a refugee who has an acceptable reason for being undocumented from being convicted. Mode of trial: Factors to consider are: <ol style="list-style-type: none"> The Allocation Guideline – either way offences to be tried summarily unless the

			<p>outcome would clearly be a sentence in excess of the court's powers;</p> <p>ii. Mitigating factors, such as the grant of refugee status.</p> <p>iii. Overall maximum sentence.</p> <p>Sentencing</p> <ul style="list-style-type: none"> In normal circumstances, a custodial sentence is inevitable - not least because these offences have the real potential to undermine the whole system of immigration control: <i>R v Bei Bei Wang</i> [2005] EWCA Crim 293.
Illegal entry and related offences			
Category	Maximum Sentence	Statutory Defence?	Key Points
Obtaining leave by deception - s24A(1) Immigration Act 1971			
Either way	2 years' custody	S31 IAA S45 MSA	<ul style="list-style-type: none"> Documentary offences will usually be prosecuted under the Identity Documents Act 2010 (IDA), which has a higher maximum sentence of 10 years' imprisonment: see above. Mode of trial: under the Allocation Guideline, many cases will be suitable for summary trial but some may be subsequently committed for sentence, as offences involving breaches of immigration control are considered to be serious and merit deterrent sentences: see <i>AG Ref No.s 1 and 6 2008</i> [2008] EWCA Crim 677, which cites the sentencing case of <i>R v Kolawole</i> - see below. This offence is broad in scope and can be applied to a number of situations, such as: <ul style="list-style-type: none"> ❖ Seeking to enter, as well as actually entering. ❖ Action taken to remain in the UK, such as preventing or deferring removal. ❖ Failed asylum seekers who seek asylum under a different identity. Prosecutors must consider the facts carefully to determine which subsection applies, and draft the charge / indictment accordingly: see <i>R v Boateng</i> [2016] EWCA Crim 57 [12-15]. To prove deception, direct evidence from the immigration official who was deceived should ordinarily be obtained. Deception includes the silent presentation of a false passport. There may also be an offence under Section 26(1)(c) of the 1971 Act of making a

			<p>false statement, return or representation to an immigration official in the commission of any offence under Section 24 of the 1971 Act. See below for s26 offences.</p> <p>Sentencing</p> <p><i>R v Heng Pit Ding</i> [2010] EWCA Crim 1979 summarised a number of sentencing principles by reference to previous cases, including <i>R v Ovieriakhi</i> [2009] EWCA Crim 452 and <i>R v Kolawole</i> [2005] 2 Cr.App.R(S)14:</p> <ul style="list-style-type: none"> • It confirmed that the principles set out in <i>R v Ali</i> 2001] EWCA Crim 2874 still apply: passport cases provide useful guidance on sentence - it is a prevalent type of offence that has potential to undermine the system of immigration control, and will be treated very seriously; good character and personal mitigation are of very limited value and cases of this kind should be sentenced on a deterrent basis. • Offences under the Identity Cards Act 2006 (since replaced by offences under the Identity Documents Act 2010), are not more serious than the offences under s24A(1) of the 1971 Act (committed by use of a false document), which have a maximum of 2 years' imprisonment. (The sentencing range of the 2006 Act offences - 10 years - had to cater for the worst possible case, such as the manufacture and distribution of false documents on a commercial basis, for significant gain.) • The sentence guidance in <i>R v Kolawole</i>, in relation to offences under the Forgery and Counterfeiting Act 1981, applies to the Identity Cards Act offences and to the 1971 Act offences: where a false passport is held or used for the purpose of defeating immigration control, the appropriate sentence on a G plea by a person of good character is in the range of 12-18 months. • The sentence could be less in cases where the passport is used not to defeat or avoid border control, but to obtain work or open a bank account, particularly if the offender is of good character and doing no more than seeking employment. • There is no distinction for sentencing purposes between offences committed under subsections 24(A)(1)(a) and 24(A)(1) (b).
Entering without leave - s24(1)(a) Immigration Act 1971			
Summary	6 months' custody	S45 MSA	<ul style="list-style-type: none"> • The 3 years extended time limit for prosecutions provided for by Section 28 applies.

			<ul style="list-style-type: none"> • The person must knowingly enter the UK without leave of an immigration officer or in breach of a deportation order. • If leave was obtained by fraud, consider an offence of obtaining leave by deception under s24(A) of the Act and / or document offences: see above.
Remaining Beyond Time Limited by Leave (overstaying) - s24(1)(b)(i) Immigration Act 1971			
Summary	6 months' custody	S45 MSA	<ul style="list-style-type: none"> • This requires proof of limited leave, the expiry date and knowledge of remaining beyond that date. • The evidence should include a statement from the Immigration Officer who admitted the defendant, setting out: the explanation to the defendant of the limits of leave and the fact that a notice in writing under s4 was given (usually a passport stamp). • If the Secretary of State extends leave, a letter will normally be sent to the person stating the new limit. This provides the requisite notice in writing and its admissibility is governed by s32(2) of the Act. • This is a continuing offence and can be charged as being committed on the day when the defendant first knew that the time limited by the leave had expired or, alternatively, as an offence continuing over a specified period. An offender may only be prosecuted once in respect of the same limited leave: s24(1A).
Failing to Observe a Condition of Leave - s24(1)(b)(ii) Immigration Act 1971			
Summary	6 months' custody	S45 MSA	<ul style="list-style-type: none"> • The following conditions can be imposed on a limited leave to remain: <ul style="list-style-type: none"> ❖ Restriction on employment. ❖ Restriction on studies. ❖ Residence. ❖ Not to have "recourse to public funds". ❖ Register with the police. ❖ Report to an immigration officer or the Secretary of State. • Evidence is required of the notice in writing, the specific condition that is imposed, the breach of the condition and the defendant's knowledge. • An automatic extension of leave also extends the conditions. However, if the leave expires, then the conditions lapse. Accordingly, there would be no offence of failing to observe a condition of leave but an offence of overstaying under

			<p>s24(1)(b)(i) may be charged.</p> <ul style="list-style-type: none"> Note that those who are working in breach a restriction on employment would ordinarily be charged with the offence of “Illegal working” under section 24B of the 1971 Act: see the section on Employment offences.
Offences in connection with administration of the Immigration Acts - s26(1) Immigration Act 1971			
Summary	6 months' custody	<p>S31 IAA applies to the offence under s26(1)(d), altering documents or possessing false documents.</p> <p>S45 MSA</p>	<ul style="list-style-type: none"> The 3 years extended time limit for prosecutions provided for by Section 28 applies to offences under subsections 26(1)(c) and (d). The offence may be committed in a number of ways, by frustrating the work of immigration officers who conduct an examination on entry. For example: <ul style="list-style-type: none"> ❖ Failing to submit to examination, without reasonable excuse; ❖ Failing to produce information or documents, without reasonable excuse; ❖ Making a false statement to an immigration officer. ❖ Altering documents such as work permits, or possessing for use a document such as a passport, knowing or having reasonable cause to believe to be false. ❖ Failing to complete and produce a landing or embarkation card, without reasonable excuse; ❖ Obstructing an immigration officer or other person acting in execution of the Act, without reasonable excuse. The legislation does not define “a reasonable excuse”. This will be a question of fact in the particular circumstances of each case. Evidence to contradict any claims of reasonable excuse should be obtained where possible. The most common way the offence is committed is under section 26(1)(c), making a false statement etc. A charge under this subsection may be appropriate where, for instance, the suspect denies his real identity when asked, or a form is filled in with deliberately false information. For offences under this subsection: <ul style="list-style-type: none"> ❖ There must be a statement of representation. A simple failure to inform the immigration officer of material facts would not amount to an offence, since there is no duty of candour placed on the defendant. ❖ The false representation must be “material” in the sense it was likely to influence the decision to allow entry: <i>R v SoS for the Home Department ex p Castro</i> [1996] Imm AR 540. ❖ The “other person” may include a police officer but not when the officer is

			<p>investigating a suspected offence under the Act. The relevant falsehood has to be addressed to a person in the course of a specific procedure under the Act, whereby that person's statutory function involved the obtaining or receipt of information relevant to the performance of that function: see <i>R v Clarke</i> [1985] A.C. 1037.</p> <ul style="list-style-type: none"> ❖ Further examples of the "other person" are: entry clearance officers, Home Office Officials and a detainee custody officer in a contracted out detention centre. ❖ Note that where leave to enter or remain is obtained by deception, a charge under s24A, Obtaining leave by deception, may be appropriate: see above. • The offence of Obstructing an immigration officer or other person acting in execution of the Act requires physical or other unlawful activity: <i>R v Clarke</i>. If the obstruction relates to a refusal to do something, there must be a duty under the Act to do what is requested by the immigration official, such as permitting inspection of luggage: Schedule 2, paragraph 4 of the Act.
Failure to cooperate with arrangements for removal - s35(3) Asylum and Immigration (Treatment of Claimants) Act 2004			
Either way	2 years' custody	S45 MSA	<ul style="list-style-type: none"> • The offence is intended to prevent people who, having exhausted all avenues of appeal following a failed asylum claim, avoid deportation by refusing to comply with arrangements for removal, such as signing the necessary documentation attending an interview or providing biometric information: see subsection (2). • Home Office guidance indicates that once a defendant raises an excuse, it is for the prosecution to disprove it or show that it is not reasonable to the criminal standard. The guidance gives examples of reasonable excuse: medical emergencies or transport problems. • In <i>R v Masoud Tabnak</i> [2007] EWCA Crim 380 the court found that a failure to cooperate based on a fear of persecution or serious harm could not amount to a reasonable excuse. This issue is one which will have already been determined by the Asylum and Immigration Tribunal, a specialist Tribunal which is best placed to consider whether the defendant's claim for asylum is genuine or not.
Assaulting an Immigration Officer - s22(1) UK Borders Act 2007			
Summary	6 months' custody	S45 MSA	<ul style="list-style-type: none"> • Under s23 an immigration officer may arrest a person without warrant if the officer reasonably suspects that the person has committed or is about to commit an

			offence under s22.
Offences committed by going through the Channel Tunnel			
<ul style="list-style-type: none"> Persons may try to enter the UK by walking through the Channel Tunnel from France to England. When this happens, the tunnel operators may shut down the power supply and suspend rail traffic, potentially causing disruption, delay and financial loss. In these circumstances, it may be appropriate to charge an offence under section 36 of the Malicious Damage Act 1861 			
Category	Maximum Sentence	Statutory Defence?	Key Points
Obstructing Engines or Carriages on Railways - s36 Malicious Damage Act 1861			
Either way	2 years' custody	S45 MSA	<ul style="list-style-type: none"> In <i>R v Mirahessari and Vahandi</i> [2016] EWCA Crim 1733 the court made a number of observations in relation to the s36 offence: <ul style="list-style-type: none"> An unlawful act within the meaning of s36 may be committed by trespassing in the Channel Tunnel, which is itself a crime, contrary to byelaw 8(15) of the Channel Tunnel Byelaws 1994; alternatively, the civil tort of trespass is an unlawful act. There is no requirement to prove an intent to obstruct. The only mens rea that need be proved is that the defendant knew at the time that he was entering and walking through the Channel Tunnel. The word "obstruct" is not limited to a physical obstruction. Where the defendant's action leads directly and naturally to the operators turning off the power or instructing train drivers not to enter the tunnel, the consequent interruption or suspension of rail traffic amounts to an obstruction of engines and carriages, which is caused by the defendant. The court also rejected a submission that the applicants were denied the opportunity to rely on the defence for refugees under section 31 of the Immigration and Asylum Act 1999 (see below) by the preferring of a charge to which the defence did not apply: the conduct of the applicants, in entering the tunnel and causing considerable disruption and delay and significant financial loss, could not be said to be reasonable and necessary in the course of seeking refuge from persecution.

Entering the UK without leave - section - s24(1)(a) Immigration Act 1971 - see above			
Placing wood etc. on railway, with intent to obstruct or overthrow any engine etc. - s35 Malicious Damage Act 1861			
Indictable only	Life in custody	S45 MSA	
Placing wood etc. on a railway, with intent to endanger passengers - s32 Offences Against the Person Act 1861			
Indictable only	Life in custody	No	
Doing or omitting anything to endanger passengers by railway - s34 Offences Against the Person Act 1861			
Either way	2 years' custody	S45 MSA	
Channel Tunnel Byelaws 1994			
Summary	Fine - level 3	S45 MSA	<ul style="list-style-type: none"> • Less serious offences under the Channel Tunnel Byelaws 1994 may apply, including: <ul style="list-style-type: none"> ❖ Under Part 5 headed "Restricted Areas". ❖ Under Part 6 headed "Interference with Eurotunnel Operations and Property". ❖ Under Part 7 headed "Compliance with Requirements of Constable or Eurotunnel". ❖ Under Part 8 headed "Other Prohibited Activities.
Facilitation Offences			
Category	Maximum Sentence	Statutory Defence?	Key Points
Assisting Unlawful Immigration to a Member State (facilitation) - s25 Immigration Act 1971			
Either way	14 years' custody	No	<ul style="list-style-type: none"> • This is a "lifestyle offence" under Sch. 2 of the Proceeds of Crime Act 2002. • The offence may be committed by, for example: <ul style="list-style-type: none"> ❖ Assisting illegal entry, for instance by smuggling someone in a vehicle or by providing false documents for presentation at a port. ❖ Harboursing an illegal entrant, a person who stays longer than allowed by their leave, or a person who fails to observe a condition of their leave. ❖ Assisting someone to remain by deception, by entering into a sham marriage or by procuring false documents.

			<ul style="list-style-type: none"> • The offence covers any act facilitating a breach of immigration law by a non-EU citizen (including a breach of another Member State's immigration law). • S25(2) defines “immigration law” as a law which has effect in any member State (not just the UK) and which controls, in respect of some or all persons who are not nationals of that State, entitlement to enter, transit or be in the State. • For the meaning of “enter” in s25(2) see s11 of the Act and also <i>R v Javaherifard and Miller</i> [2005] EWCA Crim 3231, [12 & 46]. • The defendant is entitled to know which particular law he is being accused of breaching. Prosecutors should therefore identify in the particulars of offence the immigration law said to have been breached. The law that is breached need not constitute a criminal offence (see below). It must be an immigration law within s25(2) of the Immigration Act 1971 (“the 1971 Act”). Therefore, ss1(2) and / or 3(1)(b) of the Act 1971 Act may be relied on separately or in combination, depending on the facts of the case, to specify the breach: as taken together these laws ‘determine’ (see <i>R v Kapoor</i> [2012] 2 Cr. App. R. 11) whether a person is lawfully in the UK: see <i>R v Dhall</i> [2013] EWCA Crim 1610 [20]. Where ss1 and / or 3 are relied on as the underlying immigration law, it is not necessary to prove that the person who is the subject (beneficiary) of the breach of immigration law (e.g. the person whose illegal entry was facilitated) himself/herself had the requisite <i>mens rea</i> to be guilty of an immigration offence: see <i>R v Boateng</i> [2016] EWCA Crim 57. In cases where a person (P) obtains leave to enter by deception (whether the deception is by P or a third party), P will be an illegal entrant (s33(1) defines “illegal entrant” as including a person “entering or seeking to enter by means which include deception by another person”). Since P’s entry was illegal, it can be argued that P did not enter the UK in accordance with s3 (although P entered with leave, that leave was illegally obtained). P being in the UK having entered will also be inconsistent with s1 (P will not have a right of abode). Therefore the breach of immigration law is by virtue of ss1 and 3. In such “deceptive leave” cases, a separate note should be served with the indictment, to explain that there was a breach of ss1 and 3 by virtue of the fact that leave was only gained by deception (see also <i>R v Adams</i> [1996] Crim.L.R. 593 and <i>R v Eyck</i> [2000] 1 WLR 1389). If the facts of the case suggest that the breach of immigration law should not be
--	--	--	--

			<p>particularised by reliance on ss1 and / or 3, care must be taken to ensure that the immigration law relied on is an immigration law under the 1971 Act, which determines whether a person is lawfully or unlawfully either entering the UK, or in transit or being in the UK: see <i>R v Kapoor</i>. When referring cases to the CPS, Immigration Enforcement CFI should name the specific breach on the MG3 and note it on the MG5.</p> <ul style="list-style-type: none"> • Where the offence has been committed to assist asylum seekers (<i>R v Bina</i> [2014] EWCA Crim 1444 confirms that s25 applies to asylum seekers), consideration should be given as to whether this was committed for financial gain. If so, a charge under s25A may be appropriate: see below. <p>Interpretation of s25</p> <ul style="list-style-type: none"> • <i>R v Javaherifard and Miller</i> provides detailed guidance on what is likely and not likely to constitute facilitation of another person’s unlawful stay in the UK. • In <i>R v Kapoor & Ors</i> [2012] EWCA Crim 435 the court clarified that: <ul style="list-style-type: none"> ❖ An immigration law is a law which determines whether a person is lawfully or unlawfully entering, transiting or being in the UK. Section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004 (an offence of not having a passport at a leave or asylum interview) is not an “immigration law” for the purposes of Section 25(2): it merely controls or regulates the entitlement to be in the UK and therefore cannot be relied upon as the immigration law which has been breached [28-39]. ❖ The alleged breach of immigration law under s25(2) need not constitute a criminal offence [33], confirming <i>R v Javaherifard and Miller</i> [50]. ❖ In cases of conspiracy to commit the s25 offence of facilitation, the prosecution must prove knowledge and intention by the defendants and not merely “reasonable cause for believing” that the act would facilitate the commission of a breach of immigration law, pursuant to the decision in <i>R v Saik</i> [2006] 2 AC 18. • <i>R v Ali</i> (Nazakat) [2015] EWCA Crim 43 held that it is not necessary to prove that an actual breach of immigration law occurred [45], so an offence can be facilitated
--	--	--	---

			<p>whether or not it is committed.</p> <ul style="list-style-type: none"> • In <i>R v Naillie</i> [1993] AC 674, HL, decided under the precursor offence, it was held that: <ul style="list-style-type: none"> ❖ Entry was not to be equated with arrival or disembarkation. Those who disembarked without a right of entry were not automatically illegal entrants. ❖ An asylum seeker who claimed asylum while still within the designated area was not an illegal entrant, albeit he might have forged documents or had no documents at all. • However, <i>R v Adams</i> [1996] Crim LR 593 and <i>R v Eyck</i> [2000] 1 WLR 1389 clarify that the position is different from that in <i>Naillie</i> where the would-be entrant intends to and receives help to evade immigration controls altogether before arriving in the UK. • <i>Sternaj & Sternaj v DPP</i> [2011] EWHC 1094 (Admin): the statutory defence in section 31 Immigration and Asylum Act 1999 did not apply where the appellants were registered asylum seekers who facilitated the entry of a young child (the son of one of the appellants) using another child's passport [33]. However, the prosecution might question whether it was in the public interest to prosecute [32]. <p>Sentencing</p> <ul style="list-style-type: none"> • The leading case is <i>R v Van Binh Le and Stark</i> [1999] 1 Cr. App. R. (S.) 422, which related to the original section 25 offence, which had a maximum penalty of 7 years' imprisonment at the time of the decision: <ul style="list-style-type: none"> ❖ The most appropriate penalty for all but the most minor offences of this nature is custody: the offence very often requires a deterrent sentence. ❖ Aggravating features include: repeat offending; commission for financial gain; facilitation for strangers rather than family members; conspiracies where the offence is committed over a period of time; a high degree of planning, organisation and sophistication; the number of illegal entrants involved; and the level of involvement of the offender. • For examples of how <i>R v Le</i> has been applied in more recent cases, see: <i>R. v Shahi (Rakhi)</i> [2010] EWCA Crim 2480; <i>R. v Chocat (Christiane)</i> [2010] EWCA
--	--	--	---

			<p>Crim 1468; and <i>R. v Kvec (Remus)</i> [2008] EWCA Crim 594.</p> <ul style="list-style-type: none"> • In <i>Att.-General's References (Nos 49 & 50 of 2015) (R v Bakht)</i> [2015] EWCA Crim 1402 the court listed the following non-exhaustive factors as relevant to a case of <u>Conspiracy</u> to contravene s25, referring to the case of <i>Attorney-General's Reference (No 28 of 2014)</i> [2014] EWCA Crim 1723: <ul style="list-style-type: none"> ❖ Whether the offence is isolated or repeated. ❖ The duration of offending. ❖ Whether the offender had previous similar convictions. ❖ Whether the offender's motivation was commercial or humanitarian. ❖ The number of individuals involved in the breach of immigration law. ❖ Whether they were strangers or family. ❖ The degree of organisation involved. ❖ Whether the offender recruited others. ❖ The offender's role. ❖ Whether the offender's conduct involved exploitation of or pressure put upon others. <p>Sham Marriages</p> <ul style="list-style-type: none"> • A sham marriage is a marriage of convenience entered into with the intention of gaining immigration rights for one of the spouses. Whilst referred to as a sham marriage, the union itself is valid if it conforms to the legal requirements for marriage. However, entering into a sham marriage does not entitle migrants to a right to remain in the UK. Following the “marriage” the parties must apply for the right to remain. • Sham marriages typically occur when a non-European national marries someone from the European Economic Area (EEA), including the UK, as a means of attempting to gain long-term residency and the right to work and claim benefits. An individual sham marriage is often part of a wider organised crime network which may arrange multiple sham marriages and carry out other criminal activity, including money laundering and identity fraud.
--	--	--	---

			<ul style="list-style-type: none"> • A range of offences might be disclosed in cases of sham marriage, dependant on the number and identity of the participants and the role they play. For example, those who arrange the ceremony and the participants at the wedding, including witnesses and the vicar conducting the ceremony, may be charged with assisting unlawful immigration (facilitation) and conspiracy to facilitate breach of immigration law. • Further detailed guidance on sham marriages, including a matrix describing a range of scenarios, the suspects to be charged and potential offences, is available on the Knowledge Hub. <p>Sentencing - Sham Marriages</p> <ul style="list-style-type: none"> • <i>R v Oliveira; R v Cina</i> [2012] EWCA Crim 2279 is the leading sentencing case on sham marriages. The court indicated that the aggravating factors set out in <i>R v Van Binh Le and Stark</i> (see above) apply to sham marriage cases, to which the following factors should be added: <ul style="list-style-type: none"> ❖ The recruitment of others to assist in the crime. ❖ Any measure of exploitation or pressure. ❖ A racket providing services to others for money: it will be necessary to look at the role of the defendant within the organisation. ❖ At the bottom of the range of offences involving sham marriages were cases of single bogus ceremonies entered into in circumstances which could carry a substantial degree of personal mitigation, such as where one party to the ceremony has been morally blackmailed into doing it. ❖ There is frequently no distinction to be made between a sham marriage case and a case of the provision of forged or falsified documents for the purposes of evasion of immigration control. The purpose of the marriage is, like the purpose of the forged document, to provide a bogus authentication for presence. ❖ A very large number of the ‘own marriage’ cases without organisation or facilitation of others may well fall into the very broad bracket around 18 months to three years.
Facilitating entry by asylum-seekers to the UK for gain - s25A Immigration Act 1971			

Either way	14 years' custody	S45 MSA	<ul style="list-style-type: none"> • This is a "lifestyle offence" under Sch. 2 of the Proceeds of Crime Act 2002. • The offence is aimed at those who, for gain, bring asylum seekers to the UK to enable them to claim asylum. It does not apply to persons acting on behalf of an organisation which aims to assist asylum-seekers, and does not charge for its services. • No element of smuggling is required to make out the offence; the asylum seekers do not need to be illegal entrants. • The offence covers any actions done whether inside or outside the United Kingdom, regardless of the nationality of the perpetrator. • Where there are difficulties in obtaining evidence of direct (financial) gain to support an offence under Section 25A, prosecutors should consider whether there might be sufficient evidence to infer gain. For instance, the defendant's expenditure or lifestyle may be inconsistent with his apparent earnings or receipt of benefit. In this regard, expenditure on travel and hotels as part of the offending may be relevant. If no gain can be inferred from the evidence, a charge under s25 may be appropriate. <p>Sentencing</p> <ul style="list-style-type: none"> • The factors listed above in the leading sentencing cases in respect of s25 would appear to apply also to the s25A offence: see <i>R v Le and Stark</i> [1999] 1 Cr. App. R. (S.) 422 and <i>Att.-General's References (Nos 49 & 50 of 2015) (R v Bakht)</i> [2015] EWCA Crim 1402.
Assisting entry to the UK in breach of deportation or exclusion order - s25B(1) Immigration Act 1971			
Either way	14 years' custody	S45 MSA	<ul style="list-style-type: none"> • These are "lifestyle offences" under Sch. 2 of the Proceeds of Crime Act 2002. • The offences cover any actions done inside or outside the UK. • The offence under subsection (3) can apply in cases where the Secretary of State has made an order to exclude an individual from the UK on the grounds of public policy, public security or public health (other than a temporary exclusion order under s2 of the Counter-Terrorism and Security Act 2015).

Employment Offences

Knowingly employing adults subject to immigration control - [s21](#) Immigration, Asylum and Nationality Act 2006

Either way	5 years' custody	S45 MSA	<ul style="list-style-type: none"> • The Immigration, Asylum and Nationality Act 2006 (IANA) contains a civil penalty regime for employers under section 15 IANA 2006, in addition to the offence under s21. • An employer of illegal immigrants can face three potential sanctions, depending on the how serious the employer's actions are considered: <ol style="list-style-type: none"> 1. Civil penalties <ul style="list-style-type: none"> • Penalties of up to £20,000 per illegal worker may be imposed under s15 IANA. • This is the starting point for consideration and according to the Home Office should be used for all routine non-compliance with the law. 2. Criminal proceedings under s21 IANA <ul style="list-style-type: none"> • In some cases a civil penalty procedure is considered inadequate and the Civil Penalties Department may refer cases to the CPS for possible criminal proceedings. • This is likely to occur when it is apparent that the employer has deliberately and knowingly breached the law, shown a pattern of exploitative behaviour or evaded payment of penalties by closing and re-opening businesses in another identity. • For an offence under s21 to be committed, the employee must be disqualified from employment by reason of the employee's immigration status. S21(1B) defines disqualified persons. • The mens rea of "reasonable cause to believe", inserted by s35 Immigration Act 2016, is intended to capture employers who deliberately fail to check if a worker has the right to work in the UK. • All case reviews should include consideration of the reasons for the authorities not adopting the penalty notice procedure. If the papers submitted by the police / immigration authorities contain no clear decision-making process, this should be questioned. Recorded reasons will make cases less susceptible to abuse of process arguments or judicial review.
------------	------------------	---------	---

			<p>3. Criminal proceedings under s25 Immigration Act 1971</p> <ul style="list-style-type: none"> An offence of Assisting unlawful immigration to a member state (see section above on Facilitation offences) can be considered in serious cases, such as organised criminal activity to evade immigration rules.
Working illegally - s24B(1) Immigration Act 1971			
Summary	6 months' custody	S45 MSA	<ul style="list-style-type: none"> The offence covers persons who work in breach of conditions attached to their permission to be in the UK, under section 24 of the 1971 Act. The normal course of action will be to remove illegal workers in preference to prosecution. Only where the illegal worker has refused to cooperate or has a serious record of abusing immigration laws and committed other offences, will Immigration Enforcement consider referral for prosecution. The earnings of the illegal worker can also be seized under the Proceeds of Crime Act 2002. Following conviction, the prosecutor must consider whether to ask the court to commit the person to the Crown Court for confiscation proceedings.