



Home Office

# Exclusion from the UK

Version 5.0

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# About this guidance

This guidance tells you about the exclusion from the UK of foreign nationals.

## 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 Migrant Criminality Policy team.

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

## Publication

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

- version **5.0**
- published for Home Office staff on **26 November 2021**

## Changes from last version of this guidance

Amendments to:

- reflect the end of the Grace Period
- clarify the circumstances under which a decision to exclude can be made against an EEA national under the Immigration (European Economic Area) Regulations 2016 as saved, on sham marriage grounds
- clarify the process for dealing with requests and referrals for exclusion
- reflect the introduction of the Authority to Carry Scheme 2021

## Related content

[Contents](#)

# Introduction

This page tells you what exclusion is and the different legislation governing decisions to exclude a person from the UK.

Exclusion from the UK is used to prevent a person from entering the UK. If the person is in the UK, deportation will normally be the appropriate course of action.

Exclusion is normally reserved for cases involving national security, extremism, serious crime, international crimes (including crimes against humanity) and unacceptable behaviour. See [grounds for exclusion](#) for further information.

## Decisions and orders

A decision to exclude a person from the UK is made either by:

- **Exclusion decision:** a personal decision of the Secretary of State, on the ground that it is conducive to the public good and, where applicable, on the grounds of public policy, public security or public health)  
**Exclusion order:** under regulation 23(5) of the Immigration (European Economic Area) Regulations 2016 (EEA Regulations 2016):
  - on the grounds of public policy, public security or public health in accordance with [regulation 27](#) and [Schedule 1](#) of the EEA Regulations 2016
  - on conducive grounds in accordance with regulation 27A of those regulations

An exclusion order can only be made in respect of a person who is protected by the savings provisions in the [Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#) (Grace Period Regulations 2020). That is a person (or the relevant family member of a person) who has an outstanding application (or appeal against the refusal of an application) to the EU Settlement Scheme (EUSS), made on or before 30 June 2021 and was either:

- lawfully resident in the UK in accordance with the EEA Regulations 2016 by 23:00 GMT on 31 December 2020
- had acquired a right of permanent residence by that date (unless they have been absent from the UK for a continuous period of more than 5 years)

A flowchart to assist with decisions and orders and the thresholds that apply in the different circumstances is annexed to this guidance.

## Protected cohorts

Protected cohorts are those who are protected by the EU Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement ("the Agreements"), or by the UK's domestic interpretation of the Agreements.

Consideration of exclusion in respect of someone from within the protected cohorts, on the basis of conduct which occurred prior to 23:00 GMT on 31 December 2020, must be in line with the EU [public policy, public security or public health](#) test in regulation 27 of the [EEA Regulations 2016](#).

For more information, including a list of the protected cohorts, please see guidance on [public policy, public security or public health decisions](#).

### Exclusion of EEA nationals and their family members

Cohort	Date of conduct	Basis for exclusion consideration
Protected	Up to 23:00 on 31 December 2020	If within scope of the Grace Period Regulations 2020: Public policy, public security, public health (Regulation 27)  Otherwise by a personal decision of the Secretary of State on conducive grounds where the public policy test also applies
Protected	From 23:00 on 31 December 2020	If within scope of the Grace Period Regulations 2020: Regulation 27A – conducive  Otherwise by a personal decision of the Secretary of State on conducive grounds.
Not protected	All conduct	By personal decision of the Secretary of State

An exclusion decision or exclusion order remains in force until a person successfully applies to have it lifted, or the Secretary of State decides the exclusion decision or exclusion order no longer applies.

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## The best interests of a child

The duty in [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of a child under the age of 18 in the UK, together with Article 3 of the [UN Convention on the Rights of the Child](#), means that consideration of the child's best interests must be a primary consideration in immigration decisions affecting them. This guidance, and the Immigration Rules it covers, form part of the arrangements for ensuring that we give practical effect to these obligations.

Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child. You must carefully assess the quality of any evidence provided.

All decisions must demonstrate that the child's best interests have been considered as a primary, but not necessarily the only, consideration. Decisions must demonstrate that consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK. Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

Although the duty in section 55 only applies to children in the UK, the statutory guidance – [Every Child Matters – Change for Children](#) – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children, promote their welfare and reduce the risk of trafficking and exploitation.

Further guidance can be found in paragraphs 2.34 to 2.36 of the [statutory guidance](#).

### Related content

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# Exclusion on conducive grounds

This section tells you about an exclusion decision made on the grounds that it is conducive to the public good. This means that it is undesirable to admit the person to the UK because they pose a threat to UK society. This applies to conduct both in the UK and overseas.

The power to make an exclusion decision on conducive grounds can only be exercised personally by the Secretary of State, normally the Home Secretary or a Minister of State on the Home Secretary's behalf.

Exclusion on the grounds that it is conducive to the public good applies in the following circumstances:

- to a person (EEA national or non-EEA national) who is not within the [protected cohorts](#)
- to a person within the protected cohorts, only on the basis of conduct from 23:00 on 31 December 2020

Exclusion of a person within scope of the Grace Period Regulations 2020, on the grounds that it is conducive to the public good must be done by way of an exclusion order in accordance with regulation 27A of the EEA Regulations 2016. All other persons must be excluded by virtue of an exclusion decision.

In most foreign national offender cases, deportation will be the normal route for those the Home Office want to remove from the UK, but there may be cases where the person leaves the UK before deportation action can be completed. If you are aware, or reasonably believe, that the person is no longer in the UK, consideration may be given to exclusion. If deportation action was pursued in the belief that the person was in the UK, as the person had not informed us otherwise, it may still be appropriate to rely on the deportation order obtained rather than to pursue exclusion.

Exclusion will normally be appropriate in cases where a person, who is not in the UK, has been deprived of British citizenship on the grounds that it was conducive to the public good.

## Refusal of entry clearance, leave to enter or remain

A person who has been excluded and who applies for entry clearance, leave to enter or remain in the UK must have their application refused under paragraph 9.2.1. (a) of [Part 9 of the Immigration Rules](#) on the grounds that the Secretary of State (or Minister of State acting on behalf of the Home Secretary) has personally directed that the person be excluded from the UK or that they are the subject of an exclusion order. This remains the case as long as the exclusion decision or exclusion order is still in force.

For applications under Appendix EU or EU (Family Permit), a person subject to an exclusion order or exclusion decision must be refused under paragraph EU15.1.b of



Appendix EU or paragraph FP.7.1.b of Appendix EU (Family Permit. For conduct committed before 31 December 2020, the application can only be refused where the conduct meets the public policy, public security or public health threshold.

**Related content**

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# Exclusion on the grounds of public policy, public security or public health

This page tells you about the exclusion of an EEA national or a family member of an EEA national on the grounds of public policy, public security or public health. You must read it in conjunction with guidance on [EEA decisions on grounds of public policy](#).

Exclusion on the grounds of public policy, public security or public health only applies to a person from within the protected cohorts, in relation to conduct occurring **before** 23:00 GMT on 31 December 2020.

[Regulation 27](#) and [Schedule 1](#) of the [EEA Regulations 2016](#) set out the principles to consider when making a decision to exclude on the grounds of public policy, public security or public health.

Where such a decision is taken on the grounds of public policy or public security, it must be made in line with the following principles:

- the decision must comply with the principle of proportionality
- the decision must be based exclusively on the personal conduct of the person concerned
- the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the [fundamental interests of society](#), taking into account past conduct of the individual and that the threat does not need to be imminent
- matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision
- the individual's previous criminal convictions do not in themselves justify the decision
- the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person

A decision to exclude on the grounds of public policy, public security or public health should only be made against a person who is believed to be outside the UK. Where you are considering exclusion and there is evidence the person is resident in the UK, you must take account of the following considerations, in accordance with regulation 27(6):

- the person's age
- the person's state of health
- the person's family and economic situation
- the person's length of residence in the UK
- the person's social and cultural integration into the UK
- the extent of the person's links with their country of origin

Exclusion of a person within scope of the Grace Period Regulations 2020, on the grounds of public policy, public security or public health, must be by way of an exclusion order under regulation 23(5) of the EEA Regulations 2016.

All other exclusions where the public policy, public security or public health test applies, must be by way of an exclusion decision on conducive grounds **and** public policy, public security or public health grounds.

## EUSS leave, EUSS family permit or EUSS travel permit

Where an application has been made for leave under the EU Settlement Scheme (EUSS) or for an EUSS family permit or travel permit under Appendix EU or Appendix EU (Family Permit) (FP) to the Immigration Rules from a person who is outside of the UK and the case meets the criteria for referral to Immigration Enforcement as set out in the EUSS suitability guidance, consideration must be given as to whether to exclude the person from the UK.

If the applicant has already been excluded their application will fall to be refused under paragraph EU15(1) of Appendix EU or FP7(1) of Appendix EU(FP). If the applicant is subject to an exclusion decision and has since acquired an EEA right, consideration must be given to making an exclusion order on grounds of public policy, public security or public health.

Where a decision is made to exclude an applicant, their application will fall to be refused under paragraph EU15(1) of Appendix EU or FP7(1) of Appendix EU(FP). The applicant must be notified of both the decision to make an exclusion order and the decision to refuse their EUSS or EUSS family permit or travel permit application at the same time.

## Individuals with 10 years' residence or a permanent right of residence

Under [regulation 27\(4\)](#) of the EEA Regulations 2016, a decision to exclude a person from the UK is only permitted on imperative grounds of public security, where an EEA national either:

- has a right of permanent residence and has resided in the UK for a continuous period of at least 10 years prior to the decision
- is under the age of 18, unless the relevant decision is in their best interests, as provided for by the UN Convention on the Rights of a Child

Where an EEA national or their family member has established a permanent right of residence, a decision to exclude the person from the UK is only permitted on serious grounds of public policy or public security.

For further information on the impact on exclusion of residence in the UK see guidance on [EEA decisions on grounds of public policy and public security](#).

## Fundamental interests of society

Paragraph 7 of [Schedule 1](#) of the [EEA Regulations 2016](#) provides a non-exhaustive list of the fundamental interests of society in the UK, and provides examples of the types of behaviour that are contrary to those interests.

When making a decision about whether to exclude on the grounds of public policy, public security or public health, consideration must be given to the fundamental interests of society to determine whether exclusion is appropriate on the grounds of public policy or public security. You must list all the relevant fundamental interests which apply when making an exclusion decision on the grounds of public policy, public security or public health.

Further information about the fundamental interests of society including a list of the types of behaviour considered contrary to each fundamental interest of society can be found in the guidance on [EEA decisions on grounds of public policy and public security](#).

### **Related content**

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# Grounds for exclusion

This page tells you about the types of cases where the use of exclusion is appropriate.

Exclusion of a person from the UK is normally used in circumstances involving national security, criminality, international crimes (war crimes, crimes against humanity or genocide), corruption, unacceptable behaviour and in limited circumstances, sham marriage.

## National security

National security threats will often be linked to terrorism. Terrorist activities are any act committed, or the threat of action designed to influence a government or intimidate the public, and made for the purposes of advancing a political, religious or ideological cause and that:

- involves serious violence against a person
- may endanger another person's life
- creates a serious risk to the health or safety of the public
- involves serious damage to property
- is designed to seriously disrupt or interfere with an electronic system

## Criminality

Where appropriate, individuals with past or present involvement in criminality will normally be refused entry to the UK in line with [Part 9 of the Immigration Rules](#).

Exclusion will not usually be necessary, unless the level of criminality, or the threat posed by the person is so serious that it warrants exclusion. For example, if a notorious or dangerous criminal is a non-visa national, their ability to travel to the UK in the first place may be better prevented by exclusion. Exclusion may also be an option where a foreign national offender has left the UK before it has been possible to conclude the deportation process.

Exclusion on the grounds of [public policy, public security or public health](#) may be justified on the basis of serious or persistent criminality. Consideration must be conducted on a case by case basis and be based on the person's conduct and circumstances, including whether they have any prior criminal convictions, the nature and seriousness of any previous offending and whether it is proportionate to exclude the person from the UK.

A conviction is not necessary in order to consider a person for exclusion. If the person's activities are capable of falling within the scope of UK criminal legislation (or conduct prohibited by law), whether or not the individual is charged with or convicted of an offence, then it may warrant exclusion.

Exclusion on the basis of serious or persistent criminality will normally be appropriate if there is evidence to suggest that the person intends to travel to the UK. Exclusion may also be appropriate where an offender has left the UK before it has been possible to conclude the deportation process, meaning that they cannot be deported.

## International crimes

War crimes are grave breaches of the Geneva Conventions committed during an armed conflict. This includes an internal armed conflict within a State and an international armed conflict between States.

The types of acts that may constitute a war crime include:

- wilful killing
- torture
- extensive destruction of property not justified by military necessity
- unlawful deportation
- the intentional targeting of civilians
- the taking of hostages

Crimes against humanity are acts committed at any time (not just during armed conflict) as part of a widespread or systematic attack, directed against any civilian population, with knowledge of the attack. This includes:

- murder
- torture
- rape
- severe deprivation of liberty in violation of fundamental rules of international law
- enforced disappearance of persons

Genocide means acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

This list is not exhaustive. The full definitions of war crimes, crimes against humanity and genocide can be found in [Schedule 8](#) of the International Criminal Court Act 2001.

## Corruption

There is no single accepted definition of corruption. A number of organisations including Transparency International define it as ‘the abuse of entrusted power for private gain’.

The types of activities associated with corruption include, but are not limited to the following:

- tax evasion
- money laundering

- bribery and accepting kickbacks (part of an income paid to a person in return for an opportunity to make a profit, often by some illegal arrangement)
- extortion
- asset stealing
- fraud
- match fixing in sport

A person does not need to have been convicted of a corruption related offence in order to be excluded. Where there is substantive, reliable information that a person has been involved in corruption this should be taken into account.

## Extremism

In October 2015 the Government published its [Counter-Extremism Strategy](#), which contains a commitment to make it more explicit that the criteria for exclusion on the grounds of unacceptable behaviour include past or current extremist activity, either here or overseas. A person who has previously engaged in unacceptable behaviour may still be considered for exclusion, if their views were particularly abhorrent, even if they have since publicly retracted those views and have not re-engaged in such behaviour.

In EEA cases in order to meet the public policy, public security, public health test, you must be satisfied that the person poses a genuine, present and sufficiently serious threat to the UK, taking into account the past conduct of the person and that the threat does not need to be imminent.

## Unacceptable behaviour

Unacceptable behaviour covers any non-UK national whether in the UK or abroad who uses any means or medium including:

- writing, producing, publishing or distributing material
- public speaking including preaching
- running a website
- using a position of responsibility such as a teacher, community or youth leader

to express views which:

- provoke, justify or glorify terrorist violence in furtherance of particular beliefs
- seek to provoke others to terrorist acts
- provoke other serious criminal activity or seek to provoke others to serious criminal acts
- foster hatred which might lead to inter-community violence in the UK

This list is indicative rather than exhaustive.

## Sham Marriage

An person who is protected by the Grace Period Regulations 2020, may be excluded from the UK by way of an exclusion order under the EEA Regulations 2016 where it has been determined that they have entered into, attempted to enter into, or assisted another person to enter or to attempt to enter into a marriage, civil partnership or durable partnership of convenience.

A conviction is not necessary in order to consider a person for exclusion in sham marriage cases. [Paragraph 7a of Schedule 1 of the EEA Regulations 2016](#) is clear that preventing unlawful immigration and abuse of the immigration laws is a fundamental interest of society in the UK, as such, sham marriage is contrary to those interests. [Paragraph 6\(a\) of Schedule 1](#) to the EEA Regulations 2016 states that it is consistent with public policy and public security requirements to refuse, terminate or withdraw an EEA right, where a person is involved in entering or attempting to enter into a marriage, civil partnership or durable partnership of convenience.

You must follow the guidance on [EEA decisions on grounds of public policy and public security](#) and [consideration of exclusion](#) when considering whether to exclude on public policy grounds. Where a recommendation to exclude is based on the public policy test, you must clearly set out how the decision is proportionate in line with [regulation 27](#) and [Schedule 1](#) of the [EEA Regulations 2016](#).

Where a recommendation to exclude under the EEA Regulations 2016 is based on conducive grounds, you must clearly set out how the decision is proportionate in line with regulation 27A of the [EEA Regulations 2016](#).

Exclusion under the EEA Regulations 2016 on the basis of sham marriage behaviour will generally only be considered where a deportation decision would have been appropriate, either on public policy grounds in line with regulation 27 or on conducive grounds in line with regulation 27A, but could not proceed because the person left the UK.

In such circumstances, it is important to note that additional consideration as to the impact of the exclusion must be conducted on a case by case basis and be based on the person's conduct and circumstances, including the nature and seriousness of their behaviour and whether it is proportionate to exclude the person from the UK.

## **Related content**

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# Consideration of exclusion

This page tells you what you need to do when considering whether to recommend exclusion.

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### Overview

Authority for a decision to make an exclusion order under the EEA Regulations 2016 on the grounds of persistent or serious criminality, has been delegated by the Home Secretary to the Director of FNO RC.

A decision to make an exclusion decision, or an exclusion order on all other grounds, must be made by the Home Secretary (or Minister of State acting on behalf of the Home Secretary).

Each decision to exclude will be based on a recommendation made on the facts of the particular case, which must set out:

- the relevant grounds (either conducive to the public good, or public policy, public security or public health)
- why exclusion is appropriate and how the relevant test is met
- the evidence you have considered to support your conclusions

Where a recommendation to exclude is based on the public policy test, you must clearly set out how the decision is in line with [Regulation 27 and the principles set out in Schedule 1 of the EEA Regulations 2016](#).

### Referrals and requests

Referrals for consideration of exclusion are generally made by other government departments or UK law enforcement agencies, based on reliable evidence and objective assessments of the threat posed by an individual. It will normally be appropriate to consider the case for exclusion based on a referral from another government department or UK law enforcement agency. Information on assessing cases can be found below.

From time to time you may receive requests from members of the public or other interested third parties. In contrast to referrals from other government departments or UK law enforcement agencies, such requests may not be based on reliable evidence and objective assessments. You will firstly need to consider whether the request is a request for exclusion or for other action, such as the refusal of an application for entry clearance. Vexatious requests, or those clearly without merit, should not receive further consideration. When considering whether a request for exclusion merits additional research or further investigation, you must give appropriate weight to the evidence provided. For example, an assessment by another government department or UK law enforcement body will carry more weight than uncorroborated evidence from other sources. Where it becomes apparent that exclusion is not appropriate, a record of the decision not to take further action should be retained, along with the reasons why it was taken.

The Home Office treats a person's immigration affairs as confidential. In any event, the Department's data protection obligations under the UK General Data Protection Regulation (GDPR) and associated legislation mean that it will not be possible to disclose to third parties the outcome of any requests for consideration of exclusion, the reasons for any decision or even whether or not a decision has been made. This was upheld by the High Court in the case of [FF v SSHD \[2021\] EWHC 2566 \(Admin\)](#) where the Court found that the Home Office is entitled to deal with a person's immigration affairs as being sensitive and confidential to them, and cannot be obliged to make them available to third parties.

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## Assessing cases

A recommendation to exclude an individual from the UK must be based on reliable evidence. This might include the use of criminal record checks, particularly where the recommendation is to exclude the person on the basis of criminality in the UK or

overseas. In other cases, the evidence may not be so straightforward, and a greater degree of scrutiny and assessment may be required.

You must consider all of the evidence available to you and give appropriate weight when deciding whether to recommend exclusion. Where evidence has already been assessed by law enforcement agencies or similar organisations, it will usually be reasonable to rely on that assessment without undertaking your own consideration of the reliability of the underlying evidence.

Websites can be useful sources of information, but you should exercise caution when using online research. For example, they might suggest that an individual has said or done something which would justify exclusion but the website information in fact only repeats allegations from other websites, which are wrong.

Direct statements made by an individual, together with the context in which they are made, are particularly helpful in unacceptable behaviour cases, such as cases in which an individual has been promoting extremism. However, they will not always be required to support a recommendation to exclude an individual, particularly where the recommendation is based on other evidence that has been provided by law enforcement agencies or similar organisations. The assessment should include the impact and degree of harm that the individual's statements or actions have or would have upon the UK, communities within the UK or upon UK interests overseas both if the individual is permitted to enter the UK and if they are excluded.

An exclusion decision must be reasonable, consistent with decisions taken in similar circumstances, and proportionate to the threat they pose to the UK. There must also be a rational connection between exclusion of the individual and the legitimate aim being pursued, for example safeguarding public security or tackling serious crime.

If, having consulted with any relevant stakeholders and senior caseworkers, you intend to submit to the Home Secretary or Minister of State with a recommendation on exclusion, you must make sure that your submission clearly sets out the options, with the evidence to support your conclusions and recommendation.

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## Considering conduct before and after 31 December 2020

Decisions to exclude a person from the UK are generally taken on the basis of conduct occurring over a period of time. It is therefore likely that when deciding

whether to exclude a person from within the [protected cohorts](#), you will have to consider conduct which occurs both before and after the end of the transition period on 31 December 2020.

You may consider either:

- the totality of their conduct under the public policy, public security or public health test
- only the conduct that occurred after 31 December 2020 on the ground that exclusion is conducive to the public good and do not rely on the conduct that occurred prior to that date

## Example

It is November 2021. A case is referred relating to an EEA national who hosts a website promoting anti-Semitic views and encouraging violence against Jews. The website has been running since 2018 and the person posts articles approximately every 2 weeks. You discover they were granted status under the EU Settlement Scheme, but at the end of August they travelled to their home country from where they have continued to post online.

In this case, the person falls within one of the protected cohorts and exclusion would be by way of an exclusion decision. You would have to consider all of the conduct under the conducive and public policy tests, or post end of transition conduct only under the conducive test.

## Human rights considerations

If, in the event of the Home Secretary, Minister of State or Director of FNO RC deciding to exclude the person, and it is proposed to [remove any existing immigration status](#), you must make this clear in the submission. If the person has existing immigration status in the UK it will be particularly important to address any human rights considerations that may arise. This may be under any Article of the European Convention on Human Rights, but particularly Article 8 (private and family life).

Advice on human rights is available in the following guidance:

- Considering Human Rights
- Article 8
- Human rights claims on medical grounds

Once advice has been prepared and submitted to the Home Secretary, Minister of State or Director of FNO RC, the person is within the scope of the [Authority to Carry Scheme 2021](#) as the Home Secretary or Minister of State is 'in the process' of making an exclusion decision.

## Actioning a decision to exclude

If the Home Secretary, Minister of State, or Director of FNO RC decides to exclude, the date confirmation is received from Private Office is the date the exclusion decision or exclusion order takes effect. Confirmation that the decision has been taken will be in the form of a response from the Minister's Private Office or the Director of FNO RC. You must update the case file to show that the person is excluded.

For information about how to notify a person who has been excluded from the UK see [Notification of exclusion decision or exclusion order](#).

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#### Related content

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# Removal of existing status in the UK

This page tells you what you need to do if a person has existing immigration status in the UK.

## Overview

An exclusion decision or an exclusion order does not automatically invalidate any leave or European Economic Area (EEA) documentation that the person may have.

If, for any reason, a person who is to be excluded holds entry clearance or leave to enter or remain in the UK, you must cancel or revoke that leave or entry clearance as appropriate. This is a separate decision to the decision to exclude.

Any EEA documentation held by the person who is to be excluded must also be revoked.

## Cancellation of limited leave

If a decision has been made to exclude a person, any limited leave to enter or remain that is in force, must be cancelled prior to arrival in the UK or at the border under [paragraph 9.2.2. of Part 9 of the Immigration Rules](#) on the grounds that the person has been excluded.

Where leave has been granted under EUSS or acquired by virtue of having arrived in the UK with an EUSS family permit or travel permit, it may be cancelled prior to arrival in the UK or at the border under [paragraph A3.1. of Appendix EU to the Immigration Rules](#). A decision to cancel leave granted under the EUSS or acquired by virtue of that person having arrived in the UK with an EUSS family permit or travel permit will attract a right of appeal.

A notice of the decision to cancel leave must be served in line with [article 8ZA of the Immigration \(Leave to Enter and Remain\) Order 2000](#). If the leave cancelled has been granted under the EUSS or acquired by virtue of that person arriving in the UK with an EUSS family or travel permit, then the Immigration (Notices) Regulations 2003 also apply. If the person is outside the UK but able to return to the UK before service of a notice of cancellation of leave has taken effect, they will still have leave and cancellation must be done at the border.

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## Revocation of entry clearance

If a person who holds valid entry clearance is made the subject of an exclusion decision, that entry clearance must be cancelled under [paragraph 9.2.2. of the Immigration Rules](#). This does not apply to entry clearance granted under [Appendix EU \(Family Permit\)](#).

Entry clearance granted under Appendix EU (Family Permit) may be revoked under [paragraph 30A\(iv\) of the Immigration Rules](#) where the holder is made subject to an exclusion order, exclusion decision or Islands exclusion decision in respect of conduct occurring before 23:00 on 31 December 2020.

If the person holds an EUSS family permit or travel permit, a decision to revoke entry clearance will attract a right of appeal.

## Revocation of refugee status or humanitarian protection

If a person who is being considered for exclusion is a recognised refugee in the UK or has been granted humanitarian protection in the UK you will need to consider whether there are grounds to revoke refugee status or humanitarian protection. The process of revoking refugee status or humanitarian protection can be started whilst the refugee is outside the UK. For information on when revocation might be appropriate and what you need to do, see [revocation of refugee status guidance](#) and [humanitarian protection guidance](#).

### Related content

[Contents](#)

# Appeal rights in exclusion cases

This page tells you about appeal rights and legal challenges in exclusion cases.

For information on appeal rights in relation to decisions to cancel or refuse leave, please see guidance on rights of appeal.

ECHR or protection grounds raised in a challenge to an exclusion decision or an exclusion order do not trigger a right of appeal. This is because an exclusion decision or an exclusion order is not a decision to refuse an individual entry to the UK, nor is it a decision to remove an individual from or require them to leave the UK. If you are maintaining the exclusion decision in response to such a challenge, you must make this clear in the letter.

## Exclusion decisions

There is no right of appeal against an exclusion decision, although the decision may be challenged by way of judicial review. Where the exclusion decision is made wholly or partly on the ground that the exclusion from the United Kingdom is conducive to the public good, there is no right of appeal against the decision, and the Home Secretary (or Minister of State acting on behalf of the Home Secretary) considers that the information relied upon either wholly or partly to make the exclusion decision should not be made public for any of the reasons below, the decision may be certified under section 2C of the Special Immigration Appeals Commission Act 1997:

- in the interests of national security
- in the interests of the relationship between the UK and another country, or
- otherwise in the public interest

Certification under section 2C provides for a review on judicial review principles to be heard by the Special Immigration Appeals Commission (SIAC). Only a Secretary of State (usually the Home Secretary), acting personally, can certify the decision.

An excluded person may apply for entry clearance or for leave to enter while they are outside the UK. Refusal of a human rights claim, including where raised as part of certain applications made under the Immigration Rules, attracts a right of appeal from outside the UK. Deprivation of citizenship, if applicable, also attracts a right of appeal.

## Exclusion orders

A person has a right of appeal against a decision to revoke EEA documentation under regulation 36 of the EEA Regulations 2016. The right of appeal against the revocation of EEA documentation while the person in question is outside of the UK can only be exercised from outside the UK in accordance with regulation 37(1)(f) of the EEA Regulations 2016.



## **EUSS leave, EUSS Family Permit or EUSS Travel Permit**

Cancellation of EUSS leave or leave acquired by virtue of having arrived in the UK with an EUSS family permit or travel permit, and the revocation of an EUSS family or travel permit, attract a right of appeal under the [Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#).

Where the Home Secretary (or Minister of State acting on behalf of the Home Secretary) considers that the information relied upon either wholly or partly to make the exclusion decision or exclusion order should not be made public for any of the reasons below, the decision may be certified under [section 2C of the Special Immigration Appeals Commission \(SIAC\) Act 1997](#) or regulation 38 of the EEA Regulations 2016.

### **Related content**

[Contents](#)

Rights of appeal

Judicial review guidance

# Exemption from control

This page tells you about the effect of exemption from control on exclusion decisions taken against members of a foreign government.

Under provisions in section 8 of the [Immigration Act 1971](#) and in the [Immigration \(Exemption from Control\) Order 1972](#), certain categories of person who do not have a right of abode in the UK, are either totally or partially exempt from immigration control.

Among the partially exempt categories are members of the government of a country or territory outside the UK and Islands (Channel Islands and Isle of Man) who are visiting the UK on government business. Such a person does not require leave to enter the UK. There is however provision in article 4(a) of the Immigration (Exemption from Control) Order 1972 for the Secretary of State to specifically direct in such a case that the person is not to be exempt from immigration control. This is important for exclusion cases, as on its own an exclusion decision taken by the Home Secretary (or Minister of State acting on the Home Secretary's behalf) would have no legal effect to prevent the person's entry to the UK, should they travel here on government business. A separate direction must be given against exemption from control.

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### Related content

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# Notification of exclusion

This page tells you about notifying a person they have been excluded from the UK.

## Exclusion decisions

Where possible, a person who has been excluded from the UK by virtue of a personal decision by the Home Secretary or Minister of State must be notified in writing of the decision and given reasons for their exclusion from the UK.

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## Exclusion orders

If an exclusion order has been made under the EEA Regulations 2016, the person must be notified of the exclusion order, as well as any deadlines for appeal, in accordance with the [Immigration \(Notices\) Regulations 2003](#).

If it is not possible to notify a person of their exclusion, or other appealable decisions taken, because their whereabouts are unknown, no address has been provided, no representative appears to be acting for the person and their last known or usual place of abode or business is not known, or the address given is defective, false or no longer in use by the person (for example a notice sent to the person's last known address is returned as 'gone away' or 'not known at this address'), the notice should be served to file and the file minuted accordingly. If the person is subsequently located, they must be given a copy of the notice as soon as it is practicable to do so.

### Related content

[Contents](#)

# Authority to Carry Scheme 2021

This page tells you about the Authority to Carry Scheme 2021.

The [Authority to Carry Scheme 2021](#) requires carriers, such as airlines, to seek authority from the Secretary of State to carry persons on aircraft, ships or trains which are arriving (or expected to arrive) or leaving (or expected to leave) the UK.

The purpose of the Scheme is to prevent certain persons from travelling to or from the UK when it is necessary in the public interest.

Authority to carry a person to the UK may be refused where the:

- person is the subject of an exclusion order under the Immigration (European Economic Area) Regulations 2016
- person has been excluded from the UK by the Secretary of State
- Secretary of State is in the process of making a decision to exclude the person from the UK

Where a full submission has been made to the Secretary of State recommending a decision to exclude a person and setting out the underlying circumstances and rationale, that is a person in relation to whom the Secretary of State is in the process of making a decision to exclude.

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### Related content

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# Entry in breach of an exclusion decision or an exclusion order

This page tells you what to do if a person enters or seeks to enter the UK in breach of an exclusion decision or exclusion order.

Under [paragraphs 9.2.1. of Part 9, paragraph S-EC.1.2 of Appendix FM, and paragraph EU15 \(FP7\) of Appendix EU \(EU\(FP\)\) of the Immigration Rules](#), if a person has been excluded from the UK, any application made by that person for entry clearance or to enter the UK must be refused.

A person subject to an exclusion order, to whom the EEA Regulations 2016 still apply, must be refused admission under regulation 23(2) of the EEA Regulations 2016. For more information see guidance on [EU, other EEA, Swiss citizens and their family members: consideration of administrative removal action](#),

If a person enters in breach of having been excluded, you must consider whether they can be dealt with as an illegal entrant under the [Immigration Act 1971](#) or whether deportation action is appropriate. If they have extant limited leave, it must be cancelled under paragraph 9.2.2. of the Immigration Rules. EUSS leave or leave acquired by virtue of having arrived in the UK with an EUSS family permit, must be cancelled under Annex 3 of Appendix EU to the Immigration Rules. If they have indefinite leave, you must refer the case to the team that dealt with the exclusion to consider whether it is appropriate to initiate deportation action.

If, despite measures to prevent an excluded person travelling here, including refusing a carrier authority to carry, the person is encountered in-country, further enquiries must be made to establish how they entered the UK. This will help determine if the person is to be considered and removed as an illegal entrant. For example:

- what route did the person use
- what was the mode of travel
- which part of the UK border, including consideration of the Common Travel Area, did the person cross
- did the person travel clandestinely
- if UK entry clearance was obtained, was deception employed
- had a false identity been adopted
- were false or forged documents used

It will also be relevant to know whether the person was successfully notified of the exclusion decision or exclusion order. If, despite being notified of their exclusion, an excluded person has entered the UK, they will have done so in the knowledge that they are prohibited from entering the UK and potentially will have failed to declare a material fact to the entry clearance officer or Border Force officer.

If, on arrival, the person is found to be in possession of an entry clearance that confers leave to enter or has not has their leave to enter or remain cancelled, it must be cancelled by the Border Force officer.

#### **Related content**

[Contents](#)

#### **Related external links**

Border Force operating mandate

# Revocation of an exclusion decision or an exclusion order

This page tells you about requests to revoke an exclusion decision or an exclusion order.

Both an exclusion decision and an exclusion order remain in force until revoked.

A person who is the subject of an exclusion decision or exclusion order can make a request to the Home Office to have the exclusion decision or exclusion order revoked. Such requests may be made in writing directly to the Home Office or to a British diplomatic mission overseas.

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## Exclusion decisions

Requests for revocation will normally be refused unless:

- this would be in breach of the European Convention on Human Rights (ECHR) or the Refugee Convention
- the situation has changed significantly and materially since the exclusion decision was made

Where an excluded person requests that the exclusion decision is revoked, they will need to explain why the decision should be revoked, providing any available supporting evidence. For example, if the person was excluded for engaging in unacceptable behaviour, they should be able to show genuine and credible evidence that they have publicly renounced the behaviour that led to their exclusion.

There is no formal process for making a request for the revocation of an exclusion decision. The excluded person or their representative can make a written request to the Home Office or an overseas entry clearance post.

If the person was excluded from the UK on the basis of a conviction, the fact that the conviction has become 'spent' or completed when they apply for revocation is not by itself enough to justify revoking the exclusion decision.

A decision to maintain an exclusion decision is not a decision to refuse leave to enter the UK. In considering any representations made, you are not deciding whether the excluded person should be granted leave to enter and you must make that clear in the decision letter.

## Exclusion orders

A person may apply to the Secretary of State for revocation of the exclusion order on the basis that there has been a material change of circumstances since the order was made ([regulation 34\(3\)](#)). Under regulation 34(5), the Secretary of State must revoke the exclusion order if they consider that the criteria for making an order are no longer satisfied. There is no formal process for revocation of an exclusion order, but any application must be made in writing from outside of the UK, and must set out the material change in circumstances relied on.

Upon receipt of an application for revocation the Secretary of State must make a decision within 6 months after the date of receipt ([regulation 34\(6\)](#) of the EEA Regulations 2016).

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## Refuse to revoke

Where you decide to maintain exclusion, having considered and where appropriate consulted on an application for revocation, you must provide clear reasons,



responding to the points the applicant has raised. You must minute the case and your response must be approved by a senior caseworker.

When you notify the person of the outcome of their application you must also notify them of any appeal rights they may have, for example refusing to revoke an exclusion order under the EEA Regulations 2016 attracts a right of appeal from outside the UK ([regulations 36 and 37](#)). For further information see the rights of appeal guidance.

There is no right of appeal against a decision to refuse to revoke an exclusion decision, even if ECHR or protection grounds have been raised. This is because refusing a request for revocation of an exclusion decision is not a decision to refuse a person entry to the UK. You must be clear in the decision letter that you have not refused the person leave to enter if you refuse to revoke the exclusion decision.

## Agree to revoke

Where you consider that the exclusion decision or exclusion order should be revoked you must submit your recommendation to the Home Secretary (or Minister of State), clearly setting out the reasons why you consider revocation to be justified, including advice or views from any other interested parties. Where the decision to make an exclusion order on grounds of serious or persistent criminality was made by the Director of FNO RC, any recommendation to revoke must also be submitted to the Director of FNO RC.

If the Home Secretary or Minister of State, or Director of FNO RC agrees to lift the exclusion you must notify the individual or their representative of the decision. If the application for revocation was made at an overseas post the decision must be sent to the entry clearance officer (ECO) who must notify the person concerned.

You must explain in your notification letter the revocation decision and warn that this does not mean that any leave to enter or remain that was previously cancelled is reinstated. Where the person in question does not have admission or residence rights under the EEA Regulations 2016, you must also explain that the revocation decision does not mean that the person has a right to come to the UK, nor does it guarantee the success of any application for a visa. The requirements of the Immigration Rules or the EEA Regulation 2016, as appropriate, must still be met.

You must place copies of all letters sent on the Home Office file and update the case record.

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## Change of threshold

It is possible that an exclusion decision will have been made on conducive grounds against a person who now falls to be considered under the public policy or public security test. This could happen if, for example, the person becomes the family member of an EEA national who is protected under the [Withdrawal Agreement](#).

If the person applies for revocation you must consider whether the reasons for the original exclusion decision would justify the Home Secretary or Minister of State making a decision to exclude on the grounds of public policy or public security. If they do, the case must be re-considered and a submission sent to ministers or the Director of Criminal Casework explaining the recommendation to make an exclusion decision or exclusion order against the person.

If the case for maintaining exclusion cannot be justified on grounds of public policy or public security, the exclusion decision must be revoked. You must still submit to ministers to seek agreement for revocation.

The person must be notified of the outcome, whether that is to revoke the exclusion decision or to make an exclusion order. If an exclusion order is made it will attract a right of appeal under the [regulation 36](#) of the EEA Regulations 2016.

### Related content

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