Home Office

Grounds for refusal – Criminality

Version 3.0

Contents

About this guidance

This guidance tells you how a person's criminal history is relevant to applications for entry clearance, permission to enter or permission to stay in the UK.

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 **3.0**
- published for Home Office staff on **16 January 2024**

Changes from last version of this guidance

Minor updates to reflect the introduction of Electronic Travel Authorisations (ETAs).

Related content
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Introduction

This page tells you how to take into account criminality when considering whether to refuse or cancel entry clearance or permission.

Background

On 1 December 2020, the Immigration Rules were amended to introduce a more robust and consistent framework against which immigration applications are assessed or permission cancelled on suitability grounds.

From 1 December 2020, the following changes apply to Part 9 of the Immigration Rules in respect of criminality:

- introduce a single threshold for mandatory refusal on the basis of a custodial sentence of at least 12 months, replacing the previous three sentence-based thresholds
- introduce a mandatory ground for refusal at the border for those entering as visitors or for less than 6 months
- introduce a mandatory ground for refusal or cancellation on the grounds of serious harm, persistent offending or where it is conducive to the public good

You must refuse an application where there is a mandatory ground for refusal. Where a discretionary ground for refusal applies, you must consider whether the individual circumstances of the case allow you to exercise discretion. Your decision must be proportionate and reasonable and based on the facts of the case.

Electronic Travel Authorisation (ETA)

An ETA is an advance travel permission required by specified non-visa nationals when travelling to the UK as a visitor, transiting the UK, or as a Creative Worker seeking entry to the UK. An ETA provides an individual with permission to travel to the UK and is not permission to enter or stay in the UK.

Part 9 of the Immigration Rules does not apply to applications for an ETA. Suitability considerations for ETAs must be considered under Appendix: Electronic Travel Authorisation. For further information see the Electronic Travel Authorisation Guidance and refer only to the sections of this guidance that are specified in the Electronic Travel Authorisation guidance.

Disclosure of criminal offences / penalties

Immigration applicants are required to disclose all offences and consequent penalties both in the UK and overseas, in addition to other relevant information about their conduct, character and associations. Application forms make clear to applicants where they must disclose this information and that failure to declare it may lead to refusal of that application. For further information see guidance on false representations and deception.

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

Overseas criminal record certificates

Since 2015 the Immigration Rules have required certain applicants to submit a certificate confirming their criminal record in any country where they have been present for 12 months or more in the 10 years prior to applying, while over the age of 18. The requirement currently applies to those applying for entry clearance in the following categories:

- Tier 1 (Entrepreneur) – Part 6A of the Immigration Rules
- Tier 1 (Investor) - Part 6A of the Immigration Rules
- From 1 December 2020, Skilled Workers in health, education and social care roles - Appendix Skilled Worker of the Immigration Rules (prior to 1 December 2020, the requirement applied to those seeking entry under Tier 2 (General) in these sectors).

For further information on this requirement and how it applies in the different routes to which it has so far been introduced, see: Criminal record certificate requirement.

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ETA guidance

EEA citizens

This page tells you about how to deal with applications from European Economic Area (EEA) citizens.

Background

The UK Immigration Rules will apply to EEA citizens and their family members who are not protected by the European Union (Withdrawal Agreement) Act 2020 and come to the UK after the end of the transition period on 31 December 2020, in the same way as they apply to all other foreign citizens. This means that, from 1 January 2021, an application for entry clearance, permission to enter and permission to stay from an EEA citizen will be considered under the suitability grounds in Part 9. Conduct or offending committed before 1 January 2021, by an EEA citizen who is not protected by the EU (Withdrawal Agreement) Act 2020, can be taken into account when considering suitability under Part 9 of the Immigration Rules.

For EEA citizens and their non-EEA national family members whose rights are protected under the EU (Withdrawal Agreement) Act 2020, this includes:

- those eligible for immigration status under the EU Settlement Scheme (in accordance with Appendix EU and Appendix EU(FP) of the Immigration Rules
- those who have a right to come to the UK, or who have been granted a permit, as a frontier worker (in accordance with The Citizen's Rights (Frontier Workers) (EU Exit) Regulations 2020)
- those eligible for entry clearance or permission to stay as a Swiss service providers (in accordance with Appendix Service Providers from Switzerland of the Immigration Rules)
- those eligible for entry clearance or permission to stay as a healthcare visitor (in accordance with Appendix S2 Healthcare Visitors of the Immigration Rules)

an application can be refused or permission cancelled if, in respect of conduct committed after 23:00 GMT on 31 December 2020, the decision is conducive to the public good. If the time of conduct on 31 December 2020 is unclear, you must regard it as having taken place before 23:00 GMT.

A decision on the ground it is conducive to the public good is appropriate where:

- the person has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more
- the person is a persistent offender who shows a particular disregard for the law
- the person has committed a criminal offence, or offences which have caused serious harm
- the person is excluded from the Refugee Convention or would be so excluded if they made a protection claim (see: Restricted leave)
- where it is more likely than not that the person is, or has been, involved in a sham marriage or civil partnership (see: Sham marriage)

- where the decision-maker is satisfied that the person has committed a customs breach (see: Customs breaches)

In all cases it is the date of offence which is relevant, regardless of the date of any conviction or sentence.

An EEA citizen may have criminality or engaged in adverse conduct which occurred both before and after the end of the transition period. Where conduct has occurred both before and after 23:00 GMT on 31 December 2020, you may either:

- consider the totality of their conduct under the EEA public policy, public security or public health test
- consider only the conduct that occurred after 23:00 GMT on 31 December 2020 on the ground it is conducive to the public good and do not rely on the conduct that occurred prior to that date

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Criminality rules for applications made before 9am on 1 December 2020

Applications made before 9am on 1 December 2020 must be decided in accordance with the Immigration Rules in force on 30 November 2020.

Entry clearance and leave to enter – mandatory refusal

You must refuse an application for entry clearance or leave to enter where the applicant:

- has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years (under paragraphs 320(2)(b), S-EC.1.4.(a) of Appendix FM and V 3.4(a) of Appendix V)
- has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence (under paragraphs 320(2)(c), S-EC.1.4.(b) of Appendix FM and V 3.4(b) of Appendix V)
- has been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence (under paragraphs 320(2)(d), S-EC.1.4.(c) of Appendix FM and V 3.4(c) of Appendix V)

Leave to remain – mandatory refusal

All applications for leave to remain where the person has been convicted of an offence for which they have been sentenced to imprisonment must be referred to FNO Returns Command for deportation consideration.

Applications for leave to remain under Appendix FM must be refused where the applicant:

- has been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years (under paragraph S-LTR.1.3. of Appendix FM)
- has been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence (under paragraph S-LTR.1.4. of Appendix FM)

Indefinite leave to enter or remain – mandatory refusal

You must refuse an application for indefinite leave to enter or remain where the applicant:

- has been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years (under paragraphs 322(1C)(i) and S-ILR.1.3. of Appendix FM)

- has been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence (under paragraphs 322(1C)(ii) and S-ILR.1.4. of Appendix FM)
- has been convicted of an offence for which they have been sentenced to imprisonment of less than 12 months, unless a period of 7 years has passed since the end of the sentence (under paragraphs 320(1C)(iii) and S-ILR.1.5. of Appendix FM)
- has, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out-of-court disposal that is recorded on their criminal record (under paragraphs 320(1C)(iv) and S-ILR.1.6. of Appendix FM)

Entry clearance and leave to enter – discretionary refusal

An application for entry clearance or leave to enter will normally be refused where:

- within the 12 months prior to the date on which the application is decided, the applicant has been convicted of or admitted an offence for which they received a non-custodial sentenced or other out of court disposal that is recorded on their criminal record (under paragraph 320(18A)
- the applicant's offending has caused serious harm (under paragraph 320(18B)(a)
- the applicant is a persistent offender who shows a particular disregard for the law (under paragraph 320(18B)(b)
- the applicant's exclusion is conducive to the public good because for example their conduct (including convictions which do not fall within paragraph 320(2)), character, associations or other reasons make it undesirable to grant them leave to enter the UK (under paragraph 320(19)

Leave to remain and Indefinite leave to remain – discretionary refusal

All applications for leave to remain where the person has offending which has caused serious harm or where the person is a persistent offender must be referred to FNO Returns Command for deportation consideration.

An application for leave to remain will normally be refused where:

- it is undesirable for the applicant to remain in the UK in light of their conduct, including convictions which do not fall within paragraph 322(1C), character or associations or the fact that they represent a threat to national security (under paragraph 322(5))
- the applicant's offending has caused serious harm (under paragraph 322(5A)(a))
- the applicant is a persistent offender who shows a particular disregard for the law (under paragraph 322(5A)(b))

Sentences of four years or more

Where the person has been convicted of an offence and sentenced to a period of imprisonment of at least 4 years you must refuse their application.

You must take into account a sentence in this category on an indefinite basis for all applications. However, you must always consider if there are any very compelling factors which amount to an exceptional reason why the application should be granted.

A person who has received a custodial sentence of exactly 4 years is included in the 'at least 4 years' category. Any sentence imposed by the court in months rather than years that is equivalent to 4 years (48 months) or more should also be considered in this category. Refusal will be appropriate regardless of how long after the sentence in question ended.

Sentences of between 12 months and four years

Where a person has been convicted of an offence and sentenced to a period of imprisonment of at least 12 months but less than 4 years you must refuse their application unless 10 years have passed since the end of their sentence. If they are applying for settlement you must refuse a person with a sentence in this category unless 15 years have passed since the end of the sentence. You can make a mandatory refusal under paragraph 320(2)(c) and S-EC1.4(b) in Appendix FM and V 3.4(b) of Appendix V of the Immigration Rules.

However, in respect of entry clearance and leave to enter applications, you must always consider whether there are any very compelling factors that amount to an exceptional reason why the application should be granted, even though fewer than the required number of years have passed since the end of their sentence.

A person who has received a custodial sentence of exactly 12 months or 1 year is included within the 'at least 12 months but less than 4 years' category. Similarly, a sentence of 52 weeks should be taken to be equivalent to 12 months and so must also be considered in the 'between 12 months and 4 years' category.

You must take the end of sentence to mean the entire sentence imposed, not just the time the applicant spent in prison. For instance, an applicant who is sentenced to two years' imprisonment on 1 January 2013 should not be granted entry clearance or permission to enter until 1 January 2025 (10 years added to the end of the two-year sentence imposed).

Sentences of less than 12 months

Where a person has been convicted of an offence and sentenced to a period of imprisonment of less than 12 months, you must refuse the application unless 5 years have passed since the end of their sentence. If they are applying for settlement you must refuse a person with a sentence in this category unless 7 years have passed since the end of the sentence.

However, for entry clearance and leave to enter applications, you must always consider whether there are any very compelling factors that amount to an exceptional reason why the application should be granted, even though fewer than the required number of years have passed since the end of their sentence.

You must consider a person who has received a custodial sentence of exactly 12 months in the ‘between 12 months and 4 years’ category.

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Criminality rules for applications made after 9am on 1 December 2020

Mandatory refusal of entry clearance, permission to enter or permission to stay

Paragraph 9.4.1. of the Immigration Rules provides that entry clearance or permission **must be refused** where the applicant:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more
(b) is a persistent offender who shows a particular disregard for the law
(c) has committed a criminal offence, or offences, which caused serious harm

Discretionary refusal of entry clearance, permission to enter or permission to stay (other than for visitors or those seeking entry for less than 6 months)

Paragraph 9.4.3. of the Immigration Rules provides that entry clearance, permission to enter or permission to stay **may be refused** (where paragraphs 9.4.2. and 9.4.4. do not apply) where the applicant:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of less than 12 months
(b) has been convicted of a criminal offence in the UK or overseas for which they have received a non-custodial sentence, or received an out-of-court disposal that is recorded on their criminal record

Visitors and those seeking entry for less than 6 months – mandatory refusal of entry clearance or permission to enter

Paragraph 9.4.4. of the Immigration Rules provides that entry clearance or permission to enter under Appendix V: Visitor, or a person seeking entry on arrival in the UK for a stay for less than 6 months, **must be refused** where the applicant:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of less than 12 months, unless more than 12 months have passed since the end of the custodial sentence
(b) has been convicted of a criminal offence in the UK or overseas for which they have received a non-custodial sentence, or received an out-of-court disposal that is recorded on their criminal record, unless more than 12 months have passed since the end of the custodial sentence

If a visitor or person seeking entry for less than 6 months has been convicted of an offence for which they have received a custodial sentence of less than 12 months,

and **more** than 12 months have passed since the end of the sentence, you may consider this as a ground for refusal on a discretionary basis under paragraph 9.4.3.(a).

If a visitor or person seeking entry for less than 6 months has been convicted of an offence for which they have received a non-custodial sentence or out-of-court disposal, and more than 12 months have passed since the end of the sentence or issuance of the out-of-court disposal you may consider this as a ground for refusal on a discretionary basis under paragraph 9.4.3.(b).

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Cancellation of leave

This page tells you when to cancel leave on the basis of criminality or adverse conduct.

Leave can be cancelled under the Immigration Rules in force on 1 December 2020 regardless of when permission was granted.

Entry clearance and permission: mandatory cancellation

Paragraph 9.4.2. of the Immigration Rules provides that entry clearance or permission held by a person **must be cancelled** where the person:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more
(b) is a persistent offender who shows a particular disregard for the law
(c) has committed a criminal offence, or offences, which caused serious harm

Entry clearance and permission: discretionary cancellation

Paragraph 9.4.5. of the Immigration Rules provides that entry clearance or permission held by a person **may be cancelled** (where paragraph 9.4.2. does not apply) where the person:

(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of less than 12 months
(b) has been convicted of a criminal offence in the UK or overseas for which they have received a non-custodial sentence, or received an out-of-court disposal that is recorded on their criminal record

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Custodial sentences

Where a person has a custodial sentence and is in the UK, they may meet the threshold for deportation. You must refer the case to FNO Returns Command for them to consider whether to pursue deportation.

Sentences of 12 months or more

Where a person has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of at least 12 months or more you must refuse their application.

Sentences of less than 12 months

Where a person has been convicted of an offence in the UK or overseas for which they have received a custodial sentence of 12 months or less you may exercise discretion in deciding whether to refuse their application (apart from visitors and those seeking entry for less than 6 months). You must consider the individual circumstances of the case; what may be appropriate for one case will not be appropriate for another.

The following, non-exhaustive, list of factors should be considered when assessing whether it is appropriate to exercise discretion:

- whether the person already has permission
- whether the person is making a first-time application
- if the person already has permission, did they start offending soon after they arrived in the UK?
- there is more than one instance of criminality and / or offending so that refusal is appropriate on the grounds of persistent offending, or the person should be referred for deportation
- whether the sentence is very short, such as detention at court under Section 135 of the Magistrates' Courts Act 1980 for a single day
- the length of time passed since the offence was committed, including whether any other entry clearance or permission has been granted since the offence
- the relevance of the offence to the application
- any ties the person has to the UK

Overseas convictions and offences not recognised in the UK

The rules apply equally to overseas convictions and these should be considered in the same way as the broad equivalent in the UK context, even where there may be no direct match.

An example of where there is no direct match would be a New Zealand 'home detention order'. This is a non-custodial sentence and similar to UK civil orders.

Some overseas convictions will be for conduct that is not criminal in the UK, including homosexuality or membership of a trade union. Other convictions will have received sentences that are higher than the UK maximums for the same conduct. If you are unsure of the status of an overseas conviction you should seek legal advice.

If the person has received a conviction for an offence not recognised in the UK you should not refuse or cancel permission solely on the grounds of that conviction.

Suspended sentences

These count as a 'non-custodial offence or other out of court disposal recorded on a person's criminal record', unless they are 'activated'. This means the person has reoffended or otherwise breached the conditions of that sentence. Where that happens, you must consider the original suspended sentence length, the circumstances that led to its activation, and the length of time in custody the person was required to serve following activation.

Multiple, concurrent and consecutive sentences

Where an offender has multiple convictions, you must consider whether their pattern of offending demonstrates a particular disregard for the law such that they should be considered a persistent offender.

When sentences run concurrently, defendants serve all the sentences at the same time. In these cases, you must base your consideration on the longest single sentence they received.

When sentences run consecutively, defendants have to finish serving the sentence for one offence before they start serving the sentence for any other offence. In these cases, you must base your consideration on the combined length of all the sentences they received.

Convictions and sentences varied on appeal

The outcome of such variation may be the quashing of the original conviction, or an increase or decrease in the length of the custodial sentence. For more information on this in the UK judicial context, see: Appeals against conviction and sentence. However, you must remember that criminal justice systems in different countries vary and will not necessarily mirror that of the UK. This will mean that differing provisions may apply when a conviction or sentence is varied that may not directly equate to a conviction in the UK system.

Where possible, you must establish whether there are any outstanding appeals against previous convictions and sentences before deciding an application. Where a person is acquitted, you must treat it as if there was never a conviction, although you may still consider the circumstances that led to charges being brought, which may support a refusal on non-conducive grounds. If an appeal changes a sentence but the person nevertheless remains convicted of the offence, you must take into

account the new or revised sentence when assessing their application. Where a prosecution is still pending, see pending prosecutions.

Hospital orders and restriction 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 UK Borders Act 2007). Hospital orders are considered to be a period of imprisonment under Section 38 of the UK Borders Act 2007 if they are for at least 12 months. A hospital order does not have a fixed duration but lasts until the person has been discharged.

In addition to a hospital order, the court may impose a restriction order under Section 41 of the Mental Health Act 1983. In deciding whether to impose a restriction order, the judge will consider the nature of the offence, the past history of the offender and the risk of them committing further offences if set at large, in deciding if it is necessary for the protection of the public from serious harm that a restriction order be imposed.

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Non-custodial sentences and out of court disposals

This page describes the types of non-custodial sentences and penalties a person may receive and explains how to consider these when deciding an application.

If a person has received multiple disposals that show a pattern of offending, you must consider if they meet the criteria for consideration as a persistent offender.

All non-custodial sentences and out-of-court disposals (apart from spent cautions) must be declared on application forms. This is because they are exempt from the provisions of the Rehabilitation of Offenders Act 1974.

Where a person has been convicted of an offence in the UK or overseas for which they have received a non-custodial sentence or an out-of-court disposal you may exercise discretion in deciding whether to refuse their application (apart from visitors and those seeking entry for less than 6 months). You must consider the individual circumstances of the case; what may be appropriate for one case will not be appropriate for another.

The following, non-exhaustive, list of factors must be considered when assessing whether it is appropriate to exercise discretion:

- whether the person already has permission
- whether the person is making a first-time application
- if the person already has permission, did they start offending soon after they arrived in the UK?
- there is more than one instance of criminality and/or offending so that refusal is appropriate on the grounds of persistent offending, or the person should be referred for deportation consideration
- whether the sentence is very short, such as detention at court under Section 135 of the Magistrates' Courts Act 1980 for a single day
- the length of time passed since the offence was committed, including whether any other entry clearance or permission has been granted since the offence
- the relevance of the offence to the application
- any ties the person has to the UK

Non-custodial sentences

A person may have been found guilty of an offence, on a single or multiple basis, for which they have not been sentenced to a period of imprisonment but instead given a non-custodial punishment, either in the UK, overseas, or both. Also, in certain cases an offence may be punished by a form of caution or other out-of-court disposal.

Absolute and conditional discharges

Absolute and conditional discharges may be given for minor offences. In both cases there is a finding of guilt resulting in a criminal record. The differences are as follows:

- 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 sentences or out-of-court disposals, recorded on a person's criminal record. 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 you should consider the sentence imposed when the person is re-sentenced.

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 of cancellation.

If an applicant has received multiple fines or one or more fines alongside other non-custodial sentences, particularly over a short period of time, you must also consider if it is appropriate to refuse on the grounds that they are a persistent offender.

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, environmental and civil violations. They enable the criminal justice system to dispose of certain minor offences without the need for a person to attend court, and do 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.

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 receive 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.

Where a conditional caution has been issued under section 134 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which includes a specific requirement to leave the UK, you should normally refuse the application. Further information on this can be found in guidance on Previous immigration offences.

Simple cautions are not covered by the exemption in Section 4 of the Rehabilitation of Offenders Act 1974. This means that simple cautions do not need to be declared and failure to do so is not in itself a basis for refusal. Even if an applicant does choose to declare spent cautions, you must not take these into account in your assessment of their criminal history. You can only consider unspent cautions for that purpose.

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.

A community resolution is not a conviction, but may be relevant to consideration of whether the person is a persistent offender or should be refused leave or have their leave cancelled on non-conducive grounds.

Community sentences

Where a person is convicted of a crime by a court, they may receive a community sentence. These 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

Detention and training orders

A detention or training order (DTO) 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 is in 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 subject to an intensive supervision and surveillance programme (ISSP) as a condition of the community period of the sentence.

A DTO is only imposed by the courts on young people:

- who represent a high level of risk
- who have a significant offending history
- who 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.

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, you must treat it as an out-of-court disposal.

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, although the making of such an order does not result in a conviction being recorded against the individual concerned.

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.

Official – sensitive: start of section

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Official – sensitive: end of section

A civil order will not normally result in refusal or cancellation of permission unless the person has:

- been convicted of breaching the civil order
- received an order or orders which would suggest a pattern of behaviour that means they are a persistent offender

In cases where a person has a conviction for breaching the civil order, you must assess it in line with the sentence imposed.

Disqualifications from driving

A person can be disqualified from driving if they:

- are convicted of a driving offence
- receive 12 or more penalty points (endorsements) within three years, or two years for recently qualified drivers

The exact penalties given in different circumstances will depend on the individual court, and the jurisdiction in which it operates (for example, Scottish courts have slightly different guidelines on driving offences). The court will decide how long the disqualification will last, based on how serious they think the offence is. A disqualification from driving can be either in addition to, or instead of, any other sentence (such as a fine).

This does form part of a person's criminal record and counts as a non-custodial sentence for immigration purposes.

Binding over

Binding over is a power exercised by a court as an alternative to prosecution for a criminal offence. It generally involves an agreement by the person concerned to be of good behaviour or to keep the peace.

It does not form part of a person's criminal record and must be disregarded for the purposes of counting as a conviction for an offence.

It is unlikely a person will be bound over more than once, as they are designed to be used for one-off incidents. But where a person has been bound over on multiple occasions, or also has other non-custodial sentences, particularly over a short period of time, you must also consider whether it is appropriate to refuse on the grounds that they are a persistent offender.

Anti-social behaviour orders (ASBOs)

Anti-social behaviour orders (ASBOs) were replaced in England and Wales by civil injunctions and Criminal Behaviour Orders under the Anti-Social Behaviour, Crime and Policing Act 2014 although they continue to be used in Scotland.

A breach of an ASBO is a criminal offence. For further information on ASBOs see: Potential court orders.

Pending prosecutions or sentencing

If a person has a prosecution pending for an offence or series of offences, or is yet to be sentenced, you must consider whether to put the application on hold pending the outcome of the criminal proceedings. Pending means where criminal proceedings have commenced but not yet concluded. For example a person may have been arrested for an offence but has not yet gone to court or the case has not otherwise been concluded.

However, you should only hold the application if the outcome of the pending prosecution or sentencing would materially affect how you decide the application. For example, if the person already has criminality which means their application must be refused, an additional conviction or sentence would make no difference to the outcome of their application. On the other hand, if a person has a low-level conviction which would mean their application could be refused on a discretionary basis, but the offence for which they are being prosecuted carries a maximum sentence which would mean a mandatory refusal or a refusal on the grounds of being a persistent offender or causing serious harm, you should hold the case until the outcome of the court proceedings.

There may be circumstances where an application cannot be held, for example, where the person is seeking entry at the border. In such cases, you must consider

the nature of the offences for which the person is awaiting trial or sentencing. If you consider it is appropriate to grant the application despite a prosecution still being outstanding, you must seek agreement from a senior manager.

However, in most cases it will be appropriate to defer a decision until the pending prosecution outcome is known.

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.

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 must be treated as a non-custodial offence or out-of-court disposal that is recorded on a person's criminal record.

Procurator Fiscal fines

Where an alleged offence is reported to the Procurator Fiscal, the Procurator Fiscal may, in certain circumstances, offer to have the allegation dealt with outside of court, so that there is no possibility of the alleged offender 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 pay 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.

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Persistent offending

This page tells you what is meant by persistent offending and showing a particular disregard for the law.

Paragraphs 9.4.1.(b) and 9.4.2.(b) provide that an application **must** be refused or permission cancelled where you are satisfied there is persistent offending and that the person shows a particular disregard for the law.

A persistent offender is considered to be 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 for the same behaviour which demonstrate a clear disregard for the law.

They may not have served a custodial sentence but have consistently received out-of-court disposals such as fines, community orders, or suspended sentences which, taken individually, would not normally be a reason for refusal. For example, they may have been repeatedly arrested for the same offence but never convicted.

When considering whether a person is a persistent offender, you must consider:

- the number and frequency of offences committed and the timescale over which they were committed
- the seriousness of those offences
- whether the offences have escalated in seriousness
- any pattern in the offending
- whether they have shown a particular disregard for the law

You must consider if the pattern of offending gives particular cause to believe the public interest would be served by refusing the application. This is particularly important if the person has been living in the UK for some time. when you must consider if refusal or cancellation would outweigh that person's right to family or private life.

The number of offences and the timescale over which they were committed

You must look at the number and frequency of offences committed by the individual. There is no set number of offences which determines whether a person can be described as a persistent offender.

For example, a person who has committed three minor offences in 10 years in the UK might not be viewed as a persistent offender, whereas it may be appropriate to consider a person who commits four offences in six months as a persistent offender.

If the person concerned has been out of trouble for a significant period or periods within the overall period under consideration, then the length of such periods and the

reasons for their keeping out of trouble may be important considerations. However, the fact that someone has not been convicted for some time does not necessarily signify that they have seen the error of their ways. They may have been serving the custodial part of a short sentence or been in hospital. Alternatively, they may have been subject to a community order, or a suspended sentence, or on bail. However, if a person continually offends soon after being released from prison it will normally be appropriate to consider that they are a persistent offender.

If you can attribute a series of offences, committed a long time ago, to a particular incident or issue in a person's life that is believed to have since been resolved, it may be disproportionate to consider them a persistent offender.

An established period of rehabilitation may also lead you to conclude that an individual is no longer a persistent offender. For example, in the case of a former drug addict who has ceased shoplifting to fund their habit after a period in rehabilitation, and who has been out of trouble for a significant period of time afterwards, it may not be appropriate to consider them as a persistent offender because when their history is looked at in the round, it can no longer be said that they are someone who keeps on offending.

The seriousness of the offences

The sentence or disposal should be the primary indicator of the seriousness of the offence. You must consider the nature of any offence(s) the person has been convicted of and whether they are offences which make it in the public interest to refuse or cancel permission to enter or stay. If the offences are of a particular nature, you must consider whether it is more appropriate to refuse or cancel permission on the basis of offending which has caused serious harm.

Any escalation in seriousness of the offences

You must consider if the pattern of offending gives particular cause to believe the public interest would be served by refusing the application. Your aim is to identify a pattern of escalating offending and intervene before a more serious offence is committed. A person may have committed a number of offences which have escalated in seriousness. For example, a person may have been involved in theft which then escalates to burglary, and then aggravated robbery. Your aim is to identify a pattern of escalating offending and intervene before a more serious offence is committed. If the more recent offences are sufficiently serious it may be more appropriate to refuse or cancel permission on the basis of causing serious harm.

Showing a particular disregard for the law

A person who persistently shows a lack of respect for, or desire to comply with, the law of the UK, through frequent criminal activity and adverse engagement with the judicial system, can be considered to show a particular disregard for the law. This category of offender may well have a criminal history showing, for example, regular convictions for the same offence or offence type, indicating a lack of willingness or capacity to adjust their conduct so that it remains within the law over a reasonable period of time.

Conversely, a person may have demonstrated genuine, meaningful attempts to change their behaviour and comply with the law. For example, they may have engaged with programmes or activities aimed at addressing the cause of the offending, such as (but not limited to):

- treatments aimed at reduction of alcohol consumption
- drug dependency or anger management courses

At all times you must remember that each case's outcome will depend on its individual circumstances and must be determined on its own merits.

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Serious harm

This page tells you what is meant by an offence which causes serious harm.

Paragraphs 9.4.1.(c) and 9.4.2.(c) provide that an application must be refused or permission cancelled where a person has committed an offence which 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, or that has contributed to a widespread problem that causes serious harm to a community or to society in general.

Where a person has been convicted of one or more violent, drugs-related, racially-motivated or sexual offences, they will normally be considered to have been convicted of an offence that has caused serious harm.

An offence may have caused serious harm even if the punishment imposed for the offence would not normally lead to an application being refused. For example, a person may have been convicted of a sexual offence and only received a 3-month custodial sentence. You must take into account any available offender management reports and any sentencing remarks made by the judge relating to the impact on the victim.

Sexual offences

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 have a disability and to have committed 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 database (commonly known as the Violent and 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.

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 Police National Computer (PNC), as these need to be available should a person apply to work with children or vulnerable adults.

Where a person is required to sign the sex offenders register you must refuse or cancel entry clearance or permission on the grounds of serious harm. If they are no longer required to register, the original offence will normally still merit a refusal on the grounds of causing serious harm.

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Refusal and cancellation wording

Refusal

Grounds	Rule	-
Custodial sentence of more than 12 months	9.4.1.(a)	You have sought entry clearance/permission to enter/permission to stay the United Kingdom but you have been convicted of an offence and sentenced to a period of XX years' imprisonment. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial sentence of 12 months or more. I therefore refuse you entry clearance/permission to enter/permission to stay in the UK.
Custodial sentence of less than 12 months	9.4.3.(a)	You have sought entry clearance/permission to enter/permission to stay in the United Kingdom but you have been convicted of an offence and sentenced to a period of XX months' imprisonment. I am satisfied that permission should be refused in your case because [insert circumstances of case]. I therefore refuse you entry clearance/permission to enter/permission to stay in the UK.
Non-custodial sentence or out of court disposal	9.4.3.(b)	You have sought entry clearance/permission to enter/permission to stay in the United Kingdom but you have been convicted of an offence and sentenced to/given…[insert details of non-custodial sentence or our-of court disposal]. I am satisfied there is no reason to exercise discretion in your case because [insert circumstances of case]. I therefore refuse you entry clearance/permission to enter the UK.
Custodial sentence of less than 12 months (visitors or those seeking entry for less than 6 months)	9.4.4.(a)	You have sought entry clearance/permission to enter in the United Kingdom as a [visitor/other category] but you have been convicted of an offence and sentenced to a period of XX months' imprisonment. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial

Grounds	Rule	-
		sentence of less than 12 months, and 12 months have not passed since the end of your sentence. I therefore refuse you entry clearance/permission to enter/permission to stay in the UK.
Non-custodial sentence or out of court disposal (visitors or those seeking entry for less than 6 months)	9.4.4.(b)	You have sought entry clearance/permission to enter in the United Kingdom as a [visitor/other category] but you have been convicted of an offence and sentenced to/given [insert details of non-custodial sentence or out-of-court disposal]. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a non-custodial sentence or out-of-court disposal and 12 months have not passed since [insert details of non-custodial sentence or out-of-court disposal]. I therefore refuse you entry clearance/permission to enter/permission to stay in the UK.
Persistent offender	9.4.1.(b)	You have sought entry clearance/permission to enter/permission to stay in the United Kingdom but [insert details of offences]. In the light of these offences I am satisfied that you are a persistent offender and show a particular disregard for the law. I therefore refuse you entry clearance/permission to enter/permission to stay in the UK.
Serious harm	9.4.1.(c)	You have sought entry clearance/permission to enter/permission to stay in the United Kingdom but you have been convicted of an offence and sentenced to [insert details of offence and sentence]. I am therefore satisfied that you have been convicted of (a) criminal offence(s)

Cancellation

Grounds	Rule	-
Custodial sentence of more than 12 months	9.4.2.(a)	On [date] you were granted [insert details of leave/permission]. However, on you have been convicted of an offence and sentenced to a period of XX' years

Grounds	Rule	-
		imprisonment. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial sentence of 12 months or more. I therefore cancel your permission to enter/stay in the UK.
Custodial sentence of less than 12 months	9.4.5.(a)	On [date] you were granted [insert details of leave/permission]. However, you have been convicted of an offence and sentenced to a period of XX months' imprisonment. I am satisfied that permission should be cancelled in your case because [insert circumstances of case]. I therefore cancel your permission to enter/stay in the UK.
Non-custodial sentence or out of court disposal	9.4.5.(b)	On [date] you were granted [insert details of leave/permission]. However, you have been convicted of an offence and sentenced to/given…[insert details of non-custodial sentence or our-of court disposal]. I am satisfied there is no reason to exercise discretion in your case because [insert circumstances of case]. I therefore cancel your permission to enter/stay in the UK.
Persistent offender	9.4.2.(b)	On [date] you were granted [insert details of leave/permission]. However [insert details of offences]. In the light of these offences I am satisfied that you are a persistent offender and show a particular disregard for the law. I therefore cancel your permission to enter/stay in the UK.
Serious harm	9.4.2.(c)	On [date] you were granted [insert details of leave/permission]. However, you have been convicted of an offence and sentenced to [insert details of offence and sentence]. I am therefore satisfied that you have been convicted of (a) criminal offence(s) which has caused serious harm. I therefore cancel your permission to enter/stay in the UK.

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