

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

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 • Significant role in a commercial activity • Some planning • Some financial gain/ expectation of financial gain
C- Lower culpability	<ul style="list-style-type: none"> • Facilitating a breach of immigration law by family members • Humanitarian motivation • Non – commercial activity • Minor role in group activity • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none">• Endangerment to life• 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• Assisted individuals to remain unlawfully <p>Other cases that fall between categories 1 and 3 because:</p> <ul style="list-style-type: none">• Factors are present in 1 and 3 which balance each other out and/or• The harm caused falls between the factors as described in 1 and 3•
Category 3	<ul style="list-style-type: none">• Isolated incident• Facilitated the entry/ arrival of asylum seekers• 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
- 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:

- ~~Repeat offending (unless charged as separate offences)~~
- 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

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.