



**ANNEX D TO CHAPTER 18**  
**THE GOOD CHARACTER REQUIREMENT**

<b>Process</b>	Applications for registration and naturalisation for citizenship		
<b>Implementation Date</b>	16-Sep-09	<b>Expiry/Review Date</b>	15-Sep-10

**CONTAINS MANDATORY INSTRUCTIONS**

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<b>Processes Affected</b> Applications for registration and naturalisation for citizenship from persons aged 18 or over.	
<b>Assumptions</b> Caseworkers will be able to receive appropriate training on processing applications for citizenship in light of this amended guidance.	

**NOTES**

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## Introduction

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1.1 There is no definition of Good Character in the British Nationality Act 1981 and therefore no statutory guidance as to how this requirement should be interpreted or applied. However, nationality law makes clear that the Good Character test is to be applied to all persons over the age of ten who apply for naturalisation or registration as a British citizen, except:

- a. Where an application is made under statelessness provisions in **Schedule 2** of the British Nationality Act 1981 (the Act), or;
- b. Where an application is made under **s.4B** of the Act from an eligible applicant

1.2 The Secretary of State must be satisfied that the applicant is of good character on the balance of probabilities. To facilitate this, applicants must answer in full all questions asked of them on the application form for naturalisation or registration as a British citizen to inform the assessment of good character. They must also inform Nationality Group of any significant event (e.g. such as a criminal conviction) that could have a bearing on the good character assessment.

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## 2. Aspects of the requirement

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2.1 Caseworkers should not normally consider applicants to be of good character if, for example, there is information to suggest:

- a. They have not respected, and/or are not prepared to abide by the law (e.g. 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) ([see sections 3 and 4](#)); or
- b. There is adequate information (i.e. it is more likely than not) to suggest that they have been involved previously in war crimes, terrorist related activities or other actions that are considered not to be conducive to the public good ([see sections 5 and 6](#)).
- c. Their financial affairs were not in appropriate order (e.g. failure to pay taxes for which they were liable) ([see section 7](#)); or
- d. Their activities were notorious and cast serious doubt on their standing in the local community ([see section 8](#)); or
- e. They had practiced deceit in their dealings with the UK Government ([see section 9](#)); or
- f. They have assisted in the evasion of immigration control ([see section 10](#)); or
- g. They have previously been deprived and are seeking to re-acquire citizenship within a prescribed period ([see section 11](#))

2.2 Caseworkers should normally accept that an applicant is of good character if:

- a. Enquiries of other government departments and agencies do not show fraud/deception has been perpetrated by the applicant in their dealings with them;

- b. There are no unspent convictions;
- c. There is no information to cast serious doubts on the applicant's character; and
- d. Where the applicant is a businessperson or is self-employed or a person of independent means or a sole representative - there is written confirmation from HM Revenue and Customs that their business affairs are in order.

2.3 If the application does not clearly fall into one of the categories outlined in paragraph 2.1 but there are doubts about the applicant's character, then caseworkers may request an interview in order to confirm their final assessment of the applicant's character.

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## 3. Criminal activity

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### 3.1 The Rehabilitation of Offenders Act 1974

3.1.1 In assessing the impact of previous convictions on the assessment of good character, caseworkers must have regard to the provisions of the **Rehabilitation of Offenders Act 1974** ('the 1974 Act'). Under the **1974 Act**, a conviction becomes "spent" after a specified rehabilitation period, which will vary depending on the sentence imposed. Spent convictions should not be taken into account in assessing the character requirement. Failure to declare an unspent conviction may itself cast doubt on the applicant's truthfulness and therefore whether or not they are of good character ([see paragraph 9](#)).

3.1.2 Caseworkers should normally refuse an individual who has an unspent conviction, however there is discretion to overlook some minor one-off offences. Please see criteria in [paragraphs 3.2.2 – 3.2.4](#) for further details.

3.1.3 Caseworkers should further note that where an individual has a conviction that can never become spent they will not normally be granted British citizenship; unless there are exceptional circumstances. Sentences that can not become rehabilitated include:

- a. Imprisonment, detention or custody for life; or
- b. Imprisonment, youth custody, detention in a young offender institution, or corrective training for a term exceeding 30 months; or
- c. Preventive detention; or
- d. Detention during Her Majesty's pleasure; or
- e. Imprisonment or detention for public protection under **s.225** or **s.226**, or an extended sentence under **s.227** or **s.228**, of the **Criminal Justice Act 2003**

3.1.4 In applying the rehabilitation periods set down in the **1974 Act** caseworkers should be aware of the following key facts:

- a. The sentence in question can be passed, or an order made, by the courts of any country, including court martial for persons subject to military discipline
- b. A conviction becomes 'spent' after a specified rehabilitation period
- c. The rehabilitation period runs from the date of conviction, not the date of completion of the sentence
- d. The rehabilitation period is based on the length of the sentence, not the time (if any) actually spent in prison; suspended sentences have the same rehabilitation period as sentences served
- e. When sentences are imposed concurrently, the rehabilitation period is the longest applicable
- f. When sentences are imposed consecutively, the rehabilitation period is that applicable to the total sentence (e.g. a sentence of 6 months imprisonment with another 6 months consecutive is regarded in the same way as one 12 month sentence and has a rehabilitation period of 10 years)
- g. If an individual already has a conviction (first offence) and is then found guilty of a further offence (second offence) the following will apply:

(i) If the second offence was a 'summary' offence that can only be tried in a magistrates court then the spent period attached to the first offence will not be affected. The rehabilitation periods for each offence will expire separately.

(ii) If the further offence is tried in the Crown Court then neither conviction will become spent until the rehabilitation period for the second offence is over. Offences tried in the Crown Court are either indictable or those triable either way. In practice the applicant is refused on the basis of the second unspent conviction.

- h. The rehabilitation period may, for some sentences, be reduced by half if the person was aged under 18 on conviction

Rehabilitation periods are set out in full at [Annex D\(i\)](#).

## **3.2 Convictions - general**

3.2.1 All convictions should normally be spent under the **1974 Act** before an application for citizenship made on or after 1 January 2008 is approved. For applications made before 1 January 2008 please refer to previous policy on the UKBA website.

3.2.2 Where the applicant is of good character in all other respects caseworkers should normally be prepared to overlook a single minor unspent conviction resulting in:

- a. a bind-over order
- b. an absolute or conditional discharge
- c. admonition
- d. a relatively small fine or compensation order.
- e. a fixed penalty notice and Scottish fiscal fines - these fines are not classed as convictions and as such do not attract a spent period (see paragraph 3.2.3).

3.2.3 Caseworkers should note that if a fixed penalty notice or fiscal fine has been referred to a court due to the non-payment of the fine or if the notice has been challenged by the applicant and subsequently upheld by the court then this is treated as a conviction for the purposes of the **1974 Act** (as amended) or **Rehabilitation of Offenders (N. Ireland) Order 1978** and will attract a “spent” period. [Annex D\(i\)](#) refers.

3.2.4 Caseworkers should **not** normally disregard any unspent conviction that falls into the following categories irrespective of the severity of the sentence imposed:

- a. Offences involving dishonesty (e.g. theft, fraud)
- b. Offences involving violence
- c. Offences involving unlawful sexual activity
- d. Offences involving drugs
- e. Offences which would constitute “recklessness” – e.g. drink-driving, excessive speeding, driving without tax/insurance or whilst using a mobile phone.
- f. Offences involving a serious deliberate criminal act that do not fit into points a) to d) above e.g. arson.

3.2.5 Where, exceptionally, it is proposed to grant citizenship to a person whose conviction resulted in a custodial sentence of 30 months or more (and which, therefore, can never become spent under the **1974 Act**) prior approval should be sought from the Chief Executive or from a Board member acting in her absence.

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### 3.3 Overseas convictions

3.3.1 If UKBA are, or become, aware of a conviction overseas, caseworkers should obtain information about the circumstances of the offence from the applicant. Such cases should be determined in line with our policy for UK convictions and impending prosecutions. The applicant may be subject to a European Arrest Warrant or an extradition request. Please see [paragraph 3.6](#) for further details.

### 3.4 Cautions

3.4.1 When determining whether an applicant meets the “good character” requirement, caseworkers should not normally take into account cautions unless they fall into one of the following categories:

- a. If the caution or cautions are of a sexual nature that require the individual to be included on the Sex Offenders Register. Any application received whilst the individual is subject to reporting requirements on the Sex Offenders Register should be refused (see [section 4](#) for further guidance).
- b. If the individual has received multiple cautions that show a pattern of offending, which causes harm to other individuals or to the community in general, and which, on the balance of probabilities, indicates the applicant is not of good character.

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### 3.5 Impending prosecutions

3.5.1 Caseworkers should be aware that impending prosecutions may be self-declared by an applicant or may become known through information passed to UKBA. Insufficient evidence to bring a case to court need not preclude refusal.

3.5.2 Caseworkers should not normally grant citizenship to someone who has a prosecution pending. This does not prevent caseworkers from making enquiries to establish that the other requirements for naturalisation are met and, if a refusal is indicated without reference to the latest offence, that action can be taken.

3.5.3 If nothing is heard regarding the determination of the prosecution within three months of the initial consideration of the case then caseworkers should contact the records section of the court or the police force for the area. Thereafter caseworkers should make monthly enquiries until the criminal case is resolved. Caseworkers should explain the reason for the delay to the applicant.

3.5.4 Where it is known that an applicant has attempted to conceal criminal charges caseworkers should follow the guidance at [paragraphs 9.1 – 9.2](#).

3.5.5 If caseworkers refuse an application for other reasons then any further application for naturalisation whilst the criminal charge is still pending should be discouraged.

**NB. Caseworkers should not assume the applicant to be guilty of the charge itself under any circumstances.**

### **3.6 Suspected criminal activity**

3.6.1 In some cases information may be disclosed that an applicant is known or strongly suspected of some criminal activity, but for various reasons has neither been charged nor convicted. Caseworkers should take into account the nature of the information and the reliability of the source. If, on the balance of probabilities, there is firm and convincing information to suggest that an applicant is a knowing and active participant in serious crime (e.g. drug trafficking), the application should normally be refused.

3.6.2 Caseworkers should not rely on old reports in deciding whether suspicions of criminality should remain a bar to the grant of naturalisation on character grounds. If a fresh application is made which cannot be refused outright for other reasons, an interview should normally be requested.

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### **3.7 Scottish Law**

#### ***Scottish convictions - general***

3.7.1 Caseworkers should be aware that there are many similarities between Scottish and English law but there are also some differences which are not always directly comparable.

3.7.2 The Scottish legal system is unique in having 3 possible verdicts for a criminal trial: “guilty”, “not guilty” and “not proven”. “Not proven” should be treated in the same way as not guilty. Both “not guilty” and “not proven” result in an acquittal with no possibility of retrial.

### ***Deferred sentences***

3.7.3 Caseworkers should note that 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.

3.7.4 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.

3.7.5 A deferred sentence is not, of itself, a sentence at all. Sentence is only imposed at the end of the process when the offender returns to court.

3.7.6 Caseworkers should 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 [sections 3.2 and 3.3](#).

3.7.7 Where the individual is in the period where their sentence is deferred case workers should refuse the application if the offence is one that would not merit discretion being exercised under [paragraphs 3.2.2 – 3.2.5](#). Where the offence may merit discretion being exercised caseworkers should defer the application until the individual is sentenced.

### ***Admonition***

3.7.8 Caseworkers should be aware that under **s.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”.

3.7.9 Admonition is a sentence in its own right, but can be used in conjunction with a compensation order for example.

3.7.10 As admonition is not referred to in the **Rehabilitation of Offenders Act 1974** it falls under **s.5** of the Act, “any other sentence”, and carries a 5 year rehabilitation period (2.5 years for under 18s).

3.7.11 Caseworkers may, if appropriate, disregard an admonition as a “single minor conviction” as referred to in [paragraph 3.2.2](#) above depending on the circumstances of the case.

### ***Cautions***

3.7.12 Caseworkers should be aware that a caution in Scotland is something 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. Further offending can result in the sum or bond being forfeited.

3.7.13 Where an individual has multiple cautions under Scottish Law their case can be considered in line with [section 3.4](#).

### ***Procurator fiscal fines***

3.7.14 Caseworkers should be aware that if an alleged offence is reported to the procurator fiscal he/she may, in certain circumstances, offer to have the allegation dealt with outside of court and without getting a criminal conviction.

3.7.15 The offer will allow the alleged offender to pay a sum of money as a “fiscal fine” or as compensation to someone who was affected by the alleged offence. If the offender agrees to pay the fine they will not be prosecuted. Fiscal fines **are not** convictions and as such do not attract a spent period.

3.7.16 Caseworkers should exercise discretion if they receive an application from an individual who has a criminal record dealt with by way of a fiscal fine. See [paragraph 3.2.2](#) for details of how we treat non-payment of fiscal fines.

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### **3.8 Extradition Orders and European Arrest Warrants**

3.8.1 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 an individual could be extradited is one that would likely attract a prison term of 12 months or more in the UK and the country seeking extradition.

3.8.2 A European Arrest Warrant operates in a similar way to extradition requests. It is the process by which another European Union country issues an arrest warrant and then subsequently seeks its enforcement either for the individual to stand trial or to go to prison if they have already been found guilty in absence.

3.8.3 Where caseworkers encounter an applicant who has an extant Extradition Order or a European Arrest Warrant against them their application must not be granted. This does not prevent caseworkers from making enquiries to establish that the other requirements for naturalisation are met and, if a refusal is indicated without reference to extradition or European Arrest Warrant proceedings, that action can be taken. If refusal action is not appropriate on that basis then the case must be deferred.

3.8.4 In deferred applications caseworkers should delay consideration until the outcome of the extradition or European Arrest Warrant hearing is known. If the UK courts decide that extradition should take place, or that the European Arrest Warrant should be enforced, then the case should be held further pending the outcome of the trial overseas.

3.8.5 Caseworkers should normally refuse an applicant in the following circumstances:

- (i) If an applicant has failed to declare that they are subject to an Extradition Order or a European Arrest Warrant unless evidence is presented that the applicant was not likely to have been aware of such proceedings.
- (ii) If they have been found guilty of an offence in absence and the country where the offence was committed are seeking extradition or have issued a European Arrest Warrant.
- (iii) If they have been tried overseas and found guilty.
- (iv) If they have failed to comply with bail conditions at any point during the Extradition or European Arrest Warrant process.

3.8.6 Depending on other circumstances in the case concerned, caseworkers should look more favourably towards applicants who:

- (i) A UK court has decided extradition or a European Arrest Warrant should not proceed because of a lack of evidence.
- (ii) Have been tried overseas and been acquitted.

But caseworkers should also bear in mind that 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. An acquittal may be persuasive evidence of good character but it is not conclusive.

3.8.7 Caseworkers must not disclose the fact that an extradition request has been made if the individual is unaware of this fact even if no action has been taken. In all such cases, caseworkers should contact the JCU or SOCA for confirmation.

### 3.9 Hospital Orders

3.9.1 Caseworkers should note that a court in England or Wales may authorise admission to, and detention in, a hospital for treatment (i.e. a hospital order under **s.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.

3.9.2 In addition to a hospital order, the court may impose a restriction order under **s.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. If information comes to light that an applicant has been made the subject of a hospital order, it will be important to find out whether a restriction order has also been made (see 3.9.3 below).

3.9.3 Caseworkers should note that the rehabilitation period for a hospital order is five years or two years after the order ceases to have effect whichever is longer. Where a court has only made a **s.37** order, the hospital will decide when the person should be discharged. Normally this will be after six months, although it may be decided that the person should either be discharged sooner or continue to be detained for further treatment.

3.9.4 A hospital order will usually cease to have effect on the date the person is discharged from hospital, except if an individual has been recalled in which case the order remains in effect during the licence period. Unless this information has already been given, it may be necessary for caseworkers to confirm the applicant's release date with the hospital concerned. If a **s.41** order has also been made, it will be for the Home Secretary to decide whether the person should be discharged. In such cases, enquiries should be made with the Mental Health Unit of the Home Office to check whether a **s.41** order has been rescinded.

3.9.5 A court may also order an offender to be admitted to, and detained in, a hospital for assessment before formal sentencing (i.e. make an interim hospital order under **s.38** of the **1983 Act**). An interim hospital order may initially be made for a period of up to 12 weeks (or, if renewed, up to a total of six months), and ceases to have effect when the court decides either to make a hospital order or deal with the offender in another way.

3.9.6 Caseworkers should normally refuse an application for citizenship whilst a person is subject to a Hospital Order or whilst their conviction following release remains unspent. Where the Hospital Order is for five years that conviction can never become spent and that individual will not be granted nationality, unless there are exceptional circumstances.

3.9.7 If it is proposed to grant someone who has been subject to a hospital order before their conviction can become spent then authority to proceed must come from the Chief Caseworker.

3.9.6 There are separate, but similar, provisions in Scotland and Northern Ireland on offenders who are given a hospital order.

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## 4. Sexual Offences

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### 4.1 Sexual Offences Act 2003

4.1.1 Caseworkers should note that the **Sexual Offences Act 2003** (like the **Sex Offenders Act 1997**) provides that persons are required to notify their local police force of their name, address and other details - and 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

The details are recorded by the police on a "register" - commonly known as the Sex Offenders Register - and this assists the police in monitoring the whereabouts of any sex offenders living in their community.

4.1.2 The length of the notification period depends on whether the person was cautioned or convicted for the offence, and any term of imprisonment to which the person was sentenced. The notification periods are listed in [Annex D\(ii\)](#). In respect of cautions for sexual offences caseworkers should note [paragraph 3.4.1\(a\)](#).

4.1.3 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.

4.1.4 Caseworkers should normally refuse any application from an individual who is subject to reporting notifications listed in 4.1.1 above and/or one of the additional orders listed in 4.1.3. This is regardless of whether their conviction(s) are spent.

4.1.5 A person's inclusion on the "register" would cease after the period for which 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.)

4.1.6 Where, exceptionally, it is proposed to *grant* citizenship to a person who is subject to the notification requirement described in paragraph 4.1.1 above, or to one of the orders described in paragraph 4.1.3 above, the case must first be referred to the Chief Caseworker.

4.1.7 For more detailed information about the notification requirements under the **Sexual Offences Act 2003** and associated orders see "**SEX OFFENDERS**" in Volume 2.

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## 5. War crimes, crimes against humanity and genocide

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5.1 If there is information to suggest that the applicant has been involved or associated with war crimes, crimes against humanity or genocide then caseworkers should immediately refer the case to the Deprivation Screening Team (DST).

5.2 DST caseworkers should consider the application in line with War Crimes guidance in Volume 2 Section 1.W.

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## 6. Terrorism

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6.1 Restricted – Not available for disclosure.

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## 7. Financial soundness

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### 7.1 Introduction

7.1.1 Applications from the following people require particular consideration:

- a) Bankruptcy and liquidation ([sections 7.2 to 7.4](#))
- b) Those who are evading their tax responsibilities or are attempting to defraud the DWP ([section 7.6](#))

7.1.2 Caseworkers should note that background information on bankruptcy is given in [section 7.2](#), a summary of liquidation is provided in [section 7.4](#). Action to be followed by caseworkers for bankruptcy and liquidation cases is at [section 7.5](#).

### 7.2 Bankruptcy

#### *General information*

7.2.1 Caseworkers should note that bankruptcy occurs when a person is unable to meet their debts and has had a bankruptcy order made against them. This order can either be made by:

- a) A court, as a result of a bankruptcy petition presented by the individual. This is made on a voluntary basis

- b) A court after petition by a creditor or creditors – who are owed at least £750 by the individual

7.2.2 Caseworkers should note that in England and Wales, the rules on bankruptcy and liquidation are informed by **Insolvency Act 1986** and **Insolvency Rules 1986** (as amended, most recently, by the **Enterprise Act 2002**).

### ***Handling of bankruptcy affairs***

7.2.3 A bankrupt's financial affairs are, in most cases, placed in the hands of the Official Receiver (i.e. the Insolvency Service, an Executive Agency of the Department of Trade and Industry). In the majority of cases there are few or no assets, and the Official Receiver is then appointed trustee in bankruptcy. In the remainder, a private insolvency practitioner (usually an accountant or solicitor) will be appointed, primarily to deal with the realisation of assets for the benefit of the creditors owed money by the bankrupt.

### ***Period of bankruptcy***

7.2.4 Caseworkers should note that in England and Wales a person who has been declared bankrupt is subject to a number of statutory restrictions until he is discharged from bankruptcy. The bankrupt, in most cases, will usually be automatically discharged 12 months from the making of the bankruptcy order. However, where the Official Receiver files a notice in the court that his investigation of the bankrupt's conduct and affairs is concluded the 12 month period may be reduced.

### ***Annulment of bankruptcy***

7.2.5 A bankruptcy can be annulled, the main grounds for annulment being that the bankruptcy order ought not to have been made, that he has repaid the debts and the expenses of the bankruptcy proceedings in full, or that he has successfully proposed to his creditors an alternative to bankruptcy.

### ***Bankruptcy Restriction Orders***

7.2.6 Since 1 April 2004, there has been a new civil regime which deals with the minority of bankrupts whose conduct has been irresponsible or reckless, bankruptcy restrictions orders (BRO).

7.2.7 Prior to 1 April 2004, the only way a bankrupt's could be addressed was through prosecution, either for **Insolvency Act** offences or similar legislation. As such offences are tightly framed and subject to a high level of proof there were some matters of a bankrupt's conduct that could not be addressed.

7.2.8 Prosecution however is still used to address the most serious cases of a bankrupt's misconduct and, since 1 April 2004, it has been augmented by the civil regime of BROs. Grounds forming the basis of an application to court are contained in **Schedule 4A** to the **Insolvency Act 1986**. If the bankrupt agrees his conduct has been culpable he can agree to a bankruptcy restrictions undertaking (BRU) which has the same legal effect as a BRO but does not involve a court hearing.

### ***Bankruptcy fraud***

7.2.9 Caseworkers should be aware that 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,

- d) false statements or declarations.

Making false declarations on bankruptcy forms can constitute perjury.

7.2.10 Where caseworkers have information to suggest that bankruptcy fraud has taken place and they are satisfied on the balance of probabilities that it has then they should normally refuse the application for citizenship.

### ***Further information***

7.2.11 Details of all undischarged and recently discharged bankrupts can be accessed on a database maintained by the Insolvency Service (i.e. the Individual Insolvency Register at <http://www.insolvency.gov.uk/bankruptcy/bankruptcysearch.htm> ).

## **7.3 Northern Ireland and Scotland**

7.3.1 Northern Ireland has its own Insolvency Service, but its legislation largely parallels that in England and Wales.

7.3.2 In Scotland, the equivalent of bankruptcy is called sequestration, which is administered, under the **Bankruptcy (Scotland) Act 1985**, by the Accountant in Bankruptcy. On 1st April 2008 a new bankruptcy law came into force in Scotland; the **Enterprise Act 2002**. The Act brought changes to Scotland in line with the bankruptcy laws in England. This meant that debtors will be discharged from their debts after 12 months instead of three years.

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## **7.4 Liquidation**

7.4.1 Caseworkers should note that liquidation differs from bankruptcy in that it refers to action taken against a company instead of an individual. Liquidation occurs when a company is 'wound up'. There are various types of liquidation:

- a) Members' voluntary liquidation (or members' voluntary winding up) - this is when the shareholders of a company decide to put it into liquidation, and there are enough assets to pay all the debts of the company, i.e. the company is solvent.
- b) Creditors' voluntary liquidation (or creditors' voluntary winding up) - this is when the shareholders of a company decide to put the company into liquidation, but there are not enough assets to pay all the creditors, i.e. the company is insolvent.
- c) Compulsory liquidation (or compulsory winding up) - this is when the court makes an order for the company to be wound up (a 'winding-up order') on the petition of an appropriate person. If there is more than one director, all the directors must jointly present the winding-up petition - a single director cannot present a winding-up petition.

7.4.2 Caseworkers should note that there are also alternatives to liquidation that may come up during the course of a citizenship application:

- 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.

The procedure is managed by an administrator, who must be an authorised insolvency practitioner.

7.4.3 Caseworkers can find further information on liquidation at the Insolvency Agency's website: <http://www.insolvency.gov.uk/>.

## 7.5 Action to be taken

7.5.1 If an applicant states that they have been declared bankrupt or have been a Director, or involved in the management of a company (either wholly or partly) that has gone into liquidation then caseworkers should send either stock letter "BANKRUPTCY DETAILS - APPLICANT" or "BANKRUPTCY DETAILS - AGENT". The form asks:

- a) Where the bankruptcy was declared (England, Wales, Scotland or N.Ireland) and whether they have been discharged. The stock letter also asks for:
- b) Written authorisation for us to make enquiries of the Insolvency Service (if declared bankrupt in England or Wales), the Accountant in Bankruptcy (in Scottish cases), the Official Receiver (in N. Irish cases), or other appointed Trustee, and
- c) Details of the office of the Insolvency Service, Accountant in Bankruptcy, Official Receiver or other appointed Receiver (as appropriate) handling the case, and
- d) Either any reference numbers relating to the bankruptcy, or a copy of the bankruptcy order, and
- e) Either a copy of the Certificate of Discharge from Bankruptcy (which can be obtained from the local court) or a copy of the court order discharging or annulling the bankruptcy (see [paragraph 7.2.5](#) above)

7.5.2 If on receipt of the documents requested in 7.5.1 it is clear that the applicant has been bankrupt in the last ten years then caseworkers should write to the relevant Insolvency Service for advice and information, requesting:

- a) A copy of the bankrupt's Statement of Affairs
- b) A copy of the Official Receiver's report to creditors
- c) A copy of the Official Receiver's report to the court (if one was made)
- d) Any information about whether or not criminal proceedings were instigated against the bankrupt (and the result of the proceedings)
- e) Any information about whether a Bankruptcy Restriction has been imposed either by way of order or undertaking, and, if it has, the reasons for the Order and when it will cease. [A list of all bankrupts subject to restrictions is on the Insolvency Service website - at [paragraph 7.4.3](#)]
- f) an assessment, if possible, as to the likely cause of the bankruptcy

7.5.3 On receipt of information from the applicant and/or the Insolvency Service, caseworkers should normally consider granting an application where there is evidence that:

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

7.5.4 If the conditions in 7.5.3 are not met but there is evidence that the applicant has been bankrupt or been involved with a company that went into liquidation then caseworkers should:

- 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 applicant was in their:
  - (i) Becoming bankrupt, for example caseworkers should look at the balance of evidence to determine whether an applicant was reckless or irresponsible in their financial affairs leading to the bankruptcy. If the information provided by an applicant or the Insolvency Agency suggests this then the application should be refused.
  - (ii) Involvement with the company that went into liquidation. Similar to bankruptcy, caseworkers should look at the balance of evidence to determine whether there was any element of irresponsibility or recklessness on the part of the applicant leading to the company's liquidation. If there has been, 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 on the basis that their conduct makes them unfit to do so. Details of all disqualifications are on the Companies House website. If there was then the application should be refused.
- d) Refuse an applicant if he/she has deliberately relied on a recession in order to avoid payment of taxes or payment to creditors.
- e) Consider whether it would be appropriate to grant the application if there is evidence to suggest that the applicant was made bankrupt (or their company was made insolvent) through little or not fault of their own e.g. they are simply a victim of the poor business decisions of others or their business has been severely affected by an economic downturn.

## **7.6 Self-employed applicants, persons of independent means and sole representatives (tax)**

7.6.1 Caseworkers should request the latest Self-Assessment Statement of Account from applicants who only just satisfy the minimum residence requirements of three or five years and who qualified for entry previously as:

- a) A person of independent means (POIM) up until 27 November 2008 when this route was abolished.
- b) Sole representatives
- c) Before 30 June 2008 through self-employment routes, namely:
  - i. Highly Skilled Migrant Programme
  - ii. Investors
  - iii. Entrepreneurs

- iv. Through Graduate or Fresh Talent Schemes.
- d) After 30 June 2008 - Tier 1 of the Points Based System from 30 June 2008.

7.6.2 The application form provides permission for caseworkers to contact the HM Revenue & Customs direct if necessary. Applicants should be expected to produce this information within three weeks of request, but a longer period may be allowed provided an acceptable reason can be given for the delay (e.g. because the company has been in existence for too short a time). Where the information is not produced within a reasonable period the application should normally be refused.

7.6.3 Caseworkers would not expect to naturalise persons who have deliberately failed to pay the taxes and contributions for which they are liable, especially where fraud or dishonesty is involved. If there is any doubt, a police interview should be considered (see below). Care should be taken to discriminate between “avoidance” of tax where arrangements are made to reduce tax liability and tax “evasion”.

7.6.4 When an applicant has tax arrears, and HM Revenue & Customs has made arrangements for these to be cleared, or the applicant is in dispute over the amount of taxes, caseworkers may grant the application without awaiting the full payment of the arrears or the outcome of the dispute provided that dishonest behaviour is not suspected.

7.6.5 Caseworkers should be cautious with POIMs, sole representatives and self-employed categories outlined in 7.6.1), particularly:

- a) Those who must have gained settlement by telling the Home Office they were POIMs while telling the HM Revenue & Customs (HMRC) that the money was never theirs but was only borrowed to obtain ILR in the United Kingdom
- b) POIMs who had been in business here in breach of their immigration conditions and had failed to declare their income to HMRC
- c) Businesspeople who had lived here for up to 10 years without submitting tax returns or satisfying HMRC that the source of their investment capital was not liable for tax
- d) Persons who came here as sole representatives of a company abroad when the firm was either their own or did not exist

7.6.7 If in doubt, caseworkers should consider a police interview to establish a satisfactory relationship with HMRC, as well as future intentions (where appropriate). This particularly applies where:

- a) There are excess absences; or
- b) The applicant claims not to work but to live on unearned income (e.g. foreign trust, overseas businesses; or
- c) The applicant claims not to be liable to any UK tax

7.6.8 It is worth noting that applicants domiciled abroad for tax purposes may still be liable to pay UK tax on income generated in the UK. The absences questionnaire is useful in eliciting relevant information.

7.6.9 For applicants in the categories described in [paragraph 7.5.3](#) above, further enquiries of HMRC may, with the applicant’s permission, be productive.

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## 7.7 Debt

7.7.1 Police enquiries, or other information, may suggest that an applicant is heavily in debt. Caseworkers should not use this as grounds for refusal if loan repayments have been made as agreed or if acceptable efforts are being made to pay off accumulated debts. But where an applicant deliberately and recklessly builds up debts and there is no evidence of a serious intention to pay them off, caseworkers should normally refuse the application.

## **7.8 Dishonesty in relation to public funds**

7.8.1 Caseworkers should not normally grant an applicant who is drawing public funds to which they are not entitled. Such cases may or may not result in prosecution. If they do not, caseworkers can grant an application if they are satisfied that there was no deliberate attempt to deceive the authorities.

## **7.9 Non-payment of Council Tax**

7.9.1 Payment of the Council Tax is a legal requirement, and non-compliance is a punishable offence. Failure to pay Council Tax means that an applicant fails to meet the good character requirement. Applicants who also provide a false statement or fail to declare their full circumstances in order to avoid paying a higher rate of Council Tax should also normally be refused citizenship.

7.9.2 However, where an applicant has been unable to pay the Council Tax because of his or her financial position, and some sort of arrangement is being, or has been, negotiated with the relevant authority then caseworkers may grant an application.

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# **8. Notoriety**

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8.1 The ability to meet the good character requirement may, in certain cases, be affected by other aspects of the applicant's behaviour.

8.2 Caseworkers should note that the following matters should not normally, of themselves, be relevant to determining whether the good character requirement has been met:

- 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
- e. Unemployment/working habits/ other legitimate means of support

8.3 However, where there is evidence that applicants have, by the scale and persistence of their behaviour (including, for example, a known and extensive involvement in crime [without having been convicted], drug abuse or anti-social behaviour), made themselves notorious in their local or the wider community, consideration should be given to refusal. In such circumstances, caseworkers may ask for an interview to help substantiate any information received, for example, from members of the public.

8.4 Evidence of anti-social behaviour should also be taken into account in assessing whether, taken as a whole, the application should be refused. Caseworkers should normally refuse any individuals with an extant ASBO.

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## 8.5 Anticipated public reaction

8.5.1 Caseworkers should take particular care when an applicant'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.

8.5.2 The anticipated reaction from the public or media should not unduly influence the decision of an application. But caseworkers need to be aware of the potential impact that a decision may have and raise this with the Deputy Chief Caseworker.

## 8.6 Parenting

8.6.1 Where an applicant's child has been convicted of an offence, including being issued with an Anti-Social Behaviour Order, and there is evidence to suggest that the parent's own behaviour demonstrates that they were not of good character then caseworkers may refuse the applications of the parents. This should be limited to cases where parents encouraged or were complicit in the criminal activity or where the parents were particularly negligent in their dealings with the authorities.

8.6.2. In cases where parent(s) have been convicted for breaching or lack of compliance with a Parenting Order caseworkers should consider their application under [section 3 – Criminal activity](#).

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# 9. Deception

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9.1 Caseworkers should count heavily against an applicant any attempt to lie or conceal the truth about an aspect of the application for naturalisation - whether on the application form or in the course of enquiries. Concealment of information or lack of frankness in any matter must raise doubt about an applicant's truthfulness in other matters.

9.2 Where the applicant has failed to disclose even a minor outstanding charge or conviction caseworkers should refuse the application unless there are compelling reasons that would warrant granting the application. Caseworkers must receive authorisation from a Deputy Chief Caseworker or above to grant such an application.

## 9.3 Bogus marriages/civil partnerships and marriages/civil partnerships of convenience

9.3.1 An example of deliberate deception is where an application is made for naturalisation under **s.6(2)** on the basis of a marriage/civil partnership which is not genuine. Such marriages/civil partnerships fall into 2 categories:

- a. Those which are invalid or entirely fictitious, involving forgery or the misuse of documents relating to another person (such cases would normally merit refusal)

- 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)

9.3.2 Where a bogus marriage/civil partnership or recent marriage/civil partnership of convenience is a possibility, caseworkers should make further enquiries, making sure that the interviewing officer is made aware of the suspicions. Evading immigration control by way of a marriage/civil partnership of convenience must count against an applicant's character. Refusal of the application is likely to be appropriate unless there are strong countervailing factors (e.g. the marriage/civil partnership was many years ago and the applicant has made a real contribution to the community in which they live). Refusals in these cases should be noted in NPT.

#### **9.4 Abuse of English Language and Knowledge of Life Test**

9.4.1 Where there is evidence which shows, beyond a reasonable doubt, that an applicant has circumvented or practiced deception in a Knowledge of Life and/or English Language Test, caseworkers should refuse their application. In such cases, the applicant should be advised that an application for citizenship made within 10 years from the date of their previous application would be unlikely to be successful.

#### **9.5 Evidence of fraud in the immigration and nationality process**

9.5.1 Where there is evidence to suggest that an applicant has employed fraud either during the citizenship application process or in previous immigration application processes then caseworkers should refuse their application unless the circumstances in 9.5.2 apply. The applicant should not then be able to make a successful citizenship application for ten years from the date of the refusal.

9.5.2 Where deception has been employed on a previous immigration application and was identified and dismissed, caseworkers should not use that deception as a reason by itself to refuse the application.

#### **9.6 Prosecution for false statements**

9.6.1 Caseworkers should note that under **s.46(1)** of the British Nationality Act 1981, an applicant who makes a false statement, either in the application or to the officer who conducts the interview, is liable to prosecution. The initiative for any prosecution under **s.46(1)** normally lies with the police. Prosecutions under **s.46** of the British Nationality Act 1981 should normally be commenced within six months of the commission of the offence, although this period may be extended to three years in certain circumstances.

9.6.2 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, caseworkers may exercise the option of returning the application to be re-declared, thus giving the applicant an opportunity to update the information on the form. This, however, also renews the period within which a prosecution is to be commenced, and the action should not be taken without approval.

9.6.3 In cases where a false statement is made caseworkers should give consideration to referring the evidence to the police. If such evidence is passed to the police, and the police decide to prosecute an applicant, a decision on the application should be deferred until the outcome of the proceedings is known.

9.6.4 A successful prosecution under **s.46(1)** should usually rule out naturalisation for a period of at least three years.

## 9.7 False statements by referees

9.7.1 Caseworkers should further note that referees who have been involved in attempts to deceive (e.g. they may deliberately make false statements about the length and nature of their acquaintance with the applicant) may also be liable to prosecution under **s.46(1)**. The initiative for this lies with the police and the Crown Prosecution Service. Particular consideration should be given to those who are suspected of making false statements in multiple applications.

9.7.2 Applications involving deception by a referee should also be considered by caseworkers and referred to a Deputy Chief Caseworker before a decision is made on whether the police should be informed.

9.7.3 Regardless of whether the police are informed if there are good grounds for believing that applicants have themselves prompted or been complicit in the referees' deception, the application should normally be refused.

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## 10. Evasion of immigration control

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10.1 If there is good reason to believe that an applicant is currently, or has previously been, involved in an attempt to assist someone in the evasion of immigration control then caseworkers should normally refuse their application. This also applies to an applicant whose spouse's/civil partner's recent application for entry clearance has been refused on relationship grounds.

10.2 Prior to their application for citizenship some applicants may have a past history of themselves evading control. It may nevertheless be appropriate for caseworkers to approve their application if:

- a. they meet fully all the statutory requirements without requiring the Home Secretary to exercise discretion; and
- b. there is no other evidence to cast doubt on their character or standing in the community over the full three or five year qualifying period

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## 11. Applicants who have been deprived of citizenship

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11.1 Caseworkers should note that if a person has previously been deprived of their British citizenship under **s.40** of the British Nationality Act 1981, he or she should not be able to make a successful citizenship application for a prescribed period from the date the deprivation order is issued.

11.2 In cases where the deprivation was based on fraud, false representation or the concealment of material fact (**s.40(3)**), we would not expect a person to reacquire citizenship for a period of at least 10 years from the date of the deprivation order.

11.3 For cases where deprivation was on "conducive to the public good" grounds (**s.40(2)**), different periods will be applied depending on the nature and seriousness of the

grounds for deprivation. Caseworkers should also bear in mind that deprivation for a serious criminal offence may involve a conviction that can never be spent. Consequently, the individual would never be eligible to re-acquire citizenship.

11.4 If a person applies before the end of the prescribed period and asks for discretion to be exercised in his or her favour, caseworkers should refer the application to the Chief Caseworker.

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ANNEX D(i) to  
Chapter 18**Rehabilitation periods prescribed by the Rehabilitation of Offenders Act 1974  
(as amended) or Rehabilitation of Offenders (N.Ireland) Order 1978**

Sentence	Rehabilitation period
<ul style="list-style-type: none"> <li>• Imprisonment or custody for life</li> <li>• Imprisonment or detention in a young offender institution for over 30 months</li> <li>• A sentence of preventative detention</li> <li>• Imprisonment or detention for public protection under <b>s.225</b> or <b>s.226</b> of the <b>Criminal Justice Act</b></li> </ul>	Excluded from rehabilitation
<ul style="list-style-type: none"> <li>• Imprisonment or detention in a young offender institution of over 6 months but not exceeding 30 months (2½ years)</li> <li>• Cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service.</li> </ul>	10 years (or 5 years if under 18 at the time of conviction).
<ul style="list-style-type: none"> <li>• Imprisonment or detention in a young offender institution for up to 6 months</li> <li>• A sentence of dismissal from Her Majesty's service.</li> </ul>	7 years (or 3½ years if under 18 at the time of conviction).
<ul style="list-style-type: none"> <li>• A community sentence or equivalent</li> <li>• Any sentence of detention in respect of a conviction in service disciplinary proceedings.</li> </ul>	5 years (or 2½ years if under 18 at the time of conviction).

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Fines	5 years (or 2½ years if under 18 at the time of conviction).
Hospital order under [ <b>Part III</b> of the <b>Mental Health Act 1983</b> ] or under [ <b>Part VI</b> of the <b>Mental Health (Scotland) Act 1984</b> ] (with or without a restriction order	5 years from the date of conviction or two years after the date on which the hospital order ceases or ceased to have effect, whichever is the longer.
Conditional discharge Binding over order Supervision order	1 year or the period of the order, whichever is longer
Absolute discharge	Six months
Driving disqualification	The period of disqualification
Conditional caution	Three months
Any other sentence that does not have a specified rehabilitation period within the <b>Rehabilitation of Offenders Act</b>	Five years (or 2½ years if under 18 at the time of conviction)
Attendance Order	A period ending one year after the order expires.
Referral order (within the meaning of the <b>Powers of Criminal Courts (Sentencing) Act 2000</b> : - where a contract under <b>s.23</b> of the <b>2000 Act</b> takes effect - where a contract under <b>s.23</b> of the <b>2000 Act</b> does not take effect	The date on which the contract ceases  The date on which the contract <i>would have ceased</i> if it <i>had</i> taken effect

The above table does not include some further sentences that are less common. Details of these can be located at:

[http://www.statutelaw.gov.uk/content.aspx?LegType=Act+\(UK+Public+General\)&title=rehabilitation+of+offenders&Year=1974&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1776430&activetextdocid=1776437&versionNumber=1](http://www.statutelaw.gov.uk/content.aspx?LegType=Act+(UK+Public+General)&title=rehabilitation+of+offenders&Year=1974&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1776430&activetextdocid=1776437&versionNumber=1)

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**ANNEX D(ii)  
to Chapter 18**

**Notification periods prescribed by the Sexual Offences Act 2003**

Description of relevant offender	Notification period
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under <b>s.210F(1)</b> of the <b>Criminal Procedure (Scotland) Act 1995</b> (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within <b>s.80(1)(d)</b>	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period
A person of any other description	5 years beginning with the relevant date

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