



# BRIEFING

## Immigration Offences: Trends in Legislation and Criminal and Civil Enforcement

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This briefing analyses immigration offences in British immigration and asylum legislation, and trends in legislation and in criminal and civil enforcement against offenders. The briefing deals specifically with violations of the laws governing the UK system of immigration control and with enforcement of those laws in criminal and civil courts. It does not discuss data on crimes committed by migrants that do not involve the immigration system itself, such as thefts committed by migrants.

## **Key Points**

From 1999 to 2016, British immigration law has added 89 new types of immigration offences, compared with only 70 that were introduced between 1905 and 1998.

Since the mid-2000s prosecutions and convictions of immigration offenders have decreased in magistrates courts and increased in crown courts.

The majority of enforcement action against third parties and migrants has been undertaken through civil penalties and removals rather than criminal prosecution.

Civil and criminal penalties against employers have fluctuated but increased in the most recent (2013-2014 data).

## Understanding the evidence

Data on immigration offences are compiled by the Home Office in “Control of Immigration: Statistics United Kingdom” until December 2009 and in “Immigration Statistics” from January 2010 onwards (Table pr.01), using data from the Ministry of Justice.

Immigration and asylum legislation defines immigration offences through provisions assigning civil or criminal sanctions – including imprisonment – to breaches of immigration rules. Examples include the offences of illegal entry, obtaining leave to remain in the UK by deception, employing someone who does not have legal permission to work, entering the UK without a passport, trafficking people for exploitation and many others. Immigration offences cover a broad range of conduct, with large variations in penalties. However, ‘immigration offences’ does not refer to crimes committed by migrants, except those directly involving violation of immigration law. If a migrant commits a theft, for example, this is not treated as an ‘immigration offence’ but simply as a crime committed by a migrant.

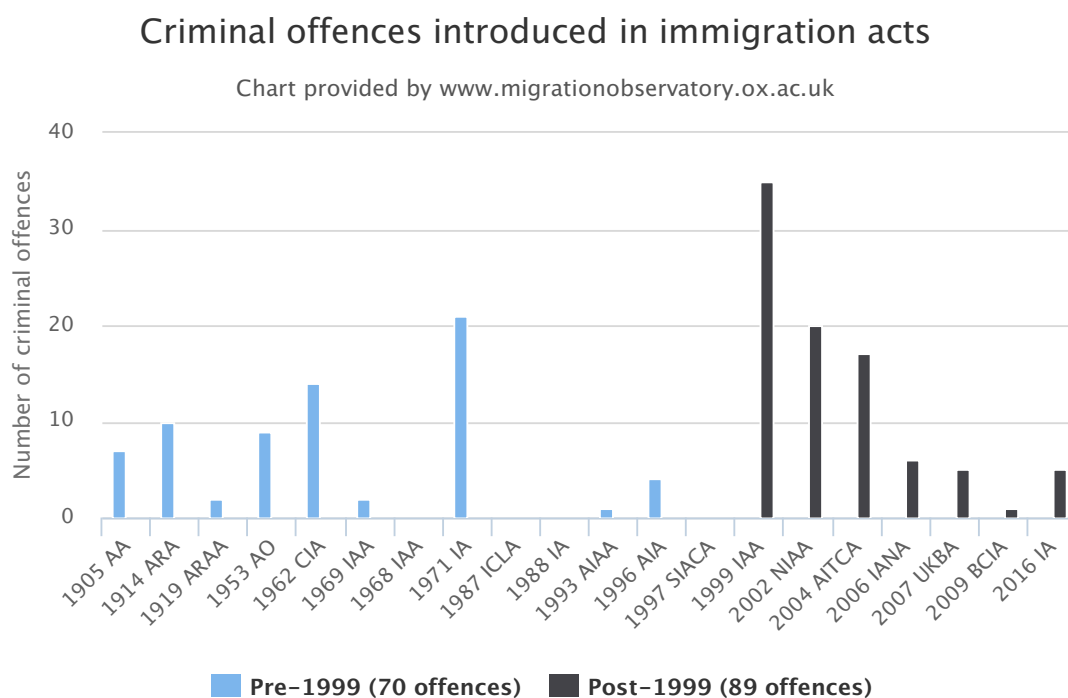
Immigration offences can be committed by both British citizens and non-citizens. While some offences – those involving the individual’s immigration status – can only be committed by people subject to immigration controls, other offences can also be committed by British citizens. These include assisting unlawful entry to an EU member state, employing migrants who do not have legal permission to work in Britain, or trafficking in human beings for exploitation.

Breaches to immigration legislation can carry civil or administrative sanctions. They can also be criminal offences, carrying criminal sanctions. In some cases, the same incident can be treated as either a civil or criminal matter. For example, one person arriving in Britain with a false passport may be removed from the country immediately, but another might be prosecuted for possessing a false document if immediate removal is not possible (Aliverti 2012). Depending on the circumstances of the case, enforcement agencies can refuse entry to the country, initiate removal or departure proceedings, or initiate deportation on ‘conducive to public good’ grounds by the Secretary of State. When such breach is also a criminal offence – in the case of illegal entry, for example – criminal prosecution is also a possible enforcement mechanism. If such prosecution results in a conviction, this may lead to a recommendation for deportation. If the sentence is of 12 months or above, or involves imprisonment for a serious offence, and the person convicted is a non-EEA national, he or she can be subject to automatic deportation. EEA nationals can also be subject to automatic deportation under stricter conditions.

### Increasing catalogue of criminal and civil offences in immigration law

Immigration law has created an increased number of actions that are legally defined as crimes. Changes to immigration law have created 89 new immigration-related crimes for which offenders can be prosecuted. The period between 1999 and 2009 witnessed the fastest and largest expansion of the list of immigration crimes since 1905. From 1999 to 2009 new legislation created 84 new immigration offences, more than double the number of offences that had been created since 1905. Recent laws, particularly the Immigration Act 2016, added further five different crimes and modified other, existing offences. Among the new offences are the criminalisation of landlords who rent out premises to unlawful migrants and of unlawful migrants who drive a car.

Figure 1



Source: Aliverti 2013, updated by the author.

### Trends in prosecutions and convictions since 2000

Magistrates’ courts deal with cases involving less serious offences – ‘summary’ offences or ‘either way’ offences – and magistrates or district judges can pass sentences of up to 6 months imprisonment. In contrast, crown courts deal with cases involving more serious offences – ‘either way’ offences and ‘indictable only’ offences – and have powers to impose more severe sentences.

Since 2000, the number of prosecutions and convictions has increased in both magistrates’ courts and crown courts. However, since 2005 the number for both has declined in magistrates’ courts. As seen in Figure 2, in 2005 there were 1,083 prosecutions in magistrates courts, compared with 573 in 2014. Over the same period, prosecutions in crown courts increased from 364 to 459 with a peak of 505 in 2011. Since 2006, the number of convictions of immigration offenders in magistrates’ courts declined from 724 to 67 in 2014, which is close to the 63 convictions recorded in 1997, whereas convictions in crown courts increased from 293 to 354 with a peak of 403 in 2011. Although prosecutions are still comparatively unusual in immigration cases – the vast majority of enforcement actions taken against those found to be in this country illegally are removals rather than prosecutions – the number of people convicted in crown courts has increased since the mid-2000s with a peak of 403 in 2011. After a temporary drop in 2012, the number of convictions in crown courts has been increasing more recently.

The decrease in cases in magistrates’ courts since 2005 may be related to changes in policy. The then UKBA has stated that criminal law should be reserved for the most serious offences. Accordingly in 2010, the Home Office

dropped its numerical targets for prosecution (previously around 1400 per year), which had encouraged the prosecutions of low level offences.

Figure 2

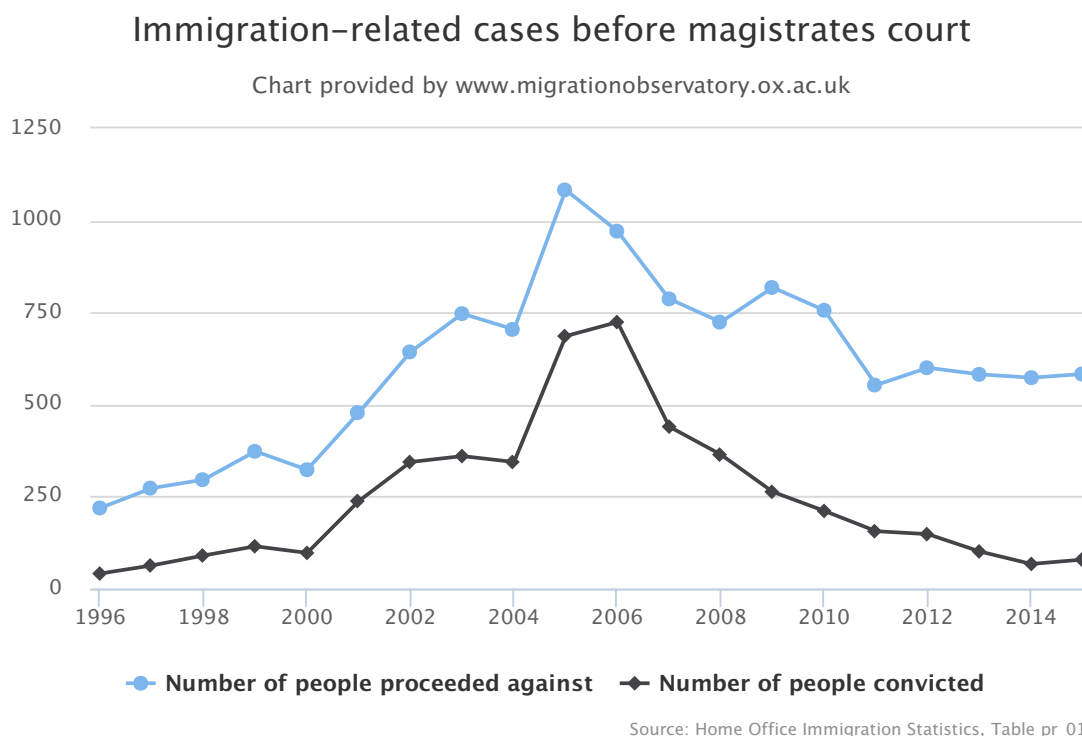
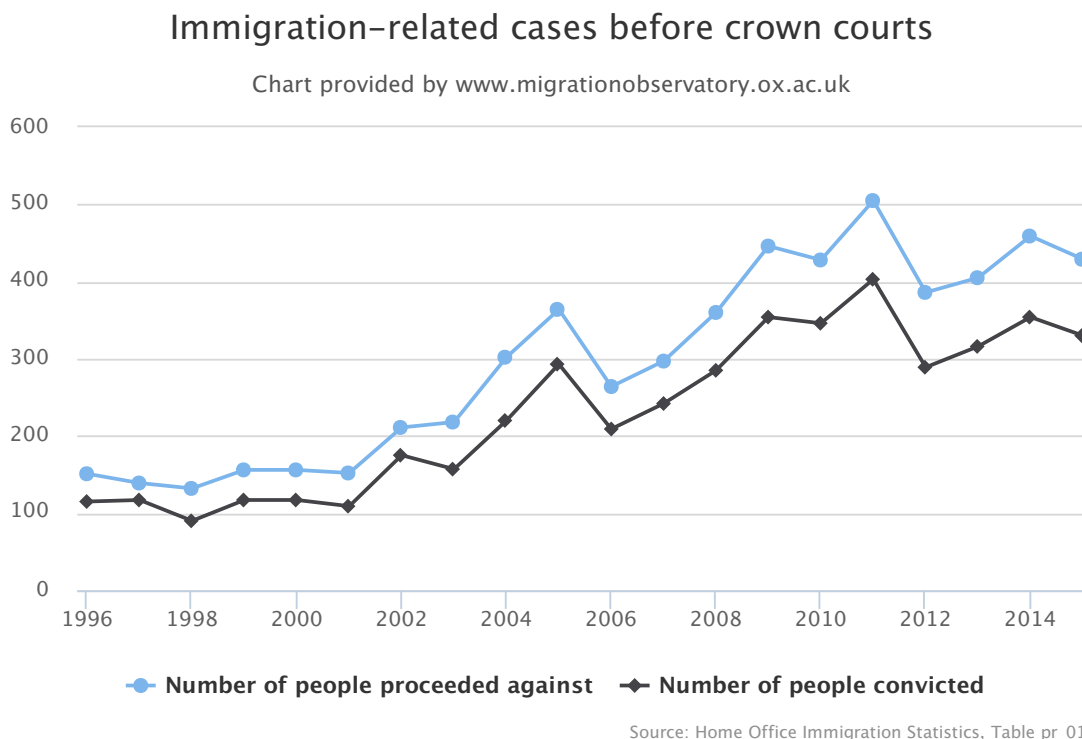


Figure 3



When prosecutions do occur and people are found guilty, the majority—78% in both magistrates’ courts and crown courts in 2015—were for three crimes: assisting unlawful immigration; seeking leave to enter or remain or postponement of revocation by deception; and being unable to produce an immigration document at a leave or asylum interview. Published statistics do not permit further disaggregation of these major categories. Research at Heathrow Airport found that most defendants were accused of entering or exiting with false travel documents or

without travel documents (Aliverti 2013), but this may reflect the location and focus of the study rather than an overall trend.

**Table 1 - Immigration offences, magistrates' courts and crown courts, 2015**

Type of crime	Number found guilty	Share
Assisting unlawful immigration to member state	252	62%
Seeking leave to enter or remain or postponement of revocation by deception	35	9%
Being unable to produce an immigration document at a leave or asylum interview in respect of himself	30	7%
All other	92	22%
Top 3 total	317	78%

Source: Home Office Immigration Statistics, Table pr\_01

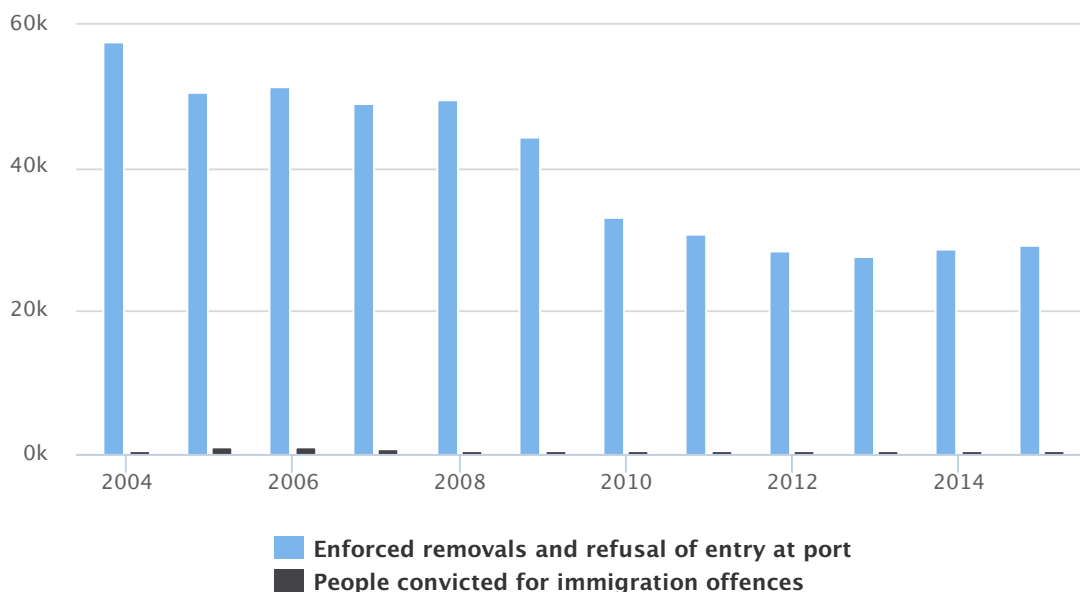
### Removals and departures far outnumber prosecutions of migrants for immigration-related crimes

Under immigration law, individuals trying to enter the UK illegally or entering the UK without permission or in violation of the conditions of their stay can be administratively removed or refused entry. As shown in Figure 4, criminal proceedings against immigration offenders remain low compared to administrative action, in the form of enforced removals and refusals of entry at port. In 2015, 29,335 people were subject to 'enforced removal' and 'refusal of entry at port and subsequently removed', while 583 people were proceeded against in magistrates' courts and 429 people were proceeded against in crown courts for immigration related offences. Meanwhile, in 2015 409 people were convicted of immigration offences in any of the courts, as shown in Figure 4. In reading Figure 4, note that removals data here do not include voluntary departures, some of which may have been subject to administrative action (i.e. notified voluntary departures).

**Figure 4**

#### Administrative actions vs immigration offence convictions

Chart provided by [www.migrationobservatory.ox.ac.uk](http://www.migrationobservatory.ox.ac.uk)



Source: Home Office, Immigration Statistics, Tables rv.01 and pr.01

Source: Home Office Immigration Statistics, Table pr.01

## **Civil penalties in transport and education; both criminal and civil penalties in employment and against landlords**

Alongside the creation of new categories of criminal offences, civil penalty regimes have been introduced to enforce compliance with immigration rules by employers, organisations and private landlords that have contact with migrants. Civil penalty regimes are in place for carriers and transportation companies that transport undocumented or clandestine passengers; for colleges and other educational institutions that fail to report international students who breach the conditions of their student visas; for landlords, homeowners and letting agents who fail to check the prospective tenant's right to rent and immigration status; and for employers of foreigners who are working in the UK without permission to do so.

Among these civil penalty regimes, there is a parallel regime of criminal sanctions for employers and landlords violating immigration law. Employers who hire foreigners without permission to work may face either civil penalties or a criminal sanction. The maximum civil penalty is £20,000 for each illegal worker. Criminal sanction may include a fine and/or up to five years imprisonment. Following the Immigration Act 2016, employers are criminally liable for hiring adult workers subject to immigration controls if they had 'reasonable cause to believe' that the worker was disqualified from employment due to his or her immigration status. Civil penalties may be imposed on employers who acted negligently by not performing identity checks before hiring someone who was disqualified from working due to his or her immigration status. Civil penalties may be reduced in a number of circumstances, including a first offence, prior notifications to the Home Office by the employer of suspicions, and partial though not complete fulfilment of employer responsibilities to check workers' documentation. The civil penalties regime was added in 2006 (taking effect in February 2008, and applying to employment contracts entered into after this date) to address low levels of criminal prosecution of employers.

Under the Immigration Act 2014 and 2016, landlords are subject to both criminal and civil sanctions for renting premises to disqualified tenants. The Immigration Act 2014 introduced a regime of civil penalties for landlords who fail to conduct the required checks on prospective tenants and subject them to up to £3,000 per lodger. The Immigration Act 2016 added a criminal offence which penalises landlords who knew or had reasonable cause to believe that the tenant was disqualified from renting. The maximum sentence is 5 years imprisonment.

Colleges and transportation companies are subject only to the civil penalty regime and cannot presently be prosecuted for failing to report students in breach of immigration law or for transporting undocumented or clandestine passengers, respectively, although they can be prosecuted for other offences, such as assisting unlawful immigration to a member state.

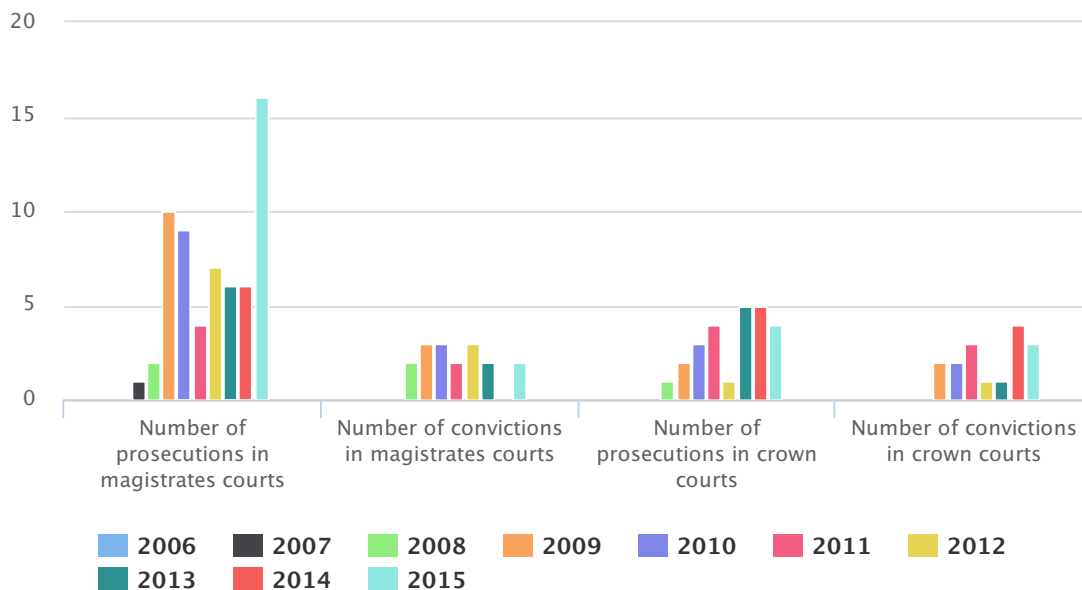
### **Civil and criminal penalties against employers increasing**

As Figure 5 below shows, criminal prosecutions and convictions for illegal employment have increased in the last few years, but the numbers still remain below 20 per year in each category. Since the introduction of the civil penalty regime, an increased number of employers have been fined, however, as shown in Table 2. Note that prosecutions of employers hiring workers from EU Accession countries are excluded from these data, as a separate regulatory regime applies to these cases, the Accession (Immigration and Worker Authorisation) Regulations 2006 (11) (S12).

Figure 5

### Prosecutions & convictions for employing illegal workers

Chart provided by [www.migrationobservatory.ox.ac.uk](http://www.migrationobservatory.ox.ac.uk)



Source: Home Office, Immigration Statistics, tables rv.01 and pr.01

Note: 'Illegal worker' is defined as an adult person who is subject to immigration control and has not leave to enter or remain in the UK, or his or her leave to enter or remain is invalid, has expired or does not allow him or her to work, according to Section 21 of Immigration Asylum and Nationality Act, 2006.

Table 2 – Civil penalties issued against employers employing illegal workers (2008-2014)

Financial year	Civil penalties issued	£ million value of penalties collected
2008-09	1,722	1.3
2009-10	2,339	4.4
2010-11	1,899	6.9
2011-12	1,341	6.5
2012-13	1,270	6.3
2013-14	2,149	5.2
2014-15	1,974	
2015-16	2,594	

Source: House of Commons Library: SN06706 – Employers’ duties to prevent illegal working, FOI release and Home Affairs Select Committee.

Note: Figures are for penalties levied at the initial decision stage which may change at the objection or appeal stage of the decision. The collection figures are not cohort based thus collection data do not represent the payments against the issued penalties in a particular year.

After the introduction of the Civil Penalty Scheme in February 2008, the number of civil penalties issued temporarily increased from 1,722 to 2,339 (in 2009-2010) followed by a decrease in the number of issued penalties over the next three years. However, the partial data for 2013-2014 suggests a reverse trend. The value of the collected civil penalties increased from 2008-2009 and peaked in 2010-2011 at £6.9 million.

### Evidence gaps and limitations

When analysing data on people proceeded against and convicted for immigration it should be borne in mind that between 2004 and 2008 there has been an under-recording of immigration offences in magistrates’ courts due to inconsistencies in data. Similarly, since 2005 crown courts’ data present other inconsistencies (Home Office 2009). For more information see the Ministry of Justice’s “A Guide to Criminal Justice Statistics”.



Immigration statistics do not include data on prosecutions and convictions for possession of forged documents. Yet, offences in the Identity Documents Act 2010 are frequently used against foreign nationals using forged or improperly obtained documents, or documents that belong to someone else. Data on people imprisoned for these offences are generally compiled in prison statistics. However, data on people convicted for these offences are grouped under the broad banner of 'Fraud and Forgery offences' and hence it is difficult to discriminate between immigration-related cases and 'ordinary' fraud cases (see for instance, Sentencing Statistics England and Wales 2009, Table 2.4)

Data on civil penalties imposed and levied against employers hiring foreigners with no permission to work per year are piecemeal and have been retrieved from Standard Note of parliamentary questions (SN06706). There are no regularly published statistics that compile this data systematically. For example, a 2010 report by the Independent Chief Inspector of the UK Border Agency compiles this data (Vine 2010), but it is limited in both time and geographical scope.

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## Related Material

- Ministry of Justice – A Guide to Criminal Justice Statistics – [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/172781/criminal-justice-statistics-guide-feb-2013.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/172781/criminal-justice-statistics-guide-feb-2013.pdf.pdf)
- Ministry of Justice – Sentencing Statistics England and Wales 2009 – [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162991/sentencing-stats2009.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162991/sentencing-stats2009.pdf.pdf)



### The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory’s analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



### COMPAS

The Migration Observatory is based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

[www.compas.ox.ac.uk](http://www.compas.ox.ac.uk)

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