Home Office

Nationality: good character requirement

Version 2.0

Contents

About this guidance

This guidance tells caseworkers how to consider whether a person applying for British citizenship meets the good character requirement.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Migrant Criminality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **30 September 2020**

Changes from last version of this guidance

New sections on

- EEA nationals and complying with immigration requirements

- minor textual amendments to clarify that a non-custodial sentence is not an out-of-court disposal
- clarification that the good character requirement is removed from certain registration routes following the British Nationality Act 1981 (Remedial) Order 2019

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Purpose

This page tells you about use of this guidance in considering whether a person meets the good character requirement.

Use of this guidance

The guidance applies to applications for registration and naturalisation from those who are aged 10 or over at the time the application is made.

The guidance does not apply to applications made under:

- the statelessness provisions in Schedule 2 of the BNA 1981
- sections 4B, 4C, or 4G to 4I of the BNA 1981
- section 4F of the BNA 1981, on the basis that the person would be entitled to register under paragraph 4 or 5 of Schedule 2 to the BNA 1981

The best interests of a child

The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means that consideration of the child's best interests must be a primary consideration in nationality decisions affecting them. This guidance forms part of the arrangements for ensuring that we give practical effect to these obligations.

Decision makers must carefully consider all information and evidence provided in the application concerning the best interests of a relevant child (that is a person who is under the age of 18 years at the date of application and it is evident from the information provided by the applicant that they will be affected by the decision) when assessing whether an applicant meets the good character requirement of the BNA 1981.

The decision letter must demonstrate that all the information and evidence provided in the application concerning the best interests of a relevant child has been considered. Decision makers must carefully assess the quality of any evidence provided. Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

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Introduction

This page explains the background to the good character requirement and summarises the factors to be taken into account when assessing whether a person meets the requirement.

Background

The good character requirement previously only existed for naturalisation as a British citizen. It was subsequently introduced by section 58 of the Immigration, Asylum and Nationality Act 2006 as a requirement for specific routes to registration as a British citizen.

Section 47 of the Borders, Citizenship and Immigration Act 2009 inserted section 41A into the British Nationality Act 1981 ('the BNA 1981') on 13 January 2010, extending the good character requirement to other registration routes including to a person registering as a British Overseas Territories Citizen, British Overseas Citizen or British Subject.

Approach

The BNA 1981 does not define good character. However, this guidance sets out the types of conduct which must be taken into account when assessing whether a person has satisfied the requirement to be of good character.

Consideration must be given to all aspects of a person's character, including both negative factors, for example criminality, immigration law breaches and deception, and positive factors, for example contributions a person has made to society. The list of factors is not exhaustive.

Each application must be carefully considered on an individual basis on its own merits. You must be satisfied that an applicant is of good character on the balance of probabilities. To facilitate this, applicants must answer all questions asked of them during the application process honestly and in full. They must also inform the Home Office of any significant event (such as a criminal conviction or a pending prosecution) or any mitigating factors that could have a bearing on the good character assessment.

Factors to consider

A person will not normally be considered to be of good character if there is information to suggest that any of the following apply:

Criminality

If they have not respected or are not prepared to abide by the law - for example, they have been convicted of a crime or there are reasonable grounds to suspect, meaning it is more likely than not, they have been involved in crime.

International crimes, terrorism and other non-conducive activity

If they have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism, or other actions that are considered not to be conducive to the public good.

Financial soundness

If their financial affairs have not been in appropriate order - for example, they have failed to pay taxes for which they were liable or have accrued significant debt.

Notoriety

If their activities have been notorious and cast serious doubt on their standing in the local community.

Deception and dishonesty

If they have been deliberately dishonest or deceptive in their dealings with the UK government, for example they have made false claims in order to obtain benefits.

Immigration-related matters

If they have breached immigration laws, for example by overstaying, working in breach of conditions or assisting in the evasion of immigration control.

Deprivation

If they have previously been deprived of citizenship.

This is a non-exhaustive list.

If the person does not clearly fall into one of the categories outlined above but there are doubts about their character, you may still refuse the application. You may also request an interview in order to make an overall assessment. Any cases you wish to interview should be referred to the Permanent Migration Interview Team.

Application of the requirement to young persons

The good character requirement applies to a person who is aged 10 or over at the date of application. When assessing whether a child is of good character, you must take account of any mitigation relevant to the child's particular circumstances. Where a child has been convicted of a criminal offence, sentencing guidelines require that any custodial or non-custodial sentence is adjusted to take into account the child's age and particular circumstances and any mitigating factors such as their ability to understand the consequences of their actions. Therefore although the criminal sentence thresholds for refusal and non-custodial sentencing guidelines for adults

will normally apply to a child who has been convicted of a criminal offence, the lesser sentence handed down to them will mean they are automatically less likely to meet the higher thresholds.

Consideration must also be given to any subsequent mitigation put forward by the applicant that was not taken into account at the time of sentencing.

You may exercise discretion where a child's criminality would result in a lifetime refusal of any citizenship application (i.e. over 4 years in prison). In these cases the amount of time passed since the crime should be weighed up against any evidence of rehabilitation.

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Criminality

This section explains how different types of criminality should be considered when assessing good character.

Overview

Having a criminal record does not necessarily mean that an application will be refused. However, a person who has not shown respect for, or is not prepared to abide by, the law is unlikely to be considered of good character.

An applicant will normally be refused if they:

- have a criminal conviction which falls within the sentence-based thresholds
- are a persistent offender
- have committed an offence which has caused serious harm
- have committed a sexual offence or their details are recorded by the police on a register

When assessing an applicant's criminal convictions, you must carefully consider all the relevant factors raised by the applicant and carefully weigh any countervailing evidence of good character.

Applicants are required to disclose all convictions, regardless of whether or not they are 'spent' under the Rehabilitation of Offenders Act 1974 (1974 Act). You may take into account any past convictions regardless of when they took place, as nationality decisions are exempt from section 4 of the 1974 Act that provides for certain convictions to become 'spent' after fixed periods of time.

The only exception is where the applicant is resident in Northern Ireland, in which case the applicant is only required to disclose unspent convictions as defined in the Rehabilitation of Offenders (Northern Ireland) Order 1978 (see Rehabilitation Periods) .

Where a person fails to declare a conviction or pending prosecution or provides misleading information about a conviction (for example where an applicant declares they received a non-custodial sentence when it is apparent they received a custodial sentence), you must consider whether the application should be refused on the basis of the conviction as well as on deception grounds. Further information about assessing false or misleading information can be found at: Deception and dishonesty.

Sentence-based thresholds

An applicant will normally be refused if they have received:

- a custodial sentence of at least 4 years

- a custodial sentence of at least 12 months but less than 4 years unless a period of 15 years has passed since the end of the sentence
- a custodial sentence of less than 12 months unless a period of 10 years has passed since the end of the sentence
- a non-custodial sentence or out-of-court disposal that is recorded on their criminal record which occurred in the 3 years prior to the date of application

However, in the case of non-custodial sentences and out-of-court disposals, if a person was convicted within 3 years of submitting the application, but more than 3 years have passed on the date the application is decided, the application must not be refused solely on this basis. However, where there are other issues of concern, previous offences may be considered relevant when considering good character as a whole.

It is the whole sentence imposed by the court that counts, not the time served by the applicant.

The Rehabilitation of Offenders (Northern Ireland) Order 1978 still applies to applicants who reside in Northern Ireland. This means that the fact a conviction is spent will be relevant to these applications. In such cases, see Rehabilitation Periods.

Defence for a refugee charged with certain offences

When considering an immigration related conviction received by a person granted refugee status, you must consider whether the person has a defence under section 31 of the Immigration and Asylum Act 1999.

Section 31(1) provides a defence for a refugee if they have committed or attempted to commit an offence under section 31(3) or (4), if they have come to the UK directly from a country where their life or freedom was threatened (within the meaning of the Refugee Convention) and if they:

- presented themselves to the authorities in the UK without delay
- showed good cause for their illegal entry or presence
- made a claim for asylum as soon as was reasonably practicable after their arrival in the UK

Suspended and concurrent or consecutive sentences

A **suspended prison sentence** must be treated as a non-custodial sentence. The exception is where the suspended sentence is subsequently ‘activated’ - this means that the person re-offended or failed to comply with the conditions of that sentence. Where this happens, you must look at both the original suspended sentence, the circumstances leading to the activation of that sentence, and the amount of time in prison the defendant was sentenced to once the original suspended sentence was activated.

For example, if a person is sentenced to 6 months' imprisonment which is suspended for 2 years, but they re-offend within the 2 years, the 6 months' sentence should be counted.

For **concurrent** sentences, you must count the longest single sentence imposed. For example, a sentence of 9 months' imprisonment served concurrently with a sentence of 6 months' imprisonment must be treated the same as one sentence of 9 months.

For **consecutive** sentences, you must add together the total of all the sentences imposed. For example, a sentence of 9 months' imprisonment served consecutively with a sentence of 6 months' imprisonment must be treated the same as one 15-month sentence.

A **short sentence** may be defined as a very brief period of imprisonment, measured in days or weeks rather than months. An example of where you would normally not take a short sentence into account when considering an application is where a person has been detained at court under section 135 of the Magistrates' Court Act 1980 for a single day. Instead this should be treated as a non-custodial offence or out of court disposal recorded on a person's criminal record.

Where a former or serving member of HM Forces has been court martialled or faced other military service proceedings refer to HM forces - criminality.

Convictions and sentences imposed outside of the UK

Any overseas conviction or non-custodial sentence must be treated in the same way as one imposed in the UK. The starting point will always be the sentence imposed.

In addition to official records of overseas convictions or criminality, an applicant may have admitted to having committed offences overseas, including declarations made in other applications to the Home Office, for example, in a protection claim. Where such declarations have been made, they should be taken into account when assessing good character. If the applicant subsequently retracts this information and depending on the reason for doing so, this in itself could call into question the person's honesty in their dealings with the Home Office. If the applicant admitted to committing an offence overseas but claims to have fled the country before being convicted, you must refer the case to a senior caseworker. The application must be put on hold until the claim has been referred to the police.

It will normally be appropriate to disregard a conviction for behaviour that is considered legitimate in the UK. Examples of offences abroad that you may disregard include homosexuality or membership of a trade union. However, the fact that there may be no equivalent for an overseas offence in British law does not in itself mean that the offence should automatically be disregarded, and you must look at what that offence indicates about the person's character. A willingness to disobey the law in another country may be relevant even if their conduct would have been lawful in the UK.

Approval to disregard offences must be obtained from the Chief Caseworker.

Convictions and sentences varied on appeal

A conviction or sentence can be altered as the result of an appeal, either by quashing the original conviction or by increasing or decreasing the sentence.

Where a person is acquitted there is no longer a conviction, although you may still take into account the circumstances that led to charges being brought. See: Suspected criminal activity.

If an appeal changes the sentence but the person nevertheless remains convicted of the offence, you must take into account the new or revised sentence when assessing the applicant's character. However, the initial conviction date still stands.

Persistent offenders

A persistent offender is defined as a repeat offender who shows a pattern of offending over a period of time. This can mean a series of offences committed in a fairly short timeframe or offences which escalate in seriousness over time, or a long history of minor offences.

Persistent offending is relevant when assessing a person's character. The overall pattern of behaviour may justify refusing an application, even if the individual sentences imposed would not normally in themselves be a reason for refusal.

When considering whether the applicant falls to be refused because they are a persistent offender, you must consider:

- the number of offences committed, the seriousness of those offences and the timescale over which they were committed
- the impact of the offences on the public
- whether the offences have escalated in seriousness

For example, a person who has committed 4 minor offences in 10 years in the UK might not be viewed as a persistent offender, whereas a person who commits 3 offences in just 6 months, might be.

Or a person may have been involved in theft, which then escalates to aggravated assault and robbery.

Further guidance on the consideration of persistent offending is set out in guidance on the General grounds for refusal

Offences which cause serious harm

It is at the discretion of the Secretary of State whether he considers an offence to have caused serious harm.

An offence that has caused serious harm means an offence that has caused serious physical or psychological harm to a victim or victims that remains ongoing, or that has contributed to a widespread problem that causes serious harm to a community or to society in general.

When considering whether the applicant falls to be refused because they have committed an offence which has caused serious harm, you must take into account any offender management reports and any sentencing remarks made by the judge relating to the impact on the victim.

An offence may have caused serious harm even if the punishment imposed for the offence would not normally lead to an application being refused.

Where a person has been convicted of one or more violent, drugs or sex offences, or hate crime or racially/religiously motivated offences, they will usually be considered to have been convicted of an offence that has caused serious harm.

However, you must balance these considerations with the length of time passed since the offence occurred. For example, an individual may have been convicted of assault 19 years ago and their sentence of 3 years mean they now qualify for citizenship because more than 15 years have passed.

Sexual offences and the Sex Offenders Register

The Sexual Offences Act 2003 requires a person to notify their local police force of their name, address and other details, including any changes to those details, if, in respect of certain sexual offences, they are either:

- convicted of the offence
- found not guilty of the offence by reason of insanity
- found to be under a disability and to have done the act they are charged with
- (in England, Wales or Northern Ireland) cautioned for the offence

This also includes convictions for offences outside the UK.

Details are recorded by the police on a register (commonly known as the Sex Offenders Register). This assists the police in monitoring the whereabouts of any sex offenders living in their community. The length of the notification period depends on the facts of the case.

Certain sex offenders may also be subject to the following:

- Sexual Harm Prevention Orders – where the person has been convicted or cautioned for a sexual or violent offence and poses a risk of sexual harm to the public in the UK and/ or children or vulnerable adults abroad
- Sexual Risk Orders – where the person poses a risk of harm to the public in the UK and/ or children or vulnerable adults abroad, including individuals without a relevant conviction or caution

- Notification Orders – where the person has been convicted or cautioned outside the UK for a sexual offence
- Sexual Offences Prevention Orders (SOPO) – where the order is necessary to protect the public (or a specific person) from sexual harm from the offender.
- Foreign Travel Orders – where the order is necessary to protect children (or a specific child) from sexual harm abroad
- Risk of Sexual Harm Orders (RSHO) – where it is believed that the person may engage in certain specified activities of a sexual nature

Sexual Offences Prevention Orders, Foreign Travel Orders, and Risk of Sexual Harm Orders have been replaced in England and Wales with Sexual Harm Prevention Orders and Sexual Risk Orders. For further information see: Guidance on part 2 of the Sexual Offences Act 2003.

Any application from a person who is subject to reporting notifications or to one of the orders listed above will normally be refused for as long as the order remains in force. This is regardless of whether their conviction or convictions still come within the sentence-based thresholds.

A person's inclusion on the register will cease after a set period of time. This depends on how long they were sentenced to be on the register. However, details of the offence may remain on the PNC as these need to be available should a person apply to work with children or vulnerable adults.

While there may no longer be a requirement to register, the original offence may still merit a refusal on good character grounds. Each case should be considered on its individual merits.

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Non-custodial sentences and out of court disposals

This section describes the types of non-custodial sentences and penalties a person may receive that can reflect negatively on a person's character and explains how to consider these when deciding an application.

Absolute and conditional discharges

Absolute and conditional discharges may be given for minor offences. There is a finding of guilt and they both result in a criminal record but they are deemed not to be a conviction. The differences are:

- **Absolute discharge** – the court does not impose a punishment, either because the offence was very minor, or the court considers that the experience of going to court has been enough of a deterrent
- **Conditional discharge** – the person is released with conditions imposed for a set period (1 to 3 years): no further action is taken unless they commit a further offence within that period in which case they can be re-sentenced for the original offence as well as the new one

Absolute and conditional discharges are considered as non-custodial offences or out of court disposals, recorded on a person's criminal record. See Sentence-based thresholds. The exception to this is where the person is given a conditional discharge but commits a further offence during the period of conditional discharge and is re-sentenced. In such a case the order conditionally discharging the person will be considered as a conviction when assessing the good character requirement.

Fines

A fine counts as a criminal conviction and forms part of someone's criminal record. Fines must be declared and may result in refusal if received within the last three years. Failure to declare may result in an application being refused on the grounds of deception. See Deception and Dishonesty.

Even where a person does not have a fine within the last 3 years, you may still conclude that a person is not of good character, and therefore refuse an application, if they have received multiple disposals of this kind that show a pattern of offending.

Where this applies, consider the factors listed at Considering cumulative, non-custodial sentences.

Fixed penalty notices, penalty charge notices and penalty notices for disorder

Fixed penalty notices, penalty charge notices and penalty notices for disorder are imposed by the police or other authorised enforcement officers for traffic rule

violations, environmental and civil violations. It is a way of the criminal justice system disposing of fairly minor offences without the need for a person to attend court.

Receiving one does not form part of a person's criminal record. A fixed penalty notice will not normally result in refusal unless the person has failed to pay or has unsuccessfully challenged the notice and there were subsequent criminal proceedings resulting in a conviction. In such instances, they should be treated in line with the sentence imposed by the court.

However, multiple fixed penalty notices over a short period of time could demonstrate a disregard for the law and therefore demonstrate that someone is not of good character.

See Considering cumulative, non-custodial sentences for more information.

Cautions, warnings and reprimands

A caution (simple or conditional), youth caution, warning or reprimand, are all examples of an 'out of court disposal' which are recorded on a person's criminal record.

Warnings and reprimands given to young offenders were abolished on 8 April 2013 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Youth cautions were introduced instead. These are a formal out of court disposal that can be used as an alternative to prosecution for young offenders (aged 10 to 17) in certain circumstances.

A reprimand is issued for a minor first offence and where there is sufficient evidence for prosecution. A final warning is issued by the police for a second offence, no matter how minor. It is also possible to get a final warning for a serious first offence.

A reprimand and a final warning are non-custodial sentences and must be treated in the same way as a caution when considering whether an applicant meets the good character requirement.

Even where a person does not have a caution, warning or reprimand within the last 3 years, an application may still be refused if the person has received multiple disposals of this kind that show a pattern of offending.

Where this applies, consider the factors listed at Considering cumulative, non-custodial sentences.

Community resolutions

A community resolution is used for less serious offences or anti-social behaviour. It is a tool which enables the police to make decisions about how to deal more proportionately with lower level crime and is primarily aimed at first time offenders where genuine remorse has been expressed and where the victim has agreed that they do not want the police to take more formal action.

In establishing whether the good character requirement is met, you must consider the seriousness of the offence and whether it was a first-time offence.

Community sentences

Where a person is convicted of a crime by a court they may receive a variety of sentences other than custody. These are often referred to as community sentences. They are designed to allow offenders to follow programmes to rehabilitate them, or to do work for the community. Such sentences can include:

- alcohol treatment
- attendance centre
- compulsory unpaid work
- curfew
- drug rehabilitation
- exclusion from specified areas
- mental health treatment
- participation in specified activities
- prohibition from undertaking specific activities
- residence requirement
- supervision
- undertaking accredited programmes

Having one or more of the above is a non-custodial sentence or out of court disposal that is recorded on a person's criminal record.

Even where a person does not have a community sentence within the last 3 years, you may still conclude that a person is not of good character, and therefore refuse an application, if they have received multiple disposals of this kind that show a pattern of offending.

Where this applies, consider the factors listed at Considering cumulative, non-custodial sentences.

Detention and training orders

A detention or training order (DTOs) applies to young people aged between 12 and 17 who have been given a sentence of between four months and two years.

The statutory basis for DTOs comes under Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000. The first half of the sentence is spent in custody and the second half in the community. The young person is supervised by a Youth Offending Team (YOT) and normally undertakes education or training whilst in custody. The courts can also require the young person to be on an intensive supervision and surveillance programme (ISSP) as a condition of the community period of the sentence.

A DTO is only given by the courts to young people who:

- represent a high level of risk
- have a significant offending history
- are persistent offenders
- where no other sentence will manage their risks effectively

The seriousness of the offence is always taken into account when a young person is sentenced to a DTO.

In establishing which of the sentence-based thresholds an applicant should be considered against, you must only take the custodial element of the DTO into account in the calculation of sentence length.

Confiscation and forfeiture orders

A confiscation order is made after conviction to deprive a person of the financial benefit or benefits they have obtained from criminal conduct.

This is similar to a fine, with the person against whom the order has been made having to pay the amount within a set period. However, it is not treated as a fine for the purposes of a conviction and it does not count as a non-custodial sentence.

Instead, where a person has had a confiscation or forfeiture order made against them, you must consider whether that indicates a person is not of good character (either on its own or in combination with other factors) even if the sentence they received alongside the order would not in itself lead to a refusal.

For more information, see the Crown Prosecution Service (CPS) guidance on Confiscation and Ancillary Orders Pre-POCA.

Civil orders

The criminal and civil courts have numerous powers to make orders relating to a person's conduct, and whilst the making of such an order does not result in a conviction being recorded against the individual concerned, this will have a bearing on any assessment of that person's character.

Some orders follow automatically on conviction. For example, a restraining order may follow on from a conviction for assault. Others may be applied for by the police, the CPS or the alleged victim.

An order may contain conditions prohibiting an individual from carrying out specific anti-social acts or, for example, entering defined areas.

A list of the most common orders is available at potential court orders. However, this is not an exhaustive list.

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

A civil order will not normally result in refusal unless the person has:

- violated or broken the civil order and there were criminal proceedings as a result, or
- received an order or orders which would suggest a pattern of behaviour that calls into question their character, or
- there are other factors to suggest the individual is not of good character.

In cases where a person has violated or broken the civil order and there were criminal proceedings as a result, you must consider this as a conviction and assess it in line with the new sentence imposed.

In cases where a person has received an order or orders which would suggest a pattern of behaviour that calls into question their character, you must consider the factors listed at Considering cumulative, non-custodial sentences.

Hospital orders and restriction orders

Hospital orders are different to civil orders. A crown court or magistrate's court in England or Wales may authorise detention in a hospital for treatment where a person has committed an offence (for example, a hospital order under section 37 of the Mental Health Act 1983). To do this the court should be satisfied that the offender is suffering from mental illness, psychopathic disorder, or some degree of mental impairment.

In addition to a hospital order, the court may impose a restriction order under section 41 of the 1983 Act.

The court will take into account the nature of the offence, the person's history, and the risk of the person offending in the future. Where a person is the subject of a hospital order, it is important to find out whether there is a restriction order too.

A hospital order will usually cease to have effect on the date the person is discharged from hospital. This will happen unless the person has been recalled to hospital. In these cases, the order remains in effect until fully discharged. Unless this information has already been provided, it may be necessary to confirm the person's release date with the hospital. If there is also a restriction order, it will be for the Home Secretary to decide whether the person should be discharged. In such cases, check with the Mental Health Casework Section of HM Prisons and Probation Service whether a restriction order has been rescinded.

Being subject to a hospital order is a non-custodial offence or out of court disposal that is recorded on a person's criminal record.

However, if the hospital order or restricted hospital order has not been fully discharged, you must normally refuse the application irrespective of when the person was subject to the order.

Considering cumulative, non-custodial sentences or out of court disposals

You may still refuse an application where a person's record shows a 'non-custodial offence or out of court disposal' older than 3 years, if the circumstances of the conviction or disposal call the person's character into question. This will be a case specific consideration, taking account of the following factors:

Number of offences

You must consider the number of offences on the applicant's record. There is no set number of non-custodial sentences or out of court disposals that would lead to an application being refused; however, the higher the number the more likely it is the application will be refused.

Period over which offences were committed

You must consider the period over which offences were committed or other disposals occurred. For example, a series of minor offences or disposals in a short space of time may indicate a pattern of sustained anti-social behaviour or disregard for the law which will be relevant to the assessment of the person's character.

Older non-custodial sentences or out of court disposals may be relevant if there are other serious factors.

Nature of the offences

You must consider the nature of the offences or the behaviour that led to other disposals. For example, anti-social behaviour, drug use, or violence may indicate that a person's character is such that their application should be refused (particularly if there is a pattern of such behaviour)

Applicant's age at the date of conviction

You must consider the applicant's age at the time older non-custodial sentences were imposed or out of court disposals took place. Isolated youthful indiscretions will not generally indicate a person is of bad character if that individual has clearly been of good character since that time.

Exceptional or other circumstances

You must consider the relevance of particular circumstances in someone's life when they received the non-custodial sentence or the out of court disposal.

The list of factors is not exhaustive.

Scottish law

The Scottish legal system is different from the system in England, Wales and Northern Ireland. It is unique in having three possible verdicts for a criminal trial:

- guilty
- not guilty
- not proven

'Not proven' is treated in the same way as not guilty.

Both 'not guilty' and 'not proven' result in an acquittal with no possibility of retrial.

Deferred sentences

It is possible under section 202 of the Criminal Procedure (Scotland) Act 1995 for a court to defer sentence after conviction for a period, usually between 3 and 12 months, and on such conditions as it determines. It is also possible for a court in England and Wales to do this, though this is rarely used.

At the end of that period of deferment, the offender returns to court. If they have complied with the conditions and have not come to the adverse attention of the police, they are likely to be dealt with more leniently than they might otherwise have been.

A deferred sentence is not, of itself, a sentence. That is only imposed at the end of the process when the offender returns to court. You must take account of the sentence imposed by the court at the end of the deferred sentence and make a decision based on the criminality criteria outlined in this section, starting with the section on sentence-based thresholds.

Where an application is made in the period during which a sentence is deferred, you must place the application on hold until the person returns to court and is finally sentenced.

Admonition

Under section 246 of the Criminal Procedure (Scotland) Act 1995 a court may, if it appears to meet the justice of the case, dismiss with an admonition any person convicted by the court of any offence.

An admonition must be treated as a 'non-custodial offence or out of court disposal that is recorded on a person's criminal record' – see sentence-based thresholds.

Cautions

A caution in Scotland is entirely different from that in England and Wales. In Scotland, it is a sum of money or a bond that has to be deposited with the court as ‘caution’ for good behaviour. The sum or bond can be forfeited if there is further offending.

A Scottish caution will be treated as a ‘non-custodial offence or out of court disposal that is recorded on a person’s criminal record’ - see sentence-based thresholds.

Procurator Fiscal fines

Where an alleged offence is reported to the Procurator Fiscal, they may, in certain circumstances, offer to have the allegation dealt with outside of court and without getting a criminal conviction.

The offer will allow the alleged offender to pay a sum of money known as a ‘fiscal fine’, of between £50 and £300, or as compensation of up to £5,000 to someone affected by the alleged offence. A combined offer, which contains both a fine and compensation, can also be made. If the offender agrees to accept the offer, they will not be prosecuted. Fiscal fines are not convictions and should be treated as out-of-court disposals which do not form part of someone’s criminal record.

Related content
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Other criminal and suspected criminal activity

This section describes other types of criminality, or suspected criminality, not covered in other sections of this guidance, that are relevant when assessing the good character requirement.

Pending prosecutions

Pending prosecutions may be discovered through criminality checks, because they are self-declared by the person, or through information passed to the Home Office.

Official – sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

Citizenship will not normally be granted to a person who has a pending prosecution, but this does not prevent you from establishing whether the other requirements for citizenship are met. If the application still falls to be refused without reference to the latest offence, a decision may be made on the case. Otherwise you must place the application on hold until the outcome of judicial proceedings.

If the application is refused for other reasons, you must inform the applicant that any further application for citizenship is unlikely to be successful while any criminal charge remains pending.

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Failure to disclose convictions or criminal proceedings

Where an applicant has attempted to conceal criminal charges or has failed to take reasonable steps to notify the Home Office that they have a pending prosecution, you must follow the guidance on Deception and dishonesty.

Extradition requests and the European Arrest Warrant (EAW)

Extradition is a formal process by which a suspected criminal held by one jurisdiction is handed over to another for trial or, if the suspect has already been tried and found guilty, to serve their sentence. A crime for which a person could be extradited is one that would likely attract a prison term of 12 months or more both in the UK and the country seeking extradition.

The European Arrest Warrant (EAW) operates in a similar way. It is the process by which an EU Member State issues an arrest warrant and then subsequently seeks its enforcement either for the person to stand trial or to complete their prison sentence.

An application **will normally** be refused where the person is the subject of an EAW or extradition warrant or has:

- failed to declare that they are the subject of an extradition order or an EAW, unless evidence suggests they were not likely to have been aware of such proceedings
- been found guilty of an offence in absence and the country where the offence was committed are seeking extradition or have issued an EAW
- been tried overseas and found guilty
- failed to comply with bail conditions at any point during the extradition or EAW process

Depending on other circumstances in the case, a person **will not normally** be refused where:

- a UK court has decided extradition or an EAW should not proceed because of a lack of evidence
- the person has been tried overseas and acquitted

However, whilst an acquittal may be persuasive evidence of good character, it is not conclusive - the criminal standard of proof is beyond reasonable doubt, whereas a decision as to whether the person is of good character is on the balance of probabilities.

You must never disclose the fact that an extradition request has been made if the person is unaware of this, even if no action has been taken.

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Suspected criminal activity

In some cases, information may reveal that a person is known to have committed or is strongly suspected of criminal activity, but for various reasons has not been charged or convicted, or charges have been dropped or the person acquitted. For example, cases may be settled out of court or a prosecution may be considered no longer sustainable due to insufficient or inadmissible evidence.

Careful consideration should be taken of the nature of the information and the reliability of the source.

Where there is firm and convincing information to suggest that a person is a knowing and active participant in serious crime, for example, drug trafficking, the application will normally be refused.

Involvement with gangs

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Where there is reliable information that the person is involved with a gang, you must weigh up both the conduct of the person and the known impact of the gang's activities.

The more 'senior' or involved a person is in a gang, the more likely it is that refusal is justified. Equally, the more prominent and 'active' the gang is, without the person being particularly 'senior', the more likely an application is to be refused.

Association with known criminals

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When considering a refusal on this basis, you must weigh up the extent of the person's connections with the individuals or group concerned and the known impact of their activities. However, the application must not be refused simply because the person knows a known criminal.

Proceeds of crime and finances of questionable origins

Where there is reliable information that the person has benefitted from the proceeds of crime, the application will normally be refused.

A person does not need to have had action taken under Proceeds of Crime legislation in order to fall for refusal under this category.

Related content
Contents

International crimes, terrorism and other non-conducive activity

This section explains the types of activity or behaviour that are not conducive to the public good, where the person poses or has posed a threat to the public, or particular sections of society, whether in the UK or elsewhere.

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War crimes, crimes against peace or humanity, genocide and serious human rights violations

If there is information to suggest that the person has been involved in international crimes or serious human rights violations, they will not normally be considered to be of good character and the application will fall to be refused.

You must refuse an application if the person's activities cast 'serious doubts' on their character. Examples of such activity include:

- involvement in or association with war crimes, crimes against humanity or genocide
- supporting the commission of those crimes
- supporting groups whose main purpose or mode of operation consists of the committing of such crimes, even if that support did not make any direct contribution to the groups' war crimes, crimes against humanity or genocide

In establishing whether there are grounds to refuse an application, you must consider evidence directly linking the applicant to such activities, such as the likelihood of their membership of and activities for groups responsible for committing such crimes. The individual role of the applicant, the length of their membership and level of seniority in the group are also relevant.

Evidencing activity

Information about an applicant must be considered against information from reputable sources on war crimes and crimes against humanity in the country concerned and, where relevant, on the groups in which the applicant has been involved.

Where these sources provide sufficient evidence to support the view that the applicant's activities or involvement constitute responsibility for or close association with such crimes, the application must be refused.

When assessing evidence, you must consider one or more of the following factors:

- an admission or allegation of involvement in such crimes
- an admission or allegation of involvement in groups known to have committed such crimes

Information may range from a brief claim to have been a member of a particular group or profession to a detailed, time framed account.

Where an applicant has denied or not mentioned involvement in such crimes the likelihood of them having done so will often depend on factors such as the nature of the group, the degree to which the group was involved in such crimes and the nature of the involvement of the applicant.

Involvement includes activities where an applicant may not have had direct involvement in such crimes but where their activity has contributed to such crimes.

Membership of a particular group may be sufficient to determine that an applicant has been supportive of or complicit in such crimes committed by that group; consideration should be given to the length of membership and the degree to which the group employed such crimes to achieve its ends (see association with individuals involved in war crimes for further guidance).

Occasionally there will be evidence on file of an allegation against the applicant of involvement in such crimes, for instance, an allegation letter to the Home Office from a third party or a claim by the applicant that they will face court action for committing such crimes from the authorities of the origin country.

Where an applicant is assessed to have been involved in war crimes or crimes against humanity, but there is evidence of mitigating circumstances, decisions must be made with consideration of applicable defences under international criminal law.

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Extremism

In October 2015 the government published its Counter-Extremism Strategy. This contains a commitment to make it more explicit that the criteria for exclusion on the grounds of unacceptable behaviour include past or current extremist activity, either in the UK or overseas.

Unacceptable behaviour

A person who has engaged in unacceptable behaviour will normally be refused British citizenship, unless they have publicly retracted their views and it is clear that they have not re-engaged in such behaviour.

Unacceptable behaviour covers any non-UK national whether in the UK or abroad who uses any means or medium including:

- writing, producing, publishing or distributing material
- public speaking including preaching
- running a website
- using a position of responsibility such as a teacher, community or youth leader

to express views which:

- incite, justify or glorify terrorist violence in furtherance of particular beliefs
- seek to provoke others to terrorist acts
- foment other serious criminal activity or seek to provoke others to serious criminal acts
- foster hatred which might lead to inter-community violence in the UK

The list of unacceptable behaviours is indicative rather than exhaustive.

If you identify a case that involves unacceptable behaviour it must be referred to Special Cases Unit.

National security and terrorism

If there is information to suggest that the applicant has been involved in, or associated with, acts contrary to any state's national security, including terrorism, they will not normally be considered to be of good character and will fall to be refused.

If you have a case where the person is known to be or suspected to be involved in or associated with terrorism, or otherwise poses a threat to national security it must be referred to Special Cases Unit.

Association with individuals involved in terrorism, extremism and/or war crimes

Those who associate or have associated with persons involved in terrorism, extremism and/ or war crimes may also be liable to refusal of citizenship.

The association link will need careful consideration, particularly where it concerns a family member. Family association with war criminals must be disregarded in the case of minors.

The following questions will be relevant when considering an application from someone known to associate, or to have associated, with an individual (or individuals) involved in terrorism, extremism and/ or war crimes:

- Is there evidence to suggest the applicant's association with the individual was not of their own free will? This is particularly relevant for family associations.
- Is there evidence to suggest the applicant associated with the individual whilst unaware of their background and activities?
- If so, what action did the applicant take once the background and nature of the individual came to light?
- Are there any suggestions that the applicant's association signals their implicit approval of the views and nature of the individual's illegal activities?

- How long has this association lasted? The longer the association, the more likely it may be that the applicant is aware of or accepts the activities and views. How long ago did such association take place?
- How long ago was the individual's involvement in the war crime and is there evidence that the individual has rehabilitated since?

If there is evidence that an associate or family member does not accept, tolerate or support the views or activities of a person involved in war crimes, or where they have clearly distanced themselves from those activities, their association alone will not be a reason to refuse an application for British citizenship. It may be necessary for an applicant to be interviewed to resolve the question of association and to help establish whether they are of good character.

If you identify a case that involves association with an extremist or extremist group it must be referred to Special Cases Unit.

Public order

An application will normally be refused where a person has engaged in activities that have or are likely to give rise to a risk to public order.

The examples of extremism are also relevant, where the intention or outcome is likely to give rise to public order concerns. A person's activities do not have to be politically motivated. For example, a known football hooligan could be regarded as a public order risk. Other examples include, but are not limited to:

- rioting
- violent disorder
- affray

If the applicant has been found guilty of a public order offence, you must consider the sentence given when deciding the nationality application. See sentence-based thresholds and Considering cumulative, non-custodial sentences.

Exclusion from the Refugee Convention and humanitarian protection

An application will normally be refused if the person has previously claimed asylum and a decision has previously been made:

- under Article 1F of the Refugee Convention to exclude the person from refugee status under the Immigration Rules (this applies to those who have committed war crimes, crimes against peace, crimes against humanity, other serious non-political crimes prior to their recognition in the UK as a refugee) or is guilty of acts contrary to the purposes and principles of the United Nations
- that they are a person to whom Article 33(2) of the Refugee Convention applies because they are regarded as being a danger to the security of the UK

- that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted of a particularly serious crime, they constitute a danger to the community in the UK
- to revoke their refugee status or humanitarian protection on grounds of criminality
- to exclude them from humanitarian protection on grounds of criminality under paragraph 339D of the Immigration Rules

For further information on the exclusion provisions, see the following guidance:

- Exclusion (Article 1F) and Article 33(2) of the Refugee Convention
- Revocation of refugee status
- Humanitarian Protection

Applications from those who have been involved in war crimes, crimes against peace, crimes against humanity, or serious non-political crimes may still be refused even if no decision has been made in relation to Article 1F of the Refugee Convention, for example because no claim was ever made for refugee status.

Corruption

This category is most likely to apply to persons who have been involved in a state-level organisation. As corruption undermines legitimate democracies, you must normally refuse an application from a person who has been involved or complicit in corruption.

Related content
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Financial soundness

This section explains the financial situations that can affect a person's good character and how to consider them when deciding an application.

Bankruptcy

Bankruptcy occurs when a person is unable to meet their debts and has had a bankruptcy order made against them. A bankruptcy order can be made by a court after a petition either by the individual (on a voluntary basis) or by a creditor or creditors.

Fraud can occur during the bankruptcy process. This can take a number of forms but may typically involve:

- concealment of assets
- concealment or destruction of relevant financial documents
- fraudulent claims
- false statements or declarations

Making false declarations on bankruptcy forms can constitute perjury.

Where there is information to suggest on the balance of probabilities that bankruptcy fraud has taken place, the application will normally be refused.

For details of all un-discharged and recently discharged bankrupts search the insolvency registers for:

- England and Wales
- Scotland
- Northern Ireland

Liquidation

Liquidation occurs when a company is 'wound up'. There are also alternatives to liquidation that may come up during the course of a citizenship application. These include:

- informal arrangements - the company may have considered writing to all its creditors to see if a mutually acceptable agreement can be reached
- company voluntary arrangement (CVA) - this is a formal version of the arrangement described above: the directors would need to apply to the court with the help of an authorised insolvency practitioner, who would supervise the arrangement and pay the creditors in line with the accepted proposals
- administration - this is a court procedure that gives the company some breathing space from any action by creditors: a court can grant an administration order to enable the company to:

- survive, in whole or in part, as an ongoing business
- organise a voluntary arrangement or compromise with its creditors
- get a better realisation of assets than would be possible if the company went into liquidation

Further information on liquidation can be found at GOV.UK.

Consideration of financial soundness

If a person states that they have been declared bankrupt or have been a Director or involved in the management of a company (either wholly or partly) that has gone into liquidation, further enquiries must be made.

On receipt of information, an application can be granted where there is evidence that:

- the bankruptcy order has been annulled
- the person was discharged at least 10 years ago
- the person was declared bankrupt abroad
- the person was involved with a company that was liquidated over 10 years ago.

If the conditions above are not met but there is evidence that the person has been bankrupt or been involved with a company that went into liquidation, you must:

- take account of the scale of the bankruptcy or liquidation
- take account of the economic circumstances at the time of application when looking at any mitigating circumstances
- make a judgement about how culpable the person was in either becoming bankrupt or their involvement in the company that went into liquidation.

You must consider whether the person was reckless or irresponsible in their financial affairs leading to their bankruptcy or their company's liquidation. If so, it is likely to be reflected by a disqualification order which prevents a person from being a Director or taking part in the management of a limited company for a period of up to 15 years. Details of all disqualifications are on the Companies House website. Where a person has a disqualification order, an application will normally be refused.

An application will also normally be refused where the person has deliberately relied on a recession to avoid payment of taxes or payment to creditors.

However, where the person was made bankrupt or their company went into liquidation through little or no fault of their own, the application will not normally be refused. For example, they may have simply been a victim of the poor business decisions of others or their business has been severely affected by an economic downturn.

Debt

An application will not normally be refused simply because the person is in debt, especially if loan repayments have been made as agreed or if acceptable efforts are being made to pay off accumulated debts.

However, where a person deliberately and recklessly builds up debts and there is no evidence of a serious intention to pay them off, the application will normally be refused.

NHS debt

A foreign national may have an NHS debt if they have received free secondary healthcare, which is healthcare provided to the person by a hospital, to which they were not entitled. NHS bodies use their own internal processes to recover the monies owed and will only notify the Home Office once the debt has been outstanding for 2 months and there is no agreement to pay by instalments.

Where a foreign national has an NHS debt of more than £500 this is a ground for refusal under Part 9 of the Immigration Rules. A person will not normally be considered to be of good character if they have outstanding debts to the NHS in accordance with the relevant NHS regulations on charges to overseas visitors.

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You must write to the applicant in all cases where checks have identified there is an outstanding NHS debt and ask them to demonstrate they have paid their debt. Evidence of payment must be in the form of receipts from the healthcare provider who charged for the treatment.

Once an NHS debt has been cleared you must not count it when assessing whether an applicant is of good character. However, even if an individual has paid previous debts, they may have incurred further charges. They may also have previously gained entry to the UK with the true intention of receiving NHS treatment to which they were not entitled. See the section on Deception and dishonesty.

Fraud in relation to public funds

An application must not be refused simply because the person is reliant on public funds.

However, an applicant may be knowingly drawing or has knowingly drawn public funds to which they are not entitled. Where this is the case, the application for citizenship will normally be refused. If the person has been convicted and sentenced for the fraud, see the section on sentence-based thresholds for the appropriate period of refusal.

See also non-compliance with immigration requirements where a person may have failed to comply with the conditions of their leave by accessing public funds when they were prohibited from doing so.

Non-payment of council tax

An application will not normally be refused where the person has been unable to pay council tax because of their financial position, particularly if an arrangement is being, or has been, negotiated with the relevant authority. However, payment of council tax is a legal requirement and non-compliance is a punishable offence.

Therefore, an application will normally be refused where a person has either:

- unreasonably failed to pay
- provided a false statement or statements, including failing to declare their full circumstances, to avoid paying the correct rate

Related content
Contents

Notoriety

This section explains what is meant by notoriety and how to consider it when assessing good character.

Background

Notoriety means the state of being famous or well-known for some bad quality or immoral deeds; for example, for example, King Henry VIII was notorious for beheading 2 of his wives. A person does not need to have been convicted of a criminal offence to be notorious, but the scale and level of behaviour must reflect so poorly on their character that it would not be appropriate to grant them British citizenship.

Examples of notorious behaviour may include, but are not limited to:

- publicly expressing unsavoury views on a subject such as race, religion or sexuality which do not fall within the definition of extremism in Extremism section
- persistent anti-social behaviour such as public drug use or excessive noise pollution
- persistently and deliberately flouting the law

Where there is evidence that a person has, by the scale and persistence of their behaviour, made themselves notorious in their local or the wider community, you must consider refusing the application. This may for example be evidenced through media reporting, items on social media or information provided by members of the public. However, you must be careful not to give credence to comments that are intended to be defamatory or malicious. Where there is uncertainty about the reliability of information, but if it is true it would be grounds for refusal, an interview may help substantiate any information received.

The decision must be a reasonable one. Therefore, the scale and level of behaviour need to reflect so poorly on a person's character that the application should be refused.

Particular care must be taken when the person's behaviour may be seen as notorious and so widely known that any decision on the application is likely to attract public attention or press reaction. Although this should not unduly influence the decision, the potential impact should be considered.

Parenting

An application will not normally be refused based on the actions of the person's child or children. This includes where the person's child has been convicted of a criminal offence, issued with an anti-social behaviour order (ASBO) or comes within the other categories listed in this guidance.

However, an application will normally be refused where the evidence suggests that the parent's own behaviour demonstrates that they are not of good character. This will be limited to cases where parents encouraged or were complicit in the criminal activity or were particularly negligent in their dealings with the authorities.

In cases where the parent or parents have been convicted for breaching, or lack of compliance with, a parenting order, the application must be considered under Criminality and Non-custodial sentences and out of court disposals.

Related content
Contents

Deception and dishonesty

This section explains the types of deception or dishonesty to consider when assessing good character in citizenship applications.

General approach

Concealment of information or lack of frankness will raise doubt about, and therefore reflect poorly on, the applicant's character.

An application will normally be refused only where the person has attempted to lie or conceal the truth about an aspect of their application, whether on the application form or in the course of enquiries, including where they have knowingly provided false personal details, for example date of birth, name or nationality.

Deceitful or dishonest dealings with Her Majesty's Government

An application will normally be refused where the person has attempted to deceive or otherwise been clearly dishonest in their dealings with another government department.

Examples might include but are not limited to:

- fraudulently claiming or otherwise defrauding the benefits system
- unlawfully accessing services (for example, housing or health care) for which access is controlled by immigration legislation
- providing dishonest information in order to acquire goods or services (for example, providing false details in order to obtain a driving licence)
- providing false or deliberately misleading information at earlier stages of the immigration application process (for example, providing false bio-data, claiming to be a nationality they were not or concealing conviction data)

Where false or deliberately misleading information was provided in an earlier immigration application, you must consider whether it is also appropriate to refuse on grounds of deception.

The extent to which false information was provided should be assessed and what, if anything, was intended or actually gained as a result.

You must not refuse an application if you are satisfied that the person made a genuine mistake on an application form or claimed something to which they reasonably believed or were advised they were entitled to and there are no other adverse factors impacting on the applicant's good character.

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Failure to disclose information required in a nationality application

Where the applicant fails to disclose information that would result in the application being refused on good character grounds, the application must be refused and any further application for citizenship will normally be refused for the next 10 years. This applies unless it is accepted that the failure to disclose was unintentional and a genuine error.

Deception in previous applications

An application will normally be refused where there is evidence that a person has employed deception either:

- during the citizenship application process
- in a previous immigration application in the previous 10 years

It is irrelevant whether the deception was material to the grant of leave or not.

An application will normally be refused if there has been any deception in the 10 years prior to the application for citizenship. For these purposes, the deception is regarded as continuing until the date on which it is discovered or admitted. For example, if a person used deception in an application in 2008, but that was discovered or admitted to in 2010, the 10-year period would start in 2010.

Related content
Contents

Immigration related issues

This section describes the types of immigration abuses that are relevant when assessing the good character requirement in citizenship applications.

Deportation order

If the applicant is the subject of an extant deportation order, they will normally fall to be refused.

If the deportation order was made on criminal grounds and it is apparent that the person entered the UK illegally in breach of a deportation order you must refer the person to Immigration Enforcement to consider enforcement action. If Immigration Enforcement are already considering deportation and are in contact with the applicant, a referral to IE is not required.

If the deportation order was made on non-criminal grounds you must refer the case to the Referred Cases Unit to consider whether to revoke the deportation order. If a decision is made to revoke the deportation order you must proceed to consider the application in the usual manner.

Sham marriages or civil partnerships and marriages or civil partnerships of convenience

An application will normally be refused where there is evidence that a person has entered or attempted to enter into a sham marriage or civil partnership or a marriage or civil partnership of convenience in the 10 years prior to the application. For these purposes, the 10-year period starts from the point the deception is discovered or admitted.

Under sections 24 and 24A of the Immigration and Asylum Act 1999, as amended by section 55 of the Immigration Act 2014, a sham marriage or civil partnership is one in which:

- one or both of the parties is not a British citizen or a European Economic Area (EEA) or Swiss national
- there is no genuine relationship between the parties
- either or both of the parties enter into the marriage or civil partnership for the purpose of circumventing UK immigration controls, including under the Immigration Rules or the Immigration (EEA) Regulations

Abuse of the English language or Knowledge of Life tests

An application will normally be refused where there is evidence that a person has practised deception in a Knowledge of Life, Life in the UK or English language test in the 10 years prior to the application. For these purposes, the deception is regarded as continuing until the date on which it is discovered or admitted.

For example, a person may allow someone to take the test on their behalf, may pay a person to take the test on their behalf or may submit false documents or otherwise make a dishonest statement relating to one of the tests.

Prosecution for false statements (applications for citizenship)

Under section 46(1) of the British Nationality Act 1981 (BNA 1981), a person who knowingly or recklessly makes a false statement, either in the application or during an interview, is liable to prosecution.

The initiative for any prosecution under section 46(1) normally lies with the police and the Crown Prosecution Service (the CPS). Prosecution action should normally be initiated within 6 months of the commission of the offence, although this period may be extended to 3 years after the offence was committed and not more than 2 months after the date certified by a Chief Officer of Police to be the date on which sufficient evidence came to note.

If a false statement has been made on the application form, and the form was received more than 6 months after the declaration had been signed, you may return the application to be re-declared, to give the person an opportunity to update the information on the form. This, however, also renews the period within which a prosecution is to be started. A decision to return the application must not be taken without approval of a Deputy Chief Caseworker.

In cases where a false statement is made, you must consider referring the evidence to the police. If the CPS decides to prosecute a person, a decision on the application must be deferred until the outcome of the proceedings is known.

Any subsequent application for citizenship will also normally be refused if it is made within 10 years from the date of the refusal on these grounds.

False statements by referees

Referees may also be liable to prosecution under section 46(1) where they have been involved in attempts to deceive, for example, by deliberately making false statements about the length and nature of their acquaintance with the person. The same principles as set out in Prosecution for false statements apply.

Careful consideration must be given to those who are suspected of making false statements in multiple applications.

Regardless of whether a prosecution is pursued, an application will normally be refused if there are grounds for believing that the person has prompted or been complicit in a referee's deception.

An application will normally be refused if there has been any deception by a referee in the 10 years prior to the application for citizenship. For these purposes, the

deception is regarded as continuing until the date on which it is discovered or admitted.

Failing to pay litigation costs

Litigation debt is a debt owed to the Home Office where the court or Tribunal has ordered another party to pay our legal costs. It is a ground for refusal under Part 9 of the Immigration Rules. Failing to pay litigation costs owed to the Home Office may demonstrate that a person is not of good character.

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If you find a debt recovery notice on a case you must contact the Litigation Finance team to check if the debt still exists. For further information see guidance on Litigation debt.

Non-compliance with immigration requirements

An application will normally be refused if, within the previous 10 years (before the date of decision), the person has not complied with immigration requirements, including having:

- failed to comply with (breached) conditions imposed under the Immigration Acts, for example:
  - accessed public funds when prohibited from doing so
  - worked in the UK without permission to do so
  - studied in the UK in contravention of any restrictions on studying
  - failed, without reasonable excuse, to report when required to do so
- remained in the UK after their leave, including when leave extended by virtue of section 3C or 3D of the Immigration Act 1971 has expired. See: Overstaying
- failed to comply with the requirements of the EEA Regulations 2016

Abuse of immigration requirements may also occur if a person enters or remains in the UK for a purpose other than that for which they were given leave to enter or remain. For example, where a person is found to be working full time in the UK having entered the UK as a Tier 4 student and having failed to undertake or complete the course of study for which the leave was given.

When assessing failure to comply with immigration requirements, it will normally be appropriate to disregard failure relating to a child when assessing their good character, if it is accepted this was outside of their control. For example, where a parent applied for the child to come to the UK as their dependant but failed to apply

for an extension of leave when the child's temporary leave expired, the child should not be penalised.

Overstaying

Prior to 24 November 2016, migrants were permitted a grace period of 28 days after the expiry of any leave during which they could make a further application to renew their leave without being penalised as an overstayer.

Changes to the Immigration Rules on 24 November 2016 abolished this 28-day grace period, and now provide for current overstaying to be disregarded only in a very limited number of scenarios. Otherwise it is a ground for refusal. For further information see applications from overstayers.

Where a person overstayed at some point in the 10 years prior to an application for citizenship, discretion to overlook this breach will normally only be considered if it is the sole adverse factor weighing against the person's good character; and

- the person's application for leave to remain was made before 24 November 2016 and within 28 days of the expiry of their previous leave, or

- the person's application for leave to remain was made on or after 24 November 2016, and the application did not fall for refusal on the grounds of overstaying because an exception under paragraph 39E of the Immigration Rules applied, or

- the period without leave was not the fault of the applicant, for example where it arose from a Home Office decision to refuse which is subsequently withdrawn or quashed or which the courts have required the Home Office to reconsider

For information on dealing with breaches of conditions see liability to administrative removal.

Illegal entry

If an applicant entered the UK illegally, an application for citizenship will normally be refused if the illegal entry is confirmed as having occurred during the preceding 10 years. If the date of entry cannot be confirmed, or if the person subsequently goes to ground, or absconds, the period of 10 years starts from the date on which the person last brought themselves to or came to the attention of the Home Office.

While there will be circumstances when it would be inappropriate to refuse citizenship to people who entered the UK illegally, claimed asylum and were subsequently granted refugee status, those who need international protection are expected to apply for it at the earliest opportunity and in the first safe country they reach. Consequently, there will be cases where refugees will normally be refused citizenship because they entered illegally and chose not to claim asylum at the first

available opportunity, or only claimed after enforcement action was taken against them.

However, you must take account of Article 31 of the Refugee Convention when considering whether it is appropriate to refuse a person granted refugee status on the grounds of illegal entry. Article 31 states that refugees should not have any penalties imposed upon them as a consequence of illegally entering or being present in the country of refuge illegally in order to seek sanctuary, provided that they:

- travelled to the country of refuge directly from the territory where they fear persecution
- presented themselves to the domestic authorities without delay
- showed good cause for their illegal entry or presence

Article 31 of the Refugee Convention does not specify any minimum time before a person should claim asylum and this will need to be considered on a case-by-case basis. As a guide it is not unreasonable to expect that a person who enters the UK illegally, with the intention of claiming asylum, should claim asylum within 4 weeks of arrival. An applicant who, having entered illegally, delayed claiming asylum beyond this period will normally be refused citizenship unless there is a reasonable explanation for the delay.

There is also an expectation that those seeking protection should do so in the first available safe country, so should not, for example, travel across several European countries to claim in the UK. That by itself will not be grounds to refuse but it will be a factor to consider alongside others that may cast doubt on an applicant's good character.

If an applicant entered illegally and would have had a valid section 31 defence but was convicted before their application for asylum was decided and granted, it may be appropriate to disregard the conviction.

Failure to comply with immigration requirements may be evidenced by service of an IS151A notice of liability to administrative removal. The IS151A was replaced on 6 April 2015 by a RED.0001 form, or where an application is also being refused, by a single decision notice which incorporates a notice of liability to removal. However, given the length of residence an applicant requires in order to apply for citizenship, IS151As will continue to be relevant until early 2025. This can show that a person came to notice as someone who breached the conditions of their leave, remained in the UK unlawfully without leave, or entered the UK illegally. CID records should be checked to see why the IS151A was served.

For further information on illegal entrants see Clandestine illegal entrants

Absconders

A person given temporary admission, temporary release, bail or release on a restriction order may be required to report at stipulated intervals to a port of entry or to an immigration reporting centre. A person who fails to comply with any reporting

restrictions, thus no longer maintaining contact with the Home Office so that their whereabouts are unknown, may become subject to absconder action.

Evidence of absconding may be apparent from CID or PNC records. A person who has previously absconded will normally be refused citizenship for a period of 10 years from the date they last brought themselves or came to the attention of the Home Office after having absconded.

For further information see non-compliance and absconder process instructions and Border Force absconder guidance.

Assisting illegal migration

An application for citizenship will normally be refused if there are grounds for believing that the person is currently, or has previously been, involved in an attempt to assist someone in the evasion of immigration control. This includes a person who has assisted another person to enter or attempt to enter into a sham marriage or civil partnership. In such cases refusal will normally be indefinite.

Illegal working

Illegal working causes damaging social and economic problems for the UK. It undercuts businesses that operate within the law, undermines British workers and exploits migrant workers.

An application will normally be refused if, within the previous 10 years (before the date of decision), the person has worked in the UK when their conditions of leave prohibited employment.

Hiring illegal workers

Where there is reliable evidence to suggest that a person has employed illegal workers, their application for citizenship will normally be refused. In such cases refusal will normally be indefinite.

Asylum seekers working

In certain circumstances an asylum seeker may be given permission to work. Such work is limited to jobs on the Shortage Occupation List (SOL) published by the Home Office. Asylum seekers who are granted permission to work who take up any other employment are considered to be working illegally. You must check the case file or CID for evidence of permission having been granted.

Asylum seekers can take part in volunteering activities whilst their claim is being considered without being granted permission to work. Where permission to work has been given, or the person can demonstrate they have been volunteering, this may reflect positively on their character, showing that they have lawfully contributed to society. The Home Office encourages asylum seekers to undertake volunteering

activities with a charity or public sector organisation to contribute to their local community.

To ensure that a person is not wrongly penalised it is important to understand the difference between undertaking volunteering activities, which are permitted and working for a voluntary organisation, which may not be permitted. The legal distinction can be complex, which is why the Home Office encourages organisations offering volunteering opportunities to check the legal position before offering such opportunities to asylum seekers who do not have permission to work.

In summary, any volunteering cannot amount to unpaid work or job substitution. For further information, see: Permission to work and volunteering for asylum seekers.

EEA nationals and their family members

People who are entitled to reside in the UK under the EEA Regulations 2016 do not require leave to enter or remain.

In assessing whether a person has complied with immigration requirements over the previous 10 years, you must take into account whether they were subject to the EEA Regulations 2016 or the Immigration Act 1971 and whether they complied with the relevant requirements.

Where an individual has not complied with conditions imposed under the Immigration Acts (for example by overstaying) and has subsequently acquired EEA rights, you must still consider the breaches of the other Immigration Acts.

EEA or Swiss nationals or the family members of an EEA or Swiss national with a permanent residence card

If an EEA or Swiss national or their family member has a permanent residence card, you can accept that they complied with immigration requirements in the UK for the 5-year period before it was issued, and the period since then. This is provided they have not lost their permanent residence, for example by being out of the UK for more than 2 years.

EEA or Swiss nationals and their family members granted indefinite leave to remain (settled status) under the EU Settlement Scheme

The EU Settlement Scheme (EUSS) allows EU, EEA and Swiss citizens and their family members who want to stay in the UK to obtain the UK immigration status they need in order to continue living and working in the UK after 31 December 2020.

To qualify for indefinite leave to remain under the EUSS, an EEA national or their family member must have been resident in the UK for a continuous period of 5 years. However, a grant of ILR under the EUSS does not confirm that the person has complied with immigration requirements during that time, as this is not a requirement of the EUSS.

To assess whether the person complied with the requirements of EU law you must consider the guidance on EEA and Swiss nationals and their family members. This includes the type of evidence you can take into account. You must assess whether the applicant was exercising a Treaty right and therefore complying with the requirements of the EEA Regulations 2016. Guidance on naturalisation as a British citizen by discretion explains how to consider lawful residence by EEA nationals in relation to applications for citizenship and how to exercise discretion over immigration breaches in the relevant qualifying period. You must consider whether it is appropriate to exercise discretion in the person's favour or whether it is appropriate to refuse the application because they do not meet the good character requirement.

Comprehensive sickness insurance

Comprehensive Sickness Insurance (CSI) is a legal requirement for EEA and Swiss students, self-sufficient persons and their family members who are residing in the UK with them.

If a person did not have CSI, you must consider why they did not have it. Where a person has been granted ILR under the EUSS but has been in breach of the EEA Regulations 2016 due to a lack of CSI you must consider whether it is appropriate to exercise discretion in their favour.

Some applicants will have previously been refused permanent residence on the basis of not having CSI. When considering whether it is appropriate to exercise discretion, you must assess the reasons given for this, and why they did not then obtain CSI.

For further information on how to exercise discretion in relation to immigration breaches see guidance on naturalisation as a British citizen by discretion.

Deprivation of citizenship

In cases where the deprivation was based on fraud, false representation or the concealment of material fact under section 40(3) of the BNA 1981, any further application made within a period of 10 years from the date the deprivation order was issued will normally be refused.

For cases where the deprivation decision was made on 'conducive to the public good' grounds under section 40(2) of the BNA 1981, any further application will normally be refused. For example, deprivation on the grounds that someone has committed a serious criminal offence may also involve a conviction that will mean a person would never normally be eligible to re-acquire citizenship.

If a person re-applies for citizenship after having been deprived and asks for discretion to be exercised in their favour, applications should be referred to the Chief Caseworker.

Related content

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Exceptional grants

This section explains when a person might exceptionally be granted citizenship and the approval level needed if proposing to grant.

An exceptional case is one where on the facts of the case, the application would normally be refused but there are mitigating circumstances which mean it would be appropriate to grant.

Examples of where applications may be granted include, but are not limited to, cases where:

- the person's criminal conviction is for an offence which is not recognised in the UK or there is no comparable offence, for example homosexuality or membership of a trade union: see Convictions and sentences imposed outside of the UK
- the person has one single non-custodial sentence which occurred within the first 2 years of the preceding 3 (such as the person has had no offences within the last 12 months), and there are strong factors which suggest the person is of good character in all other regards so the decision to refuse would be disproportionate
- the applicant has one single conviction but has lived in the UK all their life or since a very young age and the conviction was many years ago

All proposals to grant exceptionally must be approved by the Chief Caseworker.

Any proposal to grant a person who has been convicted with a sentence of 4 years or more imprisonment must be approved by ministers.

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Rehabilitation Periods

The following table sets out rehabilitation periods prescribed by the Rehabilitation of Offenders (N. Ireland) Order 1978 which only apply to applicants resident in Northern Ireland.

Sentence	End of rehabilitation period for adult offenders	End of rehabilitation period for offenders under 18 at date of conviction
A sentence of imprisonment for life	Excluded from rehabilitation	Excluded from rehabilitation
a sentence of imprisonment or corrective training for a term exceeding thirty months	Excluded from rehabilitation	Excluded from rehabilitation
A sentence of imprisonment or corrective training for a term exceeding six months but not exceeding thirty months.	10 years from the date of the conviction in respect of which the sentence was imposed.	5 years from the date of the conviction in respect of which the sentence was imposed
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	10 years from the date of the conviction in respect of which the sentence was imposed	5 years from the date of the conviction in respect of which the sentence was imposed
A sentence of imprisonment for a term not exceeding six months.	7 years from the date of the conviction in respect of which the sentence was imposed	42 months from the date of the conviction in respect of which the sentence was imposed
A sentence of dismissal from Her Majesty's service.	7 years from the date of the conviction in respect of which the sentence was imposed	42 months from the date of the conviction in respect of which the sentence was imposed
Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings.	5 years from the date of the conviction in respect of which the sentence was imposed	30 months from the date of the conviction in respect of which the sentence was imposed
A fine or any other sentence subject to rehabilitation under this Order,	5 years from the date of the conviction in respect of which the sentence was imposed	30 months from the date of the conviction in respect of which the sentence was imposed

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