

MIRREM

Measuring Irregular Migration

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United Kingdom Country Brief on Irregular Migration Policy Context

AUTHOR:

Andy Jolly

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THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Irregular migration; policy measures; pathways into and out of irregularity

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United Kingdom

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Immigration enforcement**

Enforcing controls on access to public services, employment, healthcare, driving licences and banking services as part of the “hostile” or “compliant” environment policy to encourage people with an irregular migration status to leave the country (Düvell et al., 2018)

- **Stopping small boat arrivals**

One of the five main policy priorities for the current government of Rishi Sunak is to prevent people entering the UK in small boats across the English Channel. The UK government aims to achieve this through agreements with the French government to prevent people leaving France in boats, better surveillance of the English Channel, a National Crime Agency focus on disrupting smuggling gangs, and through legislation such as the Nationality and Borders Act 2022, and the Illegal Migration Act 2023.

- **Transferring responsibility to Rwanda for asylum applications**

As a means to discourage people from making asylum applications in the UK, the government’s New Plan for Immigration takes inspiration from the Australian practice of offshore processing of asylum applications. The partnership between the government of Rwanda and the British government aims that all asylum claims (excluding from unaccompanied minors and Rwandan nationals) that are made following irregular entry to the UK will be considered for transfer to Rwanda. These claims would then be heard through Rwanda’s asylum system, and successful applicants would be granted refugee status in Rwanda rather than the UK. The policy

has been subject to legal challenge in the UK courts (See policy implementation measures section below).

1.2 OVERVIEW OF THE UNITED KINGDOM'S POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Third party migration control obligations**

An example of migration control effected through third parties is the introduction in the Immigration Act 2014 of civil penalties for renting to irregular migrants, leading to checks on the immigration status of tenants applying to rent accommodation from private landlords. Since 2022, this has applied to all landlords in England, and carries a maximum £3,000 fine – set soon to rise significantly – or a maximum prison sentence of five years for landlords who rent to people with an irregular migration status. Other third-party migration controls include right to work checks by employers, the No Resource to Public Funds condition and NHS charges, including charging at 150% of the standard tariff (brought in 2015) and up-front charges (introduced in 2017).

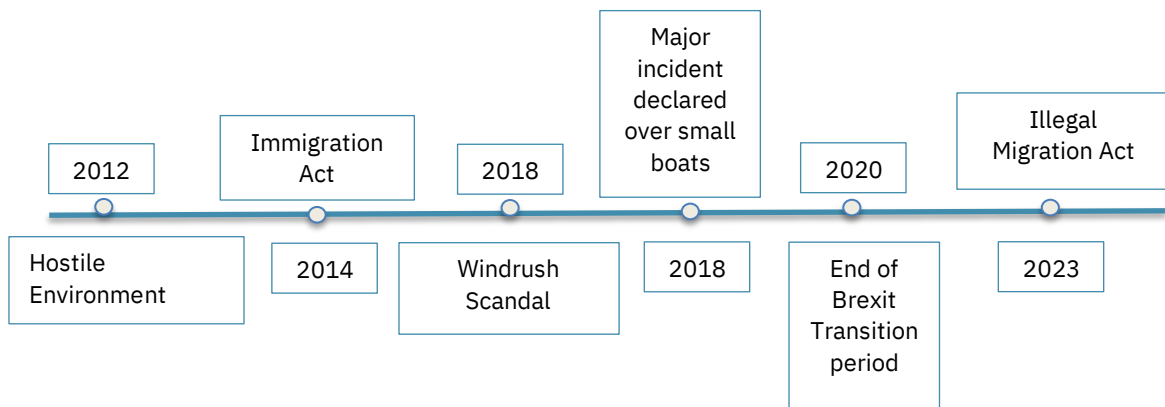
- **Rwanda policy**

The bilateral agreement between the governments of Rwanda and Britain to remove and process asylum seekers who entered the UK irregularly was announced in April 2022. Under the agreement, applicants would be barred from later entering the UK even if their claim was successful (Crowther, 2023). In November 2023, the Supreme Court ruled that the Rwanda policy was unlawful, however the UK Government has since introduced the Safety of Rwanda (Asylum and Immigration Bill) in response, which declares that Rwanda is a safe third country. At the time of writing, the Bill is proceeding through Parliament.

- **Anti-trafficking measures**

The Modern Slavery Act 2015 provides protection for people who are trafficked to the UK, including a defence in law for trafficking victims who commit crimes as a result of being trafficked. However, the Illegal Migration Act 2023 explicitly excludes irregular entrants from these provisions.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Destitution**

Policies to restrict access to employment, housing, healthcare and social security benefits through the hostile environment and predecessor policies leave people with an irregular migration status at increased risk of poverty, ill health, destitution and exploitation, with the expectation from the government that these policies will act as an incentive for people to leave the UK.
- Human trafficking and modern slavery**

There were nearly 8,000 referrals for potential victims of modern slavery in 2022, a 10% increase on the previous year. Not all victims of modern slavery are irregular migrants, and 25% of those who were referred to the National Referral Mechanism in 2022 were British citizens. However, 27% were Albanian nationals (Home Office, 2023b).
- Voluntary returns and forced removals**

Numbers of voluntary returns to countries of origin and forced removals from the UK have both fallen in recent years. However, more people with an irregular migration status leave the UK voluntarily than through enforced removals. In 2022, there were 3,860 forced returns, and 10,710 voluntary returns (Home Office, 2023a).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- Data**

There are little reliable data on the stocks of irregular migrants in the UK, or their

geographical location. Data on irregular migration flows are more reliable, but still rely on enforcement activity, and by their nature do not include people who did not come into contact with immigration enforcement.

- **Employment**

Experts suggest that irregular migrant labour is embedded in particular sectors, particularly in hospitality, care work, and agriculture (Mendonça et al., 2023). Despite attempts of immigration and law enforcement to reduce this, a casualised workforce, lack of understanding of the law by employers and widespread subcontracting make this difficult for the authorities to address completely, and some sectors of the British economy rely on irregular migrant labour to survive.

- **Hostility to enforcement action**

Factors such as the Windrush scandal and the so-called ‘go home vans’ of Operation Vaken have created a suspicion of immigration enforcement in some communities, which can prevent victims of crime from coming forward, and can hinder immigration enforcement from working in some communities (Hutchison, 2021). Similarly, there is widespread scepticism within NGOs about the impact of enforcement action in the area of immigration (Düvell et al., 2018).

Table 1: Relevant British institutions

Sr. No.	Institution/Department	Responsibilities	Web link
1.	Border Force (Home Office)	The Border Force is a law enforcement command within the Home Office. It carries out immigration and customs controls for people and goods entering the UK.	Link (EN)
2.	Immigration Enforcement (Home Office)	Immigration Enforcement’s mandate is to prevent abuse, track immigration offenders and increase compliance with immigration law. It works with partners such as the police to regulate migration in line with government policy.	Link (EN)
3.	UK Visas and Immigration (Home Office)	UK Visas and Immigration decides on who has the right to enter or stay in the country (thereby issuing visas accordingly).	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE UNITED KINGDOM: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the UK

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	A person who has legally entered the UK but stays beyond the allowed duration of their visa.
Refused asylum seeker	A person who has received and is not or cannot further appeal an decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.
Irregular entrant	Someone who enters the UK without authorisation to do so. Currently the most common route is through small boats across the English Channel.
Children of irregular migrants	Children born to non-British citizen parents in the UK since the British Nationality Act 1981 has been in force do not automatically have the right to British citizenship. Children born to parents with an irregular status will also have an irregular status, despite not crossing an international border.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Unaccompanied minors	Minors who arrive in the UK without a parent or caregiver are “looked after” by local authority children’s services under section 20 of the Children Act 1989.
Third-country (non-national) victims of trafficking with a	Adults in England and Wales who are recognised as a potential victim of modern slavery through the NRM have access to specialist tailored support for a period of at least 45 days while their case is considered.

provisional permit to stay	
Refused Asylum Seekers where there is no viable route to country of origin	Refused asylum seekers who are not able to be returned because of a lack of travel document, no viable travel route, or because of illness are eligible for Section 4 “hard case” support under the Immigration and Asylum Act 1999.
EEA Nationals who were resident in the UK prior to Brexit.	EEA nationals in the UK who moved to the UK prior to the end of December 2020 were entitled to apply for settled status through the EU settlement scheme before 30 June 2021. Those who were accepted through the scheme were able to continue to live in the UK legally, but those who did not apply became irregularised.

1.3.1 Pathways into and out of irregularity

Into Irregularity

- **Overstaying a visa**

Historically this has been the most common route into irregularity in the UK, where a person comes to the UK on a visa and stays in the country after it has expired in breach of the immigration rules. A person in this situation will not be eligible to access public funds such as local authority housing or social security benefits, and will not be legally eligible to take up employment.

- **EEA nationals after Brexit**

After the end of the Brexit transition period, EEA nationals who remained in the UK without applying for settled or pre-settled status became subject to immigration control and were irregularised.

- **Small boat arrivals**

Over the past two years there has been a large increase in numbers of people entering the UK on small boats. Although they are counted as irregular migrants in government policy, the majority go on to claim asylum.

Out of irregularity

There are no formal amnesty schemes currently operating in the UK, however, there are some individual routes through which people can use to regularise their status (Cooper, 2019; Gardner & Patel, 2021).

- **Voluntary and Assisted Return**

The UK government offers an assisted return programme to provide reintegration support for refused asylum seekers who agree to leave the UK, which offers up to £3000 towards accommodation costs, training or business start-up costs.

- **20 Year Route**

Adults with an irregular status have to prove residence in the UK for 20 years before they are able to apply for regularisation, and then enter a ten-year route to settlement, during which time they can lose their status if they do not continue to renew their visa every 2.5 years.

- **Seven-year route for children and families**

There are provisions in the Immigration Rules to allow a child without leave who has lived continuously in the UK for seven years – and their parents – to apply for leave to remain.

- **Applying for British Citizenship as a child**

A child born in the UK with an irregular status, and who lives continuously in the UK for the first ten years of his/her life, is eligible to apply for British citizenship.

References

- Cooper, R. (2019). *Legal Pathways' Effects on Irregular Migration*. https://assets.publishing.service.gov.uk/media/5cd99936e5274a38bed21639/569_Regular_Pathways_Effects_on_Irregular_Migration.pdf
- Crowther, Z. (2023, June 29). Rishi Sunak Vows To Do “Whatever Necessary” For Rwanda Deportations Despite Court Ruling It’s Unlawful. *Politics Home*. <https://www.politicshome.com/news/article/rwanda-deportation-plan-court-of-appeal-ruling>
- Düvell, F., Cherti, M., & Lapshyna, I. (2018). *Does immigration enforcement matter? Irregular migration and control policies in the UK* [Final Report]. Centre on Migration, Policy and Society.
- Gardner, Z., & Patel, C. (2021). *We are here: Routes to regularisation for the UK’s undocumented population*. The Joint Council for the Welfare of Immigrants.
- Home Office. (2023a). *How many people are detained or returned?* <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/how-many-people-are-detained-or-returned>
- Home Office. (2023b). *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022*. GOV.UK. <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>
- Hutchison, C. (2021, May 13). *Kenmure Street: Glasgow locals rejoice as men detained by immigration enforcement released*. <https://www.heraldsotland.com/news/19301608.kenmure-street-glasgow-locals-rejoice-men-detained-immigration-enforcement-released/>
- Mendonça, P., Kougiannou, N. K., & Clark, I. (2023). Informalization in gig food delivery in the UK: The case of hyper-flexible and precarious work. *Industrial Relations: A Journal of Economy and Society*, 62(1), 60–77. <https://doi.org/10.1111/irel.12320>

ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	The Immigration Rules	1971 (but regularly updated)	<p>The Immigration Rules are the government policies outlining who can and cannot be given entry and leave to remain in the UK. They were first introduced in section 3 (5) of the Immigration Act 1971 but have been amended multiple times since. They are not Primary Legislation, but are the guidance followed by the Home Office.</p> <p>They contain guidance on the 20-year and 10-year routes to settlement, where certain categories of irregular migrant can in some circumstances apply for a pathway where they can eventually be granted Indefinite Leave to Remain in the UK. These routes were introduced in their current form in 2012.</p>	Link (EN)
2	Asylum and Immigration Act	1996	The Act Introduced the criminal offence of employing someone without the right to work in the UK, and withdrew the right of asylum seekers to claim mainstream social security benefits. The Act also created a 'white list' of safe countries which people can be safely returned to after applying for asylum.	Link (EN)

3	Immigration and Asylum Act	1999	This Act was the first immigration legislation of the New Labour government, and followed the 1998 white paper “Fairer, faster and firmer” the Act created dispersal areas around the UK. Under this policy, asylum seekers were moved away from areas of entry in the southeast of England, to areas of low housing demand in other areas of the country.	Link (EN)
4	Nationality, Immigration and Asylum Act	2002	The Act gave a right for overseas born children of British mothers prior to 1981 to register as British citizens and gave British overseas citizens the right to register as British citizens if they are stateless, creating a pathway for some people to regularise their status. The Act also introduced a power for the Secretary of State to remove British citizenship from people if this is “conducive to the public good”.	Link (EN)
5	Asylum and Immigration (Treatment of Claimants, etc.) Act	2004	The Act simplified the asylum appeals system for refused asylum seekers into a single tier, and limited onward review for refusals. It strengthened powers against irregular arrivals in the UK and those who are seen to be not co-operating with the authorities, and introduced measures to prevent ‘sham marriages’ for immigration purposes.	Link (EN)
6	Immigration, Asylum and Nationality Act	2006	The Act limited the circumstances where immigration appeals could be made to just human rights and racial discrimination grounds. Introduced civil penalties for employers who take on staff without a work permit, and gave police and immigration officers more powers to request information on new arrivals in the country at the point of entry.	Link (EN)

7	UK Borders Act	2007	Introduced biometric residence permits for non-EU migrants, and gave immigration officers powers of detention, entry, search and seizure. The Act also created a new Office of the Independent Chief Inspector of the UK Border Agency.	Link (EN)
8	Borders, Citizenship and Immigration Act	2009	Lengthened the qualifying time where people could apply for Indefinite Leave to Remain in the UK from five years to a new system of probationary citizenship where applicants had to earn points through good behaviour and 'civic activism'.	Link (EN)
9	Immigration Act	2014	Part 3 of the Act introduced 'right to rent' immigration checks for private landlords, with fines of £3,000 for landlords who rent to irregular migrants without the right to rent. The Act introduced a provision to prevent irregular migrants from opening new bank accounts or applying for UK driving licenses. Finally, the Act strengthened illegal working penalties for irregular migrants without the right to work in the UK.	Link (EN)
10	Immigration Act	2016	The Act introduced a requirement for Banks and Building Societies to introduce checks on both new and existing customers, and made it easier for landlords to evict tenants without the right to rent. In the criminal justice sector, the Act introduced powers to require foreign national offenders to wear electronic tags when released from prison on bail, and extended powers to 'deport now, appeal later' to more cases.	Link (EN)
11	Nationality and Borders Act	2022	Clause 11 of the Act created two categories of refugees. Group 1, who travelled directly to the UK, and Group 2 who entered via a third country or irregular route. Group 2 refugees will have limited access to social security benefits and family reunion, and will have their status reviewed after 30 months.	Link (EN)

12	Illegal Migration Act	2023	The aim of the Act is to reduce small boat crossings across the English Channel by preventing those who enter irregularly from claiming asylum, detaining them and removing them from the UK without the right to return in the future.	Link (EN)
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Human Rights Act	1998	Incorporates the ECHR into British law, including article 3 “freedom from torture” and article 8 “respect for private and family life”. These sections can be used in Immigration cases to argue for the right to remain in the UK.	Link (EN)
2	Race Relations (Amendment) Act	2000	The Act amended the previous Race Relations Act of 1976, and introduced a duty for public authorities to promote race equality in their work.	Link (EN)
3	Anti-terrorism, Crime and Security Act	2001	Although predominantly relating to counter terrorism, the Act also impacted on other areas. It allowed the Home Secretary to detain any non-British citizen who was suspected to be a terrorist indefinitely. This power was later replaced by Control Orders in the Prevention of Terrorism Act 2005.	Link (EN)
4	Assisted Voluntary Returns Programme	2006	The Assisted Voluntary Returns Programme is a policy which was introduced in 2006 as a way of encouraging irregular migrants (including refused asylum seekers) to leave the country without the need for forced removal. The Programme assists with applying for travel documents, and in some cases applicants are eligible for a £3,000 resettlement grant.	Link (EN)

5	Modern Slavery Act	2015	The Act consolidated existing law on Human Trafficking, and created the post of Anti-Slavery Commissioner. The Act introduced the power for courts to seize assets of convicted traffickers and use them for victim compensation, and a new legal defense for trafficking victims who are compelled to commit crimes as part of their trafficking.	Link (EN)
6	Immigration and Social Security Co-ordination (EU Withdrawal) Act	2020	The Act ended freedom of movement to the UK for EEA nationals at the end of the Brexit Transition period.	Link (EN)
7	European Union (Withdrawal Agreement) Act	2020	The Act legislated for the provisions of the Brexit Withdrawal Agreement.	Link (EN)

ABOUT THE AUTHOR

Dr Andy Jolly is an Assistant Professor in the Department of Social Work and Social Care at the University of Birmingham.

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