

DOES IMMIGRATION ENFORCEMENT MATTER (DIEM)?

Irregular Immigrants and Control Policies in the UK

The Legal Context for Immigration Enforcement in the UK

PROJECT REPORT 3

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About the author

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About the project

This three-year ESRC-funded project aims to explore and explain why, in the UK, despite increasingly strict immigration policies and enhanced law enforcement (e.g. entry screening, ID and work permits checks, workplace and other raids, and employer sanctions), irregular migration continues at significant levels, and at least until 2008, even increased. This study looks specifically at in-country immigration law enforcement and its effects and limits, an aspect that has so far received very little academic attention. It complements another project based at COMPAS that studies border controls.

The overarching theme of this project is to study the impact of increasingly tight legislation and robust enforcement measures on irregular migration and on irregular immigrants. In particular, it aims to: (1) investigate immigration law enforcement agencies and practices; (2) analyse the political, legal, practical and ethical limits of law enforcement; (3) investigate the interaction between irregular immigrants' strategies, employer practices and enforcement measures; (4) find how irregular migrants navigate and survive internal immigration controls; (5) identify the impact of enforcement on irregular migrants' access to fundamental rights; (6) show how all this is perceived by the affected immigrant communities; and finally, (7) highlight the effects and effectiveness of such enforcement.

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Introduction

This paper charts the development of UK immigration legislation from the beginning of the 20th century to the present day. It is this legislation that provides the legal framework and informs the cultural context for immigration enforcement policy and practice in the UK.

The evolution of UK immigration law over this period can be broken down into four distinct phases:

Phase 1: Laying the foundations of immigration law amid conflict (1905 – 1947)

Phase 2: Regularising migration as the empire shrinks (1948 – 1970)

Phase 3: Limiting unwanted migration in an age of asylum (1971 – 1996)

Phase 4: Managing migration and securing borders (1997 – 2014)

In this paper we analyse each of these four phases before summarising the legislative chronology they comprise in a tabular appendix. The paper focuses mainly on the primary legislation passed in Britain. Of course, the acts described below also enabled the passage of subsequent secondary legislation, some of which is mentioned in the appendix, in the form of rules and requirements that have added layers of complexity to this legal framework. The final section of the paper takes a step back and looks at the criminalisation of migration through the legislative system and its implications.

Phase 1: Laying the foundations of immigration law amid conflict (1905 – 1947)

The United Kingdom's history over the centuries is predominantly one of emigration, whether for economic reasons or as a feature of imperial policy (Hatton and Wheatley Price 2005, Düvell and Jordan 2000). Immigration legislation in the UK is a relatively recent invention (Couper and Santamaria 1984). Prior to the 20th century, freedom of movement of people into the UK was less restricted by law and largely unmeasured in practice (Coleman 1987). That changed with the passing by Parliament of the Aliens Act 1905. This legislation introduced discretionary immigration control for the first time into British statute and bestowed responsibility for immigration and nationality matters upon the Home Secretary (Pellew 1989). It controlled immigration to the UK by people from outside the Commonwealth, in particular the increasing number of Jews from Eastern Europe – many fleeing from persecution in Tsarist Russia to the East End of London – and by 'undesirable aliens', such as paupers and criminals, for whom it established deportation mechanisms (BBC 2013).

The Act held that an immigrant could be denied leave to land on UK shores (all immigration to the UK at that time was by sea) if he could not demonstrate that he was able to support himself and his dependents; that he would not, through illness, become a burden on the state; that he had not been sentenced for a crime in another country; and that he had not already been expelled under the same Act (Clause 3). A right of appeal was granted whereby the would-be immigrant could appeal to the Immigration Board in charge of the designated port. The UK's first Immigration Officers were recruited to the new Aliens Inspectorate, which was charged with implementing the measures in the Act (Clayton 2012).

On the eve of the First World War, the Aliens Restriction Act 1914 was passed, requiring ever thereafter that every individual entering the UK must produce evidence of identity. This Act also obliged all aliens, as they were then known, aged 16 or over to register with the police (The National Archives). Moreover, it empowered the Home Secretary to restrict entry to the UK and to order the deportation from the UK of aliens should he consider it conducive to the public good. Immigration Officers became known as Aliens Officers, who would for the first time stamp passports – red upon arrival and black upon departure. The same year, the British Nationality and the Status of Aliens Act 1914 was passed. The legislation codified the proposition that those born in British territories are British ‘subjects’. This coincided with a time of increasing self-government within the British Empire. A year later, with the Great War under way, secondary legislation was invoked to require that passports bear the holder’s photograph and that only passengers with exit permits could leave the UK (Higgs 2011).

After World War One, with domestic unemployment rife, the Aliens Restriction Act 1919 was passed, barring aliens from certain jobs and requiring them to register with the police and seek permission from the Ministry of Labour in order to work, thereby establishing formally for the first time the connection between immigration status and the labour market. In the wake of the Russian Revolution, aliens were forbidden to promote industrial action. The Act also made a stamped passport a condition of entry, enabled refusal of entry to anyone inadequately self-sufficient, medically unfit or a convict, and introduced powers to attach conditions to any leave granted (see Torpey 2000). Enshrined in this Act was the power to demand documents as proof of identity and nationality.

During the 1920s and 1930s no landmark immigration legislation was passed, but the dynamics of migration did alter. The new Irish Free State, created in 1922, took control of its own ports from 1925. Numbers of passengers arriving in the UK by air started to grow (Home Office 1959). In the 1930s, prior to the outbreak of World War Two, the UK began to receive significant numbers of European refugees, fleeing from the Nazis or from the civil war in Spain.

The Second World War sent waves of displaced people to the UK’s shores, all of whom needed screening, demanded stricter exit controls and required some repatriation of enemy aliens. New controls were necessary between the UK and the neutral Eire, despite large numbers of Irish workers coming to work as part of Britain’s wartime effort, and at Scottish and English ports to facilitate vital merchant shipping and to vet the survivors of naval shipwreck.

The key pieces of legislation in this first phase were the Aliens Act 1905, the Aliens Registration Act 1914 and the Aliens Restriction Act 1919 which provided the basis for the ensuing Immigration Rules (secondary legislation) that fine-tuned the conditions of immigration admission until the end of the second phase (1970s). ‘Aliens’ became ‘foreign citizens’ and could not enter the country without the permission of an Immigration Officer. This required such foreign citizens to fill in landing and embarkation cards. The Aliens Act 1905 therefore marked the beginning of immigration control in the UK, designed as it was to protect the British from ‘undesirable aliens’. Most of the legislation passed in this first phase was drawn up in response to states of emergency and exception (e.g. war and pogroms), with little of it driven by a desire to address mainstream immigration.

The limited focus on tackling irregular immigration in this first phase of the UK's legislative journey reflects the limited perceived and actual scale of the phenomenon at that time. It is nonetheless important to understand the legal foundations upon which subsequent legislation addressing irregular migration has been built.

Phase 2: Limiting regular migration as the empire shrinks (1948 – 1970)

The immediate post-war years demanded the accommodation of war veterans and of displaced peoples, for instance through the passage of the Polish Resettlement Act 1947, allowing over 100,000 Polish soldiers, refugees and their dependents to stay in the UK (Düvell and Jordan 2000). A year later, the MV Empire Windrush docked in Tilbury, carrying nearly 500 passengers from Jamaica, many on cut-price tickets on a ship returning from taking de-mobilised Caribbean soldiers back to the West Indies (Düvell and Jordan 2003). The period was otherwise characterised in immigration terms by the re-normalisation of pre-existing controls, with the abolition of the wartime trade restrictions between the UK and Ireland in 1952, and by the development of the UK's travel infrastructure, for example by the opening of Heathrow airport in 1946.

Then came the British Nationality Act 1948. The intention of the Act was probably to safeguard a link between Britain and its increasingly independent former colonies, rather than to foster large-scale immigration to the UK, but it had the latter effect. The 1948 Act ended up sub-dividing British subject status into (a) citizenship of the United Kingdom and Colonies (CUKC, a new status) and (b) the citizenships of independent Commonwealth states. Randall Hansen (1999) has pointed out that the 1948 British Nationality Act concerned the politics of post-war citizenship, and was not seemingly about migration, but that nevertheless it would be the 1948 British Nationality Act which unintentionally and unexpectedly formed the political framework that shaped post-war British immigration and led to the unforeseen development of contemporary multicultural Britain. Perhaps we could widen Hansen's useful observation by noting that the politics of post-war citizenship was a further expression of the earlier political dynamics of Empire, of the reactive efforts made by Britain to maintain her leadership of the Empire, and Britain's wish to preserve a coherent Empire, in the face of the growing demands for independence from the colonies.

The 1950s saw the negotiation of the Convention Relating to the Status of Stateless Persons which took effect in 1960. The Treaty of Rome 1957 secured the freedom of citizens of countries in the European Community to travel, live and work within its area. The Treaty promoted labour mobility within Europe and afforded rights to workers and their families as well. In 1959, for the first time, more passengers arrived in the UK by air (741,669) than by sea (738,367) (Home Office 1959).

By the beginning of the 1960s, with large numbers particularly of men from the West Indies and the Indian sub-continent coming to the UK to work, the government was becoming concerned by the impact this non-white New Commonwealth immigration was having on British society in terms both of the strain it placed upon public goods such as housing and its effect on community cohesion and race relations. The government of the day therefore introduced the Commonwealth Immigrants Act 1962 to limit such immigration, partly by means of a system of work vouchers, thereby introducing to the statute books the first system of pre-entry controls based on labour market considerations (Düvell and Jordan 2000). In the short term, it had the opposite effect: in the period before its

introduction, large numbers of would-be immigrants rushed to 'beat the ban' (see Spencer 1997). It also meant that temporary migration by men to work was replaced by permanent migration by families to settle. Although the 1962 Act was not the cause of a sizeable decrease in the number of immigrants as expected, its significance lies in the fact that for the first time Britain used legislative powers to restrict immigration from the Commonwealth, providing a precedential basis for future restrictive measures. It was also the first time that British law introduced a distinction between, on the one hand, the rights of British subjects born in Britain and holding a passport issued in Britain, and, on the other hand, British subjects who held passports issued by other Commonwealth governments.

Subsequently, the Commonwealth Immigrants Act 1968 was passed to check the number in particular of Asian Africans coming to the UK, driven from places like Uganda, Kenya and Tanzania, which, recently independent, were pursuing policies of Africanisation (Düvell and Jordan 2000). The new Act provided that British subjects would be free from immigration control only if they, or at least one of their parents or grandparents, had been born, adopted, registered or naturalised in the UK. The Act therefore deliberately favoured white Commonwealth citizens more likely to have British ancestry. The Act also made the failure to submit to an Immigration Officer a criminal offence for the first time. Other provisions of the Act were as follows: the immigrants officers were empowered to require that any immigrant report to a medical officer "in the interests of public health"; the period in which an immigrant had to submit to an immigration control was extended from twenty-four hours to twenty-eight days after the date of arrival; and it was made an offence to land in the United Kingdom without being examined by an immigration officer within the time given.

This second phase of immigration legislation indirectly created the conditions for the start of substantial irregular migration to the UK. The passage of the two Commonwealth Immigrants Acts by no means put off every would-be migrant from the New Commonwealth determined to settle in the UK. The opening and then closing of the door to immigrants from Commonwealth countries was instrumental in creating a black market in forged documents such as birth certificates and visas, and bogus colleges and sham marriages proliferated (Clayton 2012). Indeed, the 1962 Act indirectly encouraged irregular immigrants to evade border controls, since, after 24 hours in the country undetected, they would no longer be required to submit to examination. This period was extended to 28 days in the 1968 Act (ibid). Soon, the first Immigration Removal Centre was established, recognising that the prison system could not handle the rising number of detained immigration offenders. While in the previous phase, most of the legislation was responding to states of emergency and exception, legislation in this second phase responded to post-colonial migration.

Phase 3: Limiting unwanted migration in an age of asylum (1971 – 1996)

By the beginning of the 1970s, immigration law was drawn from a diverse array of sources. The government of the day determined that a new act of parliament was necessary to collate, clarify and tighten the UK's immigration rules. The Immigration Act 1971 reflects that consolidation and tightening of UK immigration law. It is worth noting that the UK also joined the EEC on the day the Act came into force (1st January 1973). In immigration terms, this was the key date in the change from a preference for Commonwealth migrants to a preference for migrants from the EU. It also marked the beginning of increasingly restrictive immigration legislation in the UK. It distinguished between

patrials and non-patrials, categorising the latter's visits as either short-term or aimed at settlement, further sub-dividing those into settlement motivated by work, marriage or dependents (Düvell and Jordan 2000). Contrariwise, it removed the distinction between Commonwealth and foreign citizens for immigration purposes and equalised the control of them. It replaced work vouchers with work permits which permitted only temporary residence.

The Act defined, for the first time, an illegal entrant – “a person unlawfully entering or seeking to enter in breach of a deportation order or the immigration laws and including also a person who has so entered” (section 33) – although police action and case law would still be needed to crystallise how this definition could be applied in practice (Finch and Cherti 2011). The Act officially criminalised irregular immigration, assuming that all immigration requires authorisation and is deemed illegal if this is not granted. The Act also empowered the Home Secretary to issue or revoke a Deportation Order, requiring the person on whom it is served to leave the UK and prohibiting their return, pending its revocation.

Ever since the Aliens Order 1920 (made under the 1914 and 1919 Aliens Restriction Acts), a form of removal has existed from ports and for some illegal entrants. A version of port removal was extended to Commonwealth migrants by the 1962 Act. Both port removal and removal of illegal entrants are now provided for by Schedule 2 of the Immigration Act 1971. The term 'administrative removal' came in much later, in Section 10 of the Immigration and Asylum Act 1999, and usually refers to a distinct general power of in-country removal.

Despite the legislation of 1968 and 1971, the numbers of Commonwealth citizens coming to settle in the UK remained a cause for political concern. So, a decade later, the British Nationality Act 1981 created the statuses of British Dependent Territories citizenship and British Overseas citizenship, in order to reflect the patrial / non-patrial distinction. The Act also limited British citizenship to people having close personal connections with the UK because their parents or grandparents were born, adopted, naturalised or registered as citizens or because of their permanent settlement there. The effect was a broadening of the concept of irregular migration. For instance, a child born in the UK of Indian parents would be British in 1980, but her brother or sister born after this Act was passed would be Indian and – if the parents' rights to reside were shaky – potentially undocumented in the UK. The test for a British-born child's acquisition of British citizenship is that a parent is either a citizen or 'settled' (or that they become so). It is sufficient that the parent has (or acquires) indefinite leave or EU permanent residence. This Nationality Act was effectively an attempt to undo the previous Nationality Act passed 33 years earlier.

In 1983, new immigration rules regarding migration for the purpose of marriage, known as the 'primary purpose rule', were introduced which required people to satisfy the Immigration and Nationality Directorate that the 'primary purpose' of the marriage was not for immigration purposes (Travers 1999). This was in response to growing public concern that marriage was being used as a pretext for immigration.

The Police and Criminal Evidence Act 1984 regulated the conduct of arrests, detention and investigation of criminal matters, relevant here in that much of the investigation of irregular immigration was done at the time by police (see Zander 2013).

The Immigration Carriers' Liability Act 1987 had far-reaching implications for UK migration law, extending enforcement responsibilities as it did to private carriers of passengers to the UK, such as aviation, haulage and shipping companies operating for profit independently of the state (Finch and Cherti 2011). Failure to meet the responsibility to prevent the passage of individuals with apparently fake or no travel documents incurred a fine of £1,000 per inadmissible passenger (doubled four years later). With this Act, so the process began of widening the range of actors responsible for enforcing UK immigration law, including, over time, employers, universities, and colleges. This new statute aimed at improved control essentially shifted sovereign powers to employees of airlines and shipping companies who became responsible for detecting anyone travelling with false or no travel documents.

The late 1980s were marked by a significant increase in the number of people claiming asylum in the UK as they fled armed conflict and turmoil elsewhere in the world. Between 1979 and 1991 the number of asylum applications to the UK rose almost thirty-fold. This sharp increase in asylum applications created numerous challenges on multiple levels. First, politically, the UK was not prepared to admit so many people arriving as refugees; second, the authorities were unprepared and taken by surprise by the sheer amount of work involved in processing all these applications; and third, the system that was set in place was not able to deal efficiently with applications and removals of rejected applicants, causing a sizeable backlog of asylum cases awaiting resolution (Home Office 1993). High rates of refusal of asylum suggested a growing distinction between 'deserving' and 'non-deserving' applicants (Sales 2002). The latter group was seen as those seeking asylum while they were in fact economic migrants attracted by the availability of work and welfare.

The Asylum and Immigration Appeals Act 1993 defined a claim of asylum and gave asylum seekers the right to remain in the UK pending an appeal. The appeal process, in turn, was truncated in cases considered to be groundless, coming to be known as the 'fast track' system (Section 8). The Act also removed the right of appeal from those seeking to come as visitors and short-term students (Finch and Cherti 2011). Moreover, it introduced to the immigration domain measures openly borrowed from criminal law, such as fingerprinting (Select Committee on European Communities 1999). The Asylum and Immigration Act 1996 defines an "illegal entrant" as a person: (1) unlawfully entering or seeking to enter in breach of a deportation order, or of the immigration laws; or (2) entering or seeking to enter by means which include deception by another person (Section 33). The Act also added a 'safe list' of countries where 'in general no serious risk of persecution' appeared to exist, and from which asylum claims were therefore unlikely to be accepted. It also added silence as a possible means of deception, for instance by refusing to answer questions in an immigration interview. The Act also made it an offence to employ an illegal worker, with a £5,000 fine available as sanction. In the late 1990s, asylum seekers began to arrive in large numbers through the Channel Tunnel, with 'juxtaposed controls' introduced at various European ports (e.g. when British border guards are physically stationed in Calais, with immigration powers, and vice versa) to speed up entry and exit procedures on the Channel Tunnel route (Ryan and Mitsilegas 2010).

This third phase of immigration legislation, starting with the Immigration Act 1971, saw the creation of the category of 'illegal' migrant by distinguishing between those categories of persons who were subject to immigration control and those who were not, i.e. between people who have or have

not the 'right to abode'. Anyone 'entering without leave' has breached immigration law according to Section 3 of the Immigration Act 1971. In other words, it can be assumed that all immigration per se is prohibited, unless it is explicitly permitted; all migration that is not permitted can be denoted as 'illegal'. This phase was characterised by the rise of international migration, an influx of asylum seekers and refugees and the emergence of irregular migration. The 1980s was also the first time that the UK ceased to be a nation of net emigration and became one of net immigration.

Phase 4: Managing migration and securing borders (1997 – 2014)

The New Labour government's first major piece of immigration legislation was the Immigration and Asylum Act 1999. The Act increased the penalties for illegal entry and expanded the concept to third parties facilitating entry by deception. It also confirmed that overstayers were liable for administrative removal, like illegal entrants, irrespective of their length of stay. Before this legislation, a person who overstayed or breached their condition of their leave but had resided in the country for a given period and made their living here was treated differently from 'illegal entrants' who were apprehended at the port of entry. This rationale became obsolete with the principle of 'entry by deception', deeming overstayers as 'illegal entrants' (Vollmer 2009). The 1999 Act also enabled wedding registrars to demand that both partners attend in person to give notice, provide proof of identity and a declaration of nationality. It also imposed a duty on registrars to report to the Home Office any marriage that they had reasonable grounds for suspecting to be a sham (as defined by Section 24(5) of the Act.

Although the influence of organised crime at a commercial level on irregular immigration became increasingly apparent around the turn of the century, it was the terrorist atrocities of September 11th 2001 that motivated the next major plank of relevant UK legislation in the form of the Anti-Terrorism, Crime and Security Act 2001, passed in the aftermath of those 9/11 attacks. Section 23 of the Act gave immigration officers in certain circumstances the prerogative to detain an individual – the highest degree of censure our society has to offer.

The Nationality, Immigration and Asylum Act 2002 proposed cutting some asylum seekers' support but this was later rejected by the European Court on the grounds that it breached the European Convention on Human Rights (BBC 2004). This Act also increased carriers' liability fines to £4,000 per passenger that lacked sufficient documentation or authorisation to enter. The Asylum and Immigration Act 2004 aimed to prevent the practice of destroying identity or travel documents, making it an offence to attend an asylum interview without them (section 2) unless it is produced in a three-day period after the interview (section 2(3)(b)). In addition, new offences were introduced such as (1) the assistance of unlawful immigration, applying also to citizens from EU member states; (2) immigration documents (as distinct from passports) were added to the Forgery and Counterfeiting Act 1981; (3) and trafficking into, within or out of the UK.

Sections 19 - 25 of the Asylum and Immigration Act 2004 addressed and regularised marriage practices concerning partnerships where one of the parties is subject to immigration control. This legal provision required the superintendent registrar to be satisfied that the person who is subject to immigration control has an entry clearance granted explicitly for the purpose of marriage in the United Kingdom. Thus, the breach of this purpose could deem the person an 'illegal entrant'. Subsequently, on the 1 February 2005, a new scheme came into force under section 19 of the Asylum

and Immigration 2004 making the new spouse liable to immigration controls and requiring them to apply in the standard way for leave to remain as a spouse. This amendment to the legislation made marriage unable to confer automatically immigration benefits.

Not all of the new immigration legislation at this time was connected to asylum. In a further attempt to control irregular migration through employers, and particularly following the tragedy in 2004 when 23 Chinese cockle pickers, who were also irregular migrants, drowned when they were trapped by sweeping tides while working in Morecambe Bay, Lancashire, the Labour government acted to regulate the organisers of such gangs of workers by passing the Gangmasters Licencing Act (GLA) 2004. The purpose of the GLA was: "to safeguard the welfare and interests of workers... whilst ensuring labour providers operate within the law". It licenses labour providers, enables enforcement of the conditions of the licences it grants, and ensures that labour users do not enter into arrangements with unlicensed gangmasters.

In 2005 the Immigration, Asylum and Nationality Bill, which then became the Immigration, Asylum and Nationality Act 2006, was introduced in the House of Commons. It bolstered the powers of Immigration Officers, enabling them to confiscate travel documents and record biometric information, and of police officers, enabling them to acquire advance information of passengers, freight or crew of ships and aircraft planning to arrive in or leave the UK (Section 32-33). It intensified the sanctions for a criminal offence for employers, which were already given by section 8 of the 1996 Act. Section 15 of the Act also introduced civil penalties of £2,000 for employers for each irregular migrant they were found to employ, with the possibility of imprisonment in serious cases. Terrorists and major criminals were also excluded from refugee protection.

Another pathway into irregularity was created by the renewal of Immigration Rules published in September 2006 (Official Papers Cm 6918). Several new paragraphs were added, which had the effect of an expiry of the refugee status if it was once granted. A Home Office 'Five Year Strategy for Asylum and Immigration' published in February 2005 declared that most categories of immigrants should be subject to a minimum five year residency requirement before becoming eligible for permanent settlement, which also included persons with refugee status (Home Office 2005). With reference to the subsequent Immigration Rules 2006, paragraph 339 was extended by the "revocation or refusal to renew a grant of asylum". Provisions were set out that persons need to prove an array of still existing conditions under which their refugees status was produced in the first instance, otherwise person's grant of asylum under paragraph 334 will be revoked or not renewed. This assessment sought by the immigration authorities and its implications of reaching a conclusive evaluation represent an additional grey zone of 'illegality' (Vollmer 2009).

The UK Border Act 2007, passed in the wake of high-profile Home Office ministerial resignations, created the new, regionalised Border and Immigration Agency, soon to be replaced by the UK Border Agency a year later. The Act also required the appointment by the Home Secretary of a Chief Inspector of Borders who would produce an annual report (Vine 2013). The Act also imposes a duty on the Home Secretary, in the aftermath of high profile failures to tackle the problems posed by foreign criminals, to serve a Deportation Order on any person who is not a British citizen who has been convicted of a serious criminal offence in the UK or sentenced to a year's imprisonment, with limited exemptions.

The UK Border Act 2007 did not change the condition of paths into 'illegality', but it changed the modalities of the 'UK Border' concerning specific powers and practices (such as sections 5-15 specifying biometric registration procedures or sections 32-39 specifying the deportation of criminals).

Employer sanctions were strengthened early in 2008, with the introduction of a civil penalty system for employers. Specifically, an employer may be liable for a civil penalty of up to £10,000 per illegal worker for employing someone subject to immigration control aged over 16 who does not have permission to be in the UK or to undertake the work in question. The impact of these sanctions seems to be more significant for small businesses high fines can basically ruin and thus close down the business.

In 2008, the UK introduced mandatory re-entry bans for individuals who have breached the UK's immigration laws. The re-entry bans are based on paragraphs A320 and 320(7B) of the Immigration Rules which set out the general grounds on which entry clearance or leave to enter the United Kingdom is to be refused.

Individuals seeking to come to the UK may be refused entry because they are the subject of a one-year, two-year, five-year, or ten-year re-entry ban. Individuals are the subject of a re-entry ban if they have previously breached the UK's immigration laws by:

- a. overstaying
- b. breaching a condition attached to their leave
- c. being an Illegal Entrant
- d. using deception in an application for entry clearance, leave to enter or remain (whether successful or not)

The re-entry ban regime has been developed in such a way so as to encourage voluntary returns by reducing the duration of the ban to 1 year in their case, rather than 10 years as is the case with forced removals. Evidence about the effectiveness of the re-entry bans as a deterrent for irregular migrants is difficult to establish. Lexis lawyers argue that these bans have had 'a significant effect' and campaigners at Right to Remain confirm that 'it is very difficult to gain re-entry to the UK after a forced removal or deportation' (Lexis 2014, Right to Remain 2014).

The Immigration Act 2014, which received royal assent in May of this year, is intended to address long-standing deficiencies in the legislative framework and to toughen yet further the rules for immigration to the UK. Some of the key features of the Act include:

- making it easier to identify illegal immigrants by extending powers to collect and check fingerprints, powers to search for passports, powers to implement embarkation controls and powers to examine the status and credibility of migrants seeking to marry or enter into a civil partnership
- speeding up and simplifying the process for removing people, especially those who remain on the basis of "spurious" appeals, by reducing the number of decisions that can be appealed from 17 to 4

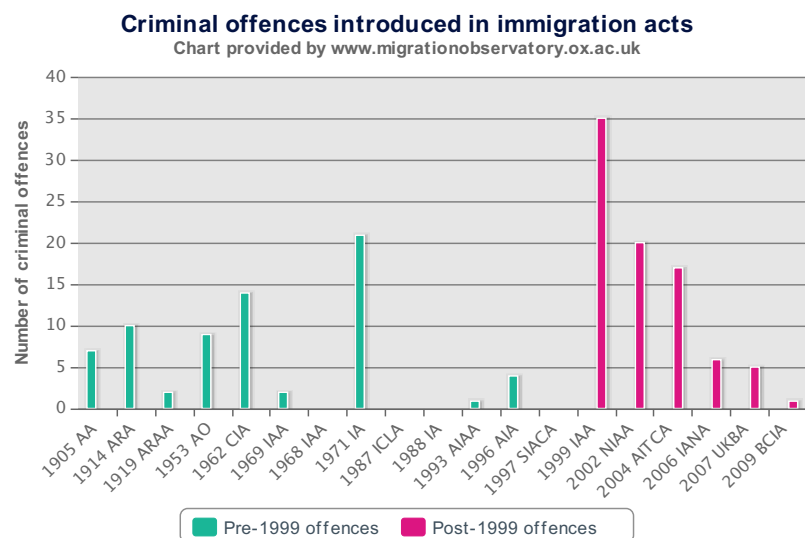
- ensuring the courts have regard to Parliament’s view of what the public interest requires when considering Article 8 of the European Court of Human Rights in immigration cases
- requiring that private landlords actively check the immigration status of their tenants (initially as a pilot)
- prohibiting banks from opening current accounts for those identified as being in the UK unlawfully
- limiting immigrant access to certain public services like the NHS by ensuring temporary migrants “make a contribution”

The net effect of these measures is intended to “give illegal migrants a really hostile reception” (Home Secretary May in The Telegraph 2012) and to create a “hostile environment” (Home Secretary May in The Guardian 2013) for irregular immigrants in the UK. There are, however, doubts regarding the practicability of some of the measures contained in the Act. For instance, increasing the penalties for landlords who do not conduct proper checks on tenants is unlikely to deter those who are already ignorant of the law and might even make those who are law-abiding more reluctant to rent to people who are perfectly entitled to live in the UK but who may have complex immigration situations. The Immigration Act 2014 can also be seen as an explicit response to public perceptions that the UK’s welfare system is a magnet for migrants coming to access more generous benefits. The Act also includes powers to prevent repeat bail applications when a removal is imminent, revoke driving licenses held by immigration offenders and allow the Home Secretary to deprive a naturalised individual of their British citizenship if their actions have been seriously prejudicial to the interests of the United Kingdom and the Home Secretary has reasonable grounds for believing the person is able to become a national of another country (Home Office 2014). More than any preceding Act, this legislation recognises the relevance to immigration control of rules and requirements in other public policy fields.

The criminalisation of migration

Looking back over the four phases in the evolution of immigration legislation discussed above, it is clear that the past two decades have seen a frenzy of lawmaking activity. Indeed, since 1999 (see Figure 1), British immigration law has added 84 new types of immigration offences, compared with only 70 that were introduced between 1905 and 1998 (Aliverti 2013). This new legislation contains criminal offences – so-called ‘immigration crimes’ – such as illegal entry, overstaying, arriving in the country without a passport and more.

Figure 1



Source : Aliverti, 2013

As part of this legal expansion, New Labour introduced a large number of new immigration offences. While there has been a longstanding practice of criminalising immigration breaches in British legislation, in the last 15 years there has been a noticeable upturn in the intensity of this criminalisation. Labour passed six immigration and asylum acts which created a total of 84 immigration offences. The preceding Conservative administrations introduced five immigration and asylum bills which created only five offences. The period between 1997 and 2009 witnessed the fastest and furthest-ranging expansion of the catalogue of immigration crimes since 1905. The recent increase in the number of criminal offences in immigration legislation suggests a shift towards regulation through punishment – or, at least, the threat of it (Aliverti 2012).

Faced with increasing pressure from the public, the media and the Opposition to bring immigration under control (Bosworth and Guild, 2008; Spencer 2007; Welch and Schuster 2005), the Government not only introduced more legislation, but from 1999 it also started using existing powers more rigorously in order to detain and remove irregular migrants (Bloch and Schuster 2005; Bosworth and Guild, 2008; Gibney 2008). This stricter enforcement of immigration rules also included the resort to the criminal law and its agencies. The 1998 White Paper, *Fairer, Faster and Firmer*, clearly stated: 'The criminal law has a role to play in stamping out abuse of immigration control' (Home Office 1998). Similarly, when introducing the first asylum and immigration bill under New Labour, the then Home Secretary Jack Straw announced that 'enforcement must be backed by the criminal law' (Hansard, HC Deb 22/02/1999, col 37).

The Government's appeal to criminal sanctions to enforce immigration rules was also intended to send out a tough message in order to be seen as 'doing something' about immigration law-breaking. In immigration – as in other policy fields – one of the ways to look tough is to create new offences. David Garland (2001) describes this reaction as 'acting out': a form of denial or evasion by the state whereby, conscious of the impossibility of actually solving a particular problem – such as reducing crime, improving social conditions or managing immigration – it adopts more criminal legislation instead, as a proxy.

On a symbolic level, the appeal to criminal law in the fight against irregular immigration in domestic politics implies a highly politicised, emotionally charged, exclusionary discourse. In this context, the criminalisation of immigration breaches is but one facet of what some authors have referred to as the criminalisation or securitisation of immigration as a whole (e.g. Aas 2011; Huysmans 2006). There is, however, another side of this phenomenon which is far from the world of high politics but is instead made up of the everyday practices of criminalisation. These are less noticeable and more ordinary exercises of power, where decisions are shaped by convenience, pragmatism and efficiency (Aliverti 2012).

Ana Aliverti (2012) provides a helpful categorisation of the immigration offences created during the Labour government. They can be classified as supporting different purposes: the first group of offences supports removal, while the second supports detection. The former comprises offences which penalise the failure to comply with a specific duty. An example of this is the provision of section 35(3) of the Asylum and Immigration (Treatment of Claimants) Act 2004. This provision enumerates a number of requirements which may be imposed by the Secretary of State in order to facilitate the removal of a person and impose a criminal sanction in response to non-compliance with them. Other

examples are offences that punish the failure to attend and give evidence or produce documents before an immigration judge (Immigration and Asylum Act 1999, Schedule 4, Paragraph 8), the failure by a detainee to submit to medical examination (ibid, Schedule 12, Paragraph 3) and the failure by employers or financial institutions to supply information requested by the authorities (Nationality, Immigration and Asylum Act 2002, Section 137).

The second category comprises offences that have specific application in the immigration field and replicate existing offences elsewhere in the law. This is the case with deception and document fraud. While a number of deception offences were introduced in the Theft Act 1968 and the Theft Act 1978, and later on in the Fraud Act 2006, the Immigration and Asylum Act 1999 includes a specific offence of deception to deal with asylum applicants. Similarly, even though the Forgery and Counterfeiting Act 1981 already punished the use of a false instrument, the offences in the Identity Cards Act 2006 were introduced specifically to address the possession of false identity documents. While the Identity Cards Act 2006 is not an immigration act, the offences contained in it are frequently used against non-citizens using forged or improperly obtained documents, or documents that belong to someone else (Macdonald 2010; Wadham et al 2006).

Other immigration offences in this second group, such as assaulting a detainee-custody officer, and assaulting and obstructing an immigration officer, reproduce those related to constables and prison officers. The creation of these offences is connected to the expansion of police-like powers to immigration officers and they were aimed to back up those powers. Even if they are rarely used, they provide immigration officers with leverage to enforce compliance. They were requested by operational officers who find it 'helpful' to have their authority backed up with a criminal sanction (Aliverti 2012).

The everyday practice of dealing with immigration offenders is governed by strategic policy decisions but also involves discretionary exercise of powers on the frontline. The existence of juxtaposed mechanisms of criminal and administrative sanctions allows enforcement agencies wide margins of discretion.

While foreigners caught and removed by the state in breach of immigration laws are a small portion of the irregular population resident in the country, the proportion of those who are actually prosecuted and convicted for breaches of immigration laws is even smaller (Gordon et al 2009, Home Office 2010). Such low rates of enforcement substantiate the suggestion that the primary purpose of the government's creation of new crimes has been political symbolism rather than practical effect (Garland 1996).

Immigration has been increasingly criminalised under both New Labour and Coalition governments. Even when new offences are barely enforced, criminalisation has consequences. At the rhetorical level, the re-shaping of immigration law using criminal vocabulary has the can demonise migrants (Pratt and Valverde 2002) with the result that they are often seen as criminals (Bosworth 2007; Bosworth and Guild 2008; Dauvergne 2008). This is not only because of the borrowing of criminal justice jargon for immigration enforcement. The utilisation of the tools of criminal law – prosecution, conviction and imprisonment – itself has a powerful effect on the representation of foreigners as lawbreakers and cheats. Immigrants who violate immigration statutes are not only represented as criminal and dangerous, but are also, strictly speaking – in legal and institutional terms – criminal offenders.

Summary

This paper has described and discussed key UK immigration legislation from 1905 until 2014. Four distinct phases were identified in terms of the evolving context and objectives of this legislation. While the first phase established the foundations for immigration legislation in the UK, the second, through its entry restrictions for foreign citizens and particularly those from the Commonwealth, set the conditions that brought about the advent of mass irregular migration. The third phase, marked the introduction of legislation that distinguished between people who are subject to immigration restrictions and those who are not ('legal' and 'illegal' immigrants) and provided the set of powers for immigration officers with which to prevent and address irregular migration. At the heart of the legislation and regulation passed in the fourth phase lay the objective of controlling ports of entry and the underlying principle of 'the British sovereign state shall not be fooled'.

The legislative framework presented in this paper provides the backdrop for the immigration policy that the UK has developed to manage migration. This will be discussed in Project Paper 4.

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Appendix

Chronological summary of the four phases of UK immigration legislation, 1905 – 2014

Year	Act	Effect	Offences
1905	Aliens Act	Introduced and enabled immigration control in the UK for the first time. Regulated immigration by east European Jews and by 'undesirable aliens', such as paupers, lunatics, vagrants and prostitutes. Set up deportation mechanisms for criminals and paupers. Gave the Home Secretary overall responsibility for immigration and nationality matters.	
1914	Aliens Registration Act	Required all foreign nationals over the age of 16 to register with the police. Targeted at 'enemy aliens' resident in Britain during the First World War. Enabled the deportation of foreign nationals. For the first time, the government had some reasonably reliable immigration data.	
1914	British Nationality and Status of Aliens Act	Defined British subjects as those with connections to the Crown's dominions.	
1919	Aliens Restriction Act	Restricted the employment rights of aliens resident in Britain. Banned aliens from certain jobs and made it illegal for aliens to promote industrial action.	
1920	Aliens Order	Consolidated the power of the Home Secretary to deport any alien whose presence was considered detrimental to the public good.	
1923	Aliens Order	Established the Common Travel Area with no immigration controls for passengers travelling between the UK and the recently created Free Irish State.	
1939	Defence Regulation 18	Reimposed immigration controls between Eire and the UK.	
1947	Polish Resettlement Act	Offered hospitality to Polish soldiers who had served under British command during the Second World War, as well as to the soldiers' dependants and Polish refugees.	
1948	British Nationality Act	Regulated nationality: the UK and the Empire's dominions each adopted their separate citizenships but retained the common status of British subject.	
1962	Commonwealth Immigrants Act	Introduced immigration control for citizens of Commonwealth countries due to stagnating economy and racial tensions in UK inner cities.	
1965	Regulation of family reunification	Restricted the ability of pre-1962 Commonwealth immigrants to bring their families to the UK.	
1968	Commonwealth Immigrants Act	Widened immigration control to include citizens of Colonies either by birth in a colony or by registration in a Commonwealth country before it became independent. Restricted immigration by African Asians.	
1969	Immigration Appeals Act	Restricted immigration of relatives.	

Year	Act	Effect	Offences
1971	Immigration Act	Ended Commonwealth citizens' automatic right to remain in the UK, meaning they faced the same restrictions as those from elsewhere. Introduced new legal distinctions between the rights of the UK born / UK passport-holders and people from former British colonies — notably India, Pakistan, and the Caribbean — who became subject to immigration controls. Provided the basis for many of the powers used by Immigration Officers today. Defined an illegal immigrant as 'a person unlawfully entering or seeking to enter in breach of a deportation order of the immigration laws and includes also a person who has so entered'.	Entering the UK in breach of a deportation order. Entering the UK without leave. Overstaying leave. Failure to observe conditions of leave. Failing to report to police or an immigration officer regarding residence. Harbours an irregular immigrant. Refusing to submit self or documents for examination by an immigration officer. Making false statements to an immigration officer. Possessing a forged or doctored passport or other documents. Failing to keep records of persons staying at hotels. Disembarking in the UK from a craft on which one is to be removed from the UK.
1980	Primary Purpose rule	Introduced for those coming to the UK with the intention of marriage, requiring them to prove that their marriage was not one of convenience.	
1981	British Nationality Act	Removed the automatic right of citizenship to all those born on British soil. Set a transitional period (1981-1987) during which people entitled to British nationality, such as Commonwealth citizens and citizens of the Republic of Ireland, could apply to claim it.	
1984	Police and Criminal Evidence Act	Regulated investigative and police processes.	
1985	Immigration Rules	Regulated immigration control practice.	
1986	Immigration Act	Imposed the first visa restrictions on the New Commonwealth.	
1987	Immigration Carriers' Liability Act	Imposed immigration control responsibilities on private carriers, with fines for non-compliance.	
1988	Immigration Act	Ended the exemption of certain Commonwealth citizens from the need to meet the marriage tests and the maintenance and accommodation requirements when bringing their families into the UK for settlement. Ensured that only one wife or widow of a polygamous marriage had a right to enter the country. Also ensured that people with freedom of movement in the European Community did not need leave to enter or remain in the UK. Restrict rights to appeal administrative deportation. Makes overstaying a continuing offence.	

Year	Act	Effect	Offences
1989	National Health Service (Charges to Overseas Visitors) Regulations	Imposed health service restrictions on foreigners.	
1993	Asylum and Immigration Appeals Act	Regulated the Asylum process. Defined a claim for asylum in terms of the UK's obligations under the United Nations Convention 1951 and the 1967 Protocol relating to the Status of Refugees. Reduced the benefit entitlements of persons who claim asylum in the UK, as well as their dependents. Established the power to fingerprint all asylum applicants (and their dependants) as a means of detecting and deterring 'multiple applications'. Allowed detention of asylum seekers whilst their claim was being decided.	
1993	Income Support (General) Amendment Regulations	Restricted asylum seekers' entitlement to benefits.	
1995	Social Security (Persons from Abroad) Miscellaneous Act	Restricted asylum seekers' entitlement to benefits.	
1996	Asylum and Immigration Act	Made it a criminal offence to employ anyone unless they had permission to live and work in the UK. Extends the penalties associated with being an 'illegal entrant' to include those seeking to 'obtain leave to enter or remain' in the UK. Withdrew eligibility to non-contributory benefits from asylum seekers who did not lodge their application at the port of entry or who are appealing on a negative decision on their claim. Resulted in a High Court judgement which established that local authorities have a duty under the National Assistance Act to provide services to asylum seekers with no other means of support. Created new powers for the arrest of immigration offenders and for searching for evidence of immigration offences: police and immigration officers now had the power to arrest suspects without a warrant. Enhanced fast track procedures and introduced 'safe lists'.	Knowingly facilitating the entry of an illegal entrant or of an asylum claimant. Knowingly facilitating leave to remain by means of deception.
1996	Changes to Immigration Rules	Restricted asylum seekers' entitlement to benefits.	
1996	Housing Act	Restricted asylum seekers' entitlement to benefits.	
1997	Primary Purpose rule	Abolished the requirement to prove that the purpose of their marriage was not one of the convenience for those coming to the UK with the intention of marriage.	
1998	Border checks	Introduction of better targeting and profiling techniques at the border to check lorries for irregular immigrants.	
1998	Immigration Carriers' Liability Act	Extended the 1987 act to haulage companies and to Eurostar to make them responsible for checking documentation of traveller.	

Year	Act	Effect	Offences
1999	Immigration and Asylum Act	Removed benefits from asylum seekers and created the National Asylum Support Service to disperse and house them, taking pressure off local authorities. Replaced welfare benefits for asylum seekers with vouchers worth £35 a week for an adult and provided accommodation on a no-choice basis around the United Kingdom. Gave new powers to immigration officers: they could now conduct personal searches on arrested persons, arrest and detain people. Expanded the use of immigration detention by quadrupling the capacity for detention to 4,000 people at any time. Increased the number of airline liaison officers based abroad in order to curb the numbers of immigrants travelling to Britain on forged papers. Increased the penalties for 'illegal entry'.	Seeking leave to enter or remain by means of deception.
2001	Anti-terrorism, Crime and Security Act	Legislated that suspected terrorists who were immigrants could be detained, potentially on a permanent basis.	
2002	Nationality, Immigration and Asylum Act	Created the first English test and citizenship exam for immigrants and introduced measures against bogus marriages. Established end-to-end asylum process, with a system of induction, accommodation and removal centres. Increased carriers' liability fines to £4,000 per stowaway.	Making or possessing a fake registration card. Altering or faking a stamp in immigration documentation. Failure to attend before an adjudicator of a tribunal. Failure to provide the Secretary of State with the information specified in the Notice. Assisting unlawful immigration. Helping an asylum seeker to enter the UK. Assisting illegal re-entry to the UK in breach of a deportation or exclusion order. Trafficking into prostitution.
2004	Asylum and Immigration Act	Introduced a single form of appeal and made it a criminal offence to destroy travel documents. Limited access to support for those told to leave the UK. Increased fines imposed on those who employ illegal workers. Allows the government to tag, track and use voice recognition technology to trace asylum seekers, as an alternative to detention. Created criminal sanctions to punish people who arrive in the UK without a valid travel document unless they have a reasonable excuse.	Inability to provide an immigration document for one's self or one's child at a leave or asylum interview. Failure to comply with a requirement to take specified action as the Secretary of State required. Employing a person aged 16 or over who is subject to immigration control. Trafficking people into the UK for the purpose of exploitation.

Year	Act	Effect	Offences
2006	Immigration, Asylum and Nationality Act	Created a five-tier points system for awarding entry visas. Those refused work or study visas had their rights of appeal limited. Brought in on-the-spot fines of £2,000, payable by employers, for each illegal employee, which could include parents taking on nannies without visas. Allowed immigration officers to confiscate travel documents and record and verify biometric information from people entering the UK and created powers for the police to obtain advance information on passengers and crew or freight of ships and aircraft arriving, expected to arrive, leaving or expected to leave the UK. Excluded terrorists and major criminals from refugee protection.	Employing a migrant who does not have permission to work.
2007	UK Borders Act	Created the UK Border Agency with powers to tackle illegal working and automatically deport some foreign nationals imprisoned for specific offences, or for more than one year. Gave immigration officers police-like powers, such as increased detention and a search-and-entry roles. Brought in the power to create compulsory biometric cards for non-EU immigrants. Allows automatic deportation of foreign nationals if they are imprisoned for specific offences or they are imprisoned for more than one year.	
2009	Borders, Citizenship and Immigration Act	Amended the rules so that people from outside the European Economic Area had to have residential status for eight years before being eligible for naturalisation. Those seeking naturalisation through wedlock had to be married for five years first. Also allowed immigration and customs officers to perform some of each other's roles and imposed a duty on Home Secretaries to safeguard children. Required foreign students to be sponsored by a licensed college or university. Introduced 'probationary citizenship' for foreign nationals from outside the European Economic Area.	
2013	Immigration Bill	Introducing various measures to identify and remove irregular migrants. Most notably, introducing new enforcement actors (eg landlords and health professionals).	Introducing penalties for third party 'new enforcement actors'

