



DATE 13 AUGUST 2024

RESPONSE TO IMMIGRATION CONSULTATION

ISSUED BY SENTENCING COUNCIL

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ABOUT THE MAGISTRATES' ASSOCIATION

The Magistrates' Association (MA) is an independent charity and the membership body for the magistracy.

We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the

development and delivery of reforms to the courts and the broader justice system. With over 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

August 2024



BACKGROUND

The Sentencing Council's consultation on immigration response

This short document summarises our response to the Council's consultation on immigration. We make several short, general observations about the issues outlined in the consultation, grouped by offence.

Before addressing the consultation's questions, we wanted to make a general point as regards delays where caused by lack of interpreters available at first appearances. We recommend – in all guidelines being consulted on here – that sentencers should take into account time spent on remand and any other effects of delays. We note that this is not an infrequent occurrence due to a lack of interpreters.

FACILITATION

Our comments

The offences in this section are beyond magistrates' current sentencing powers, but some may fall within sentencing powers once again should they rise in future to 12 months.

KNOWINGLY ENTERS THE UNITED KINGDOM WITHOUT LEAVE/ KNOWINGLY ARRIVES IN THE UNITED KINGDOM WITHOUT VALID ENTRY CLEARANCE

Our comments

We have two comments. In relation to this offence's harm factors, we note that the factor should read "exploited and/or put pressure on others".

Regarding the second Category 1 harm factor "seeking to enter or arrive in order to engage in criminal activity", members query how easy it will be in practice to demonstrate that someone enters/arrives in order to engage in criminal activity. Perhaps some accompanying training or guidance would supplement understanding of this factor.

BREACH OF DEPORTATION ORDER

Our comments

We have two comments as regards the draft guideline for this offence. Firstly, as regards the lower culpability factor "uncomplicated nature of conduct", members feel it would be useful to have an example of what this looks like.

We note the disparity between the Nationality and Borders Act 2022 – which increased the maximum sentence to five years for this offence – and the guideline's own maximum of 3 years 6 months.

DECEPTION

Our comments

None.

POSSESSION OF FALSE IDENTITY DOCUMENTS *WITH IMPROPER INTENTION AND WITHOUT REASONABLE EXCUSE*

Our comments

We've observed that identity document offences are often now charged as fraud (possession of articles for use in frauds) - which has a much wider sentencing range (Band A to 5 years).

While fraud obviously includes wider uses than immigration offences, this offence itself is no different; the harm factor in the offence of possession of articles for use in frauds (multiple documents) is a culpability factor in this guideline. Members are concerned that it may not be clear when each charge should be used, and therefore which sentencing range is appropriate. We would welcome robust accompanying guidance to clarify this point.

ANCILLARY ORDERS

Our comments

Re Q29 on the proposed wording at step 6, we would welcome robust guidance when sentencing an offender to less than 12 months' custody, and in cases where there is a requirement to consider recommendation for deportation.

