

## **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**

<b>CULPABILITY</b>	
A - High Culpability	<ul style="list-style-type: none"> <li>• Significant role played (more than simply a passenger) [OR Exercised some control over means of entry (e.g. control of a vessel or vehicle).]</li> <li>• Sophisticated nature of offence/ significant planning by the offender</li> <li>• Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document</li> </ul>
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> <li>• Factors are present in A and C which balance each other out and/or</li> <li>• The offender's culpability falls between the factors as described in A and C</li> </ul>
C - Lower culpability	<ul style="list-style-type: none"> <li>• Genuinely intends to apply for asylum on grounds which are arguable</li> <li>• Involved due to coercion or pressure</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved a high risk of serious injury or death</li> <li>• Seeking to enter/ arrive in order to engage in criminal activity</li> <li>• Exploited/ put pressure on others</li> <li>• Involved children or vulnerable adults in the offence</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Means or route of entry/ arrival involved some risk of serious injury or death</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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
<b>Category 1</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 18 months - 3 years' custody	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody
<b>Category 2</b>	<b>Starting Point</b> 18 months custody <b>Category Range</b> 1-2 years custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody
<b>Category 3</b>	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 8 -18 months' custody	<b>Starting Point</b> 8 months' custody <b>Category Range</b> 6 months' – 1 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> 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:*

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum

**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

**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.

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