

**IMMIGRATION DIRECTORATES' INSTRUCTIONS
CHAPTER 13
SECTION 4 - AFTER-ENTRY CONVICTION CASES**

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1. INTRODUCTION

Where a person who is not a British citizen has been convicted of an offence he may be liable to deportation by virtue of either section 3(5)(a) of the Immigration Act 1971 on conducive grounds, or section 3(6) on the recommendation of the sentencing court.

In the case of a European Economic Area (EEA) national or the family member of an EEA national deportation is only allowed on grounds of public policy, public security or public health. In accordance with the Immigration (European Economic Area) Regulations 2006 where a decision is taken to remove an EEA national or family member of an EEA national on such grounds he will be liable to deportation under section 3(5)(a) of the 1971 Act. This includes those cases that have been recommended for deportation by a court.

2. HANDLING OF CONVICTION CASES

Cases are referred to the Border and Immigration Agency by the Prison Service, the Courts and the police. Such referrals should be forwarded to Criminal Casework Directorate for consideration if any of the following apply:

- There has been a court recommendation for deportation
- For non-EEA nationals : A custodial sentence of 12 months or more either in one sentence, or as an aggregate of 2 or 3 sentences over a period of 5 years.
- For EEA nationals: A custodial sentence of 24 months or more.

Where a person has valid leave, including indefinite leave to enter or remain or is entitled to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 and a borderline decision has been taken not to deport, it may be appropriate to send the person a warning letter. This indicates that any further criminal conviction will lead to their immigration status being reviewed and may result in their deportation.

Those who are found to be unlawfully in the United Kingdom, e.g. illegal entrants or overstayers, will be referred to the relevant Enforcement office. Those with extant or continuing limited leave who have an outstanding application will be referred to Managed Migration Directorate who may take the conviction into account when deciding the application.

3. THE REHABILITATION OF OFFENDERS ACT 1974

Under section 1(1) of the Rehabilitation of Offenders Act 1974 ("the Act"), where a person has been convicted of any offence(s), and provided the sentence given in respect of the conviction is not excluded from rehabilitation under the Act, after the applicable rehabilitation period has ended he is treated as a "rehabilitated person" and the conviction is treated as "spent". The fact a person's convictions are spent gives rise to certain consequences as set out in the Act. In particular, a person who becomes a rehabilitated person in respect of a conviction must be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction. A chart setting out rehabilitation periods and the effect of further convictions during the rehabilitation period is provided in **Chapter 32, Section 2 - "the Rehabilitation of Offenders Act 1974"**.

The Act does not extend to Northern Ireland but there is an order in effect containing similar provisions.

3.1 Effect of the Act on legal proceedings

The Act does not prevent the admission of evidence of a previous conviction (including a spent conviction) in criminal proceedings before a court in Great Britain and in various proceedings relating to adoption, guardianship or care of children (see section 7(2) of the Act), although the Courts have been asked to uphold the spirit of the Act wherever practicable. Matters relating to spent convictions are not admissible in evidence in other court proceedings, including immigration appeals, unless the court is satisfied in the light of any relevant considerations that justice cannot be done in the case except by admitting or requiring evidence relating to the spent convictions.

4. EFFECT OF THE REHABILITATION OF OFFENDERS ACT 1974 UPON THE WORK OF BIA

5.1 Convictions to which caseworkers may refer

Caseworkers may refer to convictions which are **excluded** from rehabilitation under the Act, i.e.

- a sentence of imprisonment for life;
- a sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding thirty months;
- a sentence of preventive detention;
- a sentence of detention during Her Majesty's pleasure or for life or a sentence of detention for a term exceeding thirty months passed under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (young offenders convicted of grave crimes) or under section 206 of the Criminal Procedure (Scotland) Act 1975 (detention of children convicted on indictment);
- a sentence of custody for life; and
- a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003, a sentence of detention for public protection under section 226 of that Act or an extended sentence under section 227 or 228 of that Act.

Caseworker may also refer to convictions which have not become spent [subject to normal instructions on the disclosure of information (see **Chapter 24** to these instructions)].

5.2 Disclosure of spent convictions to third parties

It is permissible for details of spent convictions to be disclosed for immigration purposes by one person to another in the course of their official duties, for example a police officer to BIA (sections 20-21 of the Immigration and Asylum Act 1999). However, care must be taken (when

dealing with telephone enquiries) that the identity of the caller is verified before any information is disclosed.

5.3 Requiring a person to disclose details of previous convictions

A rehabilitated person cannot be required to disclose details of spent convictions in response to questions at interview. At immigration appeals a rehabilitated person cannot be asked, or be required to answer, questions which would disclose the existence of spent convictions (the only exception to this is where the court is satisfied, in the light of any relevant considerations, that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions).

5.4 Evidence at appeals

Reference to spent convictions cannot normally be made in written or oral evidence before the Asylum and Immigration Tribunal (AIT). **Due care must be taken that an adverse decision is not founded on a spent conviction.** It must be remembered that a conviction which is not spent at the time of the refusal could in some cases become spent before the case goes before the AIT.

5.5 Reviewing Deportation Orders

The provisions of the Act should be taken into account in reviewing Deportation Orders where the person's criminal record was a significant factor in the decision to deport (see also **Section 5** to this Chapter, "**Revocation of Deportation Orders**").

5.6 Adverse decisions

Adverse decisions (such as the refusal to revoke a deportation order) should not be founded either wholly or partially on convictions which have become spent.

Exceptions may be made in exceptional circumstances (e.g. where a person has considerably delayed enforcement of a deportation order by going to ground) and with the authority of an officer not below Senior Caseworker. In such cases section 7(3) of the 1974 Act may allow evidence relating to a spent conviction to be admitted in evidence before the appellate authorities if, in the light of any relevant considerations, the Court or Tribunal decides that justice cannot be done in the case except by admitting or requiring evidence relating to the person's spent convictions.

6. ENTRY CLEARANCE APPLICATIONS

Caseworkers considering refusal of entry clearance on the grounds of an applicant's criminal record or on the basis that his exclusion is conducive to the public good on the grounds of his criminal record should follow the advice provided for immigration officers in **Chapter 9, Section 2, "Refusal of entry clearance or leave to enter on general grounds"** in respect of such cases.