



Home Office

# Nationality Policy Guidance and Casework Instruction

## Chapter 18, Annex D: The Good Character Requirement

Version 4.0

9 December 2013

# Contents

<b>Section 1: Introduction</b>	<b>4</b>
1.1 Purpose of Instruction	4
1.2 Background to Good Character	4
1.3 Aspects of the Requirement	4
<b>Section 2: Criminal Convictions – General</b>	<b>6</b>
2.1 Table of How Convictions & Sentences Affect Applications	6
2.2 Key Points	6
2.3 Scottish Law	8
2.4 Convictions and Sentences Imposed Outside of the UK	9
2.5 Convictions and Sentences Varied on Appeal	10
2.6 Persistent Offenders	10
2.7 Offences Which Cause Serious Harm	10
2.8 Sexual Offences and the Sex Offenders Register	10
<b>Section 3: Criminal Convictions – Non-Custodial Sentences &amp; Other Out of Court Disposals</b>	<b>12</b>
3.1 Fines	12
3.2 Fixed Penalty Notices, Penalty Charge Notices & Penalty Notices for Disorder	12
3.3 Cautions, Warnings and Reprimands	13
3.4 Community Sentences	13
3.5 Confiscation and Forfeiture Orders	14
3.6 Civil Orders	14
3.7 Hospital Orders & Restriction Orders	15
3.8 Considering Cumulative, Non-Custodial Sentences	15
<b>Section 4: Other Criminal and Suspected Criminal Activity</b>	<b>17</b>
4.1 Pending Prosecutions	17
4.2 Failure to Disclose Convictions or Criminal Proceedings	17
4.3 Extradition Requests and the European Arrest Warrant (EAW)	18
4.4 Suspected Criminal Activity	19
4.5 Involvement with Gangs	19
4.6 Association with Known Criminals	19
4.7 Proceeds of Crime and Finances of Questionable Origins	19

<b>Section 5: War Crimes, Terrorism and Other Non-Conductive Activity</b>	<b>20</b>
5.1 War Crimes, Crimes Against Humanity and Genocide	20
5.2 Terrorism	20
5.3 Corruption	20
5.4 Public Order	20
5.5 Exclusion from the Refugee Convention	20
<b>Section 6: Financial Soundness</b>	<b>22</b>
6.1 Bankruptcy and Liquidation	22
6.2 Debt	23
6.3 Dishonesty in Relation to Public Funds	24
6.4 Non-Payment of Council Tax	24
<b>Section 7: Notoriety</b>	<b>25</b>
7.1 Background	25
7.2 Parenting	25
<b>Section 8: Deception and Dishonesty</b>	<b>26</b>
8.1 General Approach	26
8.2 Deceitful or Dishonest Dealings with Her Majesty’s Government	26
8.3 Failure to Disclose Convictions	26
<b>Section 9: Immigration Related Issues</b>	<b>28</b>
9.1 Bogus Marriages/Civil Partnerships and Marriages/Civil Partnerships of Convenience	28
9.2 Abuse of the English Language and/or Knowledge of Life Test	28
9.3 Deception in Previous Applications	28
9.4 Prosecution for False Statements	29
9.5 Assisting Illegal Migration	30
9.6 Hiring Illegal Workers	30
9.7 Deprivation of Citizenship	30
<b>Section 10: Exceptional Grants</b>	<b>31</b>
<b>Change Record</b>	<b>32</b>

# Section 1: Introduction

## 1.1 Purpose of Instruction

The purpose of this instruction is to explain how the good character requirement is assessed in relevant nationality applications.

This guidance applies to all decisions taken **on or after** 13 December 2012.

However, where an application was made **on or before** 12 December 2012, the decision maker will assess the criminality requirement in line with that set out in Annex D2. The remainder of the requirement is that which is set out in this instruction.

[Back to Contents](#)

## 1.2 Background to Good Character

There is no definition of 'good character' in the British Nationality Act 1981 ('the BNA 1981') and therefore no statutory guidance as to how this should be interpreted or applied.

However, the good character requirement applies to anybody over the age of ten who applies for naturalisation or registration as a British citizen unless an application is made under:

- a. the statelessness provisions in Schedule 2 of the BNA 1981, or;
- b. section 4B of the Act from an eligible applicant.

The Secretary of State must be satisfied that an applicant is of good character on the balance of probabilities. To facilitate this, applicants must answer all questions asked of them during the application process honestly and in full. They must also inform the Home Office of any significant event (such as a criminal conviction or a pending prosecution) that could have a bearing on the good character assessment.

[Back to Contents](#)

## 1.3 Aspects of the Requirement

The decision maker will not normally consider a person to be of good character if there is information to suggest:

- a. They have not respected and/or are not prepared to abide by the law. For example, they have been convicted of a crime or there are reasonable grounds to suspect (i.e. it is more likely than not) they have been involved in crime. For further information on the criminality element, see [section 2 – Criminal Convictions \(General Approach\)](#), [section 3 – Non-Custodial Sentences and Other Out of Court Disposals](#) and [section 4 – Other Criminal & Suspected Criminal Activity](#); or
- b. They have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism or other actions that are considered not to be conducive to the public good. For further information on this particular element, see [section 5 – War Crimes, Terrorism and Other Non-Conductive Activity](#); or
- c. Their financial affairs were not in appropriate order. For example, they have failed to pay taxes for which they were liable. For further information on the financial aspect, see [section 6 – Financial Soundness](#); or

- d. Their activities were notorious and cast serious doubt on their standing in the local community. For further information on notoriety, see [section 7 – Notoriety](#); or
- e. They had been deliberately dishonest or deceptive in their dealings with the UK Government. For further information on dishonesty and deception, see [section 8 – Deception & Dishonesty](#); or
- f. They have assisted in the evasion of immigration control; or
- g. They have previously been deprived of citizenship. For further information on these two points, see [section 9 – Immigration Related Issues](#).

This is a non-exhaustive list.

If the person does not clearly fall into one of the categories outlined above but there are doubts about their character, the decision maker may still refuse the application. They may also request an interview in order to make an overall assessment.

[Back to Contents](#)

# Section 2: Criminal Convictions – General

Having a criminal record does not necessarily mean that an application will be refused. However, a person who has not respected and/or is not prepared to abide by the law is unlikely to be considered of good character. This section explains how decision makers will look at criminal convictions when making their assessment.

Certain immigration and nationality decisions are now exempt from section 4 of the Rehabilitation of Offenders Act 1974. This means that it does not matter whether a conviction is “spent” when assessing good character provided the application was made in England, Wales or Scotland.

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

Instead, when considering an application made **on or after** 13 December 2012 from a person with a criminal conviction, the decision maker will consider the length of sentence imposed, when it was imposed and use information below to decide whether to grant or refuse.

The [Rehabilitation of Offenders \(Northern Ireland\) Order 1978](#) still applies to applicants who reside in Northern Ireland. This means that the fact a conviction is spent **will** be relevant to these applications. In such cases, see Annex D2.

## 2.1 Table of How Convictions & Sentences Affect Applications

	Sentence	Impact
1.	4 years’ or more imprisonment.	Application will normally be refused, regardless of when the conviction occurred.
2.	Between 12 months’ and 4 years’ imprisonment.	Application will normally be refused unless 15 years have passed since the end of the sentence.
3.	Up to 12 months’ imprisonment.	Applications will normally be refused unless 7 years have passed since the end of the sentence.
4.	A non-custodial sentence or other out of court disposal that is recorded on a person’s criminal record.	Applications will normally be refused if the conviction occurred in the last 3 years.

[Back to Contents](#)

## 2.2 Key Points

When considering the above table, the following applies:

- i. A person who receives a sentence of life imprisonment is included in the '4 years or more imprisonment' category (i.e. line 1 in [Table 2.1](#)).
- ii. A person who receives a custodial sentence of **exactly** 4 years is included in the '4 years or more imprisonment' category (i.e. line 1 in [Table 2.1](#)).
- iii. A person who receives a custodial sentence of **exactly** 12 months or **exactly** 1 year is included in the 'Between 12 months and 4 years imprisonment' category (i.e. line 2 in [Table 2.1](#)).
- iv. The "end of the sentence" means the entire sentence imposed, not just the time the person spent in prison. For example, a person sentenced to 3 years' imprisonment on 1/1/2013 will normally be refused citizenship until 1/1/2031 – the 15 year 'bar' added to the 3 year sentence.
- v. The phrase "the last 3 years" (line 4 in [Table 2.1](#)) is counted back from the date of application. However, where a person is clear on the date the application is decided, the decision maker will not refuse solely on this basis.
- vi. A person who is subject of an extant Deportation Order will be refused citizenship.
- vii. Where a person has been sentenced to an extremely short period of imprisonment, decision makers may take this into account in deciding whether or not a case falls to be treated in line with other cases where a person has received 'up to 12 months imprisonment'. One example of where this might be appropriate will be if a person is detained at court under s.135 Magistrates Court Act 1980. The decision maker will instead treat this as a "non-custodial offence or other out of court disposal that is recorded on a person's criminal record" (i.e. line 4 in [Table 2.1](#)).
- viii. For what else constitutes a "non-custodial offence or other out of court disposal that is recorded on a person's criminal record" (i.e. line 4 in [Table 2.1](#)), see [section 3 – Non-Custodial Sentences - Out of Court Disposals](#).
- ix. Sentences imposed overseas will normally be treated as if they occurred in the UK, see [section 2.4 – Convictions & Sentences Imposed Outside of the UK](#).
- x. A **suspended prison sentence** will be treated as a "non-custodial offence or other out of court disposal that is recorded on a person's criminal record" (i.e. line 4 in [Table 2.1](#)).

The exception is where that sentence is subsequently 'activated'. This means that the person re-offended or failed to adhere to/breached the conditions of that sentence. Where this happens, the decision maker will look at both the original suspended sentence, the circumstances leading to the activation of that sentence, and the amount of time in prison the defendant was sentenced to once the sentence was activated.

Example 1: a person is sentenced to 6 months' imprisonment, suspended for two years. If they 'activate' this, the sentence should be 6 months and fall into the 'up to 12 months' imprisonment' category above (i.e. line 3 in [Table 2.1](#)).

Example 2: a person is sentenced to 12 months' imprisonment, suspended for two years. If they 'activate' this, the sentence should be 12 months and fall into the 'Between 12 months and 4 years' imprisonment' category above (i.e. line 2 in [Table 2.1](#)).

- xi. For **concurrent** sentences, the decision maker will take the longest single sentence imposed. For example, a sentence of 9 months' imprisonment served concurrently with a sentence of 6 months' imprisonment will be treated the same as one 9-month sentence.
- xii. For **consecutive** sentences, the decision maker will add together the total of all the sentences imposed. For example, a sentence of 9 months' imprisonment served consecutively with a sentence of 6 months' imprisonment will be treated the same as one 15-month sentence.
- xiii. Former or current members of HM Forces may submit applications for naturalisation. Therefore, sentences may include those under court martial or other military service proceedings. For further information on this, see Chapter 15 of the Immigration Directorate Instructions ([External Link](#) / [Internal Link](#)).
- xiv. The nationality application form is clear that an applicant is required to declare **all** criminal convictions – including those that are pending. Where a person does not, the decision maker will consider both the criminal conviction itself and whether the failure to declare it/them is an attempt to deceive. For further information on this, see [section 8 – Deception & Dishonesty](#).
- xv. Where this section states an application will normally be refused if a person has been convicted, exceptions should only be made in exceptional circumstances. The decision maker does not have discretion to overlook convictions without referral to a Deputy Chief Caseworker in the first instance. For further information on this, see [section 10 – Exceptional Grants](#).

[Back to Contents](#)

## 2.3 Scottish Law

There are many similarities between Scottish and English law. However, there are also some differences which are not always directly comparable.

The Scottish legal system is unique in having three possible verdicts for a criminal trial:

- a. “guilty”,
- b. “not guilty”; and
- c. “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.

### 2.3.1 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 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 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. The decision maker will 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 [Table 2.1](#).

Where the person is in the period where their sentence is deferred, the decision maker might consider placing the application on hold until the person is sentenced.

### 2.3.2 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”.

Admonition will be treated as a “non-custodial offence or other out of court disposal that is recorded on a person’s criminal record” (i.e. line 4 in [Table 2.1](#)). However, it can also be used in conjunction with a compensation order for example.

### 2.3.3 Cautions

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

A Scottish caution will be treated as a “non-custodial offence or other out of court disposal that is recorded on a person’s criminal record” (i.e. line 4 in [Table 2.1](#)).

### 2.3.4 Procurator Fiscal Fines

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

The offer will allow the alleged offender to pay a sum of money as a “fiscal fine” or as compensation to someone affected by the alleged offence. If the offender agrees to pay the fine, they will not be prosecuted. Fiscal fines are **not** convictions. The decision maker will not consider them when assessing good character.

[Back to Contents](#)

## 2.4 Convictions and Sentences Imposed Outside of the UK

The decision maker will normally consider any conviction issued as if it occurred within the UK. The starting point will always be the sentence imposed.

The decision maker will not take into account a conviction for something the British Government believes to be legitimate in any circumstances; for example homosexuality or membership of a trade union. However, the fact that an equivalent offence does not exist in British law does not in itself mean the decision maker should not take the offence into account.

The decision maker should look at what the offence indicates about the applicant's character, and the fact that a person is prepared to disobey the law in another country is relevant here, even if their conduct would have been lawful in the United Kingdom.

[Back to Contents](#)

## 2.5 Convictions and Sentences Varied on Appeal

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

Where a person is acquitted, the decision maker will treat it as if there was never a conviction, although the decision maker may still take into account the circumstances that led to charges being brought

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

[Back to Contents](#)

## 2.6 Persistent Offenders

Decision makers should take into account persistent offending when assessing a person's character even if only as the overall pattern of behaviour may justify refusing an application, even if the sentences imposed would not normally in themselves be a reason for refusal in line with [Table 2.1](#). The decision maker should apply the same approach on persistent offenders as that set out in the guidance on the General Grounds for Refusal ([External Link](#) / [Internal Link](#)).

[Back to Contents](#)

## 2.7 Offences Which Cause Serious Harm

Decision makers should take into account the harm caused by a particular offence when assessing character, even if the punishment imposed would not normally lead to an application being refused in line with [Table 2.1](#). The decision maker should apply the same approach on serious harm as that set out in the guidance on the General Grounds for Refusal ([External Link](#) / [Internal Link](#)).

[Back to Contents](#)

## 2.8 Sexual Offences and the Sex Offenders Register

The Sexual Offences Act 2003 (like the Sex Offenders Act 1997) 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:

- a. Convicted of the offence; **or**

- b. Found not guilty of the offence by reason of insanity; **or**
- c. Found to be under disability and to have done the act he or she is charged with; **or**
- d. (in England, Wales or Northern Ireland) cautioned for the offence.

This can also include convictions for offences outside the UK.

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

The courts also have the power to impose the following additional orders on certain sex offenders:

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

A list of the most common civil orders is attached at [section 3A – Potential Court Orders](#). However, this is not an exhaustive list.

The decision maker will normally refuse any application from a person who is subject to reporting notifications and/or one of the additional orders listed above. This is regardless of whether their conviction(s) still come within the sentence-based thresholds at [Table 2.1](#).

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

[Back to Contents](#)

# Section 3: Criminal Convictions – Non-Custodial Sentences & Other Out of Court Disposals

## 3.1 Fines

A fine will be considered a “non-custodial offence or other out of court disposal that is recorded on a person’s criminal record” (i.e. line 4 in [Table 2.1](#)).

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

Where this applies, the decision maker will consider the factors listed at [section 3.8 – Considering Cumulative, Non-Custodial Sentences](#).

[Back to Contents](#)

## 3.2 Fixed Penalty Notices, Penalty Charge Notices & Penalty Notices for Disorder

Fixed Penalty Notices, Penalty Charge Notices and Penalty Notices for Disorder are imposed by the Police or other authorised enforcement officers for traffic rule violations, environmental and civil violations. It is a way of the criminal justice system disposing of fairly minor offences without the need for a person to attend court. Receiving one does not form part of a person’s criminal record as there is no admission of guilt.

The decision maker will not consider these unless the person has:

- a. failed to pay and there were criminal proceedings as a result; or
- b. received numerous fixed penalty notices which would suggest a pattern of behaviour that calls into question their character.

Where a fixed penalty notice or fiscal fine has been referred to a court due to non-payment or the notice has been unsuccessfully challenged by the person in court, the decision maker will consider this as a conviction and assessed in line with the new sentence imposed.

Where b. applies, the decision maker will consider the factors listed at [section 3.8 – Considering Cumulative, Non-Custodial Sentences](#).

Further information on Penalty Notices for Disorder is available on the Ministry of Justice website: <http://www.justice.gov.uk/downloads/oocd/pnd-guidance-oocd.pdf>

[Back to Contents](#)

### 3.3 Cautions, Warnings and Reprimands

A caution (simple or conditional), warning or reprimand are all examples of an “out of court disposal that are recorded on a person’s criminal record” (i.e. line 4 in [Table 2.1](#)).

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

Where this applies, the decision maker will consider the factors listed at [section 3.8 – Considering Cumulative, Non-Custodial Sentences](#).

Further information on Simple Cautions is available on the Ministry of Justice website: <http://www.justice.gov.uk/downloads/oocd/adult-simple-caution-guidance-oocd.pdf>

[Back to Contents](#)

### 3.4 Community Sentences

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

Supervision	Exclusion from specified areas
Compulsory unpaid work	A residence requirement
Participation in specified activities	Mental health treatment
Prohibition from undertaking specific activities	Drug rehabilitation
Undertaking accredited programmes	Alcohol treatment
Curfew	Attendance centre

Having one or more of the above is a “non-custodial offence or other out of court disposal that is recorded on a person’s criminal record” (i.e. line 4 in [Table 2.1](#)).

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

Where this applies, the decision maker will consider the factors listed at [section 3.8 – Considering Cumulative, Non-Custodial Sentences](#).

[Back to Contents](#)

## 3.5 Confiscation and Forfeiture Orders

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

This is similar to a fine, with the person being ordered having to pay the amount within a set period. However, the decision maker will **should not** treat it as a fine for the purposes of a conviction and it will not count as a non-custodial sentence for the purposes of [Table 2.1](#).

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

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

[Back to Contents](#)

## 3.6 Civil Orders

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

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

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

A list of the most common orders is available at section 9 of the IDIs – Potential Court Orders. However, this is not an exhaustive list.

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

Therefore, the decision maker will not consider these unless the person has:

- a. violated or broken the civil order and there were criminal proceedings as a result; or
- b. received an order (or orders) which would suggest a pattern of behaviour that calls into question their character.

In cases that fall into a. above, the decision maker will consider this as a conviction and assessed in line with the new sentence imposed.

In cases that fall into b. above, the decision maker will consider the factors listed at [section 3.8 – Considering Cumulative, Non-Custodial Sentences](#).

[Back to Contents](#)

## 3.7 Hospital Orders & Restriction Orders

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

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

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

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

Being subject to a Hospital Order is a "non-custodial offence or other out of court disposal that is recorded on a person's criminal record" (i.e. line 4 in [Table 2.1](#)).

However, if the Hospital Order or Restricted Hospital Order has not been fully discharged, the decision maker will normally refuse citizenship irrespective of when the person was subject to the Order.

[Back to Contents](#)

## 3.8 Considering Cumulative, Non-Custodial Sentences

Decision makers may still refuse an application where a person's record shows a 'non-custodial offence or other out of court disposal' older than 3 years, if the circumstances of the conviction or disposal call the person's character into question.

The factors the decision maker should consider include, but are not restricted to:

- (a) **The number of non-custodial sentences or other out of court disposals on the applicant's record.** There is no set number of non-custodial sentences or disposals that would lead to an application being refused. However, the higher the number the more likely it is the application will be refused.
- (b) **The period over which offences were committed or other disposals occurred.** Decision makers should consider whether the offences or other disposals indicate a pattern of behaviour that could justify a refusal. For example, a series of minor offences or disposals may indicate sustained anti-social behaviour or disregard for the law which will be relevant to the assessment of the person's character.

- (c) **The nature of the offences or the behaviour that led to other disposals.** Decision makers should look at the nature of the offences involved, or the behaviour that led to an out of court disposal. For example behaviour involving anti-social behaviour, drug use, or violence may well indicate that a person's character is such that their application should be refused (particularly if there is a pattern of such behaviour). In contrast isolated minor incidents such as traffic violations will not normally in themselves indicate that a person is of bad character. However, each application must be considered individually.
- (d) **Any other historical or recent convictions.** Decision-makers should bear in mind that their task is to make an overall assessment of a person's character, so older non-custodial sentences or out of court disposals may be relevant if there are other more serious convictions. Decision makers should look to see if the older non-custodial sentences or out of court disposals are relevant to their assessment of a person's character when looked at alongside other more serious or recent convictions or out of court of disposals.
- (e) **Other factors.** Decision makers should take into account any other factors that are relevant to a person's character, such as the particular circumstances in someone's life when they received the non-custodial sentence or the other out of court disposal occurred or positive evidence of their good character despite their record.
- (f) **Age.** Decision makers should take into account a person's age at the time older non-custodial sentences were imposed or other out of court disposals took place. Isolated youthful indiscretions will not generally indicate a person is of bad character if that individual has clearly been of good character since that time.

At all times decision makers should remember that each case will depend on its individual circumstances and must be determined on its own merits.

[Back to Contents](#)

# Section 4: Other Criminal and Suspected Criminal Activity

## 4.1 Pending Prosecutions

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

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

Insufficient evidence to bring a case to court does not mean that the decision maker will grant the application. The standard of proof is different. However, the decision maker will never assume or imply that the person is guilty of the charge itself.

The decision maker will not normally grant citizenship to a person who has a prosecution pending. This does not prevent them establishing whether the other requirements for citizenship are met. If the application will be refused without reference to the latest offence, the decision maker will do so. If not, the case may be held.

If an application is refused for other reasons, the decision maker will normally inform the person that any further application for citizenship is unlikely to be successful whilst the criminal charge(s) is/are still pending.

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

[Back to Contents](#)

## 4.2 Failure to Disclose Convictions or Criminal Proceedings

Where an applicant has attempted to conceal criminal charges or has failed to take reasonable steps to notify the Home Office that they have a prosecution pending, the decision maker will follow the guidance at [section 8 – Deception & Dishonesty](#).

[Back to Contents](#)

## 4.3 Extradition Requests and the European Arrest Warrant (EAW)

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

The EAW operates in a similar way. It is the process by which another member state issues an arrest warrant and then subsequently seeks its enforcement either for the person to stand trial or to complete their prison sentence.

The decision maker will normally refuse an application where the person is subject to an EAW or extradition warrant or has:

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

Depending on other circumstances in the case, the decision maker should **not** normally refuse a person where:

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

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

The decision maker will not disclose the fact that an extradition request has been made if the person is unaware of this – even if no action has been taken.

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

[Back to Contents](#)

## 4.4 Suspected Criminal Activity

In some cases, information may reveal that a person is known or strongly suspected of criminal activity, but for various reasons has neither been charged nor convicted. The decision maker will take into account the nature of the information and the reliability of the source.

Where there is firm and convincing information to suggest that a person is a knowing and active participant in serious crime (e.g. drug trafficking), the application will normally be refused. However, the decision maker will not rely on old reports about suspicions of criminality in order to refuse an application.

## 4.5 Involvement with Gangs

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

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

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

## 4.6 Association with Known Criminals

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

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

## 4.7 Proceeds of Crime and Finances of Questionable Origins

Where there is reliable information that the person has benefitted from the proceeds of crime, the decision maker will normally refuse the application.

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

[Back to Contents](#)

# Section 5: War Crimes, Terrorism and Other Non-Conducive Activity

## 5.1 War Crimes, Crimes Against Humanity and Genocide

If there is information to suggest that the person has been involved or associated with war crimes, crimes against humanity or genocide, the decision maker must refer the case to the Deprivation Screening Team (DST).

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

[Back to Contents](#)

## 5.2 Terrorism

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

[Back to Contents](#)

## 5.3 Corruption

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

[Back to Contents](#)

## 5.4 Public Order

Where a person has engaged in activities that have or are likely to give rise to a risk to public order, the decision maker will normally refuse the application.

Examples include but are not limited to where the person:

- a. has made speeches (or similar) with the aim of inciting ethnic/racial, religious or other discriminatory violence;
- b. has caused or could reasonably incite others to commit an offence. For example, the person may have extreme views which, if expressed, could result in civil unrest and a breach of the law;
- c. has advocated violent disorder or violent overthrow of the state. This does not need to be politically motivated. For example, a known football hooligan could be regarded as a public order risk.

[Back to Contents](#)

## 5.5 Exclusion from the Refugee Convention

The decision maker will normally refuse an application from a person who has:

1. applied for asylum; **and**

2. has either been
  - a. excluded from the Refugee Convention by virtue of Article 1F (this applies to those who have committed war crimes, crimes against humanity, or other serious non-political crimes); or
  - b. recognised as a refugee under the Refugee Convention, but may be removed under Article 33(2) of the Convention (Article 33(2) permits the removal of refugees who are danger to the security of the UK or who constitute a danger to the community in the UK); **but**
3. has not been removed due to legal reasons (and has therefore been granted leave to remain).

For further information on the exclusion provisions, see the guidance on Exclusion: Article 1F of the Refugee Convention ([External Link](#) / [Internal Link](#)).

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

[Back to Contents](#)

# Section 6: Financial Soundness

## 6.1 Bankruptcy and Liquidation

### 6.1.1 Bankruptcy

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

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

- a. concealment of assets,
- b. concealment or destruction of relevant financial documents,
- c. fraudulent claims; and
- d. false statements or declarations.

Making false declarations on bankruptcy forms can constitute perjury.

Where the decision maker has information to suggest that on the balance of probabilities that bankruptcy fraud has taken place, they will normally refuse the application.

Details of all undischarged and recently discharged bankrupts is available at <http://www.insolvency.gov.uk/bankruptcy/bankruptcysearch.htm>.

### 6.1.2 Liquidation

Liquidation differs from bankruptcy. It is action taken against a company instead of an individual. Liquidation occurs when a company is 'wound up'. There are also alternatives to liquidation that may come up during the course of a citizenship application. These include:

- a. Informal arrangements – the company may have considered writing to all its creditors to see if a mutually acceptable agreement can be reached.
- b. Company voluntary arrangement (CVA) – this is a formal version of the arrangement described above. The directors would need to apply to the court with the help of an authorised insolvency practitioner, who would supervise the arrangement and pay the creditors in line with the accepted proposals.
- c. Administration – this is a court procedure that gives the company some breathing space from any action by creditors. A court can grant an administration order to enable the company to:
  - i. Survive, in whole or in part, as an ongoing business;
  - ii. Organise a voluntary arrangement or compromise with its creditors;
  - iii. Get a better realisation of assets than would be possible if the company went into liquidation.

Further information on liquidation can be found on the Insolvency Agency's website: <http://www.insolvency.gov.uk/>.

### 6.1.3 Deciding the Case

If a person states that they have been declared bankrupt or a Director or involved in the management of a company (either wholly or partly) that has gone into liquidation, the decision maker will normally make further enquiries.

On receipt of information, the decision maker will normally grant an application where there is evidence that:

- a. The bankruptcy order has been annulled;
- b. The person was discharged at least 10 years ago;
- c. The person was declared bankrupt abroad; or
- d. The person was involved with a company that was liquidated over 10 years ago.

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

- a. Take account of the scale of the bankruptcy or liquidation;
- b. Take account of the economic circumstances at the time of application when looking at any mitigating circumstances;
- c. Make a judgement on how culpable the person was in their either becoming bankrupt or their involvement in the company that went into liquidation.

The decision maker will determine whether the person was reckless or irresponsible in their financial affairs leading to their bankruptcy or their company's liquidation. If so, it is likely to be reflected by a disqualification being obtained. A disqualification order or undertaking prevents a person from being a Director or taking part in the management of a limited company for a period of up to 15 years. Details of all disqualifications are on the [Companies House website](#). Where this is the case, the decision maker will normally refuse an application.

The decision maker will also normally refuse an application where the person has deliberately relied on a recession in order to avoid payment of taxes or payment to creditors.

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

[Back to Contents](#)

## 6.2 Debt

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

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

[Back to Contents](#)

## 6.3 Dishonesty in Relation to Public Funds

The decision maker will not refuse an application simply because the person is reliant on public funds.

However, this would not extend to an applicant who is knowingly drawing or has knowingly drawn public funds to which they are not entitled. Where this is the case, the decision maker will normally refuse the application.

[Back to Contents](#)

## 6.4 Non-Payment of Council Tax

The decision maker will **not** normally refuse an application where the person has been unable to pay Council Tax because of their financial position. This is particularly true if some sort of arrangement is being, or has been, negotiated with the relevant authority.

However, payment of Council Tax is a legal requirement and non-compliance is a punishable offence. Therefore, a decision maker will normally refuse an application where a person has:

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

[Back to Contents](#)

# Section 7: Notoriety

## 7.1 Background

The decision maker should note that the following matters should **not** normally, of themselves, be relevant to assessing good character:

- a. Divorce/separation, or other marital or domestic problems,
- b. Promiscuity or sexual preference within the law,
- c. Drinking or gambling,
- d. Eccentricity, including beliefs, appearance and lifestyle; or
- e. Unemployment/working habits/ other legitimate means of support.

However, where there is evidence that a person has – by the scale and persistence of their behaviour – made themselves notorious in their local or the wider community, consideration should be given to refusal. In such circumstances, the decision maker may ask for an interview to help substantiate any information received, for example, from members of the public.

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

The decision maker should take particular care when the person's behaviour may be seen as notorious and so widely known that any decision on the application is likely to attract public attention or press reaction.

The anticipated reaction from the public or media should not unduly influence the decision. However, the decision maker should consider the potential impact and discuss this with the Deputy Chief Caseworker in the first instance.

[Back to Contents](#)

## 7.2 Parenting

The decision maker will not normally refuse an application based on the actions of their child or children. This includes where the person's child has been convicted of a criminal offence, issued with an ASBO or comes within the other categories listed in this guidance.

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

In cases where parent(s) have been convicted for breaching – or lack of compliance with – a Parenting Order, the decision maker will consider the application under [section 2 – Criminal Activity](#) and [section 3 - Out of Court Disposals](#).

[Back to Contents](#)

# Section 8: Deception and Dishonesty

## 8.1 General Approach

Concealment of information or lack of frankness will raise doubt about – and therefore reflect poorly on – their character.

The decision maker will normally refuse an application where the person has attempted to lie or conceal the truth about an aspect of their application, whether on the application form or in the course of enquiries.

[Back to Contents](#)

## 8.2 Deceitful or Dishonest Dealings with Her Majesty's Government

Restricted – Not for Disclosure – Start of Section

Restricted – Not for Disclosure – End of Section

The decision maker will normally refuse an application where the person has attempted to deceive or otherwise been clearly dishonest in their dealings another department of government.

Examples might include but are not limited to:

- a. fraudulently claiming or otherwise defrauding the benefits system;
- b. unlawfully accessing services (e.g. housing or health care) for which access is controlled by the immigration rules and/or Acts;
- c. providing dishonest information in order to acquire goods or services (e.g. providing false details in order to obtain a driving licence); or
- d. providing false or deliberately misleading information at earlier stages of the immigration application process (e.g. providing false bio-data, claiming to be a nationality they were not or concealing conviction data). Where this applies, a refusal under deception grounds may also be merited.

The decision maker will assess the extent to which false information was provided and what, if anything, was intended or actually gained as a result.

The decision maker will **not** normally refuse an application because the person made a genuine mistake on an application form or because they claimed something to which they reasonably believed or were advised they were entitled.

[Back to Contents](#)

## 8.3 Failure to Disclose Convictions

Where the person has failed to disclose any (including minor) outstanding charges or convictions that would result in refusal of the application, the decision maker will normally refuse the application.

In such cases, the decision maker will normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

[Back to Contents](#)

# Section 9: Immigration Related Issues

## 9.1 Bogus Marriages/Civil Partnerships and Marriages/Civil Partnerships of Convenience

The decision maker will normally refuse an application where there is evidence that a person has entered into a marriage/civil partnership which is not genuine – particularly where an application for citizenship is on the basis of that marriage/civil partnership.

These will generally fall into two categories:

- a. those which are invalid or entirely fictitious, involving forgery or the misuse of documents relating to another person; and
- b. valid marriages/civil partnerships contracted for the specific purpose of evading immigration control or gaining an easier route to citizenship (marriages/civil partnerships of convenience).

In such cases, the decision maker will normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

[Back to Contents](#)

## 9.2 Abuse of the English Language and/or Knowledge of Life Test

The decision maker will normally refuse an application where there is evidence that a person has 'cheated' in a Knowledge of Life, "Life in the UK" and/or English Language Test.

For example, by allowing a person to take the test on their behalf, paying a person to take the test on their behalf or submitting false documents or otherwise making a dishonest statement with regards to either.

The decision maker will also normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

[Back to Contents](#)

## 9.3 Deception in Previous Applications

The decision maker will normally refuse an application where there is evidence that a person has employed deception either:

- a. during the citizenship application process; or
- b. in a previous immigration application.

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

The decision maker will also normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

[Back to Contents](#)

## 9.4 Prosecution for False Statements

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

The initiative for any prosecution under section 46(1) normally lies with the police and the Crown Prosecution Service ('the CPS'). Prosecutions should normally be commenced within six months of the commission of the offence, although this period may be extended to three years in after the commission of the offence and not more than 2 months after the date certified by a chief officer of police to be the date on which sufficient evidence came to note.

If a false statement has been made on the application form, and the form was received more than six months after the declaration had been signed, the decision maker may return the application to be re-declared, thus giving the person an opportunity to update the information on the form. This, however, also renews the period within which a prosecution is to be commenced. It should not be taken without approval of a Deputy Chief Caseworker in the first instance.

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

The decision maker will also normally refuse any subsequent application for citizenship if it is made within 10 years from the date of the refusal on these grounds.

### 9.4.1 False Statements by Referees

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

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

Regardless of whether a prosecution is pursued, the decision maker will normally refuse an application if there are grounds for believing that the person has prompted or been complicit in the referees' deception.

In such cases, the applicant should be advised that an application for citizenship made within 10 years from the date of refusal on these grounds would be unlikely to be successful.

[Back to Contents](#)

## 9.5 Assisting Illegal Migration

The decision maker will normally refuse an application if there are grounds for believing that the person is currently, or has previously been, involved in an attempt to assist someone in the evasion of immigration control. This includes a person whose spouse's/civil partner's recent application for entry clearance has been refused on relationship grounds.

However, the decision maker will **not** normally refuse an application where the person has a history of evading control themselves, particularly where there is no other evidence to cast doubt on their character.

[Back to Contents](#)

## 9.6 Hiring Illegal Workers

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

The decision maker will normally refuse an application where there is reliable evidence to suggest that a person has employed illegal workers.

[Back to Contents](#)

## 9.7 Deprivation of Citizenship

The decision maker will normally refuse an application where the person has previously been deprived of their British citizenship under section 40 of the BNA 1981. The timeframe will run from the date the deprivation order is issued and depends on the reason for deprivation.

In cases where the deprivation was based on fraud, false representation or the concealment of material fact (section 40(3)), this will normally be for a period of at least 10 years.

For cases where deprivation was on “conducive to the public good” grounds (section 40(2)), different periods will be applied depending on facts of the case.

Deprivation for a serious criminal offence may also involve a conviction that will mean a person would never normally be eligible to re-acquire citizenship. It may also be for other reasons set out in this guidance.

If a person applies before the end of the periods set out above and asks for discretion to be exercised in their favour, the decision maker will refer the application to the Chief Caseworker in the first instance.

[Back to Contents](#)

# Section 10: Exceptional Grants

There may be exceptional cases where a person will be granted citizenship even where they ordinarily would fall to be refused.

Exceptions will generally fall into one of the following categories:

- a. the person's conviction is for an offence which is not recognised in the UK and there is no comparable offence. See [section 2.4 - Non-UK Convictions](#); or
- b. the person has one single non-custodial sentence, it occurred within the first 2 years of the 3 (i.e. the person has had no offences within the last 12 months), there are strong countervailing factors which suggest the person is of good character in all other regards and the decision to refuse would be disproportionate.

All proposals to grant exceptionally **must** be approved by a Deputy Chief Caseworker in the first instance.

Any proposal to grant a person who has a sentence of 4 years or more imprisonment **must** be approved by Ministers before the decision is implemented.

[Back to Contents](#)

# Change Record

Version	Author(s)	Date	Change References
3.0	MS (CPT)	16/09/2013	Issued as interim draft to deal with post 13/12/2012 applications only. New section on hospital orders.
4.0	MS (CPT)	02/10/2013	Updated draft.

[Back to Contents](#)