

Rehabilitation of Offenders Act

Rehabilitation of Offenders Act

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This guidance explains how the Rehabilitation of Offenders Act 1974 applies to immigration and nationality decisions taken on or after 1 October 2012, when the Home Office became exempt from the act. The Immigration Rules were amended on 13 December 2012 setting out how this exemption applies.

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

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

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

The effect of this is that an individual applying for entry clearance, leave to enter, leave to remain – including indefinite leave to enter or remain (settlement) – and nationality must declare all of their convictions when applying and/or that the decision maker is entitled to rely on information about spent as well as unspent convictions when considering an application.

It also applies to any decision, or proposed decision, taken under an immigration act or the Immigration Rules where it relates to the entitlement of a person to enter or remain in the UK.

Therefore, it includes, but is not limited to:

- Decisions on immigration bail.

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[Rehabilitation of Offenders Act 1974](#)
[Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)

	<ul style="list-style-type: none"> • Decisions relating to the administrative removal or deportation of a person from the UK. • Whether or not to revoke a deportation order issued against a person. <p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p> <p>Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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Changes to this guidance

Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail	<p>This page lists changes to the Rehabilitation of Offenders Act guidance, with the most recent at the top.</p> <table><tr><th>Date of the change</th><th>Details of the change</th></tr><tr><td>5 July 2013</td><td>New guidance.</td></tr></table>	Date of the change	Details of the change	5 July 2013	New guidance.	Related links See also Contact Information owner
Date of the change	Details of the change					
5 July 2013	New guidance.					

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Initial decision making

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

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Deportation proceedings

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Revocation of a deportation order

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Cases at appeal

Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail	<p>This page tells you how to apply the Rehabilitation of Offenders Act to cases at appeal.</p> <p>Where a decision has already been taken to refuse an application and the person is appealing against that decision, it will not normally be appropriate to add to the refusal with 'new' information about spent convictions.</p> <p>This is except where the information is fundamental in supporting that decision. Examples of where this might be necessary include, but are not limited to:</p> <ul style="list-style-type: none">• A decision to refuse on character and conduct grounds would be significantly enhanced by revealing spent convictions.• A decision to refuse because a person is a persistent offender would be significantly enhanced by revealing spent convictions. <p>However, it would not normally be appropriate where, for example:</p> <ul style="list-style-type: none">• There is a clear reason for refusal because of the person's criminality. For example, they already meet the deportation threshold or their unspent convictions make a strong case for deportation or refusal.• There is (an)other clear reason(s) for refusing the person and criminality is immaterial to that. For example, the person does not meet the specific requirements of the route they are seeking leave under.	
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Applications for immigration bail

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Contact

Initial decision making Failing to declare convictions Deportation proceedings Revocation of a deportation order Cases at appeal Applications for immigration bail	<p>This page explains who to contact for more help with a specific case involving the Rehabilitation of Offenders Act.</p> <p>If you have read the relevant legislation and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <div><div>Restricted – do not disclose – start of section</div><div>The information in this page has been removed as it is restricted for internal Home Office use only.</div><div>Restricted – do not disclose – end of section</div></div> <p>The modernised guidance team will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	<p>Related links</p> <p>Changes to this guidance Information owner</p> <p>External links Links to staff intranet removed</p>
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This page tells you about this version of the Rehabilitation of Offenders Act guidance and who owns it.

Version	1.0
Valid from date	5 July 2013
Policy owner	Criminality policy team
Cleared by director	Sonia Dower
Director's role	Director, operational policy and rules unit
Clearance date	11 December 2012

The modernised guidance team will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.

Restricted – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only.

Restricted – do not disclose – end of section

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Links to staff intranet removed