

Sentencing Council meeting:
Paper number:

30 July 2021
**SC(21)JUL05 – Immigration and animal
cruelty options paper**

Lead Council member:
Lead official:

n/a
Ollie Simpson
07900 395719

1 ISSUE

1.1 Whether to prioritise immigration or animal cruelty guidelines in the remainder of 2021.

2 RECOMMENDATION

2.1 That the Council prioritises work on revising animal cruelty guidelines for the next half of the year, and then turns to immigration offences, for consultation to come shortly after with Royal Assent of the Nationality and Borders Bill.

3 CONSIDERATION

Immigration

3.1 The Council decided in 2020 to decouple the strands of modern slavery and immigration, to prioritise the work done on the modern slavery guideline, and to wait until the end of the Brexit implementation period to see what changes might result for immigration offences.

3.2 With the forthcoming publication of the modern slavery guidelines, it is open to us to pick up work on the immigration guidelines with the aim of developing drafts for consultation at the end of the year/start of 2022. As a reminder the current agreed scope of the guidelines is as follows (with volumes for recent years):

Legislation	Offence	Stat Max	2018	2019	2020
Immigration					
Immigration Act 1971 s25(1) and (6)	Do an act to facilitate the commission of a breach of UK immigration law by a non-UK national.	14 yrs	226	184	107
Immigration Act 1971 s24A(1)(a), s24A(1)(b) and (3)	Seek / obtain leave to enter / remain in UK by deceptive means - immigration. Secure avoidance of enforcement action by deceptive means	2 yrs	12	6	6

Immigration and Asylum Act 1999 s91(1)	Provide an immigration service in contravention of a prohibition. Provide an immigration service in contravention of a restraining order.	2 yrs	7	4	3
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s2(1)	Entering the UK without a passport	2 yrs	1	0	0
ID cards <i>(NB – not all of these volumes will relate to immigration)</i>					
Identity Documents Act 2010 s4	Possessing or controlling identity documents with intent	10 yrs	409	361	235
Identity Documents Act 2010 s6	Possessing or controlling a false or improperly obtained or another person's identity document	2 yrs	110	87	68

3.3 Note that volumes are low for several of these offences although the figures for 2020 will be affected by the circumstances of the pandemic¹, and the figures may in future be influenced by different enforcement strategies.

3.4 The legislation is in the process of being updated, via the Nationality and Borders Bill, introduced to Parliament on 6 July. This will see the maximum penalty for section 25 offences (i.e. those targeted at the people traffickers) raised from 14 years to life imprisonment.

3.5 In doing so, the Bill will also raise the maximum penalty for section 25A offences (helping an asylum seeker to enter the UK) from 14 years to life; that offence is also being amended to remove the requirement that assistance be for gain. The Bill also amends the existing offence of knowingly entering the UK in breach of a deportation order or without leave (section 24(1)(a) of the Immigration Act 1971), which currently is summary only with a maximum of six months' imprisonment. If passed, this would be split into the following updated offences:

- knowingly entering the UK in breach of a deportation order (maximum: 5 years' imprisonment);

¹ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. 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.

- knowingly entering the UK without permission to do so (maximum 4 years' imprisonment);
- knowingly arriving in the UK without valid entry clearance (maximum 4 years' imprisonment).

3.6 We have not so far proposed to produce guidelines for these offences' predecessor offence. They may prove controversial, with higher maximum penalties intended to target individuals seeking to enter the country rather than traffickers. At the same time, the CPS has recently issued guidance on prosecuting those crossing by boats and their traffickers:

“Depending on whether there may be aggravating factors, such as repeat offending, or those seeking to enter the UK in breach of a deportation order, prosecutors should consider approaching the occupants of vehicles and vessels (the “passengers”) in accordance with the factors set out in the CPS Immigration Legal Guidance, which provides the guiding principles to be applied.

Approaching cases in this way, it is unlikely that passengers of vehicles or boats would be prosecuted. In these cases, passengers may have committed a summary only offence and IE should give consideration to administrative removal rather than prosecution. The focus for prosecutions should be on those with more significant roles, i.e. those that facilitate the entry.

The same approach should be taken to those who are simply passengers in boats as to those found in vehicles. Further, if the boat has been intercepted, then it is unlikely that an offence of illegal entry under s.24(1)(a) Immigration Act 1971 is made out.”

3.7 There is therefore a question (at some point) for the Council about whether to bring these offences within scope.

3.8 The remaining offences within scope are, to the best of my knowledge, intended to stay the same. An imperative for acting on these sentencing guidelines is that the existing identity documents guideline is well out of date, based as they are on predecessor legislation to the Identity Documents Act 2010. As mentioned in Ruth's paper on miscellaneous amendments, we can mitigate this problem in the short term by simply removing the old guideline from the website.

Animal Cruelty

3.9 The Animal Welfare (Sentencing) Act 2021 received Royal Assent on 29 April and came into force on 29 June. Fuller background to the Act is included in and annexed to Ruth's miscellaneous amendments paper. In short, it has increased the maximum penalty for

the following Animal Welfare Act 2006 offences from six months (summary only) to five years' imprisonment:

- section 4 (causing unnecessary suffering);
- section 5 (mutilation);
- section 6 (tail docking);
- section 7 (poisoning); and
- section 8 (fighting).

3.10 Of these, a magistrates' sentencing guideline exists for unnecessary suffering and fighting. This guideline also covers the offence of breach of duty of person responsible for animal to ensure welfare (section 9), but the maximum penalty for this offence is unchanged at six months, summary only. This guideline was revised in 2017 after consultation on the magistrates' sentencing guidelines, but will now need to be updated following the significant increase in maximum penalties for sections 4 and 8.

3.11 The volumes for these offences (including those without guidelines) are as follows:

Legislation	Offence	2018	2019	2020
Animal Welfare Act 2006, s4	Causing, permitting or failing to prevent unnecessary suffering	608	551	298
Animal Welfare Act 2006, s5	Carrying out, permitting or causing to be carried out or failing to prevent prohibited procedure on a protected animal	1	3	2
Animal Welfare Act 2006, s6	Removing or causing or permitting or failing to prevent removal of dog's tail other than for medical treatment	1	0	1
Animal Welfare Act 2006, s7	Administration of poisons etc to a protected animal	0	0	0
Animal Welfare Act 2006, s8	Offences relating to animal fights	9	0	0
Animal Welfare Act 2006, s9	Failing to ensure needs of animal are met as required by good practice	156	136	48

3.12 The custody rate for section 4 offences in 2020 was 12 per cent, while the rate for section 9 was 4 per cent (representing two individuals). Where custody was imposed, the average custodial sentence length for section 4 was 4 months (we have not calculated the ACSL for section 9 as the volume of offenders sentenced to immediate custody is so low). It

should be noted that while volume of offenders sentenced for these offences in 2020 were considerably lower than those seen in 2019 (due to the circumstances of the pandemic), trends in sentencing outcomes and ACSL have remained broadly stable.

Prioritising

3.13 Following publication of the definitive modern slavery guideline and consideration of the revised sex offences guideline, I will be able to continue work on one additional project. One option could be to start immediately on immigration offences, although there would seem to be little benefit in consulting on draft guidelines ahead of the Nationality and Borders Bill completing its passage (expected in Spring 2022). One can imagine some changes to the Bill's content, particularly in the House of Lords.

3.14 The animal cruelty guidelines may not necessarily be straightforward – in particular raising the maximum penalty so significantly from six months to five years – but it would be a fairly limited, self-contained project, which should largely be a matter of identifying particularly heinous forms of the offending and separating these out to higher levels of harm and culpability. In principle it should be possible to consider a draft in two or three meetings and aim to launch a consultation at the end of the year. I can then go on to consider immigration offences, which are likely to represent a bigger project for a Summer 2022 consultation.

3.15 An alternative option would be to commit the rest of this year and the first part of next to immigration, acknowledging it is a larger and more controversial topic. We could then be sure of being ready with draft guidelines for consultation to coincide with Royal Assent of the Bill. In the meantime, we could consult on interim guidance on animal cruelty, as suggested by Ruth in her paper. However, whilst immigration is a big topic, I cannot see it occupying so much of mine or Council's time as to justify that latter approach.

3.16 A further possibility would be to extract identity document offences from the scope of the immigration guidelines and consult on those in the autumn, given how out of date the existing guideline is (albeit we propose removing those from the website). The volumes, particularly of section 4 possessing or controlling ID documents with intent cases, could justify this. Nonetheless, I would still recommend prioritising animal cruelty given how recently the maximum penalty was raised, and the thematic similarities between ID cards and immigration.

3.17 In any event, whether animal cruelty or immigration is prioritised now, we would then be able to develop the other one in due course in the first part of 2022.

Question: do you agree to prioritise the revised animal cruelty guidelines now, and return to immigration early in 2022?

4 EQUALITIES

4.1 We will consider equalities issues in the usual way as part of guideline development and publish breakdowns of the demographics of offenders. Clearly it is likely that a high proportion of immigration offenders will be non-British. We will consider the demographic data as part of the project, although given the high proportion of summary offences involved, we may not have the full picture of offenders' characteristics.

4.2 The majority of animal cruelty offences are dealt with at magistrates' courts and, as such, there are limited data regarding the ethnicity of these offenders (in 2020, the ethnicity was unknown for around 83 per cent of offenders sentenced). This means that we are unable to examine accurately the presence of any sentencing disparities.

5 IMPACT AND RISKS

5.1 We will consider the impact of the guidelines in the usual way although existing trends in sentencing volumes may not be indicative of the future both because of the pandemic and, in the case of immigration, a change in enforcement strategy alongside and because of the new legislation.

5.2 For animal cruelty, DEFRA estimates that 25 cases per year will now be heard in the Crown Court rather than the magistrates' courts, that there will be no change in the custody rate for section 4 offences, and an increase in ACSL for offences under sections 4 to 7 from 3.6 months to 5.6 months, which will have a small impact on prisons.

5.3 The explanatory notes to the Nationality and Borders Bill state that "*The main public sector financial implications of the Bill fall to the Home Office, Ministry of Justice and associated criminal and civil justice agencies. The estimated annual cost of the measures in the Bill are not yet finalised. These are being worked through as part of the business case.*" An impact assessment is expected to be published very shortly.

5.4 A longer delay to immigration guidelines is defensible given the changes in penalties. As mentioned above, the existing identity guidelines can be removed from the website as being out of date. The Office of Immigration Services Commissioner were pressing for a section 91 guideline several years ago, given they are currently relying on fraud offences due in part, they say, to the lack of a guideline, but they have not lobbied strongly on this recently.

5.5 Extending the maximum penalties for animal welfare offences from six months to five years represents a challenge in meeting Parliament's intention, and the same is true of the

revised immigration offences mentioned above should the Council wish to include them within scope.

5.6 Some or all of the immigration offences and associated penalty increases are likely to be controversial during the Bill's passage. Depending on the extent to which we widen the project's existing scope we may see the Council drawn into the wider debate around tackling illegal immigration and the status of asylum seekers. Equally, questions around animal sentience and even pet theft could be (re)ignited by consulting on animal cruelty guidelines.

Blank page