



# Suitability: Grounds for refusal / cancellation – Criminality

Version 5.0

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# About this guidance

This guidance tells you how a person's criminal history is relevant to applications for entry clearance or permission 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 **5.0**
- published for Home Office staff on **26 March 2026**

## Changes from last version of this guidance

Changes include update:

- in line with Immigration Rules to mandate refusal or cancellation of entry clearance or permission where a person has received a suspended sentence of 12 months or more
- to the sections on serious harm, overseas offending and sexual offences
- to clarify the approach to pardons and exercising discretion

## Related content

[Contents](#)

# Introduction

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

Part Suitability of the Immigration Rules provides for the mandatory and discretionary refusal or cancellation of entry clearance or permission on the grounds of criminality.

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.

On 26 March 2026, the Immigration Rules were amended to extend the mandatory grounds for refusal or cancellation to suspended sentences of at least 12 months. See [Suspended sentences](#).

## 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 Suitability 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.

## Failure to disclose criminal offences

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.

Where an applicant has failed to disclose a pending prosecution, criminal proceedings or a conviction against them, you must consider the individual circumstances around the failure to disclose that information, whether any deception or dishonesty was deliberate, and whether it would be appropriate to refuse the application for failure to declare information relevant to it.

For further information see guidance on false representations and deception.

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## 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:

- [Entrepreneur Visa \(Tier 1\) – Part 6A of the Immigration Rules](#)
- [Investor Visa \(Tier1\) - Part 6A of the Immigration Rules](#)
- [Skilled Workers in health, education and social care roles - Appendix Skilled Worker of the Immigration Rules](#)

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](#)

# Overview of requirements

## Mandatory refusal of entry clearance or permission

Paragraph SUI 5.1. 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 or suspended 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 or permission

Paragraph SUI 5.3. of the Immigration Rules provides that entry clearance or permission **may 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 or suspended 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 SUI 5.4. 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 or suspended 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 or suspended 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 SUI 5.3.(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 SUI 5.3.(b).

## Mandatory cancellation of entry clearance or permission

Paragraph SUI 5.2. 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 or suspended 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 cancellation of entry clearance or permission

Paragraph SUI 5.5. of the Immigration Rules provides that entry clearance or permission held by a person **may 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 or suspended 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

## 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](#).

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# Custodial and suspended sentences

Where a person has a custodial sentence or suspended 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 or suspended sentence of 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 or suspended sentence of less than 12 months 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. [See section: Exercising discretion](#).

## Multiple, concurrent and consecutive sentences

Where a person 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 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.

Hospital orders and restriction orders are treated as custodial sentences for the purposes of this guidance.

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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. [See section: Exercising discretion](#)

Where a person is still subject to the conditions imposed by the non-custodial sentence or out of court disposal, it will normally be appropriate to refuse or cancel entry clearance or permission.

## 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 another 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 (LASPO). 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.

Cautions – simple and conditional – are only used in England and Wales (see below for information on cautions in Scotland). Simple cautions become spent immediately as soon as they are issued. However, conditional cautions are time limited (up to

three months) and for foreign national offenders can have extra conditions attached which are not time limited and include either a specific requirement to leave the UK, or a specific condition to prevent return to the UK.

Under section 140 of the LASPO, immigration and nationality decision making is excluded from an exemption in Section 4 of the Rehabilitation of Offenders Act 1974 which does not require individuals to disclose spent convictions. However, cautions are not covered by the exemption. This means that simple cautions do not need to be declared (as they become spent immediately once issued) and failure to do so is not a basis for refusal. However, this is not the case for unspent conditional cautions. Where a conditional caution is not spent and has extra foreign national offender conditions attached to it which ensure that the applicant does not return to the UK for a specific period of time, you should refuse the application.

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 conditional cautions.

## 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. If the young person is 12-14 years old, the order can only be made if they are a persistent offender.

The statutory basis for DTOs is in [Part 10 of the Sentencing Act 2020](#). 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 program (ISSP) as a condition of the community period of the sentence.

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 like 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.

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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.

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# 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

A deferred sentence is when the final decision about a sentence is postponed to another date for the offender to be of good behaviour during that time. The sentence is usually postponed for between 3 to 12 months and the offender subject to particular conditions. See: [section 202 of the Criminal Procedure \(Scotland\) Act 1995](#). 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.

You must take account of the sentence imposed by the court at the end of the deferred sentence.

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

An admonition is where an accused person found guilty of a crime is warned not to offend again. See: [Section 246 of the Criminal Procedure \(Scotland\) Act 1995](#).

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, convicted offenders can be ordered to hand over a sum of money held by the court as security for good behaviour. If the offender does not commit any further offending, the money will be returned.

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.

## Recorded Police Warning

A Scottish Recorded Police Warning (RPW) is a direct police measure issued to adult offenders (aged 18 and over) for less serious offending. This is different to a verbal warning. It is a formally recorded out of court disposal and forms part of an individual's criminal record. It is equivalent to formal warnings that are recorded on the Police National Computer. For further information on RPVs and offences eligible for an RPV, see: [Lord Advocate's guidelines on the use of the police direct measures for adult offenders | COPFS](#).

## Procurator Fiscal fines

Procurators fiscal are based throughout Scotland. They are legally qualified civil servants who receive reports about crimes from the police and others and then decide what action to take in the public interest, including whether to prosecute someone.

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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# Pending prosecutions

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.

You must 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 must 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.

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# Overseas convictions and offences not recognised in the UK

When considering a case involving an overseas conviction, you must use the sentence imposed by the overseas Court when applying the rules. You may see cases where an individual claims that they would have received a lower sentence for an equivalent offence in the UK. However, it is generally not appropriate to go behind the sentence imposed by the competent criminal Court.

There may also be cases where the sentence received has no direct match, such as a New Zealand 'home detention order', which is a non-custodial sentence similar to a UK civil order. The conviction must be considered in the same way as the broad equivalent in the UK, even where there may be no direct match.

The only circumstances where you must disregard overseas offending is where it relates to conduct that would not be criminal in the UK, for example: homosexuality or membership of a trade union.

If you are unsure of the status of an overseas conviction you should refer to a Technical Specialist or senior caseworker. If you are unable to resolve your query within your decision-making team, you should seek legal advice.

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# Pardons

## UK Pardons

Under the Royal Prerogative of Mercy, the British monarch may grant a pardon to convicted persons. There are three categories of pardon in the UK:

- free pardon which releases the individual concerned from the effect of their penalty/ sentence but does not quash/ expunge their original conviction
- conditional pardon which substitutes one sentence for another – historically the death sentence for a lesser penalty
- remission which reduces all or part of a penalty/ sentence for meritorious conduct (good character/ behaviour) or when offender dates for a sentence have been miscalculated, for example, an early release from a sentence. However, the sentence itself remains unaltered

## Pardons in other countries

Pardons do not generally change the fact that a person has been convicted and received a particular sentence. You must therefore consider the conviction in the normal way under the criminality rules.

## Commutations

A commuted sentence refers to a reduction in a criminal sentence for a lesser criminal penalty. Commutation does not quash or expunge a conviction and the recipient of a commutation remains guilty in accordance with their original conviction. When making a decision on an application where an individual has received a commuted sentence, the criminality rules must be applied on the basis of the reduced sentence.

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# Exercising discretion

When assessing whether it is appropriate to exercise discretion where refusal or cancellation is discretionary, you must consider the following non-exhaustive list of factors:

- whether the person already has permission
- whether the person is making a first-time application
- if the person already has permission, whether they started offending soon after they arrived in the UK
- whether there is more than one instance of criminality and offending so that refusal is appropriate on the grounds of [persistent offending](#) (and if so, you must consider referring to FNORC 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 seriousness of the offence
- the relevance of the offence to the application
- any ties the person has to the UK
- whether the person is still subject to conditions imposed by the non-custodial sentence or out of court disposal, for example, the time period during which a suspended sentence could be activated

You must also consider [positive factors](#) which may indicate that discretion should be exercised in the person's favour.

Where a person has been convicted of one or more violent, drugs-related, racially motivated or sexual offences, it will not normally be appropriate to exercise discretion in their application.

## Positive factors

Positive factors are genuine, meaningful attempts to change a person's behaviour and comply with the law that may indicate, on the balance of probabilities, that discretion should be exercised in the person's favour. For example, if the person's criminality amounts to one isolated youthful indiscretion and the person has not committed an offence since, refusal of the application may be inappropriate.

An applicant may have engaged in activities which indicate that discretion should be exercised in their favour. For example, they may have engaged with programmes or activities aimed at addressing the cause of offending, such as (but not limited to) treatments aimed at the reduction of alcohol consumption, or drug dependency or anger management courses. These factors are indicative, not exhaustive.

### Related content

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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 SUI 5.1.(b) and SUI 5.2.(b) provide that an application must be refused or permission cancelled where you are satisfied there is persistent offending and 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. This can mean a series of offences committed in a 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 or suspended sentence but have consistently received out-of-court disposals such as [fines or community orders](#) 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 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 inappropriate 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 offending caused serious harm, you must consider whether it is more appropriate to refuse or cancel permission on that basis.

## Any escalation in seriousness of the offences

You must consider if the pattern of offending gives 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. 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.

Conversely, a person may have demonstrated genuine, meaningful attempts to change their behaviour and comply with the law, also known as [positive factors](#). Positive factors may indicate that it is not appropriate to consider the person to be a persistent offender.

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 SUI 5.1.(c) and SUI 5.2.(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, psychological, emotional or economic 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.

The fact that the offending is not characterised as having caused "serious harm" for sentencing purposes will not always be determinative of whether serious harm has been caused for the purposes of assessing the case under the immigration rules.

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.

You must also consider applicable caselaw in any serious harm consideration. The judgment of [Mahmood, R \(on the application of\) v Upper Tribunal \(Immigration and Asylum Chamber\) & Ors \[2020\] EWCA Civ 717 \(05 June 2020\)](#) underlined that what matters is the harm caused by the particular offence. It commended that whilst the prevalence of (even minor) offending may cause serious harm to society, an individual offence considered in isolation may not. It provided the example of shoplifting as a significant social problem, which causes serious economic harm and distress to the owner of a modest corner shop; a thief who steals a single item of low value may contribute to that harm, but cannot realistically be said to have caused serious harm himself, either to the owner or to society in general.

The judgment was reaffirmed in the case of [Wilson \(NIAA Part 5A; deportation decisions\) \[2020\] UKUT 350 \(IAC\) \(25 November 2020\)](#), which concluded that 'the contribution of an offence to a serious or widespread problem is not sufficient; there needs to be some evidence that the offence has caused serious harm'. The Tribunal added that the 'serious harm' does not need to be limited to an individual.

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# 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 children or vulnerable adults abroad
- Sexual Risk Orders – where the person poses a risk of harm to the public in the UK and children or vulnerable adults abroad, including individuals without a relevant conviction or caution
- Notification Requirements – 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. 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 subject to notification requirements under [Schedule 3 to the Sexual Offences Act 2003](#) or has a foreign conviction where the act constituting the

offence would have been an offence listed in Schedule 3 to the Sexual Offences Act 2003, it will normally be appropriate to refuse or cancel entry clearance or permission.

Where a person is required to sign the sex offenders register, or has been required to do so previously, you must also consider whether they have committed an offence that caused serious harm. [See section: Serious Harm](#)

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# Members of the armed forces

## Criminal conduct offences

Under [section 42 of the Armed Forces Act 2006](#), a criminal conduct offence is any act:

- which is punishable under the criminal law of England and Wales
- committed outside the UK which, if it had been committed in England and Wales, would be punishable under the criminal law of England and Wales

Annex Q to [chapter 9 of the Manual of Service Law](#) sets out the criminal conduct offences that are recorded on the Police National Computer (PNC). Those offences must be disclosed by the applicant. This includes any outstanding charges but also some minor convictions.

Minor disciplinary punishments are detailed in the [Armed Forces \(Minor Punishments and Limitation on Power to Reduce in Rank\) Regulations 2023](#). They include:

- restriction of privileges
- stoppage of leave
- admonition (caution or warn)
- reduction in rank

Minor convictions should normally be disregarded when considering Part Suitability criminality grounds. However, if an individual has numerous minor punishments, particularly over a short period of time, you must consider whether these amount to persistent offending: [see persistent offending](#).

## Disciplinary offences

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. Military disciplinary offences are listed in:

- [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 (see table A below)
- The Armed Forces Act 2006 (part one) (see table B below)

Offences under Schedule 1 of Police and Criminal Evidence Act 1984 (Armed Forces Order 2009) appear on a person's criminal record and can be taken into account in any Part Suitability consideration.

Offences not listed in Schedule 1 of the Police and Criminal Evidence Act 1984 (Armed Forces Order 2009) should not appear on a person's criminal record. If they do, they must not be considered for any Part Suitability consideration.

Table A provides military discipline offences listed under Schedule 1 of Police and Criminal Evidence Act 1984 (Armed Forces Order 2009). These offences are recorded on the PNC and can be taken into account in any Part Suitability consideration.

**Table A: Schedule 1 PACE – disciplinary offences (recorded on PNC)**

<b>Section</b>	<b>Disciplinary offence</b>
Section 11(1) – Misconduct towards a superior officer	Section 11(1) – Misconduct towards a superior officer Misconduct means: <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>
Section 14 – Using force toward a sentry.	Using force against a sentry by the threat of force or compelling a sentry to let him or any other person pass.
Section 24(1) – Damage to or loss of public or service property (Could be considered as schedule 2 offences. For example, damaging property with an intention to endanger life.	Intentionally, recklessly or negligently damaging or causing loss to public or service property (subsection (1))
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.
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>
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>

<b>Section</b>	<b>Disciplinary offence</b>
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>
Section 39 – Attempts to commit any offence specified above in this Schedule	-
Section 40 – Encouraging or assisting the commission of any offence specified above in this Schedule (apart from an attempt)	-

Table B provides a list of offences under the Armed Forces Act 2006 which should not be considered for any Part Suitability consideration.

**Table B: Offences under the Armed Forces Act 2006**

<b>Section</b>	<b>Offence</b>
Section 1	Assisting an enemy
Section 2	Misconduct on operations
Section 3	Obstructing operations
Section 4	Looting
Section 5	Failure to escape
Section 6	Mutiny
Section 7	Failure to suppress mutiny
Section 8	Desertion
Section 9	Absence without leave
Section 10	Failure to cause apprehension of deserters or absentees
Section 12	Disobedience to lawful commands
Section 13	Contravention of standing orders
Section 15	Failure to attend for, or perform, duty
Section 16	Malingering
Section 17	Disclosure of information useful to an enemy
Section 18	Making false records
Section 19	Conduct prejudicial to good order and discipline
Section 20	Unfitness or misconduct through alcohol or drugs
Section 21	Fighting or threatening behaviour
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

<b>Section</b>	<b>Offence</b>
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.

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# Refusal and cancellation wording

## Refusal

Suitability requirements	Rule	-
Custodial or suspended sentence of more than 12 months	SUI 5.1.(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 [number] years' imprisonment / suspended for [number] years / months. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial or suspended sentence of 12 months or more. I therefore refuse you entry clearance / permission to enter / permission to stay in the UK.
Custodial or suspended sentence of less than 12 months	SUI 5.3.(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 [number] months' imprisonment / suspended for [number] years / months. 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	SUI 5.3.(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 / give [insert details of non-custodial sentence or out-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 or suspended sentence of less than 12 months (visitors or those seeking entry for less than 6 months)	SUI 5.4.(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 [number] months' imprisonment /

Suitability requirements	Rule	-
		suspended for [number] years / months. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial or suspended 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)	SUI 5.4.(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	SUI 5.1.(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	SUI 5.1.(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

Suitability requirements	Rule	-
Custodial or suspended sentence of more than 12 months	SUI 5.2.(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 [[number]] year's imprisonment / suspended for [number] years / months. I am therefore satisfied that you have been convicted of a criminal offence in the UK or overseas for which you received a custodial or suspended sentence of 12 months or more. I therefore cancel your permission to enter / stay in the UK.
Custodial or suspended sentence of less than 12 months	SUI 5.5.(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 [[NUMBER]] months' imprisonment / suspended for [number] years / months. 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	SUI 5.5.(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	SUI 5.2.(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	SUI 5.2.(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

Suitability requirements	Rule	-
		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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