



Home Office

Immigration Returns, Enforcement and Detention  
General instructions

# **EU, other EEA, Swiss citizens, and their family members: consideration of administrative removal action**

**Version 5.0**

Valid after 30 June 2021

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# About this guidance

This document forms part of Immigration Enforcement General Instructions.

This guidance includes information in relation to individuals that have entered illegally in breach of a deportation order. In relation to other criminal deportation action see: Deportation guidance.

For detailed information about the general status of EEA citizens and their family members and their specific status in certain circumstances, see: European guidance.

For further information about the leave granted to EEA citizens on entry to the UK for various purposes, see Border Force guidance: EEA controls post transition period. This guidance provides Immigration Enforcement staff with information about the arrangements and processes in relation to EU, European Economic Area (EEA) and Swiss citizens (hereafter referred to in the guidance as 'EEA citizens' except where a distinction is required) and their non-EEA family members following the UK's exit from the EU. It tells you about arrangements in force after **30 June 2021**.

It includes guidance (or links to other guidance) in relation to establishing the existence of their right to enter and remain in the UK and their entitlement to work, access benefits and services and citizenship. It also describes potential sanctions for those who have no legitimate status or deceptively claim they have legitimate status based on being an EEA citizen, including administrative removal and deportation.

The aim of this guidance is to provide:

- advice on how individuals can evidence their rights in the UK and to demonstrate their right to work and other entitlements
- advice on how we can protect the rights of those with rights protected by the relevant citizens' rights agreements (including vulnerable applicants) and the safeguards that must be followed to ensure that EEA citizens with a legitimate right to stay are not incorrectly subjected to enforcement action
- an overview of the actions you might consider if the individual is not able to evidence that they are lawfully in the UK

## 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 Enforcement policy.

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 **5.0**
- published for Home Office staff on **23 November 2021**

## Changes from last version of this guidance

This supersedes and replaces the previous General Instructions chapter 'EEA operational guidance during the grace period', which is now withdrawn.

This version provides clarification of operational procedure in respect of:

- rewording and deletion of specific detail about actions carried out by FNORC and Returns Preparation in respect of service of the 28 day notice

### Related content

#### [Contents](#)

European guidance

Common Travel Area guidance

EU settlement scheme guidance

Criminality guidance

Grounds for refusal – rough sleeping in UK

# Background

## Terms used in this guidance

**Administrative return consideration:** means, in the context of this guidance, the process of considering whether an individual is liable to administrative removal and, having identified and notified an individual they are liable, whether it is right to actively pursue and enforce their return.

**Administrative return - enforcement:** means in the context of this guidance, the process of pro-actively arranging and enforcing an individual's return.

**28-day notice for EUSS :** the notice provides individuals believed to be European Economic Area (EEA) citizens and/or their family members with information telling them that they must now seek to secure their right of residence by making a late application to EUSS within 28 calendar days of the notice being served (within 35 calendar days if received by post) and that failure to do so may result in their loss of access to services in the UK and a requirement to leave the UK. See: [28-day notice for EUSS](#).

**Citizens' rights agreements:** (referred to in this guidance as the agreements) provide protection to EEA citizens and their family members (including third country national family members) living in the UK or who have acquired a right of permanent residence under the EEA Regulations before the end of the transition period with the right to reside, study, work and access services. This group is eligible to apply for status through the EU Settlement Scheme (EUSS) during the grace period. The citizens' rights agreements also provide for frontier workers, the healthcare cohort and Swiss service providers. See: [European guidance](#).

**Common Travel Area (CTA):** refers to an administrative arrangement between the UK, Ireland, and the Crown Dependencies (Isle of Man, Guernsey, and Jersey). The CTA is underpinned by domestic, not EU, legislation.

See:

- Common Travel Area guidance
- Within this document – [Assessing evidence – entry from within CTA](#)

**EEA citizen:** a national of either a member state of the European Union (EU), one of the European Economic Area member states (Iceland, Liechtenstein or Norway), or Switzerland. Except in certain specific cases, an EEA citizen is not also a British citizen. Whilst Irish Citizens are EEA citizens, there are special arrangements for Irish citizens, see: [European guidance](#).

**EU Settlement Scheme:** EU, EEA or Swiss citizens resident in the UK by 31 December 2020, and their family members (including children and non-EU citizens) were required to apply to the EU Settlement Scheme to continue living in the UK

beyond 30 June 2021. Successful applicants were/are granted 'settled status' (indefinite leave to remain) or 'pre-settled status' (leave to remain for 5 years).

**Frontier worker:** is an EEA national who pursued an economic activity in the UK by 31 December 2020 (by being employed or self-employed), and continues to do so, but is not primarily resident in the UK. Their travel to the UK can be occasional or ad hoc (for example, once or twice a year, or to complete occasional contracts) or regular (for example, working in the UK during the week and returning home at the weekend). The basic requirements to be a frontier worker are that the EEA national:

- is not primarily resident in the UK, which means they either:
  - spend less than 180 days in the UK in any 12-month period
  - return to their country of residence at least once every 6 months
  - return to their country of residence at least twice in every 12 months
- undertakes meaningful and effective work in the UK

Where an EEA national was a frontier worker by the end of the transition period, they will continue to have rights as a frontier worker once the transition period ends for as long as they continue to be a frontier worker. It is also possible to "retain" rights as a frontier worker in certain circumstances. Frontier workers have a right to enter the UK and do not require permission to enter.

**Grace period:** the period provided for in Article 18(2) of the EU-UK Withdrawal Agreement (and equivalent provisions of the EEA EFTA Withdrawal Agreement and Citizens' Rights Agreement with Switzerland), which ran from the end of the transition period on 31 December 2020 until 30 June 2021.

**Transition period:** the period between the UK's **withdrawal from the EU on 11pm 31 January 2020 and 11pm 31 December 2020.**

**Joining family member (JFM):**

For the purposes of this guidance a 'joining family member' is a person who is a family member of an EEA citizen (where that EEA citizen was lawfully resident in the UK by virtue of the EEA Regulations 2016 immediately prior to 11pm on 31 December 2020) and who also satisfies one of the following criteria:

- immediately before 11pm on 31 December 2020, was a family member (as defined in regulation 7(1) and 7(2) of the EEA Regulations 2016) of the EEA citizen - this includes their spouse, civil partner, direct descendants who are under 21 or who are dependant, and dependent direct relatives in the ascending line
- immediately before 11pm on 31 December 2020, was an extended family member within the meaning of regulation 8(5) of the EEA Regulations 2016 (i.e. a durable partner) of the EEA citizen, or the child under age 18 of that partner
- immediately before 11pm on 31 December 2020, was an extended family member within the meaning of regulation 8 of the EEA Regulations 2016 of the EEA citizen, provided they hold a valid EEA document (which may have been issued after 31 December 2020)

- is a child of the EEA citizen where:
  - the other parent was also lawfully resident or had a right of permanent residence under the EEA Regulations 2016 immediately before 11pm on 31 December 2020
  - the other parent has leave to enter or remain under Appendix EU
  - the other parent is a British citizen
  - the EEA citizen has sole or joint rights of custody of the child in the circumstances set out in the last point of Article 10(1)(e)(iii) of the Withdrawal Agreement or the last point of Article 9(1)(e)(iii) of the EEA EFTA separation agreement, or they fall within Article 10(1)(e)(iii) of the Swiss citizens' rights agreement
  - is the spouse or civil partner of a Swiss citizen

**Lawful residence / legitimate stay:** in this guidance, means residence in the UK in accordance with the EEA Regulations' or extant leave granted by the EU Settlement Scheme.

**Non-EEA family member:** For detailed advice concerning the definitions of who is considered to be an EEA dependant, see: EU Settlement Scheme Family Permit and Travel Permit.

See also:

- [Suspected marriage abuse](#)
- [Family members](#)

**S2 Healthcare cohort:** Residents of EU or EEA States or Switzerland, who applied by the end of the transition period to have a course of planned healthcare treatment in the UK under the 'S2 route are entitled (if that authorisation is granted) to travel to the UK to undergo the treatment. They may also be accompanied by another person such as a friend, family member or carer for the purpose of providing care and support during planned treatment. They may be any nationality but accompanying persons must reside in the EEA or Switzerland. Patients whose treatment is authorised are issued with an 'S2 certificate of entitlement to scheduled treatment' (also known as a 'Portable Document S2'). See: S2 Healthcare Visitor caseworker guidance.

**Saved rights:** The saved Immigration (European Economic Area) Regulations 2016 applied to an individual without EUSS leave who was lawfully resident by the end of the transition period until the end of the grace period or until their application for leave under the EUSS is finally determined, provided they applied by the required date of 30 June 2021.

**Service Providers from Switzerland:** individuals of any nationality employed by a business or company based in Switzerland, and who need to travel to the UK to provide a service on behalf of their employer. The work must be to execute a contract that was signed and commenced before 11pm 31 December 2020. Swiss nationals (only) can be self-employed service providers, but must also be based in Switzerland, and must have a contract which meets the requirements above. Service Providers from Switzerland must obtain entry clearance in advance of travel. The



vignette allows the holder to enter the UK and execute the relevant contract or contracts - work does not have to be undertaken in a single 90-day consecutive period, and the holder is entitled to enter the UK on multiple occasions. However, no other work is permitted. An SPS EC does not prevent individuals from also travelling to the UK as a visitor if they have permission to do so. See: Service Providers from Switzerland caseworker guidance.

**Signposting:** the general advice and information given to individuals who are identified as EEA citizens and who, although apparently eligible, indicate that they have yet to engage with the EUSS process. For most practical purposes, this is an explanation of how to access relevant on-line information and includes providing an information leaflet or a notice containing such details, in some circumstances it may be necessary to provide additional advice and support.

**Treaty rights:** in this guidance, refers to free movement rights afforded to EEA citizens and family members under the EU Treaties which had effect until 31 December 2020.

## Background

The UK left the EU on 31 January 2020. In accordance with the terms of the agreements, the UK entered a transition period and a further 'grace' period was given until 30 June 2021 to allow EEA citizens resident in the UK before the end of the grace period time to secure their future status by making an application to the EU Settlement Scheme.

Any EEA citizen and their family member lawfully resident or who acquired a right of permanent residence in the UK under the EEA Regulations before the end of the transition period on 31 December 2020 and who has not yet obtained leave under the EU Settlement Scheme had relevant rights of entry and residence in the UK saved pending a successful application to the EUSS made before 30 June 2021. These rights continued after 30 June 2021 for those with a pending application made before 30 June 2021 or until the final determination of any appeal against a refusal of an application made before that date. The rights do not continue in the case of those making a late application for EUSS.

From 1 July onwards (save for those with pending applications, outstanding appeals, or joining family members prior to the relevant EUSS deadline), a person with rights under the agreements must have EUSS leave, leave as a Service Provider from Switzerland or under the S2 Healthcare cohort, or be a frontier worker'. For those EEA citizens and their family members who have already obtained EUSS leave, it is this leave that is the basis for their continuing lawful residence in the UK. From 1 July 2021 onwards. (subject to pending applications or outstanding appeals) a person who does not have any other status granted by the immigration rules must have EUSS leave or fall within one of the other cohorts with rights under the agreements. The ongoing challenge for Immigration Enforcement (IE) is to:

- identify and, where appropriate, assist those who have a reasonable excuse for failing to apply to the EU Settlement Scheme by the deadline to secure leave to remain in the UK
- identify those who have rights under the citizens' rights agreements (such as frontier workers) and identify those falsely claiming to have them
- identify those who have no leave – such as those with expired leave or whose leave has been cancelled or curtailed
- take appropriate administrative removal action against EEA citizens, subject to the provisos detailed in this guidance, when the relevant statutory test is met

Those EEA citizens and their family members arriving on or after 1 January 2021 must successfully apply for leave or obtain visitor leave at the border, and meet the relevant immigration conditions, under the points-based system of the parts of the immigration rules giving effect to their rights as part of a cohort protected by the relevant citizens' rights agreements (save for frontier workers). Those entering via Ireland without any other form of leave or status are deemed leave unless they are encountered during an intelligence-led control and are granted visitor leave. Those entering from one of the Crown Dependencies must have existing leave granted by that Crown Dependency, which is recognised in the UK including the relevant conditions of that leave, unless they are encountered in the course of an intelligence-led control and are granted visitor leave.

Frontier workers continue to have declaratory rights to work when in the UK. See: [Frontier workers](#). From 1 July 2021 it is mandatory for non-Irish frontier workers to hold a frontier worker permit on entry to the UK for the purpose of exercising frontier worker rights.

Since 1 January 2021, EEA citizens wishing to provide services in the UK must have permission to do so. Some Service Providers based in Switzerland will meet the criteria in [Appendix EU](#) Service Providers from Switzerland in the Immigration Rules, but must still obtain an SPS visa in advance of travel.

See also

- European guidance
- EUSS EU, other EEA and Swiss citizens and family members guidance – in relation to reasonable grounds for late applications

## **Related content**

[Contents](#)

# General principles

Since 1 July 2021, (save for those with pending applications to the EU Settlement Scheme (EUSS), outstanding appeals against an EUSS refusal, or those who are joining family members prior to the relevant EUSS deadline), European Economic Area (EEA) citizens who require leave may be liable to removal if they do not have leave or are in breach of a condition of leave.

Some EEA citizens who are lawfully here may not always be able easily and quickly to satisfy you and other relevant bodies that this is the case. You must exercise the greatest care in establishing their rights and status. This guidance provides advice for a variety of possible [scenarios](#) but can never be a comprehensive guide and officers should consider the following general principles when investigating those that are or may be EEA citizens and their family members.

## Outstanding EUSS consideration / appeals

Those making a valid, late application for EUSS and who have been issued with a Certificate of Application (CoA), are afforded temporary protection pending consideration of their application and any appeal. Investigation of fraud and other criminality should however continue and details must be noted on Atlas for consideration by the caseworker.

Where there is delay in issuing a CoA it is acceptable for the individual to produce / show the acknowledgement email/letter they received which explained how they could use the checking service to prove they had made an in-time application, pending receipt of their CoA.

The temporary protection afforded to late applicants will extend to the ability to continue to use an EEA ID card for entry to the UK from 1 October 2021, prior to their application being concluded.

## No evidence of EUSS leave: service of 28-day notice for EUSS

The initial phase of the EU Settlement Scheme (EUSS) ended on 30 June 2021. Those who have not applied to the EUSS by that date, and have no other basis of stay, are liable to administrative removal. However, applications will still be accepted where the individual can demonstrate they had reasonable grounds for missing the deadline. Guidance on how to consider these is found in the EUSS guidance.

The 28-day notice has been introduced to help ensure that full consideration is given to the rights of all those whose cases are considered or whom we encounter. It aims to address those specific operational encounters with EU, EEA or Swiss nationals and their family members that are managed by frontline officers where existing processes and opportunities to submit grounds against removal or deportation may not apply or be supported by existing written notices.

Unless a person is being otherwise managed under existing processes, from 1 July 2021, and until further instructions are issued, you must continue to identify if an individual may be eligible for EUSS leave and issue them with information telling them that if they wish to remain they must now seek to secure their right of residence by making a late application to the EUSS, normally within 28 calendar days of the notice being served, and that failure to do so may result in their loss of access to services in the UK and a requirement to leave the UK. See: [28-day notice for EUSS](#).

Please note that EUSS leave granted by one of the Crown Dependencies is recognised as EUSS leave granted by the UK. These individuals do not need to apply to the UK's EUSS for additional status.

## Those who should be served a 28-day notice of EUSS

A 28-day notice for EUSS is intended to draw individuals into the immigration control process whose status is not currently being actively considered and where there is cause to think that they are EEA citizens that may otherwise be left without lawful status.

In the context of this guidance 'actively considered' means that the individual has an outstanding application, appeal or consideration is being given towards their enforced removal. All such cases will be given the opportunity to raise representations for full consideration including residual citizenship or residence rights as a matter of existing process and it is unnecessary to serve a 28-day notice of EUSS.

When considering whether an individual is liable to removal, the same evidential and procedural standards apply as to all foreign nationals subject to immigration control under the Immigration Act 1971 and who require leave.

An EEA citizen's liability for enforcement action may be relatively difficult to establish pending the completion of arrangements to provide qualifying EEA citizens and their family members with the necessary evidence of their legitimate status. However, where the available evidence means that you may reasonably conclude that the individual does not have a pending EUSS application, an outstanding appeal against an EUSS refusal, is not a joining family member prior to the relevant EUSS deadline, and requires leave but has no leave, or that they are in breach of a condition of their stay, and they do not appear to be eligible for EUSS leave, they can be served with a notice of liability to removal and consideration given as to whether it is appropriate in the circumstances to place that individual under immigration bail or in detention. See: Bail; Detention.

Where the decision is to bail the individual pending further consideration of their circumstances and whether it is right to proceed to enforce their removal, the service of notice of liability may be authorised by a CIO.

**If it is proposed to detain the individual pending removal, evidence suggesting liability to enforcement action must be established to a high degree and detention authorised by at least a grade 7.** For practical purposes this means:

- there is evidence of criminal behaviour that meets the threshold for deportation consideration (including low level persistent offending, serious and/or high harm) - EEA citizens who are protected by the agreements will fall to be considered under the EU public policy, public security or public health test where conduct was committed before the end of the transition period, thereafter conduct is considered under the UK deportation threshold (on the grounds that deportation is conducive to the public good, such as criminality or sham marriage)
- there are reasonable grounds to suspect a fraudulent claim to be an EEA citizen - including use of false documents for the purpose of making an EUSS application
- there are reasonable grounds to suspect that the individual is involved in a sham marriage see: Marriage investigations
- they are subject to an extant deportation order, exclusion decision or exclusion order See within this guidance:
  - [Liability to administrative removal](#)
  - [Examination and indicators of status](#)
  - [Entry in breach of a DO](#)

See: [assessing evidence](#).

Irish citizens do not require leave to enter or remain in the UK for any reason, including to work, study or settle, except for in a limited number of circumstances: See: Common Travel Area guidance.

If, following consideration of the facts and circumstances as described in this guidance, you are satisfied that the strength of evidence strongly suggests that the individual is not an EEA citizen and/or is misrepresenting or falsifying their relationship to an EEA citizen, it may be appropriate to continue to a [Schedule 2 examination](#) (in the case of encounters during visits and operations) and consideration of administrative removal action. You must however carefully note the advice within this document concerning [assessing evidence](#) and the appropriate authority that must be sought. Please also note that it is imperative that complete records searches are conducted, as per the Control points and data checks instructions, which should include biographic searches if no records are otherwise traced – this helps ensure that any evidence of current grants of UK leave are not missed, and helps avoid improper action being taken as a result.

## **EEA citizens: liability to administrative removal or deportation**

In the cases of EEA citizens and/or their family members who are protected by the agreements and who are arrested for criminal offences, consideration must first be given to when the criminality was committed. If the conduct was committed before the end of the transition period, their deportation will be considered under the EU public policy, public security, or public test. This also applies where there are reasonable suspicions the person has engaged in sham marriage behaviour before the end of the transition period. If the conduct was committed after the end of the

transition period, deportation must be considered under the UK deportation threshold (on the ground deportation is conducive to the public good).

For EEA citizens who are not protected by the agreements, deportation will be considered under the UK deportation threshold, regardless of when the conduct was committed.

See also:

- within this guidance: [Examination and indicators](#)
- Conducive deportation
- EEA decisions on grounds of public policy and public security

An EEA citizen may have entered the UK illegally and may be liable to administrative removal if:

- they entered in breach of a deportation order,
- they entered using false or fraudulent documentation
- they entered the UK via the Common Travel Area in certain circumstances.  
See: within this guidance; [Evidence of entry from within the CTA](#)
- they entered the UK either clandestinely or by deliberately circumventing UK border controls, within 12 months of a previous removal under regulation 23(6)(a) or 23(6)(c)
- they entered the UK where not entitled to do so by virtue of regulation 23(1) or (3) of the EEA Regulations or regulation 12 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- they were issued with a 28-day notice for EUSS but have failed to meet requirements of the notice
- they first entered the UK after the end of the transition period from 1 January 2021 and do not have valid leave or are in breach of a condition of their leave

See: [assessing evidence of status](#).

## **Related content**

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# Operational encounters / interviews: general principles and key points

Those individuals refused leave to remain having applied to the EU Settlement Scheme (EUSS) may be liable to administrative removal unless:

- they can show they have another right to remain, right of residence or citizenship; See: Safeguarding and establishing lawful residence
- they are exempt from immigration control
- they are subject to temporary protection as evidenced by a Certificate of Application

All such possibilities must be explored and the evidence for them carefully considered.

An individual refused EUSS following confirmation that they employed false representations and/or use of documentary deception, must provide evidence of any right to remain or be liable to administrative removal in accordance with the guidance 'Administrative removal (non-EEA)'. Consideration should be further given to prosecution for the offences described.

**If the individual claims to be an European Economic Area (EEA) citizen and you are satisfied this is the case, you must assess whether the individual has already been given a 28-day notice and whether this has expired. See: [assessing evidence](#).**

There may be individuals who may be eligible for status under the EU Settlement Scheme (EUSS) but did not apply by 30 June despite being entitled to do so. The general approach taken in respect of such individuals until further notice will be to serve a 28-day notice for EUSS unless they are or would be managed under existing caseworking processes.

During all enforcement interviews: fully explain your purpose in establishing the person's status:

- act flexibly and sensibly in assessing available evidence where travel documentation and entry/exit records are not immediately available
- act objectively and based on all available evidence, without preconceptions about the likelihood of the individual being an EEA citizen based on any protected characteristic, or any other individual characteristics such as spoken language; See: Enforcement interviews

Where you are satisfied the individual is, or may be, an EEA citizen or their family member who is eligible for the EUSS but has not yet been served with a 28-day notice and has yet to secure proof of their status, provide information (serve a [28-day notice for EUSS](#)) to make a late application to the EUSS.

Where there are grounds to suspect the individual has vulnerabilities or needs that mean they require more help to make an application, act immediately to refer them to UKVI; See: [Vulnerability – identification](#).

Do not promote or encourage voluntary departure for EEA citizens who have been served with a 28-day notice except for:

- those who have exhausted any appeal against refusal of EUSS and it is confirmed that they have no other basis of stay
- those who are subject to an extant deportation order and it is not intended to prosecute in this instance
- where there are overriding compassionate circumstances that mean the provision of support for voluntary departure is acting in the best interests of the individual or their dependant or dependants and it appears that the individual may not be exercising treaty rights in the UK see: Voluntary returns guidance

See also: within this guidance, [voluntary departures](#).

The points listed below are explained more fully in the following guidance:

- it is not appropriate to advise any individual on how or whether to make an application beyond the advice provided in the 28-day notice - you are not required to assess an individual's likelihood of succeeding in an application for EUSS, nor whether they may have reasonable grounds for making a late application - you may draw their attention to the [guide for EU, EEA and Swiss citizens](#) on viewing and proving their immigration status (e-Visa) - the guide explains how people can view, prove, and share their immigration status, update their details, what they should expect when crossing the UK border and how to get help accessing their immigration status. see: [28-day notice for EUSS](#)
- you must fully consider and apply the guidance contained in safeguarding – establishing lawful residence and the additional information contained within this guidance, see [assessing evidence](#)
- encounters with any individual during visits and operations must be recorded on Pronto in accordance with existing instructions. A person and case record should be generated on Atlas according to current processes, if none already exists, and service of a [28-day notice for EUSS](#)
- encounters must be recorded on Pronto and Atlas. See: [record of encounter](#)

## Examination and indicators of status

### EEA Cohorts

EEA citizens that you encounter within the UK will be part of one of the following cohorts:

- those who have an outstanding application for the or appeal against refusal of such an application
- those who may be eligible for the EUSS but have not yet applied



- those who have been granted status under the EUSS - this will be either settled status (indefinite leave to enter or remain in the UK) or pre-settled status (five years limited leave to enter or remain in the UK)
- those who have been granted an EUSS family permit
- those who arrive from 1 Jan 2021, with either visitor leave or leave under the points-based system
- those who have been issued with a [frontier worker](#) permit
- those who are eligible for a frontier worker permit but have not yet applied, or are Irish and therefore not required to hold a permit
- those who have been granted entry clearance as a Service Provider from Switzerland (route open to all nationalities)
- those who require leave but do not have it, for instance, clandestine and/or deceptive illegal entry
- those who entered lawfully from 1 Jan 2021 but have overstayed the period of leave which they were granted
- those who have been granted entry clearance or permission to stay as an S2 Healthcare Visitor
- Irish citizens who do not require leave to enter or remain in the UK under s.3ZA of the Immigration Act 1971: see CTA guidance
- those who may have been eligible for the EUSS in a Crown Dependency but have not yet applied or who have an application pending (see: [Crown Dependency EUSS](#))
- those who have been granted status under one of the Crown Dependency's EUSS or other Crown Dependency leave - this will be either settled status (indefinite leave to enter or remain in the relevant Crown Dependency) or pre-settled status (five years limited leave to enter or remain in the relevant Crown Dependency) - this status is recognised in the UK as if it were status granted under the UK's EUSS
- those who are joining family members until the relevant deadline for an application to the EUSS; See: [family members](#)

## Crown Dependency EUSS applicants

An individual may have made an application to a Crown Dependency's EUSS. Whilst the application is outstanding in Jersey or Guernsey, an individual is deemed to have leave in that jurisdiction and that is then recognised in the UK. Whilst the application is outstanding in the Isle of Man, they continue to have saved rights in line with those in the UK. However, those rights are not recognised in the UK –, the individual must have some other form of status granted by the UK (for example, visitor leave). The fact they have an outstanding application in the Isle of Man is not relevant.

Once an individual's application to one of the Crown Dependency's EUSS has been granted, the individual's status is recognised as if it were status granted under the UK's EUSS – including those granted under the Isle of Man's EUSS.

See also: [Evidence of entry to the UK from within the Common Travel area.](#)

## Interviewing and examining EEA citizens

This section is about enforcement interviews conducted during operations with individuals that may be EEA citizens or their family members.

Any examination of available evidence also provides the opportunity to consider evidence or suspicion of vulnerability. See: Identifying people at risk.

The Enforcement interviews guidance must be followed when encountering any person on a visit or operation and applies equally to those who claim to be, or there are grounds to suspect that they are, an EEA citizen or their non-EEA family member. **You must ensure that you are fully aware of and understand the information in that guidance relating to exploratory questioning.** The purpose of exploratory questioning is to form a view of whether the individual is potentially related to the intelligence basis for the operation or that they are subject to immigration control and whose status may warrant further, formal examination in accordance with [paragraphs 2 and 2A of schedule 2 to the Immigration Act 1971](#). More generally, exploratory questioning is necessary to eliminate individuals from an enquiry as quickly as possible. Exploratory questioning is consensual in nature, and with the cooperation and consent of those present, you can establish general facts concerning identity, relationships, ownership or control of property, or potential exploitation. But a refusal to answer questions or provide proof of their status does not, of itself, constitute grounds to reasonably suspect that the person is an immigration offender but may be considered in conjunction with other evidence and circumstances.

You must attempt to establish through [exploratory questioning](#) whether the individual may be related to the intelligence basis for the visit. They may, during that conversation, give you cause to conclude that they may be:

- an EEA citizen and/or have current or previous rights of residence as an EEA citizen or because of their relationship to an EEA citizen
- have exercised frontier workers' rights while in the United Kingdom
- a service provider from Switzerland who meets the criteria of Appendix SPS of the Immigration Rules

Note: For those in the healthcare cohort, an accompanying person can be a family member, a friend, or a carer. There is no requirement for the accompanying person to be an EEA national.

Note: A service provider from Switzerland (in the context of Appendix SPS) can be an individual of any nationality – all nationalities must obtain an SPS visa in advance of travel.

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If during exploratory questioning, the person tells you they are an EEA citizen or a non-EEA family member, explain that the Home Office wishes to ensure that EEA citizens with lawful status in the UK are properly recorded and safeguarded against misunderstandings that might affect their entitlements or access to services. If the individual indicates that they have settled or pre-settled status under the EUSS or an outstanding application under this scheme, but has no evidence to that effect, explain that they may, if they wish, give their consent for you to check documents in their possession and/or Home Office systems, to confirm that they have applied to the EUSS and to confirm their pre-settled or settled status.

If, during exploratory questioning, the person voluntarily produces satisfactory evidence of their lawful residence and there is no evidence of behaviour that meets the following criteria, their claim to lawful residence should be accepted, except where:

- information indicates that they have been refused EUSS or have been served with a 28-day notice for EUSS and failed to submit an application within the appropriate time
- the person's conduct committed before the end of the transition period meets the EU public policy, public security, or public health test; for example, criminality or engaging in sham marriage behaviour as either a participant or facilitator
- the person's conduct committed after the end of the transition period that meets the UK deportation threshold (on the ground deportation is conducive to the public good)
- there are reasonable grounds to suspect a fraudulent claim to be an EEA citizen, the individual is known or suspected to be involved in criminal activity, they are subject to an extant deportation order, exclusion decision or exclusion order, or have otherwise engaged in adverse behaviour that meets the threshold for enforcement action
- there are reasonable grounds to suspect the EEA national first entered the UK after the end of the transition period from 1 January 2021 and does not have valid leave or is in breach of a condition of their leave and does not have another right to remain, right of residence or citizenship and is not exempt from immigration control

In which case, continue with a schedule 2 examination.

## Conducting a Schedule 2 examination

See: [Enforcement interviews](#).

If the information available to you following exploratory questioning suggests that they are or may be an EEA citizen or their family member, a frontier worker, a service provider from Switzerland or a person with S2 Healthcare leave you must consider the available evidence and decide, on that basis, whether the individual sits within one of the following broad categories:

- an EEA citizen with leave (EUSS, Swiss or Healthcare)
- protected EEA nationals without leave; that is, those with a pending EUSS application/appeal and Frontier Workers
- EEA nationals resident before 31 December without EUSS leave or pending application – apply 28-day rule
- all other EEA nationals - standard process applies

Clarify whether the individual made an EUSS application, see: [Settled status or applications made under the EUSS](#). Where you are satisfied of the person's evidence of identity and that a valid application to EUSS has been granted or is outstanding, take no further action.

If following exploratory questioning you have information or a reasonable suspicion that they require leave and do not have it, you must continue to examine their status.

If, because of that examination, you have reason to suspect that the documents presented may be stolen, being misused, are counterfeit, or that the person is not otherwise entitled to them, you may reasonably suspect that the individual is seeking to conceal their identity and status and may be a person subject to control under Immigration Act 1971 and liable to removal. However, in all circumstances, you must consider whether there are any grounds to suspect that they may be entitled to some other permission or residual right, for instance, a legacy right to citizenship.

See: [Safeguarding those that may have citizenship or residency rights](#).

## De-arrest following investigation

A person properly arrested on suspicion of being liable to removal who subsequently claims to be an EEA citizen and provides grounds to suspect that they may have residence rights of any kind, should be de-arrested in accordance with arrest and restraint guidance, and treated as per the advice elsewhere in this guidance unless:

- there is evidence of identity abuse and/or forgery raising reasonable suspicion that the individual is falsely claiming legitimate status
- the individual has also been arrested for criminal offences, or there are reasonable suspicions that they have engaged in sham marriage behaviour as either a participant or facilitator, and further consideration has to be given as to whether they meet the EU public policy, public security or public health test (where it relates to conduct committed before the end of the transition period) -

criminality committed after the end of the transition period must be considered under the UK deportation threshold (on the ground deportation is conducive to the public good)

See: EEA decisions on grounds of public policy and public security and Conducive deportation.

## Safeguarding those that may have citizenship or residency rights

This section is about what you must do where a case is referred to you or if you encounter an individual who, although there may be little or no evidence of their status in the UK, claims to be a British citizen, to have a saved right by virtue of having applied before the end of the grace period, to have leave to enter or remain, or to be exempt from immigration control.

This is additional guidance to that contained in 'safeguarding – establishing lawful residence' about the steps that must be taken in relation to those who may have been long resident in the UK or descended from people born abroad with a claim to be British. That guidance notes the difficulty that some people may have in demonstrating their lawful status in view of the complex development of UK nationality law and residence regulations; similarly, those that have enjoyed the right of freedom of movement under EEA regulations since 1973 may have limited evidence to demonstrate their national status and residence.

Individuals encountered by, or notified to, Immigration Enforcement, or who have made an application to the Home Office, may claim to be British citizens, EEA citizens that are lawfully resident or otherwise exempt from immigration control. In some circumstances, particularly those with very long residence and/or little recent travel or engagement with the Home Office, evidence may be more difficult to obtain. Those who are unable to immediately provide proof of their status may not be able to do so for a variety of valid reasons and a careful assessment must be made to determine whether it is likely either that the individual is attempting to conceal their unlawful status or whether they have a credible claim to be lawfully resident. See: [assessing evidence](#). The following section provides examples of further consideration necessary in certain scenarios.

## Common scenarios: enforcement visits and operations

The following scenarios provide additional advice in relation to the '[assessing evidence](#)' section within this guidance. EEA citizens will not generally be the subject of operational tasking, but these scenarios may occur because of incidental encounters while visiting premises.

## 28-day notice for EUSS expired – no trace of application

See also: [28-day notice for EUSS](#).

A person encountered who was properly notified of their need to establish their right of stay but failed to do so is liable to consideration of administrative enforcement action in accordance with the guidance 'administrative removal subject to the safeguards detailed in this document and those contained in 'Safeguarding – establishing residence and nationality'. Consideration of whether it is right to serve notice of liability to removal must however be subject to the following actions:

Actions:

- investigate / consider whether the individual has a right to remain in any other capacity; for instance, because of dual nationality, leave conferred because of arrival from the common travel area (CTA), recent arrival in UK conferring visitors leave
- investigate / consider any vulnerability or extenuating circumstance that may have prevented understanding and/or compliance. Where there is evidence, see: [vulnerability issues](#)

## Entry in breach of a deportation order

A deportation order (DO) made under EEA regulations automatically invalidates leave and cancels residence rights under the EEA regulations. Only those persons who were lawfully resident in the UK before the end of the transition period and have an outstanding application to the EUSS made before 1 July 2021 will have residence rights under the EEA regulations. A DO not made by under the EEA regulations does not cancel these residence rights.

**For full details of consideration of cases where there is an extant DO, see** Criminality guidance [– entry in breach of a DO](#).

Subject to the overriding factors mentioned above, an individual who has entered the UK in breach of an extant deportation order is an illegal entrant and liable to be removed. A person who is the subject of a DO will be refused EUSS status. Status as an actual or claimed EEA citizen is not material to that fact and action to consider and/or enforce removal may continue provided that:

- any leave wrongly obtained or obtained by deception following entry is cancelled
- the individual is the person named on the order and that any dispute on this has been resolved
- full consideration has been given to usual considerations of relevant vulnerability and/or human rights

See also: [actions following assessment](#) including levels of authorisation.

## Frontier workers

Establish whether the individual has a [Frontier Worker](#) permit:

- ascertain what right to work checks were undertaken and when

- record encounter on Pronto

Those declaring themselves to be Frontier Workers are required to have presented a permit on entry to the UK. Frontier Workers that cannot produce a valid permit should be warned that they must present a valid permit on their next entry to the UK.

See: [Public guidance on Frontier Worker requirements and regulations](#)

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## Service Providers from Switzerland (SPS)

Establish whether the individual has a valid SPS visa, which will be a hard copy document for all individuals. For most nationals the visa will be attached to their passport, but for Swiss nationals (only) this can instead be attached to a Form for Affixing a Visa (FAV). In such cases, the Swiss national must also be able to present their national identity card.

There will be multiple ‘cohorts’ of service providers based in Switzerland who provide services in the UK - only those who meet the criteria of [Appendix SPS](#) are considered a protected cohort. Even for those eligible under Appendix SPS, a visa must be obtained in advance of travel, and individuals unable to produce this should be considered as working in breach of their visit leave (if this was the leave used to enter the UK), if they are found to be providing services during their stay.

You should note that SPS visa holders are entitled to enter the UK on multiple occasions during the visa’s validity period and are not required to use their annual 90-day work entitlement in a single consecutive period. You should not routinely request evidence of how many days work the individual has performed in the UK. However, you should confirm that the individual has not been in the UK for more than 90 days, as this would mean their SPS leave had expired.

You should note that any nationality is eligible under Appendix SPS, and that the same suitability thresholds apply irrespective of nationality. This is the EU public policy, public security or public health test (where it relates to conduct committed before the end of the transition period), or the UK deportation threshold (on the ground deportation is conducive to the public good) where criminality occurred after the end of the transition period.

## Long term resident / worker – non-engagement with EUSS

Example: EEA citizen who has been living and working in UK since 2002 encountered during enforcement visit to business premises. Individual has not yet applied for EUSS and states that he has no intention to.

In these circumstances:

- ascertain what right to work checks were undertaken and whether appropriate documents were seen and recorded, when employment commenced – or whether any subsequent right to work checks were made and evidence retained
- people with a right of permanent residence needed to apply for EUSS before the deadline of 30 June 2021 - those remaining after the grace period ended who have not taken steps to establish their right of stay and who now require leave must be able to demonstrate that they have permission to remain or be liable to removal, subject to the advice provided in [vulnerability issues](#)

## Crown Dependency EUSS status or pending application

Example: An individual states they have EUSS status granted by, or an outstanding EUSS application with, a [Crown Dependency](#).

Actions:

- consider their claim of EUSS status or application, by examining their statements and/or checking any documentation presented
- consider confirming their EUSS status on IT systems, and/or with the relevant Crown Dependency
- You may wish to contact the relevant Crown Dependency for confirmation of an individual's outstanding application.

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## Evidence of criminality / anti-social behaviour

If there is evidence of criminality, consideration must be given to whether it is appropriate to refer the information to Foreign National Offender Returns Command to consider deportation action. If the person is protected by the agreements and conduct was committed before the end of the transition period, their deportation will be considered under the EU public policy, public security or public test. Where conduct was committed after the end of the transition period, deportation must be considered under the UK deportation threshold (on the ground deportation is conducive to the public good).

For a person who is not protected by the agreements, deportation will be considered under the UK deportation threshold, regardless of when the conduct was committed.

If conduct does not meet the threshold for deportation consideration, consideration must be given to whether to cancel or refuse a person's leave. Further guidance can be found at: Grounds for Refusal and Cancellation

## Rough sleeping

See: Grounds for refusal – rough sleeping in UK.

## Suspected sham marriage

Any EEA citizen who has:

- entered or attempted to enter into a sham marriage
- assisted someone else to enter or attempt to enter into a sham marriage, whether or not it was successful

but who is also confirmed as not having protected rights under the Withdrawal Agreement (for example, EUSS has been refused on suitability grounds), may be liable for administrative removal under section 10 of the Immigration and Asylum Act 1999.

EEA citizens who are confirmed as having protected rights under the Withdrawal Agreement and who have been found to have engaged in the sham marriage behaviour listed above, may be considered for deportation on EU public policy grounds. See: EEA decisions on grounds of public policy and public security.

Frontier workers who have been found to have engaged in the sham marriage behaviour listed above, may be liable to deportation on grounds of public policy under the [Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#).

A non-EEA national found to have engaged in a marriage of convenience may also be liable for administrative removal on sham marriage grounds.

See: guidance – Marriage investigation for full details on the various removal pathways scenarios of those subject to a sham marriage determination.

## Disputed or unknown residence / citizenship rights

See within this guidance:

- [General principles](#)
- [Safeguarding those that may have citizenship or residency rights](#)
- [Secondary examination process](#)

## Evidence of possible right or permission to stay emerges following administrative arrest

Example: An individual is properly arrested because there are [reasonable grounds](#) to suspect they are liable to removal. They or their property is searched and/or further physical or verbal evidence is obtained that suggests they may have a lawful basis to be in the UK, such as being a frontier worker or having a pending EUSS application or ongoing appeal against the refusal of an in-time EUSS application, another right or permission to stay.

Example: An individual is arrested after leaving a premises in a manner suggesting a clear attempt to evade investigation. See: Arrest and restraint – pursuit. They or their property is searched and/or further physical or verbal evidence is obtained from elsewhere suggesting they may have a basis to stay.

Actions:

- question the person in order to ascertain the reasons for their actions, for example, the reasons for apparently trying to evade you or presenting misleading information
- consider their claim of withdrawal agreement rights, by examining their statements, checking any documentation presented or completing a check of relevant IT systems

## Right to work/rent: consideration of civil penalty

ICE teams must consider whether it is appropriate to make a referral to the CPCT in relation to breaches of either civil penalty scheme.

Where a 28-day notice to EUSS is served, there will usually be no requirement to make a referral to the CPCT; however:

- where there is unsatisfactory or no evidence that the individual has a reasonable, credible claim to be an EEA citizen or married to or related to an

EEA citizen, the individual has no other basis of stay and they have been served with a RED0001 or other notice notifying them of their liability to removal, you must pursue any evidence of breaches of the civil penalty schemes carrying out the appropriate right to work or right to rent interviews with the individual and employer/landlord (if present)

- where no evidence exists of the individual's right to work or rent, evidence of the employer or landlord's liability for a civil penalty must be gathered and recorded on Pronto in the normal way and referred to CPCT who will determine if a Civil Penalty Notice will be served
- where there is any dispute to residency rights, any referrals made to CPCT will be thoroughly reviewed and status examined before any action is taken in respect of a penalty

## Police request for advice - NCCU

Police contact National Command and Control Unit (NCCU) for advice in relation to an EEA national.

If criminal action is ongoing following a police arrest and there is no record of an EUSS application, NCCU to follow Pronto referral process to relevant ICE team depending on geographical location of custody. ICE to consider conducting a telephone interview to ascertain detail for consideration of service of 28-day notice.

If criminal action is discontinued or the police grant bail, and there is no record of an EUSS application, NCCU should obtain a current address for the individual. If a 28-day notice is to be served, NCCU to make a referral to the relevant ICE team via Pronto depending on the geographical location of the individual's arrest. ICE team to serve 28-day notice by post.

In both instances, ICE to complete the encounter in Pronto and raise a C&E card, document the encounter in EAR (enforcement service) and where applicable, document the service of Notice of Liability.

### Related content

[Contents](#)

# General principles: Returns preparation

## Review and initial consideration

An individual who was properly notified of their need to establish their right of stay but failed to do so is liable to consideration of administrative enforcement action in accordance with the guidance administrative removal subject to the safeguards detailed in this document and those contained in Safeguarding – establishing lawful residence.

Consideration of the status of individuals and their family members during any initial encounter may have been based on incomplete information. As such, further consideration by Returns Preparation caseworkers in relation to possible administrative removal must take account of all available information including that contained in Home Office records, independent health assessments, witness statements, submissions, and representations. A full and comprehensive assessment of the individual's immigration history must be completed, ensuring all previous engagement is considered.

Joining family members (JFMs) do not have saved residence rights after 1 July 2021. However, provided that they apply to the EU Settlement Scheme (EUSS) prior to the expiry of their resulting leave to enter, section 3C will mean that they have a lawful basis to stay in the UK until the refusal of that application.

Consideration of whether it is right to continue with or initiate administrative removal action must be based on the individual circumstances of each case. Consideration of relevant circumstances includes but is not limited to:

- known criminality and/or anti-social behaviour
- engagement in sham marriage behaviour as either a participant or facilitator; see Marriage investigations
- [false representations and/or deception employed during an application for EUSS suitability](#)
- known or suspected vulnerabilities that make it unreasonable or unrealistic to effect enforced removal - see: Appendix FM, Adults at risk in detention guidance
- new, substantive, representations concerning legality, policy and procedure

Appeal rights must be exhausted before administrative removal action is taken, including any appeal against refusal of EUSS. Where administrative removal is considered appropriate, a notice of liability to removal may be served, along with a Section 120 notice when it is considered necessary to invite further grounds to determine eligibility to make a late application to the EUSS.

Form IS151a (EEA) is no longer to be served except in some voluntary departure cases (see: Voluntary departures guidance). This includes those whose status and

any associated offences can be traced and determined prior to 1 January 2021 and who might, at that time, have been liable to removal because they were not exercising treaty rights. Extant appeals against decisions under the European Economic Area (EEA) Regulations in force before 1 January 2021 are still valid and must be processed appropriately. Equally, appealable decisions made under the saved EEA Regulations during the grace period continue to generate an appeal right and will be considered and determined.

Where representation indicate that an individual is eligible to apply under the EUSS they should be signposted towards making an EUSS application to regularise their status in the UK.

Where there are grounds to suspect the individual has vulnerabilities or needs that mean they require more help to make an application, act immediately to refer them to UKVI See: [Vulnerability – identification](#).

Following the service of a notice of liability to removal, bail conditions can be imposed as appropriate, including reporting restrictions. It may be appropriate to await consideration of any representations following a statement of additional grounds before imposing such restrictions. The establishment of reporting restrictions may offer a further opportunity to obtain information regarding vulnerabilities or mitigating circumstances for not applying to the EUSS.

Status granted by the EUSS supersedes previous notice of liability except where there is an extant deportation or exclusion order.

If an individual applied under EUSS and the application has been refused, all appeal rights must be exhausted, and a full assessment of all relevant circumstances completed before further deciding appropriate action. Where the individual holds no protection from the Citizens' Rights Agreement or eligibility to apply under the EUSS, the case may be considered for administrative removal action - applying the [evidence assessment](#).

## Returns Preparation and FNO RC: request for further evidence

The 28-day notice for EUSS is served only by frontline enforcement officers when encountering individuals who may have been eligible for EUSS. Returns Preparation and FNO Returns Command officers should not serve a 28-day notice but may write to individuals requesting further evidence in support of representations in order to assess / clarify the person's individual circumstances prior to making a decision on how to resolve the case.

## Representations and submissions

New information that is relevant to the decision to initiate or continue enforcement action must be fully considered. However, where the information submitted has already been considered substantively and the grounds for refusal are soundly based then removal action may continue subject to renewed [authorisation](#).

## Extant EEA administrative removal cases

EEA citizens and their family members who, prior to 1 January 2021, were served with notice that they are liable to removal, (extant cases), remain liable to removal. Cases must be reviewed following any appeal determination and/or at the point of the variation of bail conditions and assessed against this guidance to confirm that the individual has not obtained EUSS leave. If, following review, it is right that removal action should continue, the individual must be served with form RED0004 and notified of the reason for the decision in accordance with the guidance Administrative Removal:

- extant appeals against an IS.151B (EEA) served before 31 December 2020 should continue to determination and further action to enforce removal must be decided following full consideration of the individual circumstances of the case - enforced removal action, including service of notice of liability and/or notice of removal, may only proceed on confirmation that appeal rights are exhausted and any EUSS application has been refused

See also:

- EUSS family permits
- European guidance

## Scenarios: Returns consideration and preparation

### Family members

See also:

Family separation

Free movement rights – direct family members of EEA nationals

### EEA citizens joining family members

In the case of a joining family member of a relevant sponsor (where the joining family member is not a specified spouse or civil partner of a Swiss citizen) and that joining family member arrived in the UK on or after 1 April 2021: the deadline for making an EUSS application is within 3 months of the date they arrived in the UK, unless you are satisfied by information provided with the application that, at the date of application, there are reasonable grounds for the person's failure to meet that deadline. EUSS guidance provides further categories of joining family members who are included in this consideration.

Those encountered have 3 months from arrival to submit their application. Where you are satisfied that they are within this timeframe, you should not serve a 28-day notice. However, note that some family permits may be issued with a longer validity and, where this is the case, a 28-day notice should not be issued.

## Joining family members (JFM) applications

This part of the EUSS was for specific family members of EEA citizens joining their EEA sponsor after 1 January 2021. The EEA sponsor must have been in the UK on or before 31 December 2020. You must check that a third country national (TCN), (or an EEA citizen entering the UK from 1 January 2021) is not a JFM before commencing any enforcement activity.

### Status assessment:

- review TCN family member claims to determine whether they hold any leave or have a pending application to the EUSS
- if the basis of their stay in the UK is not apparent from information/ evidence we hold, we may seek to verify rights by requesting further evidence from the individual

Review all known information held including the reasons for previous refusal decision, criminality, family life, and vulnerabilities. Consideration should be given to administrative removal as detailed in marriage investigations – removal pathways.

## Post appeal scenarios

Approach:

Extant appeals against an IS.151B (EEA) served before 31 December 2020 should continue unless superseded by a successful application for leave. Where the appeal is dismissed in such cases and there is no other basis of stay removal action may continue in accordance with 'removal consideration'

## Leave obtained by deception – including EUSS

Example: Where leave is sought or obtained by deception, including sham marriage and fraudulent EUSS applications, and where it is established that the individual is not an EEA citizen.

Further action to remove may only proceed on confirmation that the individual is not eligible for or has been refused EUSS leave and must be considered in reference to [Appendix EU](#) and 'removal consideration'.

Where deception is employed, but the individual is an EEA citizen, a RED0001 may be served, authorised by at least G7, notifying liability to removal, unless they are the subject of a sham marriage determination (as either a facilitator or participant) which must be referred to Returns Preparation for consideration of the appropriate removal pathway in line with marriage investigations – removal pathways.

The power to curtail EUSS limited leave (in-country) where obtained by fraud / deception is stated within [Appendix EU](#) annex 3 paragraph 4(a), or at 4(b) if you are curtailing on sham marriage grounds. Provided you are satisfied that it is proportionate to do so, indefinite leave that was granted under Appendix EU may be

revoked under section 76(2) of the Nationality, Immigration and Asylum Act 2002 on the grounds in paragraph A3.5(b) of Annex 3 to Appendix EU that it was obtained by deception.

The Status Review Unit (SRU) may first need to curtail/revoke EUSS leave before removal action continues. Details for such individuals should be referred to SRU via the appropriate referral form on the Status Review Unit Horizon page, with evidence of the deception, and they will consider whether curtailment/revocation of leave is appropriate. Leave must be refused / cancelled before further removal action takes place.

Note that in-country curtailment or revocation of EUSS leave gives rise to a right of appeal that is suspensive of removal and you must ensure that removal action is suspended where an appeal is made against such a decision to curtail or revoke leave. If the individual leaves the UK of their own accord, the appeal does not lapse as the right of appeal can also be exercised from abroad. See: Rights of Appeal.

Any decision to curtail or revoke EUSS leave granted by a Crown Dependency must first be discussed with that Crown Dependency before any action is taken. See: CTA guidance.

See also: Suitability: false representations.

#### **Related content**

[Contents](#)



# Assessing evidence / deciding next action

The continuing challenge for IE is in distinguishing between the Citizens' Rights cohort present in the UK before 1 January 2021 but who did not apply for EU Settlement Scheme (EUSS) status, those otherwise protected by the Citizens' Rights agreements, and other European Economic Area (EEA) citizens who arrived after the end of the transition period.

## Establishing evidence of lawful entry, residence, or rights under the citizens' rights agreements

See also: [GOV.UK – advice to EUSS applicants concerning documentary evidence.](#)

### Evidence of leave granted by EU Settlement Scheme

For further information about how to check PEGA, CID and Atlas for EUSS applications and status, see: Control points and data checks. Please note that it is imperative that complete records searches are conducted, as per the 'Control points and data checks' instructions, which should include biographic searches if no records are otherwise traced – this helps ensure that any evidence of current grants of UK leave are not missed, and helps avoid improper action being taken as a result.

### Evidence of entry from outside the CTA

See also: [Border Force guidance.](#)

EU, EEA, and Swiss citizens will not be able to use an EU, EEA or Swiss national ID card to enter the UK from 1 October 2021 unless they:

- have settled or pre-settled status under the EU Settlement Scheme
- have an EU Settlement Scheme family permit
- have a frontier worker permit
- are an S2 Healthcare Visitor
- are a Service provider from Switzerland visa, **and** a Swiss national

In the cases above, they can continue to use their national ID card to enter the UK until at least 31 December 2025.

EEA citizens other than Irish citizens require permission to enter the UK. An Irish citizen does not require a grant of permission to enter, unless they are subject to a deportation order, exclusion order or international travel ban.

EEA citizens, other than Irish citizens, require a marriage visitor visa if they are travelling to the UK for the purpose of giving notice of marriage or civil partnership, or

to marry or form a civil partnership whilst here, and are subject to the conditions attached to that visa.

EEA citizens are eligible to use e-Gates at ports of entry, provided that they are aged 12 years or over and are travelling using a passport with a biometric chip. EEA citizens who are otherwise exempt from control, for instance those with diplomatic status, are also entitled to use e-gates. The only exceptions to this are EEA citizens entering under specific routes which require a passport endorsement, which are Permitted Paid Engagement (PPE) visitors and Tier 5 Certificate of Sponsorship (CoS) holders.

EEA citizens who hold existing permission to enter or stay (including under the EUSS or points- based system) do not receive an endorsement in their passport and are able to use e-Gates, provided that they meet the e-Gate eligibility criteria.

EEA citizens without existing permission (with the exception of PPE visitors and Tier 5 CoS holders) do not receive written permission to enter such as a passport endorsement; they are either granted permission to enter orally by a Border Force officer or are automatically obtain permission to enter as a visitor for 6 months on successfully passing through an e-Gate. This permission is subject to standard visitor conditions unless the passenger qualifies as an S2 Healthcare Visitor or frontier worker, in which case, those conditions apply.

Family members of EEA citizens who have been granted status under the EUSS or hold an EUSS family permit do not receive an endorsement in their passport when they cross the border.

Family members of EEA citizens who are B5JSSK nationals (Australia, Canada, Japan, New Zealand, Singapore, South Korea, USA) can also use e-Gates and also do not receive passport endorsements (with the exception of Permitted Paid Engagement (PPE) visitors and Tier 5 Certificate of Sponsorship holders) when entering with existing permission or as a visitor. All other nationalities will continue to receive a passport endorsement on arrival unless they are entering with EUSS leave or an EUSS family permit.

## Evidence of entry to the UK from within the Common Travel area (CTA)

See: Common Travel Area guidance.

Anyone travelling within the CTA must meet the immigration requirements of the places in the CTA that they will travel to (so someone who enters Ireland and then travels to the UK must meet both the immigration requirements of Ireland and the UK).

If an EEA national enters the UK via Ireland they may have 'deemed leave', for 6 months (or 2 months of deemed leave where they have previously visited the UK on the basis of deemed leave and have not left the CTA before that subsequent visit).

**Deemed leave does not confer a right to take employment** – the business visitor activities they may undertake are listed in Common Travel Area guidance.

An individual can only benefit from deemed leave if they do not hold another immigration status in the UK (this includes an EEA national who has leave granted under the EUSS) or if they do not fall into one of the exemptions to deemed leave.

Where an individual falls into one of the following categories, they will enter the UK on that basis and do not receive 'deemed leave':

- those who have a right of abode in the UK
- Irish citizens who do not require permission to enter or stay
- those who have permission to enter or stay in force which was given to them before arrival
- those who have entry clearance which confers permission or those who have continuing permission under the Immigration (Leave to Enter and Remain) Order 2000 including those who hold an EUSS Family Permit
- those who are exempt from control (for example diplomats)
- those who have been granted pre-settled status or settled status under the EUSS
- those who have applied under the EUSS whose application has yet to be determined
- those who are a frontier worker under the Citizens Rights (Frontier Workers) (EU Exit) Regulations 2020)

In all other cases, the individual is entitled to "deemed leave" when entering via Ireland, unless they fall under one of the exceptions detailed in Common Travel Area guidance, in which case they have entered illegally.

These exceptions are:

- a person subject to a deportation order
- a person whose exclusion has been deemed conducive to the public good
- a person who has previously been refused leave to enter the UK and has not subsequently been granted any leave
- any person who arrives (by ship or aircraft) in the UK from outside the CTA, having transited through Ireland, without passing through the immigration control there
- a visa national not in possession of a valid UK entry clearance
- any person who entered Ireland unlawfully from outside the CTA, including those who have deceived an Irish immigration official about their future intentions and then sought entry to the UK
- a person who enters the UK or Crown Dependencies unlawfully and who then travels directly to Ireland before returning to the UK
- a person whose leave to enter or remain in the UK expired (including through cancellation) before they left the UK for Ireland, and did not subsequently leave Ireland before returning to the UK
- a person who has been refused or subject to a removal decision under The Immigration (European Economic Area) Regulations 2016 or The Citizens'

Rights (Frontier Workers) (EU Exit) Regulations 2020 and has not subsequently been granted leave or admission

Any leave that is given in any of the islands of the Crown Dependencies has effect as if the permission or refusal had been given by the UK. So, when a passenger arrives with leave that was granted by any of the islands, that individual does not require any further leave to enter. An individual arriving from the Crown Dependencies only requires leave to enter if they are:

- a person subject to a deportation order
- a person whose exclusion has been deemed conducive to the public good
- a person who has previously been refused leave to enter the UK and has not subsequently been granted any leave
- a person who no longer has permission in the relevant Crown Dependency and then arrives in the UK direct from the Crown Dependencies
- a person with limited leave in the UK, but who is subsequently refused by a Crown Dependency, or entered the islands illegally without permission, or if their presence there was unlawful

If you encounter an individual whom you suspect of having entered the UK illegally but who claims to have recently arrived in the UK from Ireland or the Crown Dependencies, you must seek to establish the person's:

- date and means of entry to Ireland or the Crown Dependencies and immigration status in Ireland in the Crown Dependencies
- immigration history in the UK if appropriate
- date and means of embarkation from Ireland or the Crown Dependencies
- subsequent entry to the UK and details of any visas

Evidence of the above may include a passport or other travel document but full account should be taken of any other documentary evidence or statements that provide reasonable grounds on which to establish date and means of entry.

If you are satisfied that the individual has no current status (as listed in the categories above) and is in breach of the conditions of their deemed leave (that is are encountered working or have overstayed the permitted period of deemed leave), they are liable to be removed.

If you are satisfied that the individual has no current status and entered illegally due to falling into one of the exemption categories listed in the CTA guidance, they are liable to be removed. An individual with current deemed leave who is liable to removal for these reasons must be notified of the cancellation of that leave when being given notice that they are liable to removal, See Cancellation / curtailment guidance.

An individual with current deemed leave who is liable to removal for the reasons stated above must be notified of the cancellation of that leave when being given notice that they are liable to removal.

## Evidence of identity and nationality

Further guidance about determining whether an individual may be lawfully resident is contained within: Safeguarding and establishing lawful residence.

Indicators of residence may include digital and/or documentary evidence in the form of some or all of the following:

- evidence of EUSS leave; see: Control points and data checks - online status checker
- documents previously issued by the Home Office (such as a document issued for emergency travel purposes, or a frontier worker permit) provided there is no evidence that this identity or nationality was confirmed in error, fraudulently, or has significantly changed
- an expired passport or other required document, bearing the applicant's name and photograph
- an official document issued by the authorities of the applicant's country of origin which confirms their identity and nationality, including birth certificate, marriage certificate, driving licence, tax / social security statement, national service document, or emergency travel document or similar – this is not an exhaustive list and other similar documents may be considered
- official document issued by UK national and local authorities that may, when considered with other evidence, help corroborate residence history - this can include a UK driving licence, National Insurance number card, or tax or pension statement – this is not an exhaustive list and other similar documents may be considered
- an official document issued by the authorities of an EEA Member State which confirms the applicant's identity and nationality, including a document confirming permanent residence in that state or registration as the family member of an EEA citizen exercising Treaty rights in that state
- the applicant's biometrics (facial photograph and, in the case of a non-EEA citizen, fingerprints) which match an existing government record confirming their identity and nationality
- financial records including bank statements showing a record of in-country transactions, HMRC statements of national insurance paid, P60s
- witness statements corroborating the claim to unbroken residence provided by a person with an established personal or official connect during the relevant periods
- a travel ticket to the UK confirming previous in-bound travel as evidence of residence for the month of entry
- documentary evidence of EUSS leave granted by Crown dependencies

Where other means of ascertaining an applicant's identity and nationality have been exhausted, you may, with the individual's consent, consider referral to the embassy, consulate or high commission in the UK of the applicant's claimed country of origin seeking confirmation as to any records held about the claimed identity and nationality. You must be satisfied that such an approach would not put the applicant or their family at risk.

See also: [Derivative rights of residence](#).

## Initial evidence assessment: continuation of enforcement action

This section is about whether the grounds established during investigation make it reasonable and proportionate to consider administrative enforcement action other than voluntary return. Enforcement action in this context means a decision to move directly to service of notice that the individual is liable to be removed.

Any request by an individual to voluntarily leave the UK should be referred to the Voluntary Returns Service who will conduct the necessary checks. See: [voluntary departures eligibility](#).

You must attempt to investigate any individual you may encounter while conducting your enquiries to establish:

- their lawful status and whether they are a person subject to control under the Immigration Act 1971
- whether they have a lawful right to reside in the UK or other permitted basis of stay
- liability to any civil penalty, see: [consideration of civil penalty](#)

You must conduct such enquiries within the constraints described elsewhere in Immigration Enforcement General Instructions. Please note that it is imperative that complete records searches are conducted, as per the Control points and data checks instructions, which should include biographic searches if no records are otherwise traced – this helps ensure that any evidence of current grants of UK leave are not missed, and helps avoid improper action being taken as a result.

The degree of available information on which to base a decision to continue investigation, and the nature of that investigation, is dependent on the nature of the information given and the degree of co-operation offered by the individual during exploratory questions or Schedule 2 examination.

Those that cannot or will not provide satisfactory evidence of their status, or otherwise will not assist you in establishing such evidence, present the greatest risk of inappropriate arrest and it is vital that you explore every practical means of gathering information to help justify your decision to proceed or not to proceed.

You must consider several possibilities including that:

- the individual may have a lawful status but is exercising their legitimate right not to disclose personal data – there is no coercive power to make someone co-operate with exploratory questioning and they may have legitimate reasons for not wanting to talk to you - the individual may be reassured by an explanation of your purpose and aims
- they may have a right to reside whose nature they do not understand or which they are unaware of; for instance, the fact that an individual may have applied

for and been refused a status under the current immigration rules does not invalidate any pre-existing right that may exist - the individual may not have been aware of their entitlement when making their application

- they may have no basis of stay and are seeking to evade further investigation by obstructing your enquiries— being uncooperative can never, on its own, provide reasonable grounds that an offence has been committed but may, in combination with other information and circumstances, contribute to your concluding that they are attempting to conceal unlawful acts or status
- you may have misunderstood or misinterpreted information that means further advice is needed – it is recognised that EU and UK nationality law is highly complex, and it is reasonable for you to act with caution and seek further advice and clarification where necessary

In the context of this guidance, if there are any reasonable grounds to suspect that there is a credible but unsubstantiated claim to lawful residence, no notice of liability to removal should be served at that time but evidence regarding any potential civil penalty should be recorded and referred to CPCT. You should serve a 28-day notice for EUSS if one has not already been served.

What can be considered reasonable grounds in the context of the circumstances described requires an objective assessment of:

- evidence of vulnerability material to whether the individual has the physical and/or mental capacity to understand and deal with the administrative requirements of the immigration regulations
- the circumstances in which the individual was encountered – for instance, the nature of the premises, their activity and associations when encountered
- any supporting evidence available from Home Office databases and paper records – that may prompt someone who is reluctant to engage with you to confirm or dispute the information and/or reassure them that you have a legitimate need to clarify the accuracy of the data
- whether their statements, if any, accord with known procedures and rules at the times stated and, in the case of those claiming to be EEA citizens, are consistent with the EEA regulations that existed at any relevant date in their account
- the strength and consistency of information within available documentary evidence – which may not be restricted to Home Office documents
- the degree to which any statements can be corroborated by other sources, such as family members, employers, landlords, the Crown Dependencies or others, see also: [consideration of civil penalty](#)

Any information should be considered very carefully and, if dismissed, must be re-evaluated considering any further evidence or changed circumstances. It must be re-emphasised that, even if the circumstances and actions of the individual when encountered might usually be considered to undermine their credibility, they may still have actual or potential residence or citizenship rights that they are unaware of.

Those that may have apparently lost EEA residence may still be able to make a late application under EUSS and may have already done so following service of a 28-day

notice for EUSS. Your assessment of whether further consideration of administrative enforcement action is appropriate must be based on a careful assessment of all available evidence and circumstances.

## Decision options and next action

The following options are a summary of possible decisions given the general circumstances described in each.

- no further action:
  - you are satisfied that the individual is an EEA citizen, their family member, or a person with rights under the withdrawal agreements (such as a frontier worker) who has/have taken steps to confirm their status
- signposting via service of 28-day notice for EUSS only:
  - you are satisfied that the individual is an EEA citizen, an EEA family member, or a person who may have had an EEA derived right of residence and who is eligible for but did not apply to the EUSS by the deadline of 30 June 2021
- signposting and support:
  - you are satisfied that the individual is an EEA citizen, an EEA family member, or a person with EEA derived rights of residence and who is eligible to apply for EUSS but did not do so by the deadline of 30 June 2021, and there are grounds to believe that the person is vulnerable and may be unable to do so
- enforcement action - Referral to VRS:
  - the individual requests assistance to return to their home country and it is not appropriate to serve a 28-day notice for EUSS - VRS to review eligibility, see within this guidance, [voluntary returns](#) eligibility
- curtailment / cancellation see: General Instructions, cancellation and curtailment of permission guidance and the section within this guidance, [curtailment of leave – EEA citizens](#)
- enforcement action – arrest and administrative removal consideration process:
  - the decision whether to arrest sits with the immigration officer, in accordance with the guidance contained in arrest and restraint and administrative removal - in the context of this guidance, the fact and circumstances of the arrest must be notified to and reviewed by a senior officer as soon as practically possible

## 28-day notice for EUSS

A 28-day notice for EUSS warns an EEA citizen or their family member that they may lose access to services in the UK and be required to leave the UK, including by administrative removal action, and should take immediate steps to secure their ongoing right to remain.

Although the EUSS closed on 30 June 2021, the Home Office will consider late applications where 'reasonable grounds' are provided explaining why the application was not made previously. See the section 'reasonable grounds for failing to meet the deadline' in the EU Settlement Scheme guidance.



Whether reasonable grounds for the late application have been established is a matter for the EUSS team considering those applications and you should not advise on, or volunteer opinion, on what may constitute reasonable grounds. You may draw their attention to the [guide for EU, EEA and Swiss citizens](#) on viewing and proving their immigration status (e-Visa). The guide explains how people can view, prove, and share their immigration status, update their details, what they should expect when crossing the UK border and how to get help accessing their immigration status.

Where possible and appropriate, service of the notice should be accompanied by a verbal explanation of the reasons for it and their attention drawn to the time limit for late applications and the range of support services detailed on the 28-day notice for EUSS. You must not promote and/or advise voluntary departure where a 28-day notice for EUSS has been / is to be served.

## Previous service of 28-day notice for EUSS

Where an individual was previously served with a 28-day notice for EUSS but has not acted on that advice and information within the timeframe specified in the notice, they must be examined and assessed according to the guidance contained in 'Administrative Removal' as to whether they are a person liable to administrative removal and whether it is right to commence that administrative process. However, you must:

- check the record of previous service and whether any exceptional circumstances were noted at the time of that encounter on relevant Home Office systems concerning possible vulnerability suggesting the individual might need further help and direction
- check for any referral to UKVI alerting them to the fact that a vulnerable person was identified

Failure to act on the advice within the 28-day notice for EUSS does not remove or negate any other lawful status that exists. You must remain alert to the possibility that an individual may have lawful status or permission but does not understand that this is the case.

Where information suggests that further steps are being taken to address special needs, no further steps should be taken to commence administrative removal action until the individual's eligibility for EUSS has been considered and further check are made to identify any other basis of stay. No further 28-day notice should be served.

## Persons granted port bail to make an in country EUSS application

You may encounter an EEA citizen or their family member who has been refused permission to enter at the border but has been granted a period of immigration bail in order to make an in-country application to the EUSS. This is most likely to occur where the EEA citizen or their family member holds an unexpired document, such as a Biometric Residence Card or Registration Certificate, which was issued under the

EEA Regulations 2016, but will also include individuals granted bail for compassionate reasons. Immigration bail in such cases will usually have been granted for an initial period of 28 days, in line with the 28-day notice for EUSS process being used in country. Provided that the individual makes an EUSS application in that period, bail will be extended by Border Force and no further action will be taken (until and unless the application is ultimately refused). Where the individual does not make an application, Border Force will proceed to take removal action.

Such individuals should not be served with a 28-Day notice for EUSS, and no further action is required by IE unless an individual absconds or breaches the conditions of their bail.

## Vulnerability issues: suspected or identified

When serving a 28-day-notice, consideration must be given to any indication or information suggesting that the individual may have a limited ability to understand and act on the advice being given. This may, for instance, mean that those with cognitive impairment, or people with limited understanding, may need assistance in understanding the immigration regulations and in making an application. You may not legally provide advice on an application, but you may consider whether there are other people who could potentially be alerted to help the individual. These may include:

- legal representatives known to be associated with the individual
- social services
- relevant charitable bodies including religious bodies including the [72 funded organisations](#) that have assisted in raising awareness of EUSS
- family members and/or carers that make themselves known to you during the encounter and/or responsible adults where you are satisfied they are appropriate and able to act in the best interests of the individual

You must record that you have identified the individual as being vulnerable and the reasons for this on Atlas; see [record of encounter](#).

See also:

- Identifying people at risk
- General Grounds for Refusal – Rough Sleepers

## Record of encounter

Encounters with any person(s) during visits and operations must be recorded in accordance with the guidance contained in Record keeping during enforcement visits on the Police Reporting and Notebook Organiser (PRONTO) app on the Digital Pocket Note Book (DPNB). The recording of minimum details on Pronto serves to:

- provide a defence against any future claims of unlawful examination

- provide accurate information about the reasons for questioning and the numbers of those investigated

**Service of a 28-day notice for EUSS should be recorded on PRONTO and relevant case-working systems.**

See also: Control points and data checks. Please note that it is imperative that complete records searches are conducted, as per the 'Control points and data checks' instructions, which should include biographic searches if no records are otherwise traced – this helps ensure that any evidence of current grants of UK leave are not missed, and helps avoid improper action being taken as a result.

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## **Authorisation to initiate returns consideration or enforced removal**

### **Initial notification of liability to removal**

A RED notice of liability to removal can be served on authority of SCW, where appropriate, but any removal directions / removal window set to take proactive removal action must still generally be authorised by at least G7.

## Extant cases

Removal in extant cases may continue where the individual is the subject of an extant EEA deportation order. Otherwise, administrative removal may only be enforced where it is confirmed that there is no continuing eligibility for EUSS or that EUSS has been refused with no remaining appeal rights. Extant appeals against an IS.151B (EEA) served before 31 December 2020 should continue to be heard. Do not serve a new RED notice - the appeal is based on the regulations and guidance that were extant at the time of the decision

Removal and detention in the case of an EEA citizen who has returned illegally, in breach of a deportation order or having been excluded, may be authorised by CIO grade. In all other cases, any removal directions/removal window set to take proactive removal action, and any decision to detain, must be authorised by at least G7.

## Entry in breach of deportation or exclusion order

A deportation or exclusion order made under the EEA regulations invalidates any leave granted and cancels residence rights of those persons who were lawfully resident in the UK before the end of the transition period. Residence rights may be retained and must be considered for those subject to a deportation order made under the Immigration Act 1971 or UK Borders Act 2007 other powers. Following assessment, you may proceed with service of a RED.0001, noting your justification as entry in breach of a deportation or exclusion order. As there is less ambiguity about the person's identity and their rights in these cases, authority to proceed rests at HEO/CIO grade in line with existing processes.

## Voluntary departures

If the Voluntary Returns Service establishes that an applicant has no basis of stay, they will be served a form IS101 as amended, which the applicant must sign and then be served form IS151A(EEA). See: [Voluntary departure guidance](#).

## Curtailment of EUSS leave to remain

Where the individual is not a genuine EEA citizen or their family member, because:

- they obtained EUSS leave using a false document (such as an altered or counterfeit identity document)
- they are an imposter
- they obtained their EEA nationality by deception

and if they have EUSS leave, you may curtail their leave, provided that the deception was material to the grant of leave and curtailment is proportionate.

See also:

- cancellation and curtailment of permission guidance
- suitability: non-conducive grounds for refusal
- revocation of indefinite leave

To establish whether an individual holds EUSS leave you must:

- find out the date on which EUSS status was granted
- where the conduct flagged post-dates the grant of status or new intelligence has come to light since the grant of EUSS leave, then it should form part of the curtailment consideration - it is important to note that pre-grant conduct may be considered in line with post-grant conduct if an ongoing pattern of adverse behaviour can be demonstrated
- obtain from the RCCU the Unique Application Number (UAN) - this is a 16-digit reference and, where proceeding with cancellation, should be recorded on Pronto / Atlas See also: [record of encounter](#)

It should be noted that, although any previous administrative removal or refusal of admission may form part of a public policy, public security or public health consideration, you must not cancel leave purely because there has been a previous refusal or administrative removal. The public policy, public security and public health test needs to be considered in full, including considering any new facts and circumstances that are relevant to the decision.

### **Cancellation of EUSS leave must be referred to a grade 7 in the first instance.**

Any consideration of whether to cancel any form of immigration leave, including EUSS leave, granted by a Crown Dependency must be discussed with that Crown Dependency first before any action is taken to ensure a joint decision is taken.

Irish citizens could apply for EUSS even though they did not need to. Where you have cause to cancel an Irish citizen's EUSS leave, they may still be entitled to remain in the UK on the basis of their CTA rights as set out in 3ZA of the Immigration Act 1971 (as inserted by the Immigration and Social Security Co-ordination Act 2020). The individual can only be considered for administrative removal if they are also subject to a deportation order, exclusion decision or international travel ban.

### **Right of appeal / review for non-EUSS and EUSS individuals**

Non-EUSS individuals have no Right of Appeal (RoA) and no right to administrative review against a decision to cancel their permission to enter or stay in the UK. However, a non-EUSS migrant may be able to seek a Judicial Review, or they could raise a fresh Human Rights claim following a cancellation decision.

An individual with EUSS leave has a right of appeal against a curtailment (in-country) or cancellation (border) decision made under [Appendix EU](#). where leave is curtailed in-country, the leave is curtailed with immediate effect and they are placed on bail as they are liable to removal.

For those with EUSS leave, there is no right to administrative review where a decision has been made to curtail the individual's leave in-country on suitability grounds excepting:

- where a decision has been made to cancel their leave at the border - where leave is cancelled at the border the individual will either be bailed or detained until the Administrative Review process is concluded
- when cancelling leave in country on grounds of no longer meeting requirements of that leave - see [App AR 1.1\(d\)](#)

## Voluntary departures by EEA citizens: eligibility

EEA citizens may now request and be eligible for voluntary return (Those entering the UK pre 1/1/21 and post). Voluntary departure arrangements will not apply to individuals who are self-funding their departure unless they need HO assistance such as obtaining travel documentation.

EEA citizens should be referred to the Voluntary Returns Service (VRS), **only** if:

- they are not within the period indicated by a 28-day notice for EUSS
- they have no actual right to stay, VRS can work with the applicant to establish possible extant leave, saved EEA rights of residence or other rights under the withdrawal agreements
- they make a fully informed request to return home voluntarily; that is, that they understand the possibility of making a late application to EUSS but do not want to apply and understand the implications of not doing so - VRS will also explore this with the applicant

The individual must provide details of their means and date of entry to determine liability to enforcement action and eligibility for voluntary return. VRS will seek to establish whether the individual is liable / qualifies for administrative return and will also work with the individual to identify what assistance they need to return.

Check / confirm that:

- no EUSS application is still open
- there is no ongoing appeal against a refusal of EUSS leave

The IS101 (as amended) must be signed and received by VRS and an IS151AEEA served before any public expense removal can be arranged. See: [Authorisation and service – voluntary departures](#).

See Voluntary and assisted returns.

### Related content

[Contents](#)