



Immigration: criminal convictions and entry to the UK

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A person with an unspent criminal record anywhere in the world could be refused entry to the UK on one of several grounds.

For non-EEA (European Economic Area) citizens, refusal is mandatory in some circumstances and discretionary in others. Information about criminal convictions may appear in the databases which are checked by the UK Border Agency when considering an immigration application. However, if a person's conviction is considered to be 'spent', it cannot be used to refuse them entry to the UK.

EEA citizens may be excluded from the UK only on very limited grounds of public policy, public security or public health. Previous criminal convictions cannot alone constitute grounds for taking such measures.

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1 Non-EEA citizens

People who are citizens of countries outside the European Economic Area (EEA),¹ and who are not family members of EEA citizens exercising free movement rights, may apply to come to the UK under the UK's *Immigration Rules*.² This application may be refused either if they do not meet the requirements of the *Immigration Rules* for the category in which they are applying, or on one of the general grounds for refusal which are also set out in the *Immigration Rules*. There are two categories of general grounds for refusal: mandatory and discretionary refusal.

1.1 Mandatory refusal

Under the UK's *Immigration Rules*, a visa or leave to enter the UK "is to be refused" if, *inter alia*:

- the Secretary of State has personally directed that a person's exclusion from the UK is conducive to the public good;³ or
- material facts in relation to the application have not been disclosed.⁴

1.2 Discretionary refusal

A visa or leave to enter the UK "should normally be refused" if, *inter alia*:

- the person has been convicted in any country including the United Kingdom of an offence which, if committed in the United Kingdom, is punishable with imprisonment for a term of 12 months or any greater punishment or, if committed outside the United Kingdom, would be so punishable if the conduct constituting the offence had occurred in the United Kingdom (save where the Immigration Officer is satisfied that admission would be justified for strong compassionate reasons);⁵ or
- where, from information available to the Immigration Officer, it seems right to refuse leave to enter on the ground that exclusion from the United Kingdom is conducive to the public good; if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter.⁶

1.3 Access to information

How the UK immigration authorities get information about a person's conviction in another country is a different matter. The UK does not have unfettered access to other countries' criminal records databases, but countries do share specific information. Some police information would show up on the UK's 'warnings index' and other databases against which people applying to come to the UK are checked,⁷ as would people identified by Interpol as being of interest. The UK's warnings index has over 17 million entries.⁸

¹ The EEA comprises the EU Member States plus Iceland, Liechtenstein and Norway, with a linked agreement for Switzerland

² Home Office [Immigration Rules](#) HC 395 of 1993-94 as amended

³ Home Office [Immigration Rules](#) HC 395 of 1993-94 as amended, para. 320(6)

⁴ *Ibid* para. 320(7A)

⁵ *Ibid* para. 320(18)

⁶ *Ibid* para 320(19)

⁷ See UK Border Agency, *Entry Clearance Guidance - General Instructions*, [Chapter 26 - Refusals](#) [viewed 17 February 2009]

⁸ Rt Hon Jacqui Smith MP, [HC Deb 9 July 2007 cc1175](#)

If a visa section were informed of a person's criminal record overseas, they could take this into account when deciding an application. Most visa applications have to be made in the person's home country, though visit visas may also be obtained from British posts in other countries.

1.4 Spent convictions

Under the *Rehabilitation of Offenders Act 1974*, a person who has been convicted of any offence or offences is treated as a "rehabilitated person" after the applicable rehabilitation period, and the conviction is treated as "spent" or ignored. UK Border Agency guidance describes the 1974 Act, its rehabilitation periods and exceptions, and states that the Act means that spent convictions cannot jeopardise immigration applications:

For the purposes of immigration control, the main effect of the Act is to exempt from the provisions of paragraph 320(18) all rehabilitated offenders, regardless of where they were convicted.

[...]

Before a person may be refused entry clearance or leave to enter on grounds of criminal record, the entry clearance officer or immigration officer must determine that the offender is not a rehabilitated person as defined in the Act. To this end the entry clearance officer or immigration officer must know:

- * The nature of the offence committed;
- * The date of conviction;
- * The nature of the sentence imposed, and whether that sentence has been served, undergone or complied with.

Where it is established that a person has been convicted of an offence which appears to fall within the scope of paragraph 320(18) and is not a rehabilitated person, refusal of entry clearance or leave should normally follow (unless the officer is satisfied that admission would be justified for strong compassionate reasons).

Where it is established that the offender has become a rehabilitated person and their conviction spent, they may not be refused leave to enter or entry clearance on the basis of that conviction.

Paragraph 320(19) of the Immigration Rules states that entry clearance or leave to enter should normally be refused where from information available it seems right to refuse entry on the ground that exclusion from the UK is conducive to the public good in light of the person's character, conduct or associations. Where it is established that a person is a rehabilitated person and a previous conviction spent they may not be refused entry clearance or leave to enter on non-conducive grounds on the basis of that conviction.

Entry clearance officers should refer all cases to ECO Support in UKvisas policy section. Immigration officers should refer all cases to a chief immigration officer. It may also be appropriate to seek assistance from the police, particularly where an offender has committed offences in the United Kingdom. Where difficulty arises in equating a

sentence imposed by a court outside Great Britain with one of those set out in the table in paragraph 2 above, immigration officers should seek guidance from BCPI.⁹

2 EEA citizens

EEA citizens and their family members do not have to comply with the UK's immigration rules but can instead live and work in the UK under European free movement rules. They may be excluded from the UK only on very limited grounds of public policy, public security or public health. The main law setting this out is the European Free Movement Directive,¹⁰ as implemented in the UK by the *Immigration (European Economic Area) Regulations 2006*.¹¹

2.1 The Free Movement Directive

According to Article 27 of the Directive, Member States may restrict the freedom of movement and residence of Union Citizens (and their family members) on grounds of public policy, public health or public security. These grounds can not be invoked to serve economic ends. Measures taken on grounds of public policy/security must be proportional and based exclusively on the conduct of the individual concerned: previous criminal convictions cannot alone constitute grounds for taking such measures. Personal conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In order to ascertain whether the person concerned presents a danger, the Host Member State may request other Member States to provide information concerning any previous police record that the person concerned may have. Such enquiries must not be made as a matter of routine, and a reply to any checks made will be given within two months.

2.2 The UK's EEA Regulations

This provision of the Directive is reflected in the UK Regulations, which state that an EEA citizen's previous criminal conviction will not in itself justify a decision to exclude or expel on public policy or public security grounds, and that any such decision must be proportional and must reflect a genuine, present and sufficiently serious threat to the fundamental interests of society. They also set out the tighter restrictions on exclusion or expulsion that apply to EEA citizens and their family members with permanent residency, those with 10 years' residency and children, which reflect the courts' interpretation of these provisions:

21 Decisions taken on public policy, public security and public health grounds

(1) In this regulation a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

⁹ Home Office [Immigration Directorate Instructions](#) ch32 s2, *The Rehabilitation of Offenders Act 1974*, February 2006 [viewed 17 February 2009]

¹⁰ [Directive 2004/38/EC](#), 29 April 2004

¹¹ SI 2006/1003, as amended

(b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

(d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;

(e) a person's previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

(a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation^[12] or is not a disease to which section 38 of the Public Health (Control of Disease) Act 1984^[13] applies (detention in hospital of a person with a notifiable disease) shall not constitute grounds for the decision; and

(b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

The question of when or how the rights of an EEA citizen may be excluded on grounds of public policy, public security or public health has been interpreted tightly and narrowly by the courts.¹²

2.3 UK Border Agency guidance

The Government's view of the law on exclusions etc. of EEA citizens and their families on the grounds on public policy and public security is set out in UK Border Agency guidance:

7.1. Public Policy & Public Security

Decisions taken on grounds of public policy and public security must take account of the following set out in regulation 21 of the EEA Regulations:

¹² Joint Council for the Welfare of Immigrants, *Immigration, Nationality and Refugee Law Handbook*, 2006 edition, p551

- Decisions shall comply with the principle of proportionality (see paragraph 7.2) and shall be based exclusively on the personal conduct of the individual concerned.
- Previous criminal convictions shall not in themselves constitute grounds for taking such measures.
- The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
- Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

The phrase 'genuine, present and sufficiently serious threat' is concerned with an existing or perceived threat by an individual to members of the public in a Member State. Whether or not such a threat exists is a matter for judgement in the individual circumstances of each case. However, the following points should be taken into account:

- The phrase 'fundamental interests of society' is assumed to mean the values and moral set up of society and takes account of those who wish to overturn society, such as neo-Nazis and Islamic fundamentalists, and those who commit serious or persistent crimes.
- Previous criminal convictions for particularly serious crimes (e.g. rape, murder, class A drug smuggling) which mean the person is considered to represent a genuine, present and sufficiently serious threat to one the fundamental interests of society may justify a public policy or public security decision.
- In order to determine which crimes may fall within the scope of grounds of public policy, reference can be made to The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004. However do not assume that a crime listed in this Order automatically warrants a public policy or public security decision.
- If it is likely that a person convicted of a crime will reoffend this may justify a public policy or public security decision but refusal simply to repunish a person for a previous conviction for which sentence has been completed is not appropriate
- Persons charged with minor Customs or other criminal offences should not be refused admission on this basis alone.
- Facilitation of illegal entry may in itself be sufficient grounds to refuse admission to EEA nationals, particularly if the person is involved in persistent or large scale facilitation.
- National security can fall under public policy or public security.
- Public security does not necessarily equate with national security. Public security may also be a matter of personal security within society. Certain medical conditions (for example drug addiction or profound mental disturbance) may mean the person poses a threat to public policy or public security. These conditions might provide reasons for exclusion on public policy or public security grounds but not on public health grounds.¹³

The guidance emphasises the principle of proportionality:

¹³ UK Border Agency, [Immigration Directorate Instructions](#), ch7 s3, 'European economic area nationals and their families', para. 7.1

Before taking a decision to refuse on grounds of public policy or public security in relation to a person who resides in the United Kingdom immigration officers must take account of considerations such as the age, state of health, family and economic situation of the person in respect of whom the decision is taken, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin and decide whether it is proportionate to refuse admission to the person.

Those with permanent residence under the EEA Regulations may only be refused admission on serious grounds of public policy or public security. Those who have resided in the UK for more than 10 years or who are under 18 years of age may only be refused admission on imperative grounds of public security grounds.¹⁴

It also elaborates on the concept of 'serious and imperative grounds':

An EEA national or family member with a permanent right of residence should not be refused admission on public policy or public security grounds except on serious grounds of public policy or public security.

Decisions on imperative grounds are defined as decisions taken to prevent terrorism (as defined in section 1 of the Terrorism Act 2000) or other serious risks to the public or decisions taken in the interests of the relationship between the UK and another country.

EEA nationals who fall into the following categories should not be refused admission on public policy or security grounds except on imperative grounds of public security: a person who has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or a person who is under the age of 18 (unless the decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989).¹⁵

Further guidance is contained in the UK Border Agency's [European Casework Instructions](#).

2.4 Recent and forthcoming changes

Following [Sir Ian Magee's independent review of criminality information](#), the Home Secretary announced that the establishment of a UK Central Authority has enabled the exchange of criminal conviction information between EU member states and the UK.¹⁶

The Home Secretary has also announced that the Government will introduce changes to the UK's 2006 regulations that will allow her to exclude EEA nationals and their families from the UK before they travel to this country if they constitute a threat to public security or policy.¹⁷

¹⁴ Ibid para. 7.2

¹⁵ Ibid para. 7.3

¹⁶ HC Deb 4 December 2008 cc8-9WS

¹⁷ HC Deb 28 Oct 2008 c26WS