



## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### UNITED KINGDOM

Last update 16/11/2023

#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

##### Near Border:<sup>1</sup>

In the year ending (YE) June 2023, there were **52,530 irregular migrants detected entering the UK, an increase of 17%** from year ending June 2022. 85% arrived via small boats.

There were **44,460 people detected arriving by small boats** in the year ending June 2023, 26% higher than in the year ending June 2022. However, this increase was concentrated in the first 6 months of the period, with **just over half (53%)** of arrivals in YE June 2023 in the 3 months from August to October 2022.

In YE June 2023, almost half of small boat arrivals were from 2 nationalities - **Albanians (26%)** and **Afghans (21%)**.

Albanian arrivals peaked in summer 2022 but have since decreased, with **low numbers of Albanian small boat arrivals continuing in 2023**.

Afghans were the 2<sup>nd</sup> most common nationality in the last 6 months of 2022, and **are the most common nationality from January to June 2023**.

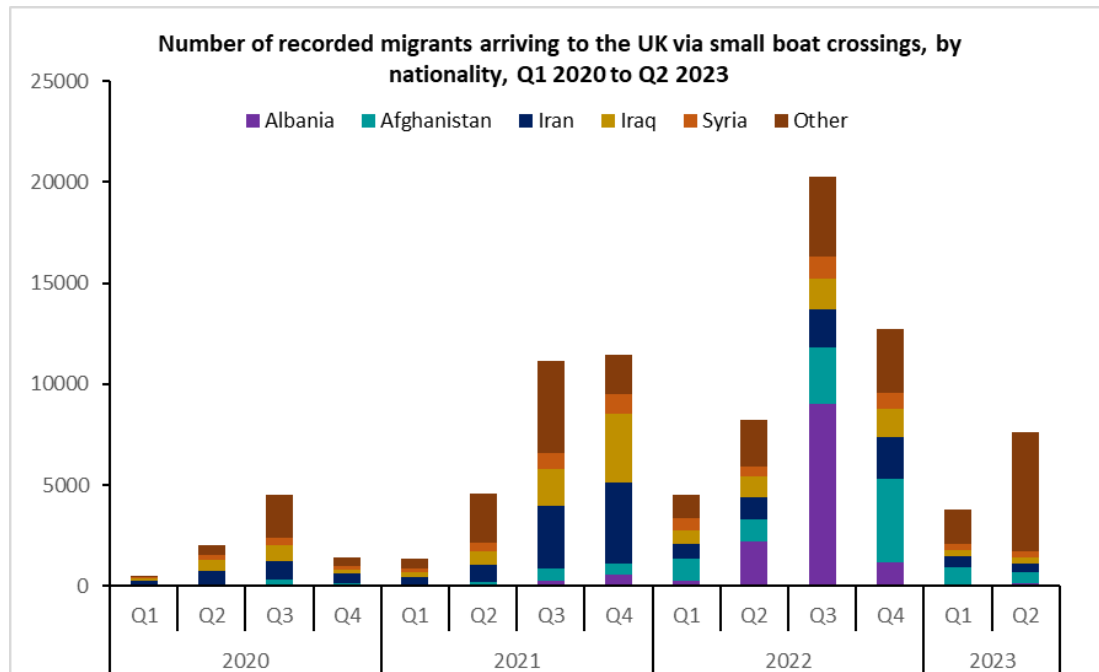
In YE June 2023, 90% of small boat arrivals had an asylum claim recorded. Small boat arrivals account for 46% of the total number of people claiming asylum in the UK in YE June 2023.

<sup>1</sup> [Irregular migration to the UK, year ending June 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-june-2023)

# COUNTRY FACTSHEET\* – Smuggling of migrants



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Source: Home Office MI (published)

Across the other main entry methods, inadequately documented air arrivals (IDAs) increased 10% to 4,804 detections, whilst other methods of entry decreased. In-country apprehensions<sup>2</sup> decreased by 39% to 2,990 detections, and UK port detections decreased by 40% to 276 detections in year ending June 2023.<sup>3</sup>

## Asylum Applications to the UK:<sup>4</sup>

There were **78,768 asylum applications** (relating to 97,390 people) in the UK in YE June 2023. This is 19% more applications than in YE June 2022 (66,384 applications, relating to 79,922 people). However, in 2023 the number of applications has been decreasing.

In YE June 2023, **71%** of the initial decisions were grants of refugee status, humanitarian protection or alternative forms of leave.

## Upstream Irregular Migration:

These figures are the detections of irregular migrants arriving at the external borders of Europe, reported by Frontex and UNHCR. It is not an accurate figure of the number of irregular migrants that have been smuggled, but is used to provide an indicative figure.

In YE June 2023, **detections of irregular border crossings at the external land and sea borders of Europe increased 33% to 344,304 (Frontex data)**. There were 44,460 people

<sup>2</sup> This is a count of individuals who, when encountered, are believed by authorities to have entered the UK clandestinely in the previous 72 hours.

<sup>3</sup> [Irregular migration detailed datasets and summary tables - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/datasets/irregular-migration-detailed-datasets-and-summary-tables)

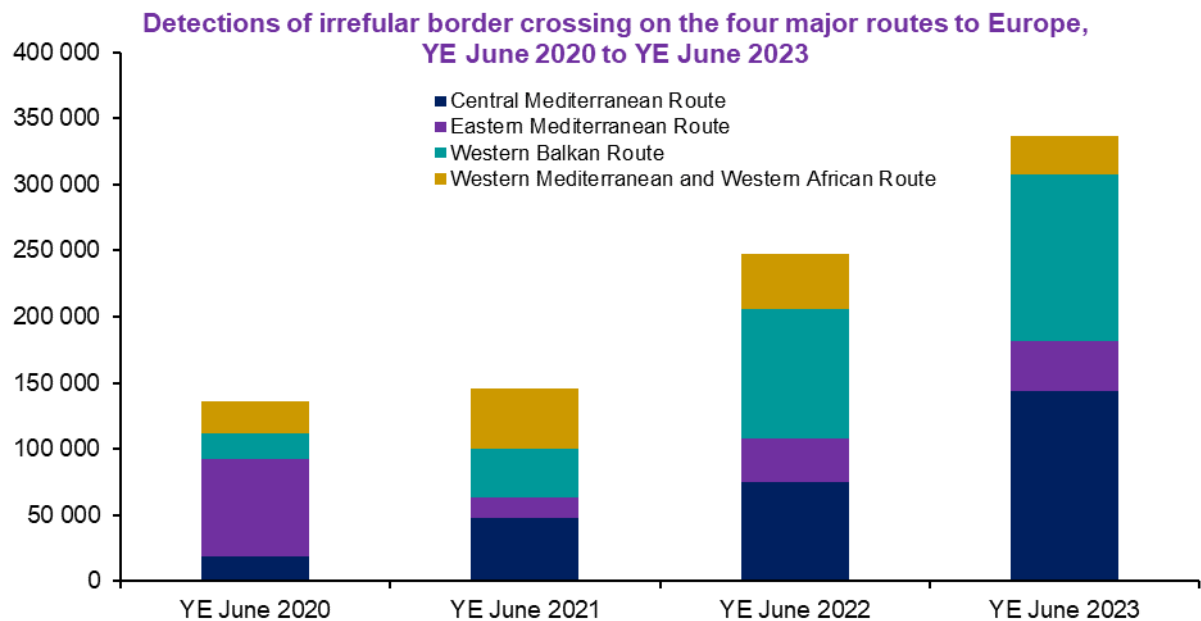
<sup>4</sup> [How many people do we grant protection to? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/datasets/how-many-people-do-we-grant-protection-to)



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detected arriving by small boats in the year ending June 2023, 26% higher than in the year ending June 2022.<sup>5</sup>



Source: Frontex (Illegal border crossings, published)

## ➔ MIGRATORY ROUTES

### Central Mediterranean route

- The Central Mediterranean route was the top migratory route into Europe in YE June 2023.
- **The route to Italy and Malta saw an increase in detected irregular arrivals of 92% to around 143,000** (Frontex data), most of these arrivals were sea arrivals to Italy.
- Italy announced a state of emergency in April 2023 due to the stark rise in the number of irregular arrivals by sea.<sup>6</sup>
- Egyptian nationals were the most prominent nationality arriving irregularly to Italy in YE June 2023.
- Libya was the most prominent point of departure in YE June 2023, but there have been continuous increases in irregular migrants departing from Tunisia and Türkiye to Italy. In January-June 2023, Tunisia became the main country of departure to Italy, followed by Libya and Türkiye.<sup>7</sup>

<sup>5</sup> [Irregular migration to the UK, year ending June 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/irregular-migration-to-the-uk-year-ending-june-2023)

<sup>6</sup> [Italy adopts state of emergency over migrants | Reuters](https://www.reuters.com/world/europe/italy-adopts-state-emergency-over-migrants-2023-04-19/)

<sup>7</sup> UNHCR, Italy sea arrival dashboard June 2023: Document - Italy Sea Arrivals Dashboard June 2023 (unhcr.org)



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## The Western Mediterranean and Western African route

- In YE June 2023, **irregular arrivals to Spain have declined by 30%** from the previous year, **to around 29,000** (Frontex data).
- Moroccans were the highest arriving nationality, followed by Algerian and Unspecified sub-Saharan nationals.
- Evidence suggests 'unspecified Sub-Saharan African' primarily claim to be from Mali and Cote d'Ivoire<sup>8</sup>.

## The Western Balkans route

- The **Western Balkans route saw an increase in detections of 29% to almost 127,000** from around 98,575 the previous year (Frontex data). The increased detections on the Western Balkans route contrast with the lower number of detections on the Eastern Mediterranean route over the same period
- Some of those detected on the Western Balkans route will have previously arrived via the Eastern Mediterranean route.
- Syrians and Afghans were the highest detected nationalities on this route in YE June 2023.
- There have been increasing detections of Turkish and Indian nationals on the Western Balkans route. Indian nationals were able to travel to Serbia visa-free until January 2023 when Serbian authorities imposed a visa regime.<sup>9</sup>

## The Eastern Mediterranean route

- The **Eastern Mediterranean route saw an increase of 15% to 37,544 detections in YE June 2023**, although numbers remain much lower than previous years (73,341 in YE June 2020, Frontex Data).
- Syrian and Afghan nationals were the top two nationalities on both the Western Balkans and Eastern Mediterranean routes.

<sup>8</sup> Frontex, [Situation at EU external borders – Lower numbers in Eastern and Western Mediterranean \(europa.eu\)](https://frontex.europa.eu/situation-at-eu-external-borders-lower-numbers-in-eastern-and-western-mediterranean/)

<sup>9</sup> [Serbia Introduces Visas for Nationals of India & Guinea-Bissau From January 1, 2023 - SchengenVisaInfo.com](https://www.schengenvisa.info/en/serbia-introduces-visas-for-nationals-of-india-guinea-bissau-from-january-1-2023)



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## INSTITUTIONAL ORGANISATION

The response to organised immigration crime requires an integrated and end-to-end response using the entire intelligence, law enforcement and diplomatic system. The Home Secretary is the minister accountable for the overall response to organised immigration crime. The Home Secretary sets the strategy and policy direction, ensures that legislation and capabilities are robust and effective, provides agencies with the funding for their operations and holds the system to account for its overall performance against the threat.

The **National Crime Agency** (NCA) leads and coordinates the UK law enforcement response to serious and organised crime, including organised immigration crime. The NCA is responsible for developing a single view of the threat, which shapes the NCA's prioritisation of its own operational resources and informs operational activity by law enforcement agencies to disrupt and dismantle criminal networks. The NCA deploys a network of international liaison officers who use their international relationships and operational collaboration to disrupt organised immigration crime overseas.

**Home Office Operations** have an important role in stopping organised immigration crime and by extension illegal immigration. These include Border Force, Immigration Enforcement, the Illegal Migration Operational Command Centre (IMOCC), Home Office Intelligence (HOI) including HOI Overseas, UK Visas and Immigration and His Majesty's Passport Office. Alongside NCA, these agencies work together, using intelligence, capabilities and data to identify, target and disrupt organised criminals seeking to exploit the UK border and those criminals involved in facilitating illegal migration who operate outside of the UK. This work is strengthened by close cooperation and joint working with overseas partners.

The **Police** also play an important role, though local forces, through Regional Organised Crime Units, which have specialist capabilities, and through the Modern Slavery & Organised Immigration Crime (MSOIC) Unit, which defines the standards for national policing around organised immigration crime, and supports embedding an improved policing and wider law enforcement response.

The **Foreign, Commonwealth and Development Office** delivers a range of international policy, diplomatic, security, development and programmatic expertise as part of the response to serious and organised crime. This includes the SOCnet network and Joint Serious and Organised Crime Platforms.



## LEGISLATIVE FRAMEWORK

The key legislation to control illegal immigration into the UK is the Immigration Act 1971. This has been updated regularly by other statutes, most recently the Nationality and Borders Act 2022. There are also a number of statutes which are designed to tackle the use of false documents to secure entry.

# COUNTRY FACTSHEET\* – Smuggling of migrants



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## Key offences:

Assisting Unlawful Immigration to a Member State or to the UK (facilitation) – section 25 Immigration Act 1971. This offence is used to prosecute people smugglers and carries a maximum sentence of life imprisonment. The offence is committed where a person “does an act which facilitates the commission of a breach of immigration law by an individual who is not a national of the United Kingdom.” It applies to acts done whether inside or outside the United Kingdom.

Conspiracy to assist unlawful immigration to a Member State or to the UK under section 1 Criminal Law Act 1977. Where more than one person is involved in people smuggling, they could either be prosecuted jointly for a section 25 offence or they could be prosecuted for conspiracy. Where the conspiracy or the event takes place outside England and Wales, section 1A of the Criminal Law Act 1977 applies. The consent of the Attorney General is required for prosecution in these circumstances.

Illegal Entry and Arrival into the UK – section 24 Immigration Act 1971. The Nationality and Borders Act 2022 amended this section by creating a number of new offences relating to illegal entry and arrival and increasing sentences to 4 years imprisonment. For those who are facilitated (illegal migrants), they will commit offences under this section if they enter, arrive or attempt to arrive or remain in the UK without leave.

Duty to remove – Illegal Migration Act 2023: This legislation came into force on 20 July 2023 and further amends Immigration Act 1971 by placing on the Secretary of State a “duty to remove those who have entered or arrived in the UK without leave”. This duty and the majority of provisions however are yet to be brought into force, as the government has indicated it will await the Supreme Court ruling on the lawfulness of the policy to send people seeking asylum to Rwanda, it is likely to come into force in 2024.

## False documents

The key offences relating to false documents are as follows:

- Possession of false identity documents with improper intention – section 4 Identity Documents Act 2010. The maximum sentence is 10 years imprisonment. An “Improper intent” is defined at section 4(2) as intending to establish personal information about himself or intending to allow or induce another to use it to verify personal information about himself or another.
- Possession of apparatus designed or adapted for the making of false identity documents – section 5 Identity Documents Act 2010. The maximum sentence is 10 years imprisonment. This section creates an offence for a person with prohibited intent to make or possess or control, apparatus or any article or material to his knowledge designed or adapted for making false identity documents. “Prohibited intention” is defined at section 5(2) as an intention that they or another will make a false identity document or that the document will be used by somebody to establish/ ascertain/ verify personal information about a person.
- Possession of false identity documents etc without reasonable excuse – section 6 Identity Documents Act 2010. The maximum sentence is 2 years imprisonment, as it relates to simple possession where the improper intention cannot be established.

The Proceeds of Crime Act 2002 provides for the recovery of criminal proceeds. A Confiscation Order can be made following any criminal conviction and has no minimum threshold. The



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offence of assisting unlawful immigration under section 25 (or 25A) of the Immigration Act 1971 is a “lifestyle offence” meaning that the extended form of confiscation applies to those convicted. The Proceeds of Crime Act also includes powers to recover proceeds without the need for a criminal conviction; Civil Recovery and various forms of forfeiture.



## JUDICIAL FRAMEWORK

### Role of the prosecutor

In cases of migrant smuggling, law enforcement will refer a case to the prosecutor at an early stage of the investigation for early advice, including lines of inquiry, evidential requirements, pre-charge procedures, disclosure management and overall investigation strategy. Where international inquiries are needed, this can be facilitated by the prosecutor at an early stage. In cases of migrant smuggling, law enforcement will refer a case to the prosecutor at an early stage of the investigation for early advice, including lines of inquiry, evidential requirements, pre-charge procedures, disclosure management and overall investigation strategy. Where international inquiries are needed, this can be facilitated by the prosecutor at an early stage through Mutual Legal Assistance. However, the Crown Prosecutor cannot direct law enforcement.

The prosecutor will then review all evidence and decide in accordance with the tests set out in the Code for Crown Prosecutors whether a person should be charged with a criminal offence and what that offence should be. Even where the evidence meets the evidential test in the Code, they must still apply the public interest test. Review is a continuing process and prosecutors must take account of any change as the case develops, including what the defence case might be.

In cases where a person is responsible for piloting a small boat crossing the English Channel with illegal migrants, unless there is evidence of facilitation such as arranging journeys, financial gain, links to organised crime networks or more serious criminality, prosecution will usually be for an offence of aggravated attempt to arrive illegally. This carries a maximum sentence of 4 years imprisonment and is considered proportionate to the offending rather than facilitating illegal migration, which carries a sentence of life imprisonment. In relation to other passengers on the boat, there will only be charges brought against individuals where there are other aggravating features, such as other offences are committed alongside illegal entry or arrival.

In some instances there may also be links to other serious offences such as human trafficking, money laundering, obtaining forged and fraudulent documents. Where the evidence supports these offences, they will be additionally charged.

If a defendant pleads guilty, the case will be opened to the Court by the prosecuting advocate, mitigating circumstances will be outlined by the defence advocate and the case will be adjourned for sentence hearing. Sentencing is for the Court and in applying sentencing guidelines an offender who pleads guilty may expect some credit in the form of a discount. For an early guilty plea the sentence can be reduced by one third to reflect early admission of guilt.

Where a defendant pleads not guilty, the case will proceed to trial by jury at the Crown Court. The role of the prosecution advocate is to prepare a case for court and to present the evidence





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and facts of the case, including oral evidence from all witnesses required to attend court. The role of the judge is to assist the jury with the law and provide direction on applying it to the facts of the case to the offences charged. Rather than rely on the evidence of other smuggled migrants, the preferred prosecution strategy is to rely on independent evidence, including financial gain, downloads from digital devices, evidence of organisation. Once all the evidence is adduced the jury then decides whether the defendant is guilty or not guilty.

Where defendants are convicted, the matter will be adjourned for sentence hearing.

Sentencing will be determined by the Judge taking account of the culpability of the defendant, the harm or risk of harm to those being smuggled, aggravating and mitigating circumstances. The Sentencing Council is currently developing specific sentencing guidelines on immigration offences, including migrant smuggling. When agreed these will be published and issued to the judiciary to provide guidance on sentencing lengths and consistency in sentencing.

A recent judgment in R v Ginar [2023] EWCA Crim 1121 in the High Court has provided interim assistance to the judiciary on sentencing in cases where pilots of boats are convicted of aggravated illegal arrival under s. 24 Immigration Act 1971.



## INTERNATIONAL COOPERATION

International cooperation can be achieved in two ways:

1. Mutual administrative assistance (also known as informal or police to police cooperation) where engagement takes place between law enforcement agencies, for example the exchange of intelligence material.
2. Judicial cooperation, where prosecutorial and judicial bodies formally request assistance by issuing a Mutual Legal Assistance (MLA) request.

### Mutual Administrative Assistance

To combat international and serious and organised crime effectively, the NCA deploy International Liaison Officers (ILOs) in strategic locations around the world where their expertise can help disrupt serious criminality, including illegal migration, before it impacts on the UK. The NCA ILO network works closely with local authorities including the police, border & customs officers and security & judicial authorities, to develop intelligence by ensuring information is shared appropriately. They are also able to coordinate law enforcement action in support of UK investigations.

The NCA's Joint International Crime Centre (JICC) provides the UK National Central Bureau (NCB) for INTERPOL and the UK EUROPOL National Unit. The EUROPOL liaison bureau is a multi-agency team made up of NCA officers and seconded officers from other UK Law Enforcement and Government Departments. The UK's INTERPOL Bureau is also hosted in the JICC, where officers work with the other 194 international NCBs and law enforcement agencies to share criminal data and intelligence to assist global investigations. Both INTERPOL and Europol provide the NCA with secure access to law enforcement agencies to





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investigate and share intelligence to combat serious and organised crime with the aim of protecting the public.

## **Mutual Legal Assistance**

The UK is a signatory to a number of bilateral and multilateral treaties, including the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, the 1957 Council of Europe Convention on Extradition and the UK:EU Trade and Cooperation Agreement (TCA). The UK does not require a legal basis to provide assistance to an overseas partner and can operate on the basis of reciprocity.

All incoming non tax related requests to obtain evidence in England, Wales and Northern Ireland should be sent to the United Kingdom Central Authority (UKCA), Home Office, London and to the The Crown Office, Edinburgh for all requests pertaining to Scotland.

Evidence and asset recovery requests issued under the TCA must be submitted to the UK on the appropriate forms annexed to the TCA. There is no required format for requests made under other legal basis, however the International Letter of Request format is often utilised.

Please note, the UK is no longer a party to the European Investigation Order (EIO) Directive and there cannot accept a request on the EIO Annex A form.

The UK strongly encourages engagement with UK law enforcement to inform any proposed MLA request. Details of any pre-MLA engagement with UK agencies should be referred to in the MLA request.

## **Tools**

The UK can provide a wide variety of assistance to overseas partners. The UKCA website provides helpful information about the nature of assistance that can be provided to overseas authorities: [MLA guidelines for authorities outside of the UK - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614441/MLA_guidelines_for_authorities_outside_of_the_UK_-_GOV.UK.pdf).

The UK will require a formal MLA request to provide evidence obtained via coercive measures, such as material to be seized from the search of a premises or a production order for banking information. Material which can be obtained via non-coercive means may be obtained on a police to police basis.

## **Specific types of assistance**

### Banking information:

The UK does not have a central banking register and therefore details of bank accounts, such as the IBAN, the account holder's personal identifying information and banking organisation are required to enable the UK to provide banking information.



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## Communication Data:

In the UK, communication data is typically only retained for a period of 12 months. A preservation order can be obtained, by making contact with the NCA G7 team ([G7@nca.gov.uk](mailto:G7@nca.gov.uk)) coordinated by the requesting country's equivalent 24/7 single point of contact team as a signatory to either or both, the Budapest Convention on Cyber Crime or the G7 Roma–Lyon agreement, as soon as it is discovered that communication data located in the UK is required.

## Asset Freezing and Confiscation:

For asset freezing and confiscation request, overseas authorities should engage with UK law enforcement, either via National Crime Agency or CARIN (Camden Asset Recovery Inter-agency Network), to identify assets and intelligence prior to submitting a formal request.

## Interception of Communications:

Please note, the UK is no longer party to any international agreements which expressly allow for the interception of communications under MLA. The central authorities are therefore unable to accept MLA requests for the interception of communications from any country.

## Joint Investigation Teams (JITs):

The UK can enter a JIT under a single, mutually applicable instrument:

- Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters 1959.
- Article 19 of the United Nations Convention against Transnational Organised Crime ("UNTOC").
- Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- Article 49 of the United Nations Convention against Corruption (UNCAC).

The UK Desk at Eurojust coordinates all UK JITs with other member countries at Eurojust.

## Transfer of Proceedings:

The UK can accept a transfer of proceedings on the following basis:

- Article 21 – 1959 European Convention on Mutual Assistance in Criminal Matters.
- Article 47 – UN Convention against Corruption ('UNCAC').
- Article 8 – UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ('Vienna Convention').
- Article 21 – UN Convention against Transnational Organised Crime 2000 ('UNTOC')
- Reciprocity (on a case-by-case basis).

Please note, the UK has a reservation under Article 21 of the 1959 Convention which states that "(...) the Government of the United Kingdom reserves the right not to apply Article 21". The reservation means the UK are not bound to accept a transfer of proceedings and any decision to accept a transfer will be determined on a case-by-case basis.



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The UK strongly encourages engagement with law enforcement, Crown Prosecution Service (CPS) Liaison Prosecutors or the UK Desk at Eurojust to discuss the potential transfer of proceedings before the submission of a formal request, which must be sent to UKCA, for transfers to England, Wales or Northern Ireland, or to the Crown Office, for transfers to Scotland.

## Network:

The Crown Prosecution Service (CPS) is the public prosecution service in England and Wales. It has a network of 21 internationally deployed Liaison Prosecutors who enhance the CPS's judicial cooperation abilities (MLA, Extradition and Asset Recovery requests), by focusing on reciprocal casework and forging strong and productive relationships with overseas authorities. Liaison Prosecutors often assist other UK bodies, such as other UK prosecutorial agencies, law enforcement and Government agencies, to engage with overseas counterparts to tackle cross border crime.

Liaison Prosecutors are located across a wide number of countries; in addition there are two UK-based Liaison Prosecutors who cover Ireland and all other countries where there is not a Liaison Prosecutor deployed.

The UK Desk at Eurojust provides law enforcement and judicial cooperation support to the UK and overseas partners. The UK Desk can host coordination meetings which are a valuable tool, enabling real time translation, to discuss the best way to cooperate on cross border investigations and prosecutions. The UK desk can be contacted at [LPUK@eurojust.europa.eu](mailto:LPUK@eurojust.europa.eu). The UK is a member of a number of international networks including the International Association of Prosecutors, the European Judicial Network, the Network of Public Prosecutors or equivalent Institutions in the Supreme Courts of the Member States of the European Union (NADAL).



## RELEVANT CASES

### ❖ KHEDEIR IDRIS MOHAMED & three others

Each of the defendants had travelled across the English Channel from France on a small boat along with other migrants and were intercepted by the UK authorities. They were identified in each case as piloting the boat for part or all of its journey. The appeal raised a number of challenges which the court considered:

- Whether an offence of facilitating others can be brought where the immigration law was one of arrival;
- Whether the facilitator must be aware or have reasonable grounds to believe that the conduct of passenger migrants who are being facilitated is 'criminal';
- The definition of 'arrival' for the purposes of section 25 offence and whether there are any defences available to the passengers being facilitated.

Each of the points raised failed on appeal and the prosecution approach was confirmed as correct.



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❖ R v Kakaei [2021] EWCA Crim 503

Where the evidence indicates an intention to head for shore and to land undetected, there should be no difficulty in proving an intended breach of immigration law. The same would apply where the boat seeks to evade capture or avoid assistance when seen by Border Force officers, as this would suggest an intention to enter the UK.

Where the evidence indicates a dual intention when putting to sea; namely to head for shore, but diverting to Border Force if encountered and intercepted, the existence of a secondary intention to be rescued if encountered would not remove the fact that there is an intention to 'enter' the UK. In those circumstances, it can be argued that the section 25 offence is *prima facie* committed by anyone who facilitates the journey to the UK.

Following this case and the changes made to the Immigration Act 1971 by the Nationality and Borders Act 2022, where there is doubt as to whether the conduct will amount to entry to the UK, which has a technical legal definition, then a charge should allege arrival in the UK, which has a wider meaning.

❖ R v Kapoor and others [2012] 2 Cr. App. R. 11

The case involves an important interpretation and analysis of the requirements of the offence under s 25(1) of the Immigration Act 1971 (UK) which criminalises 'facilitating the breach of an immigration law'. At the centre of the appeal in this case is the question "what laws qualify as 'immigration laws' within the meaning of s 25(1)". The defendant is entitled to know which particular law they are being accused of breaching. Prosecutors should therefore identify in the particulars of the offence the immigration law said to have been breached. The law that is breached need not constitute a criminal offence, but it must be an immigration law within s25(2) of the Immigration Act 1971 ("the 1971 Act"). Therefore, subsections 1(2) and / or 3(1)(b) of the Act 1971 may be relied on separately or in combination, depending on the facts of the case, to specify the breach: as taken together these laws 'determine' whether a person is lawfully or unlawfully entering, transiting or being in the UK.