

## Visa Refusal on Grounds of Criminal Conviction

Information from [http://www.ukvisas.gov.uk/en/ecg/chapter26/#point\\_eleven](http://www.ukvisas.gov.uk/en/ecg/chapter26/#point_eleven)

26.11 - Refusal on grounds of criminal conviction **[Updated 11 August 2008]**  
[Paragraph 320\(18\)](#) of the Rules states that an application should normally be refused if that person has been convicted of an offence in any country, which would be punishable with imprisonment for a term of 12 months or more if the offence had occurred in the UK,. **ECOs should not refuse under 320(18) if the conviction is considered “spent” under the Rehabilitation of Offenders Act** (see Annex 26.3). Paragraph 320(18) will not apply where an applicant has been cautioned.

Details of the possible sentence which a particular offence in England and Wales could attract can be found on the Crown Prosecution Service website at:

[http://www.cps.gov.uk/legal/s\\_to\\_u/sentencing\\_manual/](http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/).

If an ECO cannot adequately determine the possible sentence using this website, or where the applicant was found guilty under Scottish law, the ECO should contact ECO support for assistance.

ECOs should note that the applicant does not have to have received a sentence of more than 12 months, nor to have served a sentence of more than 12 months, but simply that the crime they were convicted of carried a maximum penalty of 12 months or more. Equally, it does not matter if the applicant has a summary conviction. Rather if the offence was indictable, it is the possible sentence that could have been received if tried by a jury that is important. For example, Dangerous Driving is punishable by up to six months imprisonment if dealt with as a summary offence. The sentence rises to a possible 2 years imprisonment on indictment.

Thus, the offence attracts the possible application of 320(18) regardless as to the mode of trial at the case in question. However, when considering whether or not the offence is spent, rehabilitation periods are based on actual sentences received (see below).

When determining if a refusal under 320(18) is appropriate, the ECO must also take into account any human rights grounds and ensure that the refusal is both proportionate and reasonable.

If an applicant disputes the content of the Police Certificate, the applicant must contact the Association of Chief Police Officers Criminal Records Office (ACRO). Their contact details are noted at the bottom of the Police Certificate.

### Refusal wordings

The ECO must not make reference to the details of the conviction in the refusal notice. The refusal wording must read "...records held in the United Kingdom indicate that you have been convicted of at least one criminal offence that could have carried a custodial sentence of more than 12 months [if that offence had occurred in the United Kingdom]. According to those records, that conviction is not spent...". Where the applicant subsequently request further information regarding why (s)he has been refused, the ECO may disclose to the applicant in writing or verbally any additional information noted on the "Court Certificate for Entry Clearance purposes".

The ECO must ensure the refusal notice reflects the consideration they have given to the proportionality and the impact of human rights and compassionate considerations. The refusal notice may read "...I have considered the compassionate circumstances of your application [going on to explain what they are, if any]. However, I am not satisfied that they are of a sufficiently compelling nature for me to exercise the powers of discretion granted to me by paragraph 320(18) of the Immigration Rules.

**Spent Convictions**

The purpose of the Rehabilitation of Offenders Act 1974 ("ROA") is that people may behave badly at one point in their lives but may nevertheless go on to live law abiding lives. To encourage this process, after a certain period of good behaviour, and provided the offence wasn't too serious, the person is entitled to be treated as a reformed character. The Police Certificate should detail whether or not a conviction is spent. The rehabilitation periods are also set out in ECG Annex 26.3.