



Home Office

# Grounds for refusal – rough sleeping in the UK

Version 2.0

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# About this guidance

This guidance tells you when an application for permission to stay may be refused, or any permission held may be cancelled on the grounds of rough sleeping in the UK.

The guidance does not apply to:

- those granted or eligible for pre-settled or settled status under the EU Settlement Scheme (EUSS)
- those granted indefinite leave
- those granted leave under a protection route (for example as a refugee or on the grounds of human rights or for humanitarian protection)

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Migrant Criminality Policy Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **10 November 2021**

## Changes from last version of this guidance

All internal Horizon links updated to those on the SharePoint guidance platform.

### Related content

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# Introduction

This page gives you background about the rough sleeping rule. This applies to applications made on or after 1 December 2020 and decisions to cancel taken on or after 1 December 2020.

## Background

On 1 December 2020, the Immigration Rules were amended to introduce a more robust and consistent framework against which immigration applications are assessed or permission cancelled on suitability grounds.

Paragraphs 9.21.1. and 9.21.2. of [Part 9 of the Immigration Rules](#) set out a discretionary basis for the refusal of permission to stay, where the application was made on or after 1 December 2020, and for any permission held to be cancelled on the grounds of rough sleeping in the UK.

The rule was amended on 6 April 2021 to clarify that permission may only be refused or cancelled where a person has repeatedly refused suitable offers of support and engaged in persistent anti-social behaviour.

Rough sleeping means sleeping, or bedding down, in the open air (for example on the street, in doorways or parks) or in buildings or other places not designed for habitation (for example stairwells, sheds, car parks, stations, or tents).

The general expectation is that migrants coming to the UK should be able to maintain and accommodate themselves without recourse to public funds. This reflects the need to maintain the confidence of the general public that immigration brings benefits to our country, rather than costs to the public purse. Only those who are normally or habitually resident in the UK are entitled to access benefits and social housing, reflecting their strength of connection to the UK. This includes those with indefinite leave to remain, refugees, protected persons and those granted discretionary leave.

Rough sleepers are one of the most vulnerable groups in society, many with high levels of complex and interrelated needs such as mental health conditions, substance dependence or poor literacy issues. There are also many reasons why a person might find themselves sleeping rough. For example, a person may be in between accommodation rental agreements and sleep rough for a few nights; they may have missed the last train home after a night out and sleep in the station; or they may have left their home to escape domestic abuse. There may also be some cases where individuals are sleeping in a semi-permanent structure, such as a tent, which may, in limited circumstances, be based on financial or economic reasons.

The introduction of rough sleeping as a ground for the refusal or cancellation of permission is not intended to criminalise rough sleeping or to penalise those who inadvertently find themselves temporarily without a roof over their head. Instead, the

rule will be applied to those who refuse to engage with the range of available support mechanisms and who engage in persistent anti-social behaviour.

Where a person is engaged in persistent on-street anti-social behaviour but there is no evidence they are sleeping rough, the rough sleeping rule cannot be used to refuse or cancel permission to stay in the UK. Instead, you must consider if permission can be refused or cancelled on the grounds of persistent offending. See guidance on Criminality and persistent offending.

#### **Related content**

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# Support for rough sleepers

This page tells you about the type of support available to rough sleepers in the UK.

## Background

The government is committed to building on the framework set out in the [Rough Sleeping Strategy 2018](#) for ending rough sleeping in England. The Rough Sleeping Strategy, is based around three core pillars:

- **prevention**, with the focus on providing timely support before someone becomes homeless
- **intervention**, which sets out how the strategy will help those already in crisis to get rapid, targeted support
- **recovery**, emphasising support for people to find a new home quickly and start to rebuild their lives

Local resources for rough sleepers vary across the UK depending on local circumstances and can range from accommodation to employment support or training and job searching and the provision of support workers. Homelessness organisations, day centres, and hostels also provide employment advice, training and opportunities for people who are homeless or rough sleeping.

Not every rough sleeper will be eligible for statutory support and many migrant rough sleepers will have a condition attached to their leave prohibiting access to public funds. Depending on the person's immigration status there may be limits on the help a local authority can provide where the person is ineligible for homelessness assistance.

However, there are important safeguards in place to ensure vulnerable migrants who are destitute and have community care needs, including issues relating to human rights or the wellbeing of children, can receive some support. Local Housing Authorities may conclude they have the scope to provide very limited assistance, shelter and support, to those migrants not eligible for homelessness assistance in circumstances where they deem a person is eligible for such support, for example, where there are community care needs, migrants with serious health problems or family cases.

In England and Wales, Local Authorities may also have powers to offer support in certain circumstances under the general power of competence in [Chapter 1 of the Localism Act 2011](#). It will be for the relevant Local Authority to satisfy itself of the lawfulness of any proposed measures and to consider how such measures may be limited by existing legislation noting, for example, the restrictions set out in the [Nationality Immigration and Asylum Act 2002](#).

You cannot refuse or cancel permission to remain in the UK under the rough sleeping rule where a person hasn't refused support because none has been

offered. This may be because they are not eligible for support or have previously exhausted available support.

Instead, such individuals may decide that their best option will be returning to their home country.

## Individual support

Support to rough sleepers is not just in relation to accommodation. The nature of support offered should be relevant to an individual person's needs; for example, they may have mental health, substance misuse or other issues requiring support.

Examples of support may include:

- offers of accommodation if they are eligible (including temporary accommodation)
- help with looking for work
- help accessing benefits to which they are eligible
- access to services for alcohol, substance misuse or mental health issues (including preventative services and community support programmes)
- if a European Economic Area (EEA) citizen, help with making an application to the EU Settlement Scheme
- if they want to go home, help to apply for a [voluntary return](#)
- if they think they are a victim of trafficking or modern slavery, referral to the [National Referral Mechanism](#)

Under [Section 18 of the Care Act 2014](#), once a 'needs assessment and determination of eligibility is completed', Local Authorities in England and Wales have a duty to meet the needs of a person who is present in the Local Authority area and of no settled residence. Similar provisions are made in the [Housing Support Duty](#) under [Section 32B of the Housing \(Scotland\) Act 1987](#) and [Part 2 of the Housing \(Northern Ireland\) Order 1988](#).

## Refusal of support

Rough sleeping is a complex issue and to be able to successfully transition away from a life on the streets requires ongoing support over a period of several months. There is no one-size-fits-all approach; for some people with multiple needs it can take longer than this whereas for others who may be resolutely opposed to all support offers it may become clear over a shorter period that the limit of eligible support has been exhausted.

Offers of support will therefore be commensurate with needs.

Some rough sleepers will be in priority need (for example if they are vulnerable as a result of mental illness or physical disability) and owed statutory duties to be accommodated. Others will not be in priority need but, if eligible, will be owed the 'relief' duty under [Section 189B of the Housing Act 1996](#). Where the relief duty applies it can be brought to an end if a person deliberately and unreasonably refuses

to co-operate with the local housing authority in relation to securing accommodation. This could include circumstances where an individual actively refuses to engage with activity required to help them secure accommodation. The bar is set at 'unreasonably refusing to co-operate' so that it does not penalise those who have difficulty co-operating, for example because of poor mental health.

Chapter 14 of the [Homelessness Code of Guidance](#) sets out the circumstances where a duty to a person would come to an end.

The aim of the duty is to encourage those who are homeless or at risk of becoming homeless to take responsibility for working proactively with their local authority and commissioned outreach services and provider team to resolve the problem as soon as possible but not to create challenges for vulnerable people who may have difficulty in participating in the homeless prevention activities of their local authority.

When assessing whether an individual has refused support you must consider what has been offered, including by non-commissioned services, and whether it has been appropriate for that person's needs. You should consider the individual circumstances of the case and be guided by the local authority who will be aware of what has been offered and refused in individual cases. In most cases it will be appropriate to consider ongoing refusal of support which has been offered over a period of at least 3 months, starting from the point at which the rules are applied. However, as the support offer should be commensurate with need this period may be shorter or longer.

## Rough Sleeping Support Service

The [Rough Sleeping Support Service](#) (RSSS) was initially launched in 2018 as part of the government's Rough Sleeping Strategy. The RSSS offers an enhanced service for local authorities and registered charities by providing a single point of contact to help establish a rough sleeper's immigration status and to help staff assess their entitlements such as whether they have access to public funds, including housing.

The Rough Sleeping Support Service (RSSS) can also support people looking to resolve their immigration status if they are sleeping rough. Where a check establishes that a person has an outstanding application the RSSS will work with casework teams to request that this case is prioritised.

The service is managed by Immigration Enforcement and has recently been refreshed to provide clarity to organisations and individual rough sleepers as to how their data will be used. From 1 September 2020 those who use the service will need to complete the following steps:

- charities or local authorities must first register their organisation to be able to access the service and become an RSSS user
- to make a referral the person whose information is sought should be aware of the purpose of the service and must give their consent to be referred



If you think a Local Authority or registered charity would benefit from using the RSSS please advise them to email the Rough Sleeping Support Service inbox.

**Related content**

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Identifying people at risk

# Anti-social behaviour

This page tells you about types of anti-social behaviour. This is not an exhaustive list.

[Section 2 of the Anti-Social Behaviour, Crime and Policing Act 2014](#) defines anti-social behaviour as:

- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person
- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- conduct capable of causing housing-related nuisance or annoyance to any person.

In Scotland, [Section 143 of the Anti-Social Behaviour etc. \(Scotland\) Act 2004](#) defines anti-social behaviour as where a person either:

- acts in a manner that causes or is likely to cause alarm or distress
- pursues a course of conduct that causes or is likely to cause alarm or distress

In Northern Ireland, [Article 2 of the Anti-Social Behaviour \(Northern Ireland\) Order 2004](#) describes anti-social behaviour as where a person has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.

Anti-social behaviour therefore covers a wide range of issues. Examples can include, but are not limited to:

- aggressive begging
- vandalism
- noise pollution
- rioting
- graffiti
- fly-tipping
- drunk and disorderly
- public alcohol or substance misuse
- owning dangerous dogs

The [Anti-Social Behaviour, Crime and Policing Act 2014](#) and accompanying [statutory guidance](#) emphasises that the victims of anti-social behaviour should be put first and given a say in how complaints of anti-social behaviour are dealt with. The Act includes specific measures designed to help ensure that victims' voices are heard:

- the [Anti-Social Behaviour \(ASB\) Case Review](#) gives victims of persistent anti-social behaviour the ability to demand a formal case review where the locally defined threshold is met, in order to determine whether there is further action that can be taken

- the [Community Remedy](#) gives victims a say in the out-of-court punishment of perpetrators of anti-social behaviour

There are also a number of remedies in the [Anti-Social Behaviour, Crime and Policing Act 2014](#) which can be used by Local Authorities and the police to address anti-social behaviour. These include:

- Community Protection Notices
- Civil Injunctions
- use of dispersal powers
- breach of a Public Space Protection Order

For information on these see guidance on [punishments for anti-social behaviour](#) and the [statutory guidance](#).

Some of the measures can require an individual to take positive measures as well as make prohibitive measures, for example, a Civil Injunction can require someone to attend alcohol awareness classes for an alcohol related incident.

In Scotland and Northern Ireland, an Anti-Social Behaviour Order (ASBO) can be issued by the sheriff or magistrate respectively.

Where a person has been issued with any of the above orders or notices or is the subject of action following an ASB Case Review or Community Remedy, it will normally be appropriate to consider that they have engaged in persistent anti-social behaviour.

Other sources of evidence may be a person's criminal record showing multiple cautions or warnings for anti-social behaviour.

When considering whether someone has engaged in **persistent** anti-social behaviour you must consider the following non-exhaustive list of factors:

- the seriousness of the behaviour
- the level of harm to the local community posed by the behaviour
- any escalation in seriousness of the behaviour
- the timescale over which the person was engaged in anti-social behaviour
- the frequency of the anti-social behaviour
- repetition of the same behaviours indicating a set behaviour pattern suggesting a poor likelihood of the person ceasing these behaviours and any reasons underlying the behaviour, such as an alcohol or drug dependency and whether there have been genuine meaningful attempts on the part of the individual to change their behaviour and comply with the law - where such attempts over time appear to be proving successful, that is a factor you must take into account when coming to a decision

## Related content

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# Consideration of paragraphs 9.21.1. and 9.21.2.

This page explains how to decide whether to refuse or cancel permission on the basis of rough sleeping.

Under paragraph 9.21.1 of [Part 9 of the Immigration Rules](#), permission to stay may be refused where the decision maker is satisfied that a person has been rough sleeping in the UK and repeatedly refused offers of suitable support and engaged in persistent anti-social behaviour.

Under paragraph 9.21.2 of [Part 9 of the Immigration Rules](#), where the decision maker is satisfied that a person has been rough sleeping in the UK and repeatedly refused offers of suitable support and engaged in persistent anti-social behaviour, any permission held by the person may be cancelled.

As set out in paragraph 6 of the [Introduction to the Immigration Rules](#), rough sleeping means sleeping, or bedding down, in the open air (for example on the street or in doorways) or in buildings or other places not designed for habitation (for example sheds, car parks or stations).

## Making an assessment

Local authorities are likely to know rough sleepers in their area and where there is anti-social behaviour will refer them to the police.

A non-UK national who is encountered sleeping rough may be referred to Immigration Enforcement's National Command and Control Unit by either the police, following a referral from the local authority, or directly from a local authority because of their offending or anti-social behaviour and where the person has failed to co-operate with offers of support.

A referral may also be made by the police to the Home Office if, during the course of their duties, the police encounter a non-UK national sleeping rough who is engaged in offending or anti-social behaviour.

A person may also be identified by Immigration Enforcement in the course of an enforcement operation.

On receipt of a referral Immigration Enforcement will assess whether the person's circumstances meet the threshold of persistent [anti-social behaviour and the threshold for refusing support](#). A Police National Computer (PNC) check on the person must be completed at this point, as any extant Criminal Behaviour Order (CBO) will be recorded on the database. See guidance on [Criminality](#) for further information on how to assess persistent behaviour.

If the anti-social behaviour threshold is reached but the referral does not include information about whether the person has refused support, enquires must be made to the relevant Local Authority. Evidence that the person has refused support must be obtained before any decision is made to refer the case to UKVI.

If the individual is engaged with support, no further action should be taken. Equally, if there is no support available to a person, or they have exhausted all avenues of support, you cannot refuse or cancel permission using the rough sleeping rule.

If the person's criminality meets the threshold for consideration of deportation, a referral must be made to the Foreign National Offender Returns Command.

If a person who already has permission to enter or stay in the UK has refused to engage with support and has engaged in persistent anti-social behaviour, a case summary must be compiled and referred to the UKVI Status Review Unit to consider cancelling permission.

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**Official – sensitive: start of section**

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

**Official – sensitive: end of section**

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## Refusing or cancelling permission to stay

If you have been notified of a rough sleeper who has refused support and who has engaged in persistent anti-social behaviour you must consider whether it is appropriate to:

- refuse permission to stay on the grounds of rough sleeping under paragraph 9.21.1. of the Immigration Rules
- cancel their permission to stay on the grounds of rough sleeping under paragraph 9.21.2. of the Immigration Rules

Where consideration is given to cancelling a person's leave you must take account of guidance on the Cancellation of entry clearance and permission.

The person may not have been convicted of a criminal offence but may have received multiple warnings or cautions for repeated low-level disorderly behaviour which has shown no signs of improvement. Alternatively they may have been the subject of action taken under the [Anti-Social Behaviour, Crime and Policing Act 2014](#) or the [Anti-Social Behaviour etc. \(Scotland\) Act 2004](#) or the [Anti-Social Behaviour \(Northern Ireland\) Order 2004](#). See [anti-social behaviour](#) for further information.

If the person has committed more serious criminal offences you must consider whether it is appropriate to refuse or cancel permission on the basis of Criminality.

Consideration must be made on a case-by-case basis and be based on the person's individual conduct and circumstances in the UK. All decisions must be reasonable and proportionate. All relevant information must be taken into account when deciding whether to refuse an application or cancel permission to stay.

## Proportionality

All decisions must be reasonable and proportionate. Factors to be considered should include, but are not limited to, the following:

- the length of time the individual has been in the country
- how the person came to be sleeping rough
- their circumstances at the time they were encountered
- whether the support offered was commensurate with the persons' needs
- the period of time during which support was offered and refused
- the nature of the anti-social behaviour, including risk to the public
- any individual vulnerabilities or mitigating circumstances, such as mental or physical health issues preventing engagement with support services

You must carefully consider the circumstances of each person before you decide on the most appropriate course of action. You must fully evaluate all relevant evidence or information about them before you reach a decision on whether or not to refuse or cancel their permission to stay.

## Service of the decision

The decision will be served in person at the next encounter.

If there has been a significant gap in time between making the decision and notifying the individual in person, you must consider their circumstances to ensure the decision is still relevant. For example, if the individual is no longer rough sleeping and/or is now actively in receipt of support it would not be appropriate to serve the decision and the original decision must be withdrawn.

If it is not possible to serve a decision notice on the individual themselves, you must serve to file and make a note of the circumstances. The notice should be given to the person themselves at the next available opportunity.

### Related content

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Partnership working

# EEA citizens and their family members

This page tells you about how to deal with European Economic Area (EEA) citizens.

EU, EEA and Swiss citizens and their family members, or those with EEA derivative rights of residence, residing in the UK before the end of the transition period continue to be eligible to apply for status under the EU Settlement Scheme (EUSS) until 30 June 2021. Individuals will also be able to apply to the EUSS after this date, where they have reasonable grounds for missing this deadline. For eligibility criteria see EU settlement scheme.

Any EU, EEA or Swiss citizen or their family member who has EUSS status or is eligible to apply for status must not have that leave cancelled on the basis of rough sleeping.

EU, EEA and Swiss citizens and their family members who are not protected by the withdrawal agreements with the EU, EEA and Switzerland and who come to the UK after 23:00 GMT 31 December 2020 will be subject to the Immigration Rules in the same way as any other foreign national and, may have their permission cancelled on the basis of rough sleeping if they refuse support and engage in persistent anti-social behaviour.

## **Related content**

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# Devolved administrations

In Scotland, Wales and Northern Ireland, housing and homelessness policy is devolved and policies and public services are different from those in England.

If you need further information on a person's circumstances, you may need to liaise with local authorities in Scotland, Wales or Northern Ireland where they have been rough sleeping.

While the territorial extent of the [Anti-Social Behaviour, Crime and Policing Act 2014](#) is the UK, Scotland, Wales and Northern Ireland also have their own legislation.

The sections below give you more information on homelessness and anti-social behaviour in the devolved administrations.

For more information on devolution, see: [Devolution of powers to Scotland, Wales and Northern Ireland section of GOV.UK](#).

## Scotland

In Scotland, the [Housing and Social Justice Directorate](#) is responsible for housing and homelessness policy. There are also a number of pieces of legislation governing housing and homelessness.

[Section 1 of the Housing \(Scotland\) Act 2001](#) requires Local Authorities in Scotland to develop a strategy for preventing and alleviating homelessness.

The [Homelessness etc. \(Scotland\) Act 2003](#) abolished the priority needs test which means Local Authorities in Scotland no longer make an assessment of priority need when discharging their duties under sections 31 and 32 of the [Housing \(Scotland\) Act 1987](#).

Anti-social behaviour is legislated for in the [Anti-Social Behaviour etc \(Scotland\) Act 2004](#), and the accompanying [guide to the Act](#) explains the Scottish Government's antisocial behaviour strategy and the measures which can be used to deal with such behaviour in Scotland.

## Wales

The Department for Education and Public Services is responsible for housing in the Welsh Government, as well as policy and strategy relating to [homelessness and rough sleeping in Wales](#).

While the [Anti-Social Behaviour, Crime and Policing Act 2014](#) applies in Wales, the Welsh Government and the [Welsh Local Government Association](#) have their own policies and strategies relating to [anti-social behaviour](#).



## Northern Ireland

In Northern Ireland [the Housing Executive](#) is the statutory agency responsible for housing and homelessness policy. Most rough sleepers are found in Belfast but there are small numbers in a few other towns and cities.

If you need information about a rough sleeper in Northern Ireland you should contact the Housing Executive in the first instance.

There is also an [emergency helpline](#) for those who are homeless.

Anti-social behaviour policy in Northern Ireland is the responsibility of the Department for Communities and [The Anti-social Behaviour \(Northern Ireland\) Order 2004](#) is the relevant legislation.

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