

This guidance is based on Appendix Armed Forces of the Immigration Rules.



## HM Forces: Criminality

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## HM Forces: criminality

### About this guidance

<p><a href="#">About this guidance</a> <a href="#">What is recorded on the police national computer</a> <a href="#">Criminality convictions</a> <a href="#">Military service offences</a> <a href="#">Criminal conduct offences</a> <a href="#">Minor punishments</a> <a href="#">Non-criminal conduct (disciplinary offences)</a> <a href="#">Schedule 1 non-criminal (disciplinary offences) character and conduct</a> <a href="#">Refusing on character as a result of schedule 1 non-criminal convictions</a> <a href="#">Refusal of settlement under the suitability criteria</a> <a href="#">Limited leave to remain</a></p>	<p>This guidance tells you about dealing with applications from HM Forces personnel who are exempt from immigration control under section 8(4)(a) of the Immigration Act (the 1971 Act) where there is evidence of criminality.</p> <p>Within this guidance ‘armed force rules’ means Appendix Armed Forces.</p> <p>A military criminal conduct offence means an offence which would be an offence recognised under civilian law in England and Wales.</p> <p>A non-criminal conduct (disciplinary) offence means an offence that only exists in HM Forces in order to enforce discipline.</p> <p>MCTC – Military Corrective Training Centre at Colchester.</p> <p>For transitional arrangements see related link: Armed forces.</p> <p>Changes to this guidance – This page tells you what has changed since previous versions.</p> <p>Contacts – This page tells you who to contact for help if your line manager, senior caseworker or deputy chief caseworker cannot answer your question.</p> <p>Information owner – This page tells you about this version of the document and who owns it.</p> <p>Safeguard and promote child welfare – This section explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	<p><b>In this section</b> <a href="#">Changes to this guidance</a> <a href="#">Contact</a> <a href="#">Information owner</a></p> <p><b>Related links</b> Links to staff intranet removed</p> <p><b>External links</b> Appendix Armed Forces <a href="#">Immigration Act 1971</a></p>
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This page lists changes to the 'HM Forces: criminality' guidance, with the most recent at the top.

Date of the change	Details of the change
2 December 2013	Guidance modernised by the armed forces policy team and the modernised guidance team.

#### Related links

[Contact](#)  
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### What is recorded on the Police National Computer

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### Details of convictions recorded

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	<p>Section 11(1) – Misconduct towards a superior officer</p>	<p>Misconduct means:</p> <ul style="list-style-type: none"> <li>• violence against a superior officer (subsection (1))</li> <li>• threatening or disrespectful behaviour towards a superior officer (subsection (2))</li> <li>• a threat to damage the superior officer’s property (subsection (3))</li> </ul>	<p>Up to two years’ imprisonment for disrespectful behaviour.</p>	
	<p>Section 14 – Using force toward a sentry.</p>	<p>Using force against a sentry by the threat of force, or compelling a sentry to let him or any other person pass.</p>	<p>Up to two years’ imprisonment.</p>	
	<p>Section 24(1) – Damage to or loss of public or service property (Could be considered as schedule 2</p>	<p>Intentionally, recklessly or negligently damaging or causing loss to public or service property (subsection</p>	<p>Up to two years’ imprisonment for reckless conduct which does not cause damage</p>	

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	offences. For example, damaging property with an intention to endanger life.	(1))	or loss, and for negligent conduct.	
	Section 27 – Obstructing or failing to assist a service policeman.	Intentionally obstructing or failing to assist a service policeman or a person exercising authority on behalf of a provost officer.	Up to two years' imprisonment.	
	Section 28 – Resistance to arrest .	<ul style="list-style-type: none"> <li>intentionally disobeying an order, or</li> <li>using or threatening violence towards a person who has ordered them into arrest in the exercise of a power granted under the act.</li> </ul>	Up to two years' imprisonment .	
	Section 29 – Offences in relation to service custody.	<ul style="list-style-type: none"> <li>escaping from lawful custody</li> <li>using violence against, or threatening, a person having lawful custody.</li> </ul>	Up to two years' imprisonment.	
	Section 30 – Allowing escape, or unlawful release, of prisoners.	<ul style="list-style-type: none"> <li>intentionally, recklessly or negligently allowing prisoner to escape, or</li> <li>releasing a prisoner without authority.</li> </ul>	<p>Up to ten years' imprisonment with intent or knowledge.</p> <p>Otherwise, up to two years' Imprisonment.</p>	

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### Criminality convictions

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### Criminal convictions: criminal casework criteria for deportation

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Even though foreign or Commonwealth nationals serving in HM Forces are exempt from immigration control while they are in the military, this exemption is irrelevant if deportation is being considered. They are not exempt from the deportation provisions of the 1971 Immigration Act (paragraph 8.4 applies (see related link)). Therefore, they do not need to be discharged from the services for CC to consider deportation if they meet criteria.

#### **CC deportation criteria**

All non European Economic Area (EEA) nationals' cases are considered for deportation if the subject has been convicted of a criminal offence and received:

- a single sentence of 12 months (regardless of when it was passed)
- an aggregate of two or three sentences amounting to 12 months in total over the past five years
- a custodial sentence of any length for a serious drugs offence (as defined in CC policy) since 1 August 2008.

#### **EEA deportation criteria**

It would be unusual for a member of HM forces to be an EEA national with or without dual British nationality but they may be married to one (which will bring them under EEA legislation). If they are convicted of a criminal offence, then they must be considered under the EEA Regulations and criteria, which means:

- a sentence of at least 24 months, except if they are an Irish national, where the normal sentence threshold for consideration is 10 years
- a custodial sentence of 12 months for certain sex, drugs and violence offences (as defined in CC policy) convictions from 1 April 2009.

#### **Rehabilitation of Offenders Act 1974**

Offences used to be spent under the Rehabilitation of Offenders Act 1974 after a rehabilitation period. Depending on the sentence received and if there were no further convictions the conviction become 'spent' unless it exceeded the tariff set out for rehabilitation (then the conviction was never spent).

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	<p>That was until the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) now paragraph 140 (No rehabilitation for certain immigration or nationality purposes –see related link), came into force so no conviction is spent in relation to any immigration decision.</p>	
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### Military service offences

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This page tells you about military service offences and how they should be considered when dealing with applications for settlement or leave to remain.

Offences against military service law are set out in the Armed Forces Act 2006 and fall into two categories:

- criminal conduct offences
- non-criminal conduct (disciplinary) offences.

You must consider any criminal conduct offence imposed under service law in the same way as one imposed by a civilian court.

A non-criminal conduct (disciplinary) offence must not be considered the same as a criminal conduct offence, but may be taken into account when considering character and conduct requirements under the suitability requirements in part 2 of Appendix Armed Forces. See related link.

#### Related links

Links to staff intranet removed

#### External links

[Section 42 of the Armed Forces Act 2006](#)

[Paragraph 320 of the Immigration Rules](#)

Appendix Armed Forces

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### Criminal conduct offences

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### Minor punishments

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### Non-criminal conduct (Disciplinary offences)

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This page tells you about how non-criminal conduct (disciplinary offences) are defined and how to consider them when assessing applications for settlement or leave to remain.

HM Forces have particular requirements necessary to enforce discipline. Behaviour which is not a crime in civilian life can be a disciplinary matter in HM Forces.

There are two types of non-criminal conduct (disciplinary offences):

- Offences listed on schedule 1 of the Police and Criminal Evidence Act 1984 (Armed Forces Order 2009), for example, misconduct towards a superior officer or using force on a sentry. These offences appear on an applicant's criminal record and can be considered when undertaking the broader consideration of character, conduct and association requirement of the suitability requirements in Appendix Armed Forces.
- Non-criminal conduct (disciplinary offences) which are not listed on schedule 1 of the Police and Criminal Evidence Act 1984 (Armed Forces Order 2009), for example, disobeying an order or being untidily dressed. These offences must not appear on the applicant's criminal record and if they do they must not be considered for immigration purposes.

For more information on the general grounds for refusal see the related link.

For guidance on suitability requirements see related links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

#### In this section

[Types of Non-criminal \(disciplinary\) offences – Armed Forces Act 2006](#)

#### Related links

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#### External links

[Schedule 1 of the Police and Criminal Evidence Act 1984 \(Armed Forces Order 2009\)](#)

[Paragraph 320 of the Immigration Rules](#)

Appendix Armed Forces

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### Types of Non-criminal (disciplinary) offences – Armed Forces Act 2006

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	<p>Section 22 – Ill-treatment of subordinate Section 23 – Disgraceful conduct of a cruel or indecent kind Section 25 – Misapplying or wasting public or service property Section 26 – Definition of public property or service property Section 31 – Hazarding of ship Section 32 – Giving false air signals Section 33 – Dangerous flying Section 34 – Low flying Section 35 – Annoyance by flying Section 36 – Inaccurate certification Section 37 – Prize offences by officer in command of ship or aircraft Section 38 – Other prize offences Section 39 – Attempts Section 41 – Aiding, abetting, counselling or procuring.</p>	
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### Schedule 1 non-criminal (disciplinary offences) and character and conduct

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	<p>service.</p> <p>For information see related links:</p> <ul style="list-style-type: none"><li>• General Grounds for Refusal guidance</li><li>• For guidance on suitability requirements see related links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following sub-paragraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).</li></ul>	
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## HM Forces: criminality

### Refusing on character as a result of schedule 1 non-criminal convictions

<p><a href="#">About this guidance</a> <a href="#">What is recorded on the police national computer</a> <a href="#">Criminality convictions</a> <a href="#">Military service offences</a> <a href="#">Criminal conduct offences</a> <a href="#">Minor punishments</a> <a href="#">Non-criminal conduct (disciplinary offences)</a> <a href="#">Schedule 1 non-criminal (disciplinary offences) character and conduct</a> <a href="#">Refusing on character as a result of schedule 1 non-criminal convictions</a> <a href="#">Refusal of settlement under the suitability criteria</a> <a href="#">Limited leave to remain</a></p>	<p>This page tells you about refusing an application on the grounds of character as a result of schedule 1 non-criminal convictions.</p> <p>If you are considering refusing an application on the grounds of character, conduct and associations because of schedule 1 non-criminal offence, you must ask the Ministry of Defence (MOD) for further information:</p> <ul style="list-style-type: none"><li>• about the nature and severity of the offence, and</li><li>• if the date of the conviction pre-dates the Armed Forces Act 2006.</li></ul> <p>A decision to refuse on the grounds of character must be approved at grade 7 or regional manager level.</p> <p>If an applicant has been convicted of a schedule 1 non-criminal offence (or a mixture of both non-criminal and criminal where criminal casework (CC) are taking no action and have issued a warning letter), and has received a sentence of six months or more the following approval levels apply:</p> <ul style="list-style-type: none"><li>• sentences from six months up to 12 months requires the approval of the head of unit</li><li>• sentence of 12 months or more need to be cleared by the head of unit and referred to ministers for information before the applicant is informed of the decision.</li></ul>	<p><b>Related links</b> Links to staff intranet removed</p> <p><b>External links</b> <a href="#">Paragraph 320 of the Immigration Rules</a></p> <p>Appendix Armed Forces</p> <p><a href="#">Appendix FM</a></p> <p><a href="#">Schedule 1 of the Police and Criminal Evidence Act 1984 (Armed Forces Order 2009)</a></p>
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This guidance is based on Appendix Armed Forces of the Immigration Rules.

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### Refusal of settlement under the suitability criteria

<p><a href="#">About this guidance</a> <a href="#">What is recorded on the police national computer</a> <a href="#">Criminality convictions</a> <a href="#">Military service offences</a> <a href="#">Criminal conduct offences</a> <a href="#">Minor punishments</a> <a href="#">Non-criminal conduct (disciplinary offences)</a> <a href="#">Schedule 1 non-criminal (disciplinary offences) character and conduct</a> <a href="#">Refusing on character as a result of schedule 1 non-criminal convictions</a> <a href="#">Refusal of settlement under the suitability criteria</a> <a href="#">Limited leave to remain</a></p>	<p>This page tells you how to deal with applications from HM Forces personnel if you are refusing indefinite leave to remain on discharge under the relevant suitability criteria in part 2 of Appendix Armed Forces.</p> <p>The requirements for indefinite leave to enter or remain for both Gurkhas and foreign or Commonwealth citizens discharged from HM Forces are set out in Appendix Armed Forces.</p> <p>If an applicant is applying for indefinite leave to remain but fails to meet the suitability requirements in paragraph 8 or 9 of part 2 of Appendix Armed Forces, there is provision in the Immigration Rules to grant them a period of 30 months limited leave to remain. This provision does not apply to someone applying for limited leave to remain.</p> <p>There is no provision to grant limited leave to enter in cases where an applicant does not meet the suitability requirements when applying for indefinite leave to enter overseas.</p> <p>The suitability criteria in part 2 of Appendix Armed Forces cover circumstances where an applicant for indefinite leave to remain has, within the 24 months immediately before the date of the decision, been convicted of, or admitted to an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.</p> <p>Further information on what is meant by a non custodial sentence or out of court disposal can be found in the guidance on General Grounds for Refusal.</p> <p>However, in such circumstances they can be granted up to 30 months limited leave to remain.</p> <p>This approach is in line with paragraph 17 of Appendix Armed Forces. This provision applies to discharged foreign or Commonwealth (including Gurkhas) members of HM</p>	<p><b>Related links</b> Links to staff intranet removed</p> <p><b>External links</b> <a href="#">Paragraph 320 of the Immigration Rules</a></p> <p>Appendix Armed Forces</p> <p><a href="#">Appendix FM</a></p>
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This guidance is based on Appendix Armed Forces of the Immigration Rules.

	<p>Forces.</p> <p>For guidance on suitability requirements see related links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).</p>	
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### Limited leave to remain

<p><a href="#">About this guidance</a> <a href="#">What is recorded on the police national computer</a> <a href="#">Criminality convictions</a> <a href="#">Military service offences</a> <a href="#">Criminal conduct offences</a> <a href="#">Minor punishments</a> <a href="#">Non-criminal conduct (disciplinary offences)</a> <a href="#">Schedule 1 non-criminal (disciplinary offences) character and conduct</a> <a href="#">Refusing on character as a result of schedule 1 non-criminal convictions</a> <a href="#">Refusal of settlement under the suitability criteria</a> <a href="#">Limited leave to remain</a></p>	<p>This page tells you how to grant limited leave to remain to discharged HM Forces personnel with outstanding criminal convictions.</p> <p><b>Granting limited leave following a refusal of indefinite leave to remain</b> If you decide to grant leave, under the provision stated below, it must be for no more than 30 months on code 1A conditions (access to work and benefits).</p> <p>There is no provision under the Immigration Rules to grant limited leave to enter if a discharged member of HM Forces applies for and is refused indefinite leave to enter.</p> <p><b>Direct applications for limited leave to remain from discharged HM Forces personnel</b> Under Appendix Armed Forces paragraph 14 there is provision to grant 30 months leave to remain following discharge from HM Forces. The requirements are that the applicant:</p> <ul style="list-style-type: none"><li>• is in the UK</li><li>• has completed at least four years' service with HM Forces</li><li>• was not discharged from HM Forces more than two years immediately before the date on which the application is made</li><li>• has made a valid application for leave to remain as a foreign or Commonwealth citizen discharged from HM Forces</li><li>• is not in the UK in breach of immigration laws except for any period of overstaying for a period of 28 days or less which will be disregarded</li><li>• does not fall for refusal under the suitability criteria which relate to limited leave to remain (although they may fall for refusal under the suitability criteria which relate to indefinite leave to enter or remain).</li></ul> <p>When assessing if a discharged member of HM Forces should be refused on suitability grounds you must note the guidance on military convictions as outlined in the guidance on general grounds for refusal which detail the appropriate sentencing thresholds for leave to</p>	<p><b>Related links</b> <a href="#">General grounds for refusal guidance</a></p> <p><b>External links</b> Appendix Armed Forces <a href="#">Appendix FM</a></p>
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	<p>remain applications.(see related links).</p> <p><b>Granting leave to remain</b> If you decide to grant under paragraph 14 of Appendix HM Forces, applicants must be given no more than 30 months leave to remain on code 1A conditions (access to work and benefits).</p>	
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## HM Forces: criminality

### Contact

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This guidance is based on Appendix Armed Forces of the Immigration Rules.

## HM Forces: criminality

### Information owner

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[What is recorded on the police national computer](#)  
[Criminality convictions](#)  
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This page tells you about this version of the 'HM Forces: criminality' guidance and who owns it.

Version	1.0
Valid from date	2 December 2013
Policy owner	Official – sensitive: information removed
Cleared by director	Official – sensitive: information removed
Director's role	Official – sensitive: information removed
Clearance date	27 November 2013

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Links to staff intranet removed