

Irregular migration in the UK

an ippr FactFile

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Summary

- Irregular migrants are people who are liable to be deported for issues related to immigration status.
- The scale of irregular migration is very difficult to estimate. The Home Office's median estimate for the numbers of irregular migrants in the UK in 2001 was 430,000.
- Irregular migrants come to and stay in the UK for a similar range of reasons to regular migrants.
- There is very little publicly available data about how migrants enter the UK, but it is likely that more overstay their visa than enter clandestinely.
- Most irregular migrants will come from outside the European Union (EU) because EU nationals generally enjoy comprehensive entitlements to visit, live in and work in the UK.
- Irregular migrants are thought to work in sectors that pay low wages and have high unmet demand for workers.
- The potential extra fiscal revenue from the income taxes that irregular migrant workers could be paying is at least £485 million per annum. The real figure is more likely to be around £1 billion, given that some irregular migrant workers will be earning more than the minimum wage.
- Migrants, both regular and irregular, are more mobile than many people think, but immigration restrictions (especially border controls) can encourage permanence.
- Irregular migrants have limited rights under the Human Rights Act, but bringing a case to court carries a risk of deportation.
- Policy options for managing irregular migration include better border controls, improved internal controls (e.g. ID cards), increased opportunities for regular migration, clamping down on the informal economy, employer sanctions, removals, voluntary return and regularisation.
- No policy by itself will prevent all irregular migration.

Case studies:

- The UK has traditionally focused on external controls, but the Government plans to introduce more internal controls through identity cards and the use of electronic tagging for asylum applicants.
- The USA has attempted to improve border controls but with only limited success, especially at the US-Mexico border. Employer sanctions and regularisation have also featured in the US strategy.
- In 2005, Spain completed a large-scale regularisation programme. Several other Southern European countries (including Spain) have carried out regularisation in the past.

Introduction

Irregular migration (also described as illegal, undocumented or unauthorised migration) is a complex and controversial issue that is a source of considerable debate in the media and among the general public.

From controversies surrounding the immigration status of *Big Brother 6* contestant Makosi (BBC 17 November 2005) to the tragic deaths of 58 Chinese migrants being smuggled into the UK (BBC 19 June 2000), irregular migration is never far from the public eye.

Public concern about immigration in general is at unprecedented levels (MORI 2005), with a significant proportion of people polled recently feeling that the Government does not have immigration under control (MORI 2003).

Irregular migration is seen as an important public issue in several ways:

- as evidence that the immigration system is failing or being abused
- as a challenge to national sovereignty (that is, the UK may not have total control over who comes and goes from the country)
- as potentially compromising the security of the UK (especially in light of growing fears about international terrorism)
- as exposing some vulnerable migrants to exploitation, in transit or when they get to the UK.

In response to some of these concerns about the integrity of the immigration system and national security, the Government plans to introduce identity cards that include biometric data such as fingerprints and to implement electronic borders to monitor the movement of individuals in and out of the UK. While the vast majority of irregular migrants will not have terrorist ambitions, they will have reason to evade, or at least be wary of, the police and other authorities due to fears of deportation. This was highlighted by the immediate confusion surrounding the legal status of Jean Charles De Menezes, a Brazilian electrician who was shot dead by police in Stockwell tube station, London, on 22 July 2005 (Independent on Sunday 21 August 2005).¹

In 2005, the UK Government attempted to estimate the numbers of irregular migrants and published the UK's first official estimate of irregular migration (Home Office 2005a). While this estimate has been a useful contribution to the evidence base on irregular migration in the UK, it is equally important to go beyond estimating numbers and deal with some of the broader policy issues that irregular migration raises. This FactFile seeks to address some of these issues.

Key questions about irregular migration

Who are irregular migrants? How do they differ from illegal, undocumented and unauthorised migrants?

The terminology and concepts surrounding the phenomenon of irregular migration are frequently emotive and contested. Finding a satisfactory terminology is further complicated by the sheer complexity of irregular migration and its intimate relationship to government policy. This FactFile will use the term **irregular migrants**², which we define as **people who are liable to be deported for issues related to immigration status**. There are a variety of reasons for which irregular migrants can be liable for deportation, which include:

- entering by avoiding immigration inspection (often with the assistance of smugglers)
- entering using false documents (wittingly or unwittingly)
- overstaying visas or otherwise violating visa conditions (including students who work more hours than is allowed, described as ‘semi-compliance’ (Anderson 2005))
- having a rejected asylum claim but remaining in the UK (failed asylum seekers)
- being *sans papiers* (for example, a person’s passport may have been destroyed or taken by an employer)
- already having applied for asylum elsewhere, which is described as ‘irregular secondary movements’ (Khosler 2005).

There is considerable debate regarding the most appropriate terminology for describing those who are liable to be deported as a result of their immigration status. Table 1 (next page) summarises the different terms with examples of where they are used and why they have been criticised. Despite the fact that some researchers use the terms interchangeably, there are differences in what is implied by each term. **The term ‘irregular’ is used in this FactFile because it best captures the complexity of the issue and has fewer connotations with criminality. However, it is acknowledged that the term does have shortcomings and is rarely used in public debate.**

It is also important to recognise that most irregular migrants have committed administrative offences rather than a serious crime. This has led some, such as the UN Special Rapporteur on the Rights of Non-citizens, to suggest that ‘Immigrants... even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals’ (Khosler 2005: 5).

Table 1. Terminology

Term	Where it is used	Comments
Irregular	<ul style="list-style-type: none"> • International Labour Organisation • International Organisation for Migration • Organisation for Security and Cooperation in Europe • Global Commission for International Migration 	<ul style="list-style-type: none"> • Irregular migration is a very complex concept that needs to be used in an informed way rather than as simply a euphemism/synonym for illegal migration. • The term is not commonly used in media and public debate.
Illegal	<ul style="list-style-type: none"> • UK Government • European Union • Much of the UK press 	<p>The term 'illegal' has associations with criminality, which is viewed as objectionable for the following reasons:</p> <ul style="list-style-type: none"> • Being liable to deportation is usually an administrative rather than criminal offence.³ • Defining someone as 'illegal' may undermine the protection of their human rights, some of which may be in jeopardy. • Defining those seeking asylum as 'illegal' on entry may jeopardise their claim.
Undocumented	<ul style="list-style-type: none"> • Non-governmental organisations (e.g. PICUM⁴) 	<ul style="list-style-type: none"> • The term 'undocumented' is ambiguous. Undocumented has been used to describe both migrants who have not been recorded and those without documents. • This is not an accurate description of all migrants liable for deportation.
Unauthorised	<ul style="list-style-type: none"> • Home Office (2005a) 	<ul style="list-style-type: none"> • Not all migrants liable for deportation are unauthorised.

Source: House of Lords (2002), Khoser (2005) and Home Office (2005a)

Irregular migration and asylum

Many researchers argue that asylum and immigration should be treated as discrete processes, but there is considerable blurring between categories. For example, refugees in need of protection may use irregular channels (smugglers and so on) in order to claim asylum, but as the Refugee Convention outlines, **it is not 'illegal' to enter irregularly if a migrant claims asylum on arrival.**⁵ Nonetheless, in public debate the terms 'asylum seeker' and 'illegal immigrant' are almost synonymous. This is compounded by policies regarding asylum in the UK and elsewhere having been focused on rejected asylum seekers and preventing them reaching UK territory to make their claim (Layton-Henry 2004).

Smuggling and trafficking

There has been considerable confusion regarding the distinction between migrant smuggling and human trafficking, which has a significant impact upon the rights of the individual involved. The UN protocols of 2000 have considerably clarified the differences by stressing that coercion is present in trafficking but not in smuggling.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)

Trafficking in human beings: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

UN Protocol against the Smuggling of Migrants by Land, Sea and Air (2000)

Smuggling of migrants: The procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident.

However, a journey that begins voluntarily can become coercive if, for example, a migrant is forced to work in order to pay off debts accrued in transit. Indeed, the European Experts group on Trafficking in Human Beings notes that 'from a human rights perspective, there is no reason to distinguish between forced labour involving "illegal migrants", "smuggled persons" or "victims of trafficking"... States should criminalize any exploitation of human beings under forced labour, slavery or slavery like conditions, in line with the major human rights treaties that prohibit the use of forced labour etc.' (Anderson and Rogaly 2005: 9). This indicates that the distinction between smuggling and trafficking is likely to continue to be contentious and highlights the importance of viewing them as issues relating to forced labour just as much as issues related to movement across borders.

Why do irregular migrants come to the UK?

Irregular migrants come to the UK for a range of economic, political and social reasons – indeed, probably as wide a range of reasons as regular migrants.

The economic drivers of all migration are often divided into push and pull factors. Push factors include **increased poverty, population pressures and an oversupply of less educated labour in developing countries**. Many developing countries have experienced national economic difficulties, and in some cases crises, that have increased unemployment and decreased social assistance. These economic difficulties are compounded by continuing population growth and low levels of education and training in many developing countries.⁶

Pull factors include the fact that **wages are higher in developed countries**, and that there is **persistent labour demand**. In the UK, fertility rates are declining, the population is ageing, education levels are rising and there are increasingly negative attitudes to menial jobs among the native-born population (Cornelius and Tsuda 2004). While the native born population appears to be increasingly reluctant to work in low paid, menial jobs, demand for low paid workers is growing. Goos and Manning (2003) found that between 1979 and 1999 there was a 12 per cent increase in the numbers of jobs in the ten lowest paid occupations (relative to median wage). Recent research has also shown that up to 90 per cent of low paid jobs in London are filled by migrants (Evans et al 2005).⁷

While economic push and pull factors are central to decisions to migrate, it is essential that social and political factors are considered. Castles (2004) stresses the **importance of migrant social networks** through which new migrants follow the initial migration of other members of their family or community. A recent report on migration in the east of England has shown that word of mouth and family connections are the most likely routes into employment for migrants (McKay and Winkelmann-Gleed 2005). Such networks provide a basis for adaptation and community formation. Furthermore, it is increasingly acknowledged that a migration industry, including travel agents, lawyers, labour recruiters and interpreters, develops from these networks.

The political context in both sending and receiving countries is crucial to the existence of irregular migration. Most often, the political drivers of migration are associated with asylum seekers and refugees. While political instability in sending countries can also be a prime driver of irregular migration, **it is the policies of receiving countries that create irregularity**. In short, a migrant only becomes 'irregular' if they have been defined as such by immigration laws and regulations in receiving countries. Therefore, there is an intimate relationship between immigration regulation and irregular migration.

Seen in this way, the proposed changes to the UK labour migration system (Home Office 2005b), for example, may have important impacts on the size of the irregular population. An increasing emphasis on highly skilled migrants and the scaling down of legal avenues for low-skilled temporary migrants to enter the UK, may provide incentives for those ineligible under the proposed system to migrate without permission (ippr 2005). Conversely, the decision of the UK Government to allow free movement of workers from the new member states that joined the European Union in 2004 may have meant that thousands of these nationals already in the UK may have gone from being irregular to regular status overnight.

How many irregular migrants are there?

The scale of irregular migration can only be roughly estimated. Different countries have used different methodologies and have focused on different aspects of the phenomenon.⁸ There are two central features to consider when estimating irregular migration: **the stock and the flow of irregular immigrants**. The irregular migrant stock represents the total irregular population resident in the country and irregular migrant flows represent the movement of irregular migrants across borders (Heckmann 2004).

Pinkerton et al (2004) have recently reviewed the available methodologies for estimating the irregular migration stock, looking at both direct and indirect methods. The former seeks to build up a picture by looking at data from sources such as removal statistics (see Table 2), regularisation data or other administrative statistics (e.g. from police checks and apprehensions). Indirect methods try to infer the size of the irregular population by comparing different population censuses and registers, including data on births and deaths. Direct methods have the potential to be more accurate but encounter problems due to the hidden nature of the irregular migrant population. Indirect methods, if appropriately utilised, can often provide a fuller picture of the irregular population that does not rely on counting irregular migrants.

Table 2 People against whom enforcement action was initiated, 2000-2004

	2000	2001	2002	2003	2004
Illegal entry action initiated	47,325	69,875	48,050	-	36,550
Deportation action initiated	2,525	625	235	-	1,560
Administrative removal action initiated	720	5,610	9,450	-	12,670
Total	50,570	76,110	57,735	-	50,780

Source: Office for National Statistics 2005

The Home Office (2005a) recently published its first estimate of the ‘illegal’ migrant stock based upon the indirect residual method. Pinkerton et al (2004) view this method as the most applicable in the UK context because there were not enough sufficiently disaggregated and centralised statistics to use other direct or indirect methods. By contrast, the residual method deduces the number of irregular migrants in the UK from census records. It subtracts an estimate of the ‘legal’ foreign-born population (e.g. permanently settled migrants, temporary legal migrants and quasi-legal migrants such as those with appeals held in backlogs) from the total foreign born population recorded in the 2001 census to work out the number of ‘illegal’ migrants. Estimates ranged from 310,000 at the lower end to 570,000 at the higher end, with a median estimate of 430,000.

While this estimate will greatly aid policy making, its categories do not fully reflect the complex nature of irregularity. For example, foreign students who work more than their visa allows may be liable to deportation if discovered, but would not be counted under the residual method listed above.

The residual method’s primary weakness is that it is based upon the census, which is only conducted once every ten years. The current estimate has been criticised as being out of date and unable to factor in developments since the last Census in 2001. For example, irregular migrants from accession countries (such as Poland and the Czech Republic) are now entitled to live and work in the UK.⁹ This highlights the need for serious consideration of data collection, especially embarkation records, in order to increase the applicability of other methods of estimating the irregular population. **While it is true that the estimate released by the Home Office is out of date, its great strength was that it compared the information from migration statistics with an overall estimate of the UK foreign born population.** Without such a comparative perspective there is a danger of making arbitrary assumptions about the numbers who will be affected by new developments.

How do irregular migrants enter the UK?

There is very little publicly available data about how migrants enter the UK, but **it is likely that more overstay their visa than enter clandestinely**. That is, given improvements in border controls at UK ports and airports, it is unlikely that there are large numbers of people crossing UK borders without permission. Improving passport and visa technology is also likely to mean that people entering on forged documents are fewer. While it is difficult to ascertain how many migrants leave the country upon the expiry of their visa (because there is no immigration control on embarkation at present), it is likely that most irregular migrants are those who entered the country legally but remain in the country without permission.¹⁰

Many of the routes for clandestine entry are very dangerous. UNITED for Intercultural action has compiled a list of 3,490 documented deaths that are thought to have occurred while entering Europe between 1993 and 2002, of which 72 occurred during attempted irregular entry to the UK.¹¹ The most common cause of death while entering the UK (61 of the deaths recorded) was suffocation in a lorry while being smuggled into the UK by ferry.¹² Others drowned in the English Channel, froze to death as stowaways on an aeroplane and were crushed by trains in the Channel Tunnel. However, these recorded deaths offer only a limited insight into the routes of entry, especially as less dangerous (and probably more popular) routes may not be represented.

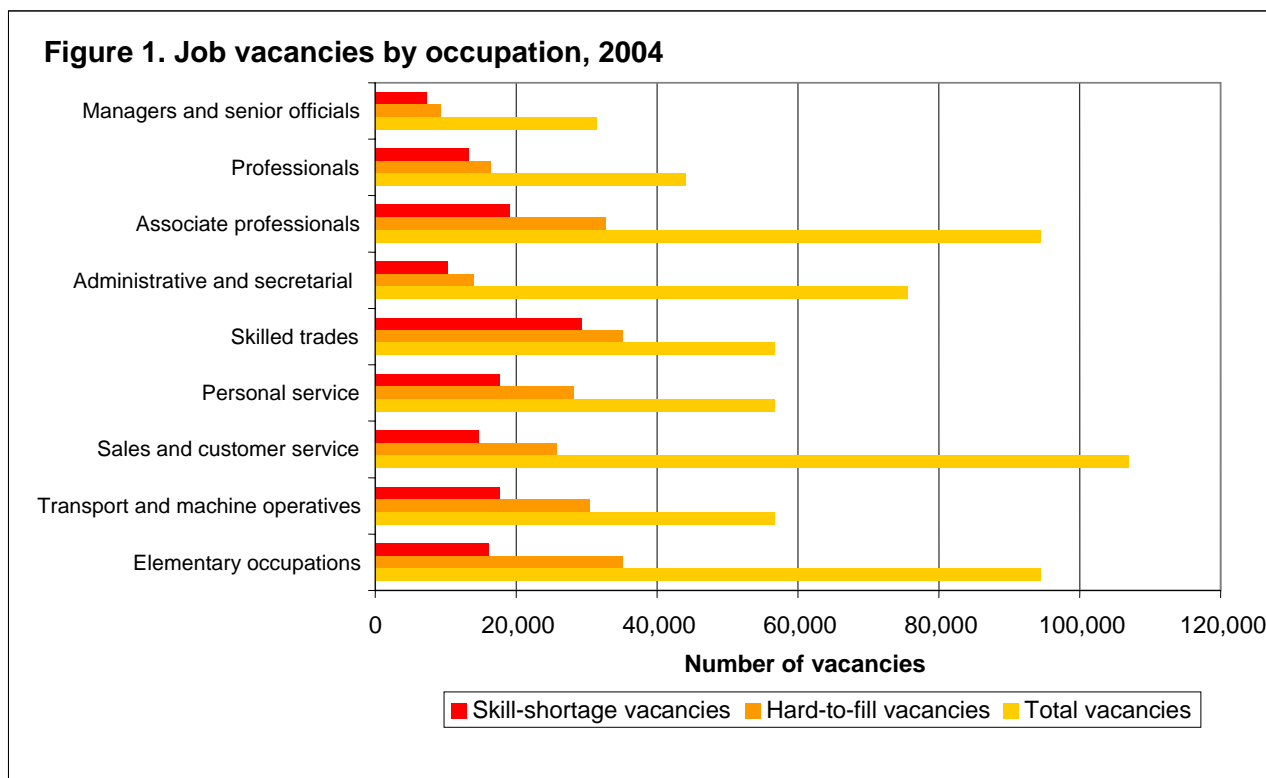
Where do irregular migrants come from?

Just as it is difficult to estimate the size of the irregular population, it is difficult to ascertain the origin of the population. One source of information that can give us some idea of the origin of the irregular population is the country of origin of people detained under the Immigration Act. Of the 1,950 number of people held in detention on 25 December 2004, some 39 per cent were from African countries, 28 per cent were from Asia, 15 per cent from Europe, 11 per cent from the Americas and seven per cent from the Middle East.¹³ The largest European nationality groups in detention were from Turkey, Serbia and Montenegro and Romania. The recent accession of ten new members (Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) to the European Union in May 2004 may mean that the figures for European nationals above are less likely to be replicated in more recent statistics.

In addition, it is worth noting that the immigration status of migrants from accession countries is unique in comparison to other EU member states. Nationals of accession states who want to work in the UK for more than a month are required to register with the Workers Registration Scheme in order to work *regularly* in the UK. Registered workers receive a registration card for each job they have and need to apply for a new card if they change jobs.¹⁴ This highlights the fact that **despite being citizens of the European Union, with a right to enter, live and work in the UK, it is possible for accession country nationals to become irregular.**

Where do irregular migrants work?

Irregular migrants are often thought to work in sectors that pay low wages but have high demand for labour. The National Employer Skills Survey 2004 (see Figure 1 below) has shown that there are significant numbers of hard-to-fill vacancies in low paid occupational groupings such as personal services, sales and customer services and elementary occupations.¹⁵ A recent study on low paid employment in London showed that many migrants work as cleaners on the London Underground, in care work and in hospitality (Evans et al 2005).¹⁶ Different nationalities were concentrated in particular occupations: for example, Slovaks were often employed in personal service occupations and Ghanaians were often employed in elementary occupations.



Source: Learning and Skills Council 2005

A recent study into forced labour in the UK focused on four sectors (construction, agriculture/horticulture, contract cleaning and residential care) and found that the immigration status of workers varied a great deal (Anderson and Rogaly 2005). For example, many migrants obtained permits to work in agriculture through the Seasonal Agricultural Workers Scheme (SAWS) and then were subsequently hired by other companies in violation of work card conditions. In addition, *Guardian* journalists Felicity Laurence (2005) and Hsiao-Hung Pai (2004) have detailed cases in which irregular migrants are working in food production and for contract cleaners in Canary Wharf, respectively.

It would seem that, while regular migrants to the UK come to fill vacancies across the skills spectrum, most irregular migrants are likely to be doing jobs that could be characterised as dirty, difficult and dangerous.

What are the economic impacts of irregular migration?

The relatively high numbers of irregular migrants and the fact that many of them are working suggest that they provide important inputs into the economy. However, it is very difficult to gauge the exact economic contribution made by irregular migrants, given that by their very nature **they work for cash payment and operate outside of the official tax regime, as part of the informal or hidden economy.**

There are several different estimates regarding the scale of the informal economy in the UK. One average 'guesstimate' of its size is 6.8 per cent of GDP or £75 billion (Small Business Council 2005). While there may be short-term fiscal advantages for both the individual and the employer in the informal economy, the broader social and economic costs are significant, ranging from a loss of social protection and rights, to increased taxpayers' burden and limited business expansion (Grabiner 2000).

While migrants with irregular status make up only one part of the informal economy, which covers various tax and benefits abuses, it is likely that irregular migrants do contribute significantly to the economy as a whole. This raises some difficult challenges for policymakers in this area. Despite most often breaking the law and also likely to be in exploitative conditions, irregular migrant workers may at the same time be making important contributions to the UK economy. By doing jobs that resident workers may be unwilling to do (at the rates and conditions on offer), irregular migrant workers may be propping up important sectors of the economy. While this situation is deeply problematic in many ways, there is also the economic reality that the absence of these workers may push prices up dramatically or lead to some jobs not being done at all.

The potential fiscal revenue from irregular migration, in terms of the taxes that could be collected were irregular migrant workers in a regular situation, may also be important. While irregular migrants may be contributing to the exchequer (for example, by paying VAT on their purchases) or be consuming some public services (for example, by using emergency care at NHS hospitals), it is highly unlikely that irregular migrant workers will be paying income taxes.

One way of calculating this potential tax revenue would be to assume that irregular migrants have the same age characteristics and employment rate of recently-arrived immigrants. Kyambi (2005) uses aggregated Labour Force Survey data for 2000-04 to show that, in 2004, some 82 per cent of immigrants in the UK since 1990 were of working age (aged 16-64) and had an employment rate of 61.5 per cent. Assuming that the total numbers of irregular migrants in the UK are similar to the Government's mid-point estimate for 2001 of 430,000 (Home Office 2005a), then we would expect there to be some 216,850 irregular migrants who are working. If we assume that all of these earn only the minimum wage (£5.05 an hour, or £202 a week on a 40 hour week), then each should be paying £2,236 per year in income tax, National Insurance and employers' contribution. In other words, **this represents a potential contribution of at least £485 million a year to the exchequer.** More realistically, if we assume that some of these workers earn more than the minimum wage and in fact earn the same as the median wage of recently-arrived immigrants (£308 per week), **this potential contribution rises to £4791 per worker per year or £1,038 billion per year in potential fiscal revenue.**¹⁷

When considering what policy solutions to pursue with regards to irregular migration, it is also worth calculating the costs of deporting irregular migrants. The financial costs are likely to be significant given that they must include the cost of apprehension, detention, as well as transport. As an example, in the UK, the average cost of carrying out the enforced removal of a failed asylum seeker is around £11,000 (NAO 2005). If we assume that the Government were to deport all irregular migrants at this rate, this would imply a total removal cost of around £4.7 billion. A cost assessment of deportation for all irregular migrants in the US estimates a cost of around \$25,000 per irregular migrant, leading to a much larger total of \$206 billion (Goyle and Jaeger 2005).

How long do irregular migrants stay?

Much migration research is based on the assumption that migration is permanent, which means that there has been little research into non-permanent migrations, regular or irregular. This emphasis on permanent migration is largely based on the post-war experiences of several countries in Europe where temporary workers stayed permanently, and the fact that temporary migrations can be more difficult to research. However, **restrictive government policy can create permanence**. In Germany, for example, the settlement of many temporary guest workers is thought to have been prompted by the government's decision to end recruitment of less skilled migrants for more than ninety days (Heckmann 2004). Migrants are unlikely to circulate between home and host countries if they fear that the routes of entry will not be open again in the future. The link between open channels and temporary migration appears to be playing out in the aftermath of the recent regularisation programme in Spain, as air passenger numbers between Spain and Latin America have increased by 30 per cent (*Le Monde* 2006).

Government policy has a profound effect upon the length of stay. Internal and external controls are particularly relevant in this regard. If there are tight internal controls, it may be difficult to live in a country irregularly on a long-term basis. If there are tight controls at the border (for example, visa requirements), the financial costs and personal dangers associated with the use of such services are likely to make irregular migrants reluctant to circulate between the country of origin and destination. In Germany, for example, much irregular migration operates as a 'pendulum movement' (Heckmann 2004) in which migrants come to work irregularly for short periods. However, this circular migration is only a realistic option for migrants who do not need visas (e.g. Romanians); others are more likely to turn to smugglers for assistance, making the journey more perilous and expensive.

Immigration to the UK has been less permanent than is commonly thought: **almost half (46 per cent) of all overseas-born immigrants left the UK within five years of arrival between 1981 and 2002** (Office for National Statistics 2004).¹⁸ In addition, anecdotal evidence already suggests that many accession country migrant workers intend to work in the UK only temporarily in order to save money for their families or their studies. Moreover, the increased accessibility of global communications and transport systems would suggest that circular migration is increasingly possible. There is growing support for innovative policy to create incentives for increasing circulation, especially reimbursing income taxation upon return to the home country and transferring pension entitlements (Sriskandarajah 2005).

What rights do irregular migrants have?

In the UK, there are considerable obstacles to the promotion of irregular migrants' rights, especially due to the fact that there is no written constitution to protect individual rights and that irregular migrants are often absent or explicitly excluded from international conventions.¹⁹ A written constitution or a ratified convention can be appealed to by advocacy organisations and legal representatives in order to defend the rights of irregular migrants. **The rights available to irregular migrants in the UK have relied upon 'concessions' and formalised discretion, rather than upon legally enshrined formal rights.** However, the Human Rights Act 2000 has the potential to alter the UK immigration system. This establishes in domestic law what might have been granted as a concession.²⁰ It may also mean that the rights of irregular migrants are in effect reduced as there will be less flexibility (Morris 2002).

Irregular migrants might be able to claim the following rights:

- **The right to freedom from inhuman or degrading treatment.** For example, a drug courier found to have AIDS was allowed to remain in the UK as he would have no access to medical treatment or care if he was sent to his home country.²¹
- **The right to a family life,** though qualified by consideration of whether family life is possible elsewhere. It is on this basis, for example, that if a child who has been resident in the UK for seven years or more the family will not be removed.²²

Bringing a case to court poses considerable risks for irregular migrants as exposing oneself could result in deportation, and even if exceptional leave to remain is granted the migrant will often be prevented from working. This is a significant, but not insurmountable, obstacle to the advancement of the rights of irregular migrants as the case of migrant domestic workers in the 1980s and 90s shows. Migrant domestic workers, who had left abusive employers and thus fallen into irregular status, founded a self help association (United Workers Association) and a coalition of interested individuals and advocacy organisations (Kalayaan), which successfully campaigned for regularisation (Kalayaan 1996).

What are the policy options?

Given the sheer complexity of irregular migration, no policy by itself will prevent all forms of it. Therefore it is vital to consider the apparent strengths and weaknesses of each option in order to create an informed debate about possible policy combinations.

Table 3. A summary of possible policy options

Policy option	Advantages	Disadvantages
Enhanced border controls	<ul style="list-style-type: none"> Reduces flows of clandestine arrivals. Greater chance of intercepting smugglers and traffickers. 	<ul style="list-style-type: none"> Will not stop all irregular migration, especially overstaying by legal entrants. Can be very expensive. For example, the EU spends US\$17 billion on immigration controls, according to the OECD. Can inhibit legitimate travel and economic activity such as trade. May make migrants stay longer.
Internal controls (e.g. ID cards)	<ul style="list-style-type: none"> Makes it easier for police to identify irregular migrants. Provides disincentives to enter a country as it is more difficult to live and work there. 	<ul style="list-style-type: none"> Might adversely impact on civil liberties. May displace risk onto the most vulnerable groups who have difficulty proving their identity or whose identity is often a factor for being discriminated against.
Increased scope for regular migration (e.g. bilateral agreements for temporary migration)	<ul style="list-style-type: none"> Incentive to enter regularly. Can be used to secure cooperation of countries of transit/origin. May benefit social and economic development of developing countries if migrants can circulate between home and host countries, and send money home. 	<p>To be successful, these measures will require:</p> <ul style="list-style-type: none"> public support enhanced enforcement minimal irregular population (e.g. so that regular migrants cannot just 'disappear').
Controlling the informal economy	<ul style="list-style-type: none"> Removes much of the demand for irregular labour. Increased tax revenues. 	<ul style="list-style-type: none"> May drive irregular migration further underground. May increase bureaucratic burden on employers.
Employer sanctions	<p>Reduces the demand for irregular labour. Recognises the role that employers play in fuelling irregular migration.</p>	<ul style="list-style-type: none"> Authorities have in the past been unable or unwilling to enforce the sanctions. Fines are often insufficient to be a disincentive. Too many checks may increase bureaucratic burden on employers.
Removals	<ul style="list-style-type: none"> Reduces the irregular migrant stock. 	<ul style="list-style-type: none"> Humanitarian consequences (e.g. mixed status families). Forced removal is very costly. Can be socially and economically disruptive.
Voluntary return	<ul style="list-style-type: none"> Preferable to removals on humanitarian grounds. 	<ul style="list-style-type: none"> Inapplicable on a large scale. Relies on individuals coming forward.
Regularisation (e.g. normalisation or legalisation or amnesty)	<ul style="list-style-type: none"> Increases regulation of the labour market and collection of tax revenues. Reduces scope for exploitation and abuse of irregular migrants. Can help bilateral relationship with sending/transit countries. Can provide valuable information about the demographics and labour market participation of migrants and, in theory, help countries plan to control future irregular migration. 	<ul style="list-style-type: none"> May encourage further irregular migration if there is an expectation of further regularisation. If only temporary regularisation, may lead to reversion to irregular status. Considerable operational challenges (e.g. publicity and administrative capacity). Some employers may not want to pay higher wages to regular workers, thus fuelling continued demand for irregular migrant workers. Public might perceive it as a reward for criminal behaviour.

Policy case studies

The United Kingdom

A key assumption guiding UK policy towards irregular migration has been the effectiveness of border controls. The geographical position of the UK means that border controls have been relatively effective. The UK has no land borders and mainland Europe does not produce immigrants in large numbers.²³ **Thus, the UK has used visa policy and carrier sanctions to limit arrivals of irregular immigrants.** Border controls have, however, come under increasing pressure due to the opening of the Channel Tunnel and increased passenger and freight travel.

Internal controls have been utilised to a far lesser degree, presumably due the reliance on external controls. In the next three years, however, **the Government plans to introduce identity cards, electronic borders and electronic tagging for asylum applicants.** The effectiveness of these plans will depend greatly on the kind of policies they are combined with.

Another important component of UK policies towards irregular migration has been attempts to reduce the demand for irregular labour. In the context of irregular migration, employer sanctions are the main focus of policy attempts to control informal working.²⁴ **The Asylum and Immigration Act 1996 made it illegal to knowingly or negligently employ people who do not have permission to work in the UK** (with a penalty of up to £5,000 if proved). However, there were only 33 successful prosecutions between 1998 and 2000 (Layton-Henry 2004).

The Gangmasters Act 2004 introduced an obligatory licensing system for gangmasters and employment agencies who supply or use workers involved in agriculture in order to reduce exploitation. It defines a gangmaster as someone who supplies a worker to work for another person and makes it an offence to operate without a license, to present a bogus license, to use an unlicensed gangmaster or to thwart enforcement officers. A notable aspect of this act is that it includes both regular and irregular workers (Anderson and Rogaly 2005).

In recent years, these measures have also been supplemented by increasing scope for regular labour migration. Measures to manage low-skill temporary inflows such as the Seasonal Agricultural Worker Scheme and the Sector Based Scheme are likely to have had some impact on irregular migrant working in some areas. Given this, the current dismantling of these schemes and the proposed scaling back of low-skill migration from outside the enlarged EU may increase incentives for irregular migration.

Although operating on a very small scale, another component of UK policy towards irregular migration is the so-called '**long residence concession**'. **This concession allows permanent residence on a discretionary basis to those who have resided in the UK continuously for longer than 14 years or seven years for children.** During the 1990s this involved granting discretionary concessions to around 2,000 to 3,000 applicants per year.

Finally, the UK has also undertaken a few specific regularisation programmes such as one that ran from 1974-78 in response to the 1971 Immigration Act and a 1998 programme for migrant domestic workers (Guild 2000). That said, the Government's current stated position is that no major regularisation programme is being considered as a serious option.

The United States

Since the 1980s, several policies have been initiated to tackle irregular migration. The main initiative is the **1986 Immigration Reform and Control Act (IRCA)**, a response to increasing irregular flows that resulted from factors such as the ending of the Bracero Programme in 1964²⁵ and the Mexican debt crisis in 1982.²⁶ This was specifically targeted at:

- Immigration enforcement
 - Border enforcement specifically for control along the Mexico-US border.
- Employer sanctions
 - Made knowingly hiring or employment of irregular migrants illegal.
 - Employers would be subject to fines ranging from \$250 to \$10,000 per irregular worker.
 - Six-month prison sentence for those who repeatedly hire irregular migrants.
- Legalisation (regularisation)
 - For those who could prove:
 - they had lived in the US continuously since 1 January 1982, or
 - they had worked for 90 days in seasonal agricultural work (SAW) during the past three years.

While there is considerable debate about the effectiveness of each policy option, it seems clear that IRCA did not accomplish its goal of stemming irregular migration flows. **In 1980, the estimated number of irregular migrants in the US was two to four million (Levinson 2005). Recent estimates suggest that there are 10.3 million irregular migrants in the US (29 per cent of the foreign born population) and is estimated to be growing at an annual rate of around 200,000 to 300,000.**²⁷ Most come from Mexico, but significant minorities from other countries in Latin America and elsewhere can be found (Van Hook et al 2005).

An anti-immigrant backlash in 1992 prompted an increase in border enforcement. **Between 1993 and 2004, the US Congress has more than tripled spending on border enforcement activities.** This makes irregular routes of entry more hazardous, which has resulted in more than 2,640 border-related deaths between 1995 and 2004.²⁸ In 2001, there were 9,500 agents posted at the border, who were focused on the relatively short segments of the US-Mexico border at which most migrants attempt to cross. This strategy is based upon cost-benefit assumptions: it attempts to increase both the physical and financial costs of illegal entry as a form of prevention through deterrence (Cornelius 2004).

There is little persuasive evidence that increased border controls have reduced either the stock or the flow of irregular migrants from Mexico. Enhanced border controls encourage migrants already in the US to stay permanently, disrupting the tradition of circular migration between the US and Mexico (Papademetriou 2004). In addition, there is a 'learning process' through which migrants and smugglers have become better at evading controls (Cornelius 2004). **Increased restrictions (both border control and vigilante activity) in one area encourage migrants to go elsewhere.** In 1990, 80 per cent lived in California, Texas, New York and Florida. By the early 2000s, 54 per cent lived in these states and there were five or six times as many irregular migrants in Georgia, North Carolina, Tennessee and Arkansas during the 1990s (Van Hook et al 2005).

A focus on border control can also have a detrimental impact on other policy tools. **The priority for border enforcement has taken staff and funding away from policies such as employer sanctions.** In 2000, there were only 124 full-time immigration agents assigned to workplace immigration for the whole of the US (Cornelius 2004). In the aftermath of 9/11 attacks, the

likelihood of being caught employing irregular workers has been further reduced for many employers. Worksite enforcement has been focused on employers and subcontractors working at sites such as airports, nuclear power and military bases. The ALF-CIO, America's Union Movement, has criticised the current employer sanctions policy as the worst of both worlds as it has a low employer enforcement rate and could potentially encourage discrimination (Brownwell 2005).

The 1986 legalisation programme granted amnesty to most applicants²⁹ and increased wages, mobility and integration in the long term. However, studies have shown that the regularisation had **little impact on irregular migration patterns to the US.** It was not open to migrants who arrived after 1982, which meant that migrants who had arrived between 1982 and 1987 (the deadline for applications) were not eligible. There were also problems regarding fraud, which is suspected in as many as 73 per cent of applications to the general amnesty and 40 per cent of applications to the SAW scheme (Levinson 2005).

Several proposals for further immigration reform are currently tabled. **In January 2004, President Bush announced his proposals to deal with irregular migration (the Fair and Secure Immigration Reform).** His proposals were intended to limit the threat of irregular migration for national security, combat migrant exploitation and diminish human smuggling. Immigrants, including those currently residing in the US irregularly, would be able to apply for three-year work permits that were renewable for a further three years. This proposal has a number of positives: migrants can freely circulate in and out of the US during the visa, it is not restricted to particular sectors and the number of permits will be guided by the number of vacancies in the US economy. However, it offers no route to permanent settlement as migrants are expected, and offered tax and social security incentives, to return home after the visa expires (Levinson 2005).

The two major alternative proposals are the bi-partisan Secure America and Orderly Immigration Act (SAOIA) and the Republican Comprehensive Enforcement and Immigration Control Act (CEICA).³⁰ The SAOIA includes: earned legalisation, future opportunities for regular migration, provisions for family reunification and immigration enforcement. By contrast, the CEICA would provide five-year temporary visas for irregular migrants, which are restricted to government approved employers. Once the visa expires, participants would have to leave the US. It would also introduce new immigration restrictions and establish a national identity system (National Immigration Law Center 2005). It seems that the temporary nature of the CEICA does not overcome the problems with Bush's proposals as irregular migrants might not have an incentive to apply if they will have to leave in five years. Therefore, the SAOIA seems likely to be more effective. Nonetheless it has been criticised for not sufficiently protecting the rights of migrant workers as some workers will still have more rights than others on the basis of immigration status.

Most recently, the House of Representatives passed a bill that would make irregular migrants criminals rather than infringers of immigration law and would order a fence to be built along sections of the US-Mexico border.³¹ While this law is unlikely to become law as it will face opposition in the Senate, it highlights the contentious nature of immigration in the US.

The 2005 Spanish Regularisation Programme

Over the past 20 years, Spain has experienced a rapid transition from being a labour exporting country to being a labour importing country. The economic boom created by Spain's entry to the European Community in 1986 encouraged a nearly four-fold increase in the numbers of legally resident immigrants between 1985 and 2000. The numbers of irregular migrants in Spain has also

increased. In 1993, estimates ranged from 200,000 to 300,000 (Cornelius and Tsuda 2004). This has increased dramatically; **there were almost 700,000 applications in the most recent regularisation.**

On the 7 May 2005, Spain completed its fifth regularisation programme. This programme was distinctive and striking because it was part of a much broader approach (Arango and Jachimowicz 2005):

- Employers were responsible for submitting the regularisation application (except for independent domestic workers).
- It featured unique collaboration between Ministry of Interior and Ministry of Labour and Social Issues.
- It had broad support from employer organisations, unions, and NGOs and few dissenters (e.g. Partido Popular).
- All other immigration applications and benefits procedures are suspended.
- The programme was part of broader immigration reform (border controls, workplace inspections and removals).
- Employers were fined €60,000 per employee for illegal hiring, while irregular migrants who denounce their employers with proof of fraud could be regularised immediately.

The eligibility criteria were tighter than previous regularisations. Irregular migrants had to be officially registered as resident in Spain before 8 August 2004.³² The goal of this stringency was to reduce fraud, but it was criticised as excluding those who were unaware that they could register or were fearful of the implications of registering. Demonstrators argued for other documents to be considered as proof and one month before the end of the regularisation period, it was decided to allow documents such as asylum applications. Other criteria included: no criminal record and a future employment contract for at least six months (three months in agricultural jobs). Successful applicants were given a one-year residence and work permit, which was renewable. However, some have argued that it is now easier to fall back out of status due to requirements for social security payments from employers. **It is still too soon to fully evaluate the policy, but its novel approach has received considerable praise** (Arango and Jachimowicz 2005). Moreover, the Spanish Government estimates that its recent regularisation programme has increased revenue by €750 million in 2005, and is set to add a further €1,350 million in 2006 (*Le Monde* 2006).

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¹ In the weeks following his death, there was considerable confusion in the media about whether De Menezes was an ‘overstayer’ or ‘illegal’. It was initially believed that he had fuelled police suspicion that he was a terrorist by running from the police because he was in the country irregularly. While De Menezes turned out not to be a terrorist (or even to have run from the police), the immigration stamps in his passport were not valid. There is continuing speculation regarding the extent to which De Menezes was aware of this fact.

² We acknowledge concerns that an individual cannot be ‘irregular’. However, we have continued to use the term ‘irregular migrant’ rather than terms such as ‘migrants with irregular status’ (Global Commission on International Migration 2005) in order to prevent further confusion.

³ This distinction is explicitly drawn in the Netherlands, but does not exist in UK domestic law. A ‘similar *de facto* distinction is drawn in the United Kingdom in so far as straightforward instances of illegal immigration, such as overstaying, are invariably dealt with administratively rather than by criminal proceedings’ (House of Lords 2002: 10-11).

⁴ The Platform for International Cooperation on Undocumented Migrants, www.picum.org.

⁵ Article 31 of the 1951 UN Refugee Convention (Global Commission on International Migration 2005)

⁶ Between 2000 and 2050, developing countries will account for almost 99 per cent of world population growth with a projected population increase of 61 per cent (Population Resource Center 2001).

⁷ The immigration status of the workers in the study was not published.

⁸ See Pinkerton et al 2004 for a full discussion.

⁹ Many applications to the Workers Registration Scheme were made by accession country workers who had been in the UK before May 2004. Research has shown that at the end of 2004, 26 per cent of applicants were in the UK before accession and 12 per cent did not provide details of their date of arrival (Portes and French 2005).

¹⁰ Data from Australia, which carries out thorough checks on arrivals and departures, show far larger numbers of migrants overstay their visa than arrive irregularly by air and sea. It would be reasonable to expect a similar pattern to be present in the UK (House of Lords 2002).

¹¹ PICUM website www.picum.org/.

¹² This happened to 58 Chinese migrants entering Dover, UK, in June 2000.

¹³ It is important to note that citizens of the European Economic Area (EEA) and Switzerland are exempt from UK immigration law and therefore do not need permission to enter, live or work in the UK. In 2004, the European Economic Area included: all members of the EU (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden), Iceland, Liechtenstein and Norway.

¹⁴ It costs £70, which only applies to the first time registrants. People who are self-employed do not need to register.

¹⁵ Elementary occupations involve mostly routine tasks and can be found in manufacturing, services and the public sector. Examples include labourers, bar staff and cleaners (Learning and Skills Council 2005).

¹⁶ 90 per cent of the randomly selected respondents were migrants. The immigration status of the migrants was not published.

¹⁷ We have chosen to use median (£308) and not mean (£395) weekly earnings because the latter is skewed by a small number of high earners, an effect that is unlikely to be present in the irregular population. The median earnings figure is also similar to the average weekly earnings found in sectors that irregular migrants are likely to be working in, for example, £267 for personal services, £273 for sales and customer services, £287 for elementary occupations and £370 for process, plant and machine operatives (ONS Labour Force Survey, Autumn 2005, not seasonally adjusted).

¹⁸ This is based upon the International Passenger Survey, which defines an international migrant as ‘a person who moves to a country other than his or her usual residence for a period of at least a year’. Under this definition, there are two types of immigrant: a UK-born immigrant and an overseas-born immigrant.

¹⁹ A notable exception is the United Nations Convention on the Protection of the Rights of all Migrant Workers and their Families (1990), which does seek to protect the basic human rights of irregular migrants. However, no developed country has yet ratified this Convention.

²⁰ This incorporated the European Convention on Human Rights into domestic law.

²¹ European Court of Human Rights case no.146/1996/767/964 (Morris 2002).

²² See Morris 2002.

²³ This is perhaps best demonstrated by the reluctance of the UK to enter the Schengen Agreement, a measure that abolishes internal border controls between 15 European countries.

²⁴ Other policy approaches to informal working have focused on tax evasion and benefit fraud, which are not limited to irregular migrants and therefore are not discussed in detail in this FactFile. See Grabiner 2000 for further details about these approaches.

²⁵ Due to labour shortages during WWII, Mexican labourers were recruited to work in the US agricultural industry on a temporary basis under the Bracero programme. Many stayed when it ended and people continued to cross the border illegally due to continuing demand from employers (Levinson 2005).

²⁶ This crisis was followed by International Monetary Fund Policies that involved sudden privatisation, liberalisation and deregulation. See Levinson 2005 for further information.

²⁷ This is a net figure: 500,000 are expected to enter annually, which is offset by an estimated 200,000-300,000 irregular migrants who leave the US, die or become legal immigrants each year (Levinson 2005).

²⁸ Most of which have been due to ‘environmental causes’ such as freezing to death in the mountains or dehydrating in the desert.

²⁹ 94 per cent for the general amnesty and 85 per cent for the SAW scheme.

³⁰ See Turner and Rosenblum 2005 for details of other proposals.

³¹ The Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005 (H.R. 4437). See American Immigration Lawyers Association (2005).

³² Irregular migrants in Spain can register in their municipality for healthcare and social provision regardless of immigration status.