



Home Office

Rehabilitation of Offenders Act

Archived

Rehabilitation of Offenders Act

About this guidance

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This guidance explains how the Rehabilitation of Offenders Act 1974 applies to immigration and nationality decisions taken on or after 1 October 2012, when the Home Office became exempt from the act.

The Immigration Rules were amended on 13 December 2012 setting out how this exemption applies.

This guidance updates the previous instruction issued in February 2006 in chapter 32, section 2 of the Immigration Directorate Instructions (IDI's) and any other references to the Rehabilitation of Offenders Act in immigration and nationality casework instructions issued previously.

Section 56A of the UK Borders Act 2007 as inserted by section 140 of the Legal Aid, Sentencing and Punishment of Offenders (the 'LASPO') Act 2012 came into force on 1 October 2012. It exempted certain immigration and nationality decisions from the scope of section 4(1), 4(2) and 4(3) of the Rehabilitation of Offenders Act 1974 ('the ROA').

In summary, it means a conviction becoming 'spent' no longer applies to certain decisions taken by the Home Office.

This means an individual applying for:

- entry clearance
- leave to enter
- leave to remain, including indefinite leave to enter or remain (settlement), and
- nationality

must declare all of their convictions when applying. The decision maker is then entitled to rely on information about spent as well as unspent convictions when considering an application.

In this section
[Changes to this guidance](#)
[Contact](#)
[Information owner](#)

Links to staff intranet removed

It also applies to any actual or proposed decision taken under an immigration act or the Immigration Rules, where the decision is on a person's right to enter or remain in the UK.

Therefore, it includes but is not limited to decisions on:

- immigration bail
- the administrative removal or deportation of a person from the UK
- revoking a deportation order issued against a person

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.

Information owner – This page tells you about this version of the guidance and who owns it.

Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.

Archived

Rehabilitation of Offenders Act

Changes to this guidance

Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail	<p>This page lists changes to the Rehabilitation of Offenders Act guidance, with the most recent at the top.</p> <table border="1"><thead><tr><th data-bbox="490 416 831 456">Date of the change</th><th data-bbox="831 416 1532 456">Details of the change</th></tr></thead><tbody><tr><td data-bbox="490 456 831 644">9 December 2013</td><td data-bbox="831 456 1532 644">Six month review by the modernised guidance team:<ul style="list-style-type: none">• Minor housekeeping changes.</td></tr><tr><td data-bbox="490 644 831 687">5 July 2013</td><td data-bbox="831 644 1532 687">New guidance.</td></tr></tbody></table>	Date of the change	Details of the change	9 December 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.	5 July 2013	New guidance.	<p>Related links See also Contact Information owner</p>
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Archived

Rehabilitation of Offenders Act

Initial decision making

<p>Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail</p>	<p>This page tells you how to apply the Rehabilitation of Offenders Act (ROA) when making initial decisions on immigration and nationality cases.</p> <p>Part 9 (general grounds for refusal) and Appendix FM (family members) of the Immigration Rules set out how criminal convictions and sentences affect an application made on or after 13 December 2012 for:</p> <ul style="list-style-type: none">• entry clearance• leave to enter, and• leave to remain, including indefinite leave to enter or remain (settlement). <p>The good character policy sets out the same for applications for nationality. The European Economic Area (EEA) Regulations set out these corresponding entitlements of EEA nationals.</p> <p>If a person has a conviction and sentence that falls within the relevant period set out in the rules or good character policy, it will normally lead to that application being refused, even if the conviction is spent under the ROA. However, as a conviction becoming spent is no longer relevant in immigration and nationality decisions, you must not refer to this or make this distinction in your decision letter or notice.</p> <p>When weighing up convictions which are spent under the ROA and do not fall within the relevant period stated in the Immigration Rules or the good character policy, you should still consider refusing:</p> <ul style="list-style-type: none">• on the grounds that the person is not of good character, or• because a refusal is appropriate under either the ‘character, conduct and associations’ category and/or the ‘persistent offender’ category, where there are multiple convictions. <p>You must consider:</p>	<p>Links to staff intranet removed</p>
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- how long ago the offence was committed
- how long ago a person was convicted, and
- the sentence(s) imposed.

For further information on this, see related link: [General grounds for refusal](#).

If the application was made before 13 December 2012, you should not normally rely on a spent conviction when making your decision on the case.

Archived

Rehabilitation of Offenders Act

Failing to declare convictions

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This page tells you how to consider immigration and nationality cases where the applicant has failed to declare convictions.

Where a person has applied on or after 13 December 2012 and they failed to declare a criminal conviction on the application form, you must consider whether this amounts to a failure to disclose material facts and decide whether to refuse the application:

- under the relevant provision in the rules, or
- for applications for nationality, because it indicates the person is not of good character.

You must assess the nature of the offences withheld and the sentences imposed as a result.

Reasons why it is normally appropriate to refuse for failing to declare a criminal conviction on deception grounds include, but are not limited to:

- More than one offence has not been declared.
- The person was sentenced to a period of imprisonment, regardless of whether or not the person actually served any time in prison.

Reasons why it is normally not appropriate to refuse on deception grounds include, but are not limited to:

- It was a one-off offence, particularly one which happened a long time ago and would not have led to their case being refused had it been disclosed.
- There are no other attempts to withhold information or provide false information in connection with their immigration application(s).
- There are no other grounds on which to doubt the person's character.

Where the application was made before 13 December 2012, you should not normally refuse an application on deception grounds for failing to declare a spent conviction because applicants were not required to declare spent convictions, before 2013.

Rehabilitation of Offenders Act

Deportation proceedings

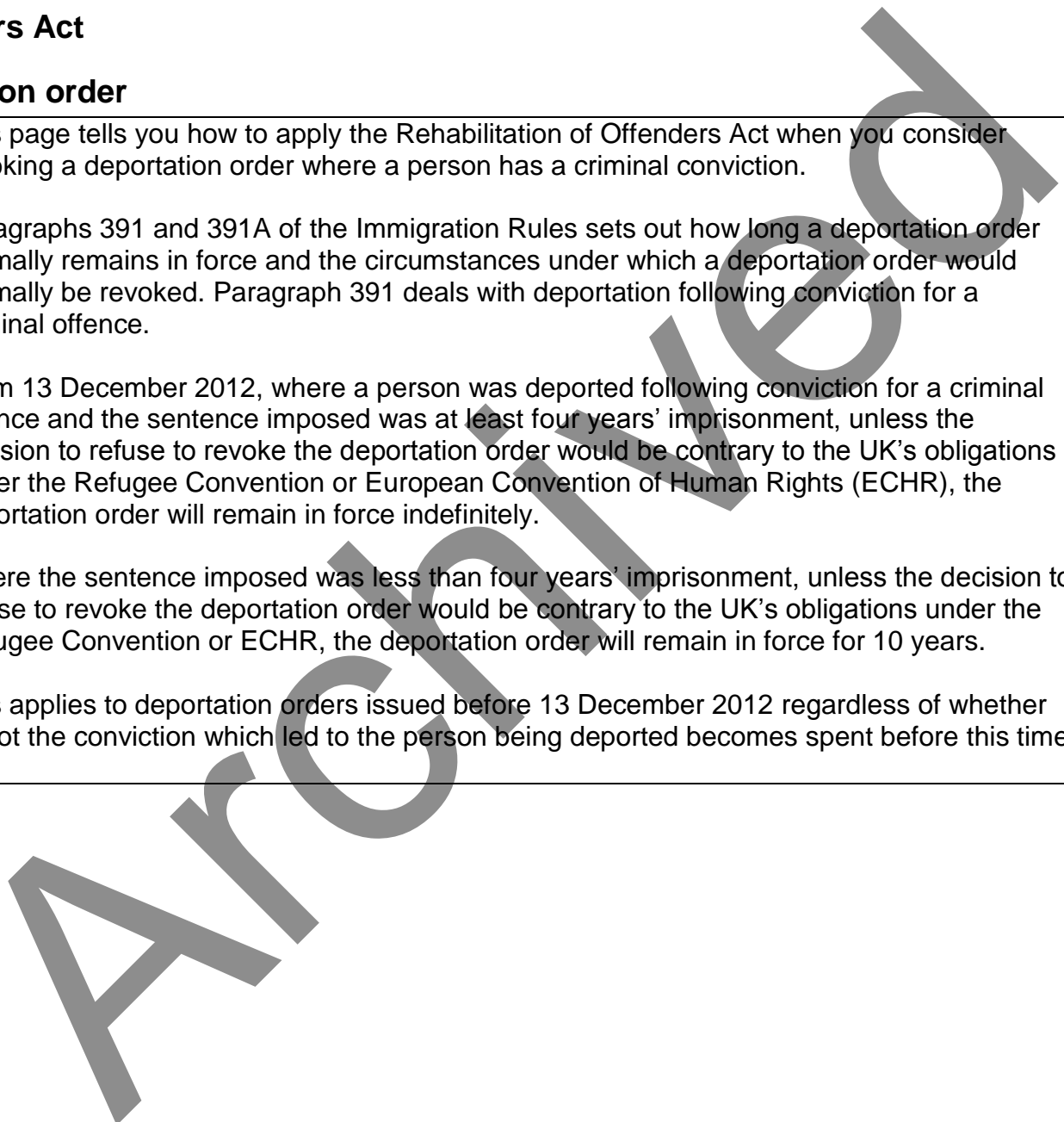
<p>Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail</p>	<p>This page tells you how to apply the Rehabilitation of Offenders Act when you consider whether to take deportation action.</p> <p>If you are considering deportation action or making a decision to deport on or after 13 December 2012, spent convictions can be taken into account when deciding which factors are relevant to deportation being conducive to the public good. For example propensity to re-offend, danger posed to the community and so on.</p>	
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Archived

Rehabilitation of Offenders Act

Revocation of a deportation order

<p>Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail</p>	<p>This page tells you how to apply the Rehabilitation of Offenders Act when you consider revoking a deportation order where a person has a criminal conviction.</p> <p>Paragraphs 391 and 391A of the Immigration Rules sets out how long a deportation order normally remains in force and the circumstances under which a deportation order would normally be revoked. Paragraph 391 deals with deportation following conviction for a criminal offence.</p> <p>From 13 December 2012, where a person was deported following conviction for a criminal offence and the sentence imposed was at least four years' imprisonment, unless the decision to refuse to revoke the deportation order would be contrary to the UK's obligations under the Refugee Convention or European Convention of Human Rights (ECHR), the deportation order will remain in force indefinitely.</p> <p>Where the sentence imposed was less than four years' imprisonment, unless the decision to refuse to revoke the deportation order would be contrary to the UK's obligations under the Refugee Convention or ECHR, the deportation order will remain in force for 10 years.</p> <p>This applies to deportation orders issued before 13 December 2012 regardless of whether or not the conviction which led to the person being deported becomes spent before this time.</p>	<p>Links to staff intranet removed</p>
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Rehabilitation of Offenders Act

Cases at appeal

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This page tells you how to apply the Rehabilitation of Offenders Act to cases at appeal.

Where a decision has already been taken to refuse an application and the person is appealing against that decision, it will not normally be appropriate to add to the refusal with 'new' information about spent convictions.

This is except where the information is fundamental in supporting that decision. Examples of where this might be necessary include, but are not limited to:

- A decision to refuse on character and conduct grounds would be significantly enhanced by revealing spent convictions.
- A decision to refuse because a person is a persistent offender would be significantly enhanced by revealing spent convictions.

However, it would not normally be appropriate where, for example:

- There is a clear reason for refusal because of the person's criminality. For example, they already meet the deportation threshold or their unspent convictions make a strong case for deportation or refusal.
- There is (an)other clear reason(s) for refusing the person and criminality is immaterial to that. For example, the person does not meet the specific requirements of the route they are seeking leave under.

Rehabilitation of Offenders Act

Applications for immigration bail

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This page tells you how to apply the Rehabilitation of Offenders Act when considering applications for immigration bail.

Where a person applies for immigration bail, spent convictions can be taken into account to the extent that it is relevant to the consideration of whether or not bail should be granted. This includes circumstances where the person was detained before 13 December 2012.

Archived

Rehabilitation of Offenders Act

Contact

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This page explains who to contact for more help with a specific case involving the Rehabilitation of Offenders Act.

If you have read the relevant legislation and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.

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[Changes to this guidance](#)

[Information owner](#)

Links to staff intranet removed

Rehabilitation of Offenders Act

Information owner

[Initial decision making](#)
[Failing to declare convictions](#)
[Deportation proceedings](#)
[Revocation of a deportation order](#)
[Cases at appeal](#)
[Applications for immigration bail](#)

This page tells you about this version of the Rehabilitation of Offenders Act guidance and who owns it.

Version	2.0
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Clearance date	11 December 2012
This version approved for publication by:	Official – sensitive: information removed
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