Home Office

Public policy, public security or public health decisions

Version 7.0

Contents

About this guidance

This guidance tells you how, from 1 January 2021, decisions should be made on the grounds of public policy, public security or public health.

Such a decision may need to be made in respect of persons protected by the EU Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement (the Agreements), or by the United Kingdom's domestic implementation of the Agreements, in relation to conduct (including any criminal convictions relating to it) committed before 23:00 GMT on 31 December 2020. For conduct committed after that date, the UK's criminality threshold applies.

For more information on those who are protected under the Agreements or by the United Kingdom's domestic implementation of the Agreements see Restricting residence and entry rights of relevant persons.

Where this guidance refers to the 'EEA Regulations 2016', this refers to the Immigration (European Economic Area) Regulations 2016, or any of its predecessor regulations. Where this guidance refers to the 'EEA Regulations 2016, as saved', it should be read as reference to those regulations as saved by, where relevant, the:

- Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (Grace Period Regulations 2020)
- Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 (Restrictions Regulations 2020)
- Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (Consequential Regulations 2020)

From 1 January 2021, persons who are not protected by the Agreements or the United Kingdom's domestic implementation of the Agreements, will fall to be considered under the UK's Immigration Rules and criminality thresholds.

For more information see conducive deportation, exclusion and general grounds for refusal guidance.

Contacts

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

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

Publication

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

- version **7.0**
- published for Home Office staff on **30 September 2022**

Changes from last version of this guidance

The guidance has been amended to include details about:

- the circumstances when it is appropriate to make a decision on grounds of public policy, public security or public health from 1 July 2021
- minor changes relating to refusal or invalidation of EEA documentation
- minor changes relating to the effect of deportation decisions
- minor changes relating to entry in breach of a deportation order, exclusion order or exclusion decision and applications to the EU Settlement Scheme (EUSS)
- minor changes relating to the consideration of continuous residence

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Introduction

Purpose

This section tells you about use of this guidance in decisions on the grounds of public policy, public security or public health.

Use of this guidance

This guidance must be followed when you are considering:

- taking a decision on the grounds of public policy, public security or public health
- whether to impose an employment restriction following a decision to remove a person on grounds of public policy, public security or public health

From 1 July 2021, a decision on grounds of public policy, public security or public health **may need** to be made in respect of any of the cohorts protected by the Agreements or the United Kingdom's domestic implementation of the Agreements, in relation to conduct occurring before 23:00 GMT on 31 December 2020. A person is protected by the Agreements (or the UK's domestic implementation of the Agreements) if they:

- have been granted leave under Appendix EU or entry clearance under Appendix EU (Family Permit)
- have submitted an application to the EUSS (and if the application was submitted after the relevant deadline, they have reasonable grounds for doing so) and a decision or appeal is pending on the application
- are a joining family member until the relevant deadline for an application to the EUSS, for example 3 months after their entry to the UK
- are a frontier worker as defined in regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (Frontier Workers Regulations 2020)
- are in the UK having arrived with entry clearance granted by virtue of their right to enter the UK as a service provider from Switzerland under Appendix Service Providers from Switzerland to the Immigration Rules
- have or are seeking permission to enter or remain in the UK as a patient for the purpose of completing a course of planned healthcare treatment in the UK which was authorised under the 'S2 arrangements', as provided for at Appendix S2 Healthcare Visitor to the Immigration Rules - this also includes persons or family members accompanying or joining the patient

Definitions

For the purpose of this guidance, any person who has rights protected by the Agreements (or the UK's domestic implementation of the Agreements) is referred to as a 'relevant person'.

For the purpose 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 before 23:00 GMT on 31 December 2020) and who also satisfies one of the following criteria:

- immediately before 23:00 GMT 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 dependent, and dependent direct relatives in the ascending line
- immediately before 23:00 GMT on 31 December 2020, was an extended family member within the meaning of regulation 8(5) of the EEA Regulations 2016 (that is a durable partner) of the EEA citizen, or the child under age 18 of that partner, provided they hold a valid EEA document (which may have been issued after 31 December 2020)
- immediately before 23:00 GMT 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 where it was applied for by then)
- 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 23:00 GMT 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 EU 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

Family members of a relevant EEA citizen are defined in regulation 7 (family members) and extended family members are defined in regulation 8 (extended family members) of the EEA Regulations 2016, as saved. For further guidance including definitions see Free movement rights: direct family members of European Economic Area (EEA) nationals and Free movement rights: extended family members of EEA nationals.

For the purpose of this guidance, 'EEA citizens' includes EU citizens, EEA citizens and Swiss citizens.

For the purpose of this guidance, 'lawfully resident' means having a 'right to reside' under the EEA Regulations 2016 under the EEA Regulations 2016. This includes:

- 3 months' initial right of residence under regulation 13
- extended rights of residence under regulation 14
- residence after having acquired a right of permanent residence under regulation 15
- derivative rights of residence under regulation 16

A period of imprisonment doesn't count as lawful residence and will break the continuous period of residence necessary to acquire permanent residence. See Continuity of residence for more information.

For more information see the guidance on qualified persons and derivative rights of residence guidance.

When conduct has occurred both before and after 31 December 2020, the public policy, public security or public health test may apply. See conducive guidance for more information.

More information can be found in the following guidance:

- EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- EEA, Swiss nationals and EC association agreements
- frontier workers
- S2 healthcare visitor
- service providers from Switzerland

The best interest 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 children who are in the UK means that consideration of a child's best interests is a primary, but not the only, consideration when making a decision on grounds of public policy, public security or public health. A decision on public health grounds will only be made if it is in the child's best interest.

Where a child or children in the UK will be affected by a public policy, public security or public health decision, you must have regard to the best interests of the child in the UK when considering whether to take such a 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.

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.

Related content

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Related external links
Borders, Citizenship and Immigration Act 2009
Every Child Matters – Change for Children
Working together to safeguard children

Introduction

This section sets out the background to the European Union (Withdrawal Agreement) Act 2020 and the subsequent secondary legislation saving and modifying the provisions set out in the EEA Regulations 2016.

Background

The UK's withdrawal from the EU and the transition period

Following its decision to leave the EU, the UK secured the Agreements with the EU, EEA EFTA countries and Switzerland. The EU (Withdrawal Agreement) Act 2020 received Royal Assent on 23 January 2020. It implements the EU Withdrawal Agreement and provides a vehicle for the Government to give effect to the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement. The UK left the EU and EEA at 23:00 GMT on 31 January 2020 and thereafter there followed a "transition period" which ended at 23:00 GMT on 31 December 2020. The EEA Regulations 2016, which previously enabled freedom of movement of EEA citizens in the UK, were repealed at the end of the transition period, and have only been saved in specific circumstances as outlined below.

The EU Settlement Scheme (EUSS) was formally introduced from 30 March 2019 and is the mechanism by which EEA citizens and their family members who were resident in the UK by the end of the transition period, as well as their joining family members, can apply for leave to remain in the UK. The EUSS is contained in Appendix EU to the Immigration Rules and requires applicants to satisfy validity, eligibility and suitability criteria. For more information see the EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members guidance.

EEA citizens and family members who were resident in the UK by the end of the transition period were required to apply to the EUSS by 24:00 GMT on 30 June 2021. Joining family members arriving in the UK before 1 April 2021 also had until 24:00 GMT on 30 June 2021 to apply. Joining family members arriving on or after 1 April 2021 have 3 months from their date of arrival in the UK in which to apply. Where an applicant has missed the relevant deadline by which to apply, their application will be considered where there are reasonable grounds for their delay in making their application. For more information on reasonable grounds see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

The grace period

The period from the end of the transition period to 24:00 GMT on 30 June 2021 is referred to in this guidance as the "grace period". During the grace period, the Grace Period Regulations 2020 saved the EEA Regulations 2016 for those who were lawfully resident in the UK immediately before the end of the transition period and their joining family members, until they acquired EUSS leave based on an application made by 30 June 2021. This was to prevent those who were potentially

eligible to apply to the EUSS from losing their previous free movement rights (and therefore lawful basis of stay in the UK) at a time when they could still apply for leave under the EUSS.

Now that the grace period has ended, the EEA Regulations 2016 are only saved for those who were lawfully resident in the UK immediately before the end of the transition period **and** who made an application to the EUSS before the end of the grace period which is still awaiting a decision or final determination of an appeal.

For information on scenarios where Immigration Enforcement provide a person they encounter with a **written notice** giving them an opportunity to make a valid application under Appendix EU, normally within 28 days of the date of that notice, see EEA Operational guidance.

Conduct committed by 31 December 2020

A relevant person cannot have their rights of residence and entry under the Agreements restricted for conduct which occurred before 23:00 GMT on 31 December 2020 unless that conduct meets the public policy, public security or public health test in accordance with regulation 27 of the EEA Regulations 2016. Decisions made in accordance with regulation 27 may therefore need to be made directly under the EEA Regulations 2016 as saved or in other circumstances such as in the making of exclusion directions or making decisions in respect of those with temporary protection.

Conduct committed after 31 December 2020

From 1 January 2021, the UK's criminality and deportation thresholds will apply to those protected by the Agreements (or the UK's domestic implementation of the Agreements) in respect of any conduct committed after 23:00 GMT 31 December 2020.

The UK's criminality and deportation thresholds also apply to EEA citizens and non-EEA citizens not protected by the Agreements or the UK's domestic implementation of the Agreements, irrespective of when their conduct occurred.

A relevant person may have criminality or engaged in adverse conduct which occurred both before and after the end of the transition period (both before and after 23:00 GMT on 31 December 2020). See the conducive deportation guidance for more information on conduct spanning the end of the transition period or on applying the conducive test.

Irish citizens

Section 3ZA of the Immigration Act 1971 (as inserted by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020), ensures that Irish citizens can enter and stay in the UK without requiring permission regardless of where they have

travelled from. There are some limited exceptions to this, where they are subject to any of the following:

- a deportation order made under section 5(1) of the Immigration Act 1971
- an exclusion decision, or an exclusion order made under regulation 23(5) of the Immigration (European Economic Area) Regulations 2016
- a travel ban implemented under section 8B of the Immigration Act 1971

The UK does not routinely deport Irish citizens. On 19 February 2007, the then-Secretary of State announced in Parliament, through a Written Ministerial Statement, that the UK would not deport Irish citizens, unless in 'exceptional circumstances'.

Maintaining the rights of British and Irish citizens when in each other's states is a shared objective of the UK and Ireland. Our policy is therefore clear that the deportation of an Irish citizen is only sought in exceptional circumstances or where recommended by a criminal court**.**

See Deportation: Irish citizens for further details.

Related content
Contents
Deportation: Irish citizens

Related external links
EU Settlement Scheme: Suitability requirements
EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
Conducive deportation

Restricting residence and entry rights of relevant persons

This section tells you about the application of the public policy, public security or public health test to the cohorts protected by the Agreements or the UK's domestic implementation of the Agreements from 1 July 2021.

The powers to apply the public policy, public security or public health test in respect of conduct committed before 23:00 GMT on 31 December 2020 are contained in the following regulations and provisions in the Immigration Rules:

- Grace Period Regulations 2020
- Restrictions Regulations 2020
- Frontier Workers Regulations 2020
- Appendix EU to the Immigration Rules
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland

Persons covered by the Grace Period Regulations 2020

The Grace Period Regulations 2020 set the deadline for applications under the EUSS. They preserved the EEA Regulations 2016 for those who were lawfully resident immediately prior to the end of the transition period (23:00 GMT on 31 December 2020) and for joining family members arriving during the grace period who had not yet acquired EUSS leave. They also amended the EEA Regulations 2016, as saved, to include a new regulation 27A which creates a conducive deportation threshold in respect of those covered by the EEA Regulations 2016, as saved, where their deportation is sought in relation to conduct occurring after the end of the transition period. See Conducive deportation guidance for more information on regulation 27A.

Since 1 July 2021, the Grace Period Regulations 2020 continue to apply only to those who were lawfully resident immediately prior to the end of the transition period and who applied to the EUSS by 30 June 2021, and who are still awaiting a final determination (including any appeal) on their application. If deportation is considered in respect of this cohort, the power to deport is contained in regulation 23 of the EEA Regulations 2016, as saved, and where the conduct occurred prior to 23:00 GMT on 31 December 2020, the threshold is the public policy, security and health test in regulation 27.

The following decisions must be taken on grounds of public policy, public security or public health in relation to relevant persons with rights under the Grace Period Regulations 2020 where the relevant conduct was committed before 23:00 GMT on 31 December 2020:

- deportation under regulation 23(6)(b) of the EEA Regulations 2016, as saved

- exclusion under regulation 23(5) of the EEA Regulations 2016, as saved
- refusal of admission to the UK under regulation 23(1) of the EEA Regulations 2016, as saved
- revocation of a registration certificate, residence card, document certifying permanent residence or permanent residence card under regulation 24(1) of the EEA Regulations 2016, as saved by regulation 7(1)(b) of the Grace Period Regulations 2020
- refusal under regulation 24(1) of the EEA Regulations 2016, as saved, of an application to issue or renew documentation (e.g. application for a residence card or residence permit)

Persons covered by the Restrictions Regulations 2020

The Restrictions Regulations 2020 save and modify deportation provisions in the EEA Regulations 2016. They save the deportation power in regulation 23(6)(b) of the EEA Regulations 2016 and provide for the EU law test of public policy, public security or public health in regulation 27 to apply when considering deportation in respect of certain relevant persons as a result of conduct committed before 23:00 GMT on 31 December 2020. These regulations apply only to those:

- who have been granted leave under Appendix EU or entry clearance under Appendix EU (Family Permit)
- who are in the UK having arrived with entry clearance granted by virtue of their right to enter the UK as a service provider from Switzerland under Appendix Service Providers from Switzerland to the Immigration Rules
- who have or are seeking permission to enter or remain in the UK as a patient for the purpose of completing a course of planned healthcare treatment in the UK which was authorised under the 'S2 arrangements', as provided for at Appendix S2 Healthcare Visitor to the Immigration Rules - this also includes persons or family members accompanying or joining the patient

Persons covered by the Frontier Workers Regulations 2020

The Frontier Workers Regulations 2020 establish a frontier worker permit scheme under which a protected frontier worker can apply for and be issued with a permit certifying their rights to continue to enter and work in the UK. These regulations implement our commitments under the Agreements to protect the rights of EEA citizens who were frontier workers in the UK prior to the end of the transition period (23:00 GMT on 31 December 2020). The regulations also contain deportation powers for this cohort. For more information on decisions in respect of frontier workers, including where the person is subject to a restriction decision which may be taken on grounds of public policy, public security or public health in relation to persons with rights under the Frontier Workers Regulations 2020 where the relevant conduct was committed before 23:00 GMT on 31 December 2020 see the Frontier Workers permit scheme guidance.

Persons covered by provisions under the Immigration Rules

Appendix EU to the Immigration Rules

Appendix EU to the Immigration Rules provides that an application for EUSS leave must be refused on suitability grounds where the person is the subject of a deportation order or exclusion order made under the EEA Regulations 2016. Where the person is the subject of a deportation order or exclusion decision made other than under the EEA Regulations 2016, and the conduct in question occurred before 23:00 GMT on 31 December 2020, the public policy, public security and public health test in regulation 27 of the EEA Regulations 2016 must be applied, and if met, their application must be refused.

Appendix EU also provides that if the person has previously been refused admission under regulation 23(1) of the EEA Regulations 2016 or regulation 12(1)(a) of the Frontier Workers Regulations 2020 or has previously had their EUSS leave or EUSS Family Permit cancelled, if the conduct in question occurred before 23:00 GMT on 31 December 2020, the public policy, public security and public health test in regulation 27 of the EEA Regulations 2016 must be applied.

Appendix EU also provides that when considering cancelling EUSS leave due to conduct that occurred before 23:00 GMT on 31 December 2020, the public policy, public security and public health test in regulation 27 applies.

When considering this test, references to having a 'right of permanent residence under regulation 15' must be read as satisfying the eligibility criteria for settled status. Where the person would otherwise be eligible for settled status then the serious grounds threshold must apply. Where they are an EEA citizen and would otherwise be eligible for settled status and have 10 years' continuous residence, then the imperative grounds test applies.

Refer to the EU Settlement Scheme (EUSS): suitability requirements guidance for decisions on suitability grounds in respect of:

- a person subject to a deportation order, a decision to make a deportation order, an exclusion order or an exclusion decision under rule EU15 of Appendix EU to the Immigration Rules
- a person who has previously been refused admission to the UK in accordance with regulation 23(1) of the EEA Regulations 2016; or has had indefinite leave to enter or remain or limited leave to enter or remain granted under the EUSS scheme which was cancelled under EU16(c) of Appendix EU to the Immigration Rules based on conduct committed before 23:00 GMT on 31 December 2020

This part of the guidance should be read in conjunction with Annex 3 of Appendix EU - Cancellation, curtailment and revocation of leave to enter or remain and Annex 3 to Appendix EU (Family Permit) – Cancellation and curtailment of leave to enter and the revocation of indefinite leave to remain guidance.

Appendix EU (Family Permit) to the Immigration Rules

Appendix EU (Family Permit) to the Immigration Rules provides that where an applicant for an EUSS family permit is the subject of a deportation order or exclusion order made under the EEA Regulations 2016 their application must be refused. Where the person is the subject of a deportation order or exclusion decision made other than under the EEA Regulations 2016, and the conduct in question occurred before 23:00 GMT on 31 December 2020, the public policy, public security or public health test in regulation 27 of the EEA Regulations 2016 must be applied, and if met, their application must be refused. If the applicant has previously been refused admission under regulation 23(1) of the EEA Regulations 2016 or regulation 12(1)(a) of the Frontier Workers Regulations 2020, or has previously had their EUSS leave or EUSS family permit cancelled, if the conduct in question occurred before 23:00 GMT on 31 December 2020, the public policy, public security or public health test in regulation 27 of the EEA Regulations 2016 must be applied.

When considering this test, references to having a 'right of permanent residence under regulation 15' must be read as satisfying the eligibility criteria for settled status. Where the person would otherwise be eligible for settled status then the serious grounds threshold must apply. Where they are an EEA citizen and would otherwise be eligible for settled status and have 10 years continuous residence, then the imperative grounds test applies.

Appendix S2 Healthcare Visitor

Appendix S2 Healthcare Visitor to the Immigration Rules confers the power to restrict the right of an S2 healthcare visitor to enter or remain in the UK in respect of their conduct committed before 23:00 GMT on 31 December 2020 on grounds of public policy, public security or public health. The decisions which may be taken on grounds of public policy, public security or public health in relation to relevant persons who have or apply for leave as a S2 healthcare visitor where the relevant conduct was committed before 23:00 GMT on 31 December 2020 are set out in the S2 healthcare visitor guidance.

Appendix Service Providers from Switzerland

Appendix Service Providers from Switzerland confers powers to restrict the right of a service provider from Switzerland to enter or remain in the UK in respect of their conduct committed before 23:00 GMT on 31 December 2020 on grounds of public policy, public security or public health. The decisions which may be taken on these grounds can be found in the service providers from Switzerland guidance.

Persons serving or having served a sentence of imprisonment

You may encounter an EEA citizen and/or their non-EEA citizen family member in respect of whom you need to consider deportation for conduct committed before 23:00 GMT on 31 December 2020 and who has a pending application to the EUSS

that was made by the 30 June 2021 deadline. In these cases, you may need to ascertain whether or not they were lawfully resident before 23:00 GMT on 31 December 2020 in order to ascertain whether or not they are protected by the Grace Period Regulations 2020 as set out above.

A period of time serving a sentence of imprisonment does not constitute lawful residence under the EEA Regulations 2016. Consequently, unless a person who was serving a sentence of imprisonment had acquired a right of permanent residence before commencing their sentence, they will not be covered by the EEA Regulations 2016, as saved, and consideration of deportation will need to made applying the conducive to the public good test (see conducive deportation guidance). Removal cannot be enforced until the EUSS application has been finally determined and any appeal rights are exhausted, unless the appeal is certified in accordance with the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (Citizens' Rights Appeals Regulations 2020).

If such a person had acquired a right of permanent residence under the EEA Regulations 2016 prior to serving their sentence of imprisonment (and which had not been lost through more than 5 years' absence), they will be protected by the Grace Period Regulations 2020 and the EEA Regulations 2016, as saved, will continue to apply to them until their EUSS application is finally determined.

If a person with a pending application to the EUSS made by 30 June 2021 previously served a sentence of imprisonment but was released before 23:00 GMT on 31 December 2020, the Grace Period Regulations 2020 will apply to them until such time as their EUSS application is finally determined if:

- they had acquired a right of permanent residence before the start of their sentence of imprisonment
- they were lawfully resident under the EEA Regulations 2016 immediately before 23:00 GMT on 31 December 2020

For more information see the guidance on qualified persons.

Related content
Contents
Deportation: Irish citizens

Related external links
Annex 3 - Cancellation, curtailment and revocation of leave to enter or remain
Annex 3 – Cancellation and curtailment of leave to enter
Conducive deportation

Consideration of public policy or public security

This section tells you about the approach to take when considering whether to make a public policy or public security decision.

Overview

Public policy and public security are not defined in the EEA Regulations 2016, as saved. There is no uniform scale of public policy or public security values across member states. Therefore, the government has discretion as to the standards of public policy or public security that apply in the UK from time to time. This position is reinforced by paragraph 1 of Schedule 1 of the EEA Regulations 2016.

The Court of Justice of the European Union (CJEU) has consistently emphasised that member states have discretion to determine the circumstances which justify the use of the public policy provision. In particular in the case of Yvonne van Duyn v Home Office (Workers) [1974] EUECJ R-41/74 the CJEU held at paragraph 18:

> "It should be emphasized that the concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly, so that its scope cannot be determined unilaterally by each member state without being subject to control by the institutions of the Community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty".

Approach

In every case where a decision is made on the grounds of public policy or public security, you must consider all of the following:

- **is there conduct or behaviour that sufficiently engages the public policy or public security test? In particular, is there a genuine, present and sufficiently serious threat, taking into account all relevant factors at regulation 27(5) of the EEA Regulations 2016, as saved, or regulation 18 of the Frontier Workers Regulations 2020**: this might include, for example, considering the number, date and length of any convictions and likelihood of reoffending, or other issues which could amount to behaviour contrary to the fundamental interest of society

- **does that threat affect one of the fundamental interests of society of the UK**, which are defined non-exhaustively at Schedule 1 to the EEA Regulations 2016 and the Schedule to the Frontier Workers Regulations 2020?

- **the level of protection the person is entitled to** (that is does the decision need to be made on 'serious grounds of public policy or public security' or 'imperative grounds of public security'). The higher levels of protection do not apply to the frontier workers, S2 healthcare visitor or Swiss service provider routes. See Additional protection levels: serious and imperative grounds for more information

- **is the threat posed by that person sufficiently serious,** including considering factors such as how long ago the activity took place, the nature and seriousness of any offending, the nature and extent of their involvement in the relevant behaviour or conduct, whether there is an escalating pattern of behaviour and the impact on victims or society?

- **is the decision proportionate taking into account all of the facts and circumstances of the case, including the regulation 27(6) factors where the person is resident in the UK**, for example, age, integration, health, family ties, etc?

- **any other relevant considerations**, for example s55 Borders, Citizenship and Immigration Act 2009 or any ECHR rights that have been engaged and it is necessary to consider

The public policy or public security test: regulation 27 principles

A decision taken on grounds of public policy or public security must be in accordance with the 6 principles set out in regulation 27(5) of the EEA Regulations 2016, as saved, and regulation 18 of the Frontier Workers Regulations 2020:

Principle	EEA Regulation 2016	Frontier Workers Regulation 2020
The principle of proportionality	27(5)(a)	18(4)(a)
The decision must be based exclusively on the personal conduct of the person concerned	27(5)(b)	18(4)(b)
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 person and that the threat does not need to be imminent	27(5)(c)	18(4)(c)
Matters isolated from the particulars of the case or which relate to considerations of	27(5)(d)	18(4)(d)

general prevention do not justify the decision		
A person's previous criminal convictions do not in themselves justify the decision	27(5)(e)	18(4)(e)
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	27(5)(f)	18(4)(f)

Where a person is resident in the UK, additional considerations as set out in regulation 27(6) of the EEA Regulations 2016 apply.

For frontier workers, additional considerations must be considered under regulation 18(5) of the Frontier Regulations 2020.

Proportionality

The decision must comply with the principle of proportionality. This means that the measures to restrict the individual's entry and residence rights must be suitable, appropriate and necessary to address the specific threat the individual poses, taking into account all of the facts and circumstances of the case, including the likely impact of the decision and the nature and severity of the threat that the decision is intended to address.

Personal conduct of the person concerned

A decision on grounds of public policy or public security must be based exclusively on the personal conduct of the person concerned. This means that the decision must only be taken having regard to the conduct of the person in question and cannot be justified on the grounds of conduct committed or risks posed by other people, although in certain circumstances conduct committed by another person may still be relevant to whether the person in question poses a threat in their own right (for example, if they are inciting violence committed by someone else). An individual's circumstances must be assessed on a case-by-case basis taking account of all relevant evidence.

Official – sensitive: start of section

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Official – sensitive: end of section

Genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society

The threat the person poses must be a genuine, present and sufficiently serious one, affecting one of the fundamental interests of society.

Genuine: the threat must be a realistic one.

Present: the threat must exist, but it does not need to be imminent. An indication of a present threat may include intelligence or any precautionary measures which have been imposed on the individual for example a licence condition imposed because there is a genuine and present risk. Even a low risk can constitute a present threat, especially where the consequences of any offence could be serious. An argument by the individual that they pose a low risk of offending should not be determined automatically in their favour when making a public policy or public security decision. For the purpose of determining whether a person is a present threat while they are detained, the fact that they are detained should not be taken into account. The threat does not need to be imminent at the point of release.

Sufficiently serious: the threat must be serious enough to affect one of the fundamental interests of society (higher threshold protections are afforded to those who have a right of permanent residence, indefinite leave to remain under the EUSS and to children). When considering the public policy or public security test within an EUSS decision (either a refusal on suitability grounds or in cancellation of leave cases), being eligible for indefinite leave to enter or remain under Appendix EU is sufficient to trigger the higher protection.

It is also not necessary to demonstrate that an individual is likely to commit a specific type of offence or will pose a specific kind of threat.

When considering whether an individual poses a threat, you may also consider the following factors:

Nature of the offence: in deportation cases, the government's view is that certain types of offences weigh more heavily in favour of deportation. Those offences typically result in a custodial sentence or a requirement to sign the Violent and Sex Offender's Register (ViSOR). This includes violent, sexual, gun and drug-related offences.

Length of sentence: in most cases, the length of sentence will provide a strong indication of the severity of the offence and will therefore provide an indication of the

nature and severity of the threat posed, although each case must still be considered on its individual merits and you cannot consider that there is a threat merely because there has been a criminal conviction. Where the individual in question is in prison and as a result of the assessment of their risk they require the most secure accommodation on the prison estate, this gives an indication of the risk it is considered that they would pose to society if they escaped. When considering the length of sentence, any overseas conviction or non-custodial sentence must be treated in the same way as one imposed in the UK, although it will normally be appropriate to disregard a conviction for behaviour that is considered legitimate in the UK, such as homosexuality or proselytising.

You will also need to take into account differences between the mandatory and discretionary sentences in jurisdictions outside England and Wales and the sentences open to courts in response to the severity of the offence. For example, in Scotland, there are mandatory and discretionary life imprisonment sentences. A conviction for murder is a mandatory life sentence, that is the only sentence open to the court to give.

Rehabilitation: you must consider the nature and duration of any efforts to rehabilitate. This is relevant in particular to whether or not that person poses a "present" threat. Where such efforts are in their infancy (for example they have only spent a few weeks in the community, or have only undertaken a few sessions) you should not consider these efforts to be determinative of their risk of recidivism.

Access to rehabilitation programmes or support may also in certain circumstances be relevant to whether or not the public policy or public security decision is proportionate, taking into account all of the facts of the case. However, where an individual seeks to argue that their access to rehabilitation in their country of origin will be detrimental when compared to the UK, any differences in the provision of rehabilitation will be considered to be minor, unless there is strong evidence to the contrary.

Time since offence: you should consider how long ago any offending took place and if a change in lifestyle or circumstances may now have removed the likelihood of reoffending.

Schedule 1 of the EEA Regulations 2016, as saved, provides a non-exhaustive list of examples of the fundamental interests of society. For further guidance see fundamental interests of society.

Matters isolated from the particulars of the case or which relates to consideration of general prevention

Matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision. You must make your decision on a case-by-case basis, based on a consideration of the facts and circumstances of the individual case and not on general principles of deterrence.

Previous criminal convictions do not in themselves justify the decision

A decision made on public policy or public security grounds cannot be based purely on the fact that a person has a criminal conviction. You must take into account all the principles of regulation 27(5) as saved, or by regulation 18(4) of the Frontier Workers Regulations 2020. The nature of previous offending including the number and seriousness of previous convictions should form part of your assessment of the threat that person poses, considering the overall conduct of the person concerned. You should take into account any available evidence, including self-declared criminality.

However, it is not necessary for a person to have any previous criminal convictions for a decision to be made on public policy or public security grounds. It is their conduct alone which must represent a genuine, present and sufficiently serious threat, whether it resulted in a conviction.

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 may be made on public policy or public security grounds even in the absence of a criminal conviction to prevent the specific individual from carrying out certain, specific types of conduct. This is particularly important in the national security context, where there is reliable intelligence to suggest that a relevant EEA citizen or their family member may pose a threat to public security.

Additional considerations for a person resident in the UK

Under regulation 27(6) of the EEA regulations 2016, as saved, you must take additional considerations into account where the person is resident in the UK. This includes where the person is temporarily outside the UK.

Regulation 27(6) does not apply to an application for an EEA family permit (applications were accepted until 30 June 2021 in the case of direct family members and durable partners) where the applicant is applying from overseas, to a decision about whether a person should be admitted to the UK unless they are resident in the UK, or to a decision about whether a person should be excluded from the UK unless they are resident in the UK. It may apply to EUSS family permit applications where the person is resident (but temporarily outside the UK) and is applying for this permit in order to travel to the UK to apply to the EUSS.

Regulation 18(5) of the Frontier Workers Regulations 2020 sets out considerations which must be taken into account in all frontier worker cases, this includes the person's age, state of health, family and economic situation, length of presence in the UK, social and cultural integration into the UK and the extent of their links with their country of origin.

The age of the person concerned

Age is a factor that should be taken into consideration along with a person's length of residence and health (illness or disability). It would not by itself be grounds for not making a public policy decision.

You may not take a relevant decision in respect of a relevant person under the age of 18 except on imperative grounds of public security, unless the decision is in their best interests. We would therefore only seek to deport a relevant child on imperative grounds of public security, for example where a child has engaged in very serious offending, such as terrorism, serious sexual offences and violence against another child, or serious and prolific organised crime or gang related violence carried out with intent.

If, however the offending was committed when the person was under the age of 18 but the deportation decision is taken once they are 18 years of age or older then they may not benefit from any additional level of protection.

If they have lawfully spent all or the major part of their childhood or youth in the UK (even if they are no longer a child), then the level of offending needs to be serious in order for deportation to be proportionate (and they may qualify for higher thresholds of protection on the basis of the length of their residence in any case). This is more so when the person concerned committed the offences as a juvenile.

Where the person is under the age of 18, you must ensure that consideration is given to their best interests in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009. See Every child matters: statutory guidance.

A person's general state of health, including their physical and mental health

You must consider the implications of the proposed decision on that person's health. Where claims of ill-health are made, it is expected that they would be substantiated by medical evidence from medical professionals with relevant qualifications and experience. Documentary evidence from official or independent sources will be given more weight in the decision-making process than photocopies or unsubstantiated assertions.

Whether the person has any family in the UK and their economic situation

You must consider factors such as whether the person has dependants in the UK such as children, dependent parents or grandparents or dependent extended family members. You must consider the extent to which any dependants would be able to support themselves or be supported by others already legally residing within the UK.

If the person has a genuine and subsisting relationship with a partner or any other person, or a genuine and subsisting parental relationship with a child, you must consider the effect of the decision on that person. This should include considering the level of integration into the UK of that person, and whether they could reside elsewhere in the European Union if they were to re-locate as a result of the public policy decision.

Significant evidence of family life and integration would not always outweigh the decision on public policy or public security grounds. What the EEA Regulations 2016, as saved, require is a wide-ranging holistic assessment, recognising that the more serious the risk of reoffending and the offences that a person may commit, the greater the ability to interfere with the right of residence.

You must also consider the impact of the decision on any employment, properties or business interests that person may have in the UK.

The length of time the person has lived in the UK

Generally, the shorter the length of residence, the less likely it is that a person will have established significant links to the UK and the more likely it is that they will be able to re-integrate easily into their country of return. This might include persons who have not resided in the UK for a continuous period of 5 years and therefore have not acquired a permanent right of residence.

Where a person has resided in the UK for a relatively long period without any history of abuse of immigration laws, criminality or any time spent in prison, this is a further consideration that you should include as part of your decision making.

The extent to which the person is socially and culturally integrated in the UK

This could include factors such as employment links, voluntary work, family and friends, length of residence, properties or business interests in the UK as well as any absences from the UK, including the length and frequency of those absences and whether the person's personal, family or occupational interests have moved to another country.

You will need to consider all relevant circumstances to form an overall assessment of whether a person is socially and culturally integrated into the UK. You must consider all of the relevant information available, including all the reasons put forward by the person about their social and cultural integration in the UK.

Mere presence in the UK is not evidence of integration. There needs to be a wider degree of cultural and societal integration to be regarded as integrated into the UK. Where the person is only able to show links with their family members, or with others of the same nationality, or who speak the same language, the mere fact of having these links will not be sufficient to demonstrate integration in the UK, as provided by

paragraph 2 of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 3 of the Schedule to the Frontier Workers Regulations 2020.

Criminal offending

Criminal offending is an indication of a lack of integration. Where the person in question has a custodial sentence or is a persistent offender, you should take into account that the longer the sentence, or in the case of a persistent offender, the more convictions, the greater the likelihood that the person is not integrated and, as set out in paragraph 3 of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 3 of the Schedule to the Frontier Workers Regulations 2020, the greater the likelihood that the person's continued presence in the UK represents a genuine, present and sufficiently serious threat. You should also consider the nature of the offending, for example anti-social behaviour that targets a local community or offending that has caused a serious or long-term impact on a victim or victims (for example sexual assault, burglary) may be further evidence of non-integration.

Integrating links

You must still include consideration of integrative links in your decision making. Less weight will usually be given to claims unsubstantiated by independent and verifiable documentary evidence.

As provided by paragraph 4 of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 3 of the Schedule to the Frontier Workers Regulations 2020, links which are formed at or around the same time as a person has been carrying out the offending behaviour, was otherwise acting in a way which affects the fundamental interests of society, or whilst the person was in custody are less likely to indicate integration. Imprisonment as a result of a criminal sentence is an indicator that that person is not integrated into society – they have been deprived of their freedom due to their decision to breach societal norms and engage in conduct which is contrary to positive engagement with the UK.

Whilst positive contributions to society may be evidence of integration, this will not weigh strongly in the person's favour if it was undertaken at such a time as to suggest an attempt to avoid deportation.

The extent of the person's links with their country of origin

You should assess how much time the person has spent living in their country of origin, whether they are involved in community groups or have regular contact with others from their country of origin within the UK which would help them maintain or re-establish links in their country of origin, whether they understand the local language and culture and whether they have family and friends overseas to assist them with re-connecting with their country of origin if they return. Absence of these factors will not necessarily prevent removal, but they should be considered and they will be relevant to whether the decision is proportionate.

Continuity of residence

This section explains how to calculate whether a person has 10 years' continuous residence in the UK and therefore qualifies for consideration on imperative grounds of public security. When calculating continuity of residence, you must count backwards from the date of decision.

Regulation 3 of the EEA Regulations 2016, as saved, gives effect to the Court of Justice of the European Union (ECJ) judgments in Onuekwere (Judgment of the Court) [2014] EUECJ C-378/12 and Secretary of State for the Home Department v MG (Judgment of the Court) [2014] EUECJ C-400/12 to clarify that continuity of residence is broken when a person serves a sentence of imprisonment. In line with those judgments a sentence of imprisonment also breaks a person's continuous qualifying period for the purposes of eligibility for the EUSS. See EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members for more information on continuous qualifying period of residence.

A sentence of imprisonment includes all forms of custodial sentence including but not limited to periods of detention in a prison or a young offenders institute (in the latter case confirmed by the Court of Appeal in SSHD v Viscu [2019] EWCA Civ 1052). It also includes detention within a hospital as part of a sentence imposed as a result of a criminal conviction. Detention within a hospital or immigration detention that is not as a result of a conviction is not included.

Imprisonment as a result of a criminal conviction does not count as legal residence and interrupts continuity of residence for the purpose of acquiring a right of permanent residence (generally requiring 5 years of lawful residence) under the EEA Regulations 2016 or for the purposes of calculating a continuous qualifying period under the EUSS for a relevant EEA citizen or their family member. Periods of residence before and after a prison sentence cannot be combined in order to acquire permanent residence under the EEA Regulations 2016 or settled status under the EUSS.

A period of imprisonment is also capable of interrupting continuity of residence when assessing whether a relevant person has accrued 10 years' residence in accordance with the EEA Regulations 2016. When assessing whether any previous integrating links with the UK have been broken by time in prison, you must consider what effect the time in prison has had on those integrating links. This requires an overall assessment of the person's situation and whether it would not be appropriate to treat imprisonment as breaking their continuity of residence taking account of:

- the time the person spent in the UK prior to any imprisonment, including the nature and extent of any integrating links formed prior to their imprisonment
- the effect that the imprisonment had on those links
- any positive contributions to society which may be evidence of integration, for example an exceptional contribution to a local community or to wider society
- the nature of the offence and circumstances surrounding it

- the attitude and behaviour of the person while they were in prison, for example whether behaviour in prison has reinforced existing links with the UK

Where the person had weak social and cultural integrative links with the UK prior to imprisonment, it may be more likely that imprisonment could break those links. Where the person has been in the UK since they were a young child, have undertaken their entire education in the UK and have not lived in another EEA country for more than 2 years, that may indicate that they have strong integrative links with the UK that have not been broken by the period of imprisonment, depending on all of the facts of the case.

Additional protection levels: serious and imperative grounds

Regulation 27 of the EEA Regulations 2016 provides different levels of protection to EEA citizens or their family members in relation to decisions taken on grounds of public policy or public security, based on their length of residence in the UK.

These levels of protection reflect whether a person:

- has yet to acquire a right of permanent residence
- has acquired a right of permanent residence but has resided in the UK for less than 10 continuous years
- has acquired a right of permanent residence **and** has resided in the UK for a continuous period of at least 10 years (applicable to relevant EEA citizens only)
- has been granted indefinite leave to enter or remain under the EUSS
- is a child (applicable to relevant EEA citizens only)

The basic threshold

Where making a decision under the EEA Regulations 2016 as saved by the Grace Period Regulations, the basic threshold of the public policy or public security test applies where there is no right of permanent residence and the person in question is not an EEA citizen who is under the age of 18 (unless the decision is in their best interests).

Where making a decision under the EEA Regulations 2016 as saved by the Restrictions Regulations 2020, the basic threshold of the public policy or public security test applies where the person does not have indefinite leave to enter or remain under Appendix EU and the person in question is not an EEA citizen who is under the age of 18 (unless the decision is in their best interests).

Where making an EUSS suitability decision or a decision to cancel EUSS leave for conduct before 23:00 GMT on 31 December 2020 that engages the public policy or public security test, the basic threshold applies where the person does not satisfy the eligibility criteria for indefinite leave to enter or remain under Appendix EU and the person in question is not an EEA citizen who is under the age of 18 (unless the decision is in their best interests).

Additional protection levels do not apply to the frontier worker, S2 healthcare visitor or Swiss service provider routes.

Serious grounds of public policy or public security

The serious grounds of public policy or public security threshold applies where a person has less than 10 years' continuous residence in the UK and they are not a child, but where they:

- have a right of permanent residence (in the case of decisions being taken under the EEA Regulations 2016, as saved by the Grace Period Regulations 2020) (when calculating whether a person has been exercising Treaty Rights for 5 years, the continuous period of qualifying activity may finish after 31 December 2020)
- have indefinite leave to enter or remain granted under Appendix EU (in the case of decisions being taken under the EEA Regulations 2016, as saved by the Restrictions Regulations 2020)
- have or are eligible for indefinite leave to enter or remain under Appendix EU (in the case of decisions concerning Appendix EU suitability criteria or cancellation of EUSS leave)

Where this threshold applies, a decision can only be made on **serious** grounds of public policy or public security, in accordance with regulation 27(3) of the EEA Regulations 2016, as saved.

Regulation 15 of the EEA Regulations 2016, sets out the circumstances in which a relevant EEA citizen or their family member can acquire a right of permanent residence in the UK.

Serious grounds of public policy or public security are not defined in the EEA Regulations 2016. To justify a decision on serious grounds, there must be stronger grounds than would be applicable for a person who does not have a right of permanent residence.

There are a wide range of offences that could meet the serious grounds threshold depending on the seriousness of the offence and the degree of involvement in these types of criminal activities. Whether or not the serious grounds of public policy or public security threshold has been met and the decision is proportionate will depend on the specific facts of the case.

Imperative grounds of public security

A decision may only be taken on **imperative** grounds of public security where the person:

- is an EEA citizen who is under the age of 18, unless the relevant decision is in their best interests, as provided for by the Convention on the Rights of the Child
- has 10 years' continuous residence in the UK and:

- has a right of permanent residence (in the case of decisions being taken under the EEA Regulations 2016, as saved by the Grace Period Regulations 2020)
- has indefinite leave to enter or remain granted under Appendix EU (in the case of decisions being taken under the EEA Regulations 2016, as saved by the Restrictions Regulations 2020)
- has or is eligible for indefinite leave to enter or remain under Appendix EU (in the case of decisions concerning Appendix EU suitability criteria or cancellation of EUSS leave)

Where a person has acquired a right of permanent residence **after 5 years' lawful residence**, the subsequent 5 years of continuous residence (or the combined 5 years either side of the 5 years of lawful residence under EU law) do not have to be in accordance with the EEA Regulations 2016.

Decisions cannot be made on public policy grounds in these cases.

Imperative grounds of public security are not defined in the EEA Regulations 2016. The threshold may be interpreted more widely than threats to the state or its institutions, and can, for example, include serious criminality, such as drug dealing as part of an organised group. See: Tsakouridis (European citizenship) [2010] EUECJ C-145/09.

In the case of P.I (Imperative grounds of public security) [2009] EUECJ C-348-09 the Court of Justice of European Union held that it was open to member states to consider that those crimes referred to in Article 83(1) of the Treaties of the European Union (TFEU) constitute a particularly serious threat to the fundamental interests of society and are capable of justifying a decision on 'imperative grounds of public security' provided the manner in which such offences were committed disclose particularly serious characteristics and the person in question poses a genuine, present and sufficiently serious threat. The areas of crime covered by Article 83(1) of TFEU are:

- terrorism
- trafficking in human beings and sexual exploitation of women and children
- illicit drug trafficking
- illicit arms trafficking
- money laundering
- corruption
- counterfeiting of means of payment
- computer crime
- organised crime

This list is not exhaustive and other crimes without a cross-border element may also be relevant depending on the nature and severity of the offence, the circumstances of how the offence was committed and whether it has characteristics considered to pose a threat of a particularly high degree of seriousness.

Official – sensitive: start of section

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

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

Official – sensitive: end of section

Additional consideration: 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 children who are in the UK means that consideration of a child's best interests is a primary consideration when making a decision on grounds of public policy or public security.

For more information, please see the section on the best interest of the child above.

Primary carers

Where a decision requiring the primary carer of a British citizen child to leave the UK would force that child to leave the EEA, your decision to do so must take the child's best interests into account when setting out the facts and assess the particular circumstances of the case.

You must pay attention to the child's age, health, situation in the UK and the extent to which they are dependent on the parent/guardian who is to be deported.

Primary carers of children can include:

- a parent who has primary responsibility for a child
- a direct relative (other than the parent) or legal guardian with primary responsibility for a child
- a person who shares equal responsibility for a person's care with one other person

You must demonstrate in your decision notice or letter that you have considered all the information and evidence that has been provided to you concerning the best interest of a child in the UK.

Fundamental interests of society

Schedule 1 to the EEA Regulations 2016, as saved, and the Schedule to the Frontier Workers Regulations 2020 provide non-exhaustive lists of the fundamental interests of society in the UK.

A list of the types of behaviour considered contrary to each fundamental interest of society is set out in this section with examples provided where helpful. This is a non-exhaustive list.

The fundamental interests of society include:

(a) **preventing unlawful immigration and abuse of the immigration laws** and maintaining the integrity and effectiveness of the immigration control system (including under these regulations) and of the Common Travel Area.

Examples of behaviour contrary to this interest include:

- marriages of convenience or durable partnership of convenience
- human trafficking
- use of fraudulent documents
- facilitating illegal entry to the UK
- circumventing the immigration system
- facilitating the circumvention of the immigration system

(b) **maintaining public order**

Examples of behaviour contrary to this interest include:

- inciting public disorder
- anti-social behaviour such as criminal damage, drug offences and offences committed to fund a drug or alcohol habit, or committed while under the influence of drugs or alcohol

(c) **preventing social harm**

Examples of behaviour contrary to this interest include:

- low-level criminality
- acquisitive crime including theft and shoplifting

(d) **preventing the evasion of tax and duties**

Examples of behaviour contrary to this interest include:

- tobacco or alcohol smuggling tax fraud
- non-payment of taxes or duties owed

(e) **protecting public services**

Examples of behaviour contrary to this interest include:

- benefit fraud

(f) **excluding or removing a relevant person with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence)** and maintaining public confidence in the ability of the relevant authorities to take such action

(g) **tackling offences likely to cause harm to society** where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union)

Examples of behaviour contrary to this interest include:

- drugs offences (for example, smuggling, supplying, manufacturing drugs)

(h) **combating the effects of persistent offending** (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27, as saved, or regulation 18

Examples of behaviour contrary to this interest:

- persistent shoplifting or other low-level offending

(i) **protecting the rights and freedoms of others**, particularly from exploitation and trafficking

Examples of behaviour contrary to this interest include:

- high harm criminality
- human trafficking

(j) **protecting the public**

Examples of behaviour contrary to this interest include:

- high harm criminality
- human trafficking

(k) **acting in the best interests of a child** (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child)

Examples of behaviour contrary to this interest include:

- preventing the entry of a child if there are concerns as to why they are coming to the UK or who they are travelling with and it is considered that refusing them admission is in their best interests

(l) **countering terrorism and extremism** and protecting shared values

Related content

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Additional protection levels: serious and imperative grounds
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Immigration (European Economic Area) Regulations 2016
Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
Every child matters: statutory guidance
Borders, Citizenship and Immigration Act 2009
Free movement rights: derivative rights of residence

Conduct which may lead to a public policy or public security decision

This section provides further guidance about certain types of behaviour considered contrary to the fundamental interests of society. This is not an exhaustive list.

While conduct considered contrary to one or more of the fundamental interests may lead to a decision on grounds of public policy or public security, conduct generally falls into one of the following 4 broad categories:

- criminality (including criminal convictions and persistent offending)
- marriage, civil partnership or durable partner of convenience
- fraudulently obtaining a right under the Agreements
- evasion of taxes and duties

Criminal conduct

A person's criminal behaviour will be taken into account when making a decision on public policy or public security grounds, although a decision can be made even if the person has not received any criminal conviction if there is sufficient, reasonable evidence to underpin a decision that meets the civil standard of proof. Such criminal behaviour may be demonstrated by domestic or overseas convictions.

FNO Returns Command (FNO RC) is responsible for considering whether it is appropriate to deport a relevant person on grounds of criminality.

All foreign nationals who receive a custodial sentence are referred by the prisons to FNO RC.

Cases can also be referred to FNO RC for deportation consideration by police forces, the Courts, Immigration and Compliance (ICE) teams in Immigration Enforcement, Border Force Officers and decision-makers in UK Visas and Immigration (UKVI) if there is serious or persistent criminality.

EUSS and applications for a frontier worker permit may be referred to FNO RC if they meet the criteria set out in the EU Settlement Scheme: suitability requirements and the Frontier workers guidance.

Persistent offending

Persistent offending is considered contrary to the fundamental interests of society as set out in paragraph 7(h) of Schedule 1 to the EEA Regulations 2016, as saved, and in the Schedule to the Frontier Workers Regulations 2020.

A person is considered to be a persistent offender if they show a pattern of offending over a period of time. This can mean a series of offences committed in a short timeframe or that escalate in seriousness over time, or a pattern of minor offences.

Non-custodial sentences, suspended sentences, restraining orders, restrictions directions or orders, community protection notices or Criminal Behaviour Orders used in England, Wales and Northern Ireland as well as Anti-social Behaviour Orders used in Scotland, police cautions and equivalent offences can all be taken into account, but consideration will need to be conducted on a case-by-case basis.

In the case of a persistent offender, whilst an offence taken in isolation may not meet the requirements of regulation 27, the cumulative effect of the offences may be considered as a threat and it may be sufficient to make a public policy or public security decision on this basis.

Pending prosecutions

Where you are considering making a decision on public policy or public security grounds under the EEA Regulations 2016 or Frontier Workers Regulations 2020, and you find that there is a pending prosecution, it is important to consider the seriousness of the criminality for the following reasons:

- a pending prosecution generally constitutes a barrier to removal
- depending on the circumstances of the case, the outcome of the prosecution may strengthen the public interest in deporting the person, and may be taken into account when considering the public policy and public security test which will impact a decision applying the test in regulation 27 of the EEA Regulations 2016
- in some circumstances, the prosecuting authorities will decide that the public interest in deportation outweighs the public interest in proceeding with the prosecution

In cases where the person is being investigated by the police or has been charged with a criminal offence, if the individual is convicted in due course, the criminal convictions and surrounding circumstances may permit a public policy or public security decision to be made.

In the first instance, you must consider, together with all other relevant information, whether, even if the person were to be convicted of the alleged offences(s) together with all other relevant information, the appropriate threshold to make a public policy or public security decision is met. If not, you must not wait for the outcome of the prosecution or investigation and assess that no negative public policy or public security decision should be made. This is also the case when the prosecution is no longer pursued.

In some cases, there will be sufficient evidence, or other prior conduct, to justify taking a public policy or public security decision before the conclusion of any outstanding criminal proceedings. In such instances, deportation proceedings can

begin or continue, unless the relevant prosecutorial authority has made it clear the prosecution must be concluded before the subject's deportation.

If there is no sufficient evidence, a decision on public policy or public security grounds in accordance with regulation 27 of the EEA Regulations 2016, as saved, or regulation 18 of the Frontier Workers Regulations 2020, should generally be delayed until resolution of the pending prosecution.

Where a public policy or public security decision is delayed you may conduct further investigations with the police to obtain evidence of the threat that the person may pose. This may include information about the charges made against the person; the nature of the offences the person is alleged to have committed; the strength of evidence presented during the prosecution; and any previous arrests, convictions or evidence of similar behaviour. You should use this information to assess the threat posed by the person, and the stage the case has reached in the criminal justice system. Any evidence used must be disclosable.

You should also make an assessment of proportionality considerations, as set out in regulation 27(5) of the EEA Regulations 2016, as saved, or in regulation 18(4) of the Frontier Workers Regulations 2020. If you are satisfied that there is not, at the present time, sufficient evidence of a threat on grounds of public policy or public security and that the principles in regulation 27(5) or 18(4) have been sufficiently considered, you must notify the applicant that a decision on grounds of public policy or public security has not been made and is held pending the outcome of criminal justice proceedings. You must monitor these cases and make a decision as soon as is practicable upon conclusion of the criminal justice proceedings. If evidence of further criminality or conduct emerge during this period, it must be assessed to see if the threshold to make a public policy or public security decision is met, with or without including consideration of the pending prosecution.

For cases where deportation action is being considered where there is a pending prosecution see Decision to deport from the UK.

For more information on pending prosecutions see the pending prosecutions guidance.

Non-criminal conduct

Marriage, civil partnership and durable partnership of convenience

A right to be admitted or reside under the EEA Regulations 2016, as saved, or under the EUSS, is not obtained through a marriage or civil partnership of convenience.

Regulation 2 of the EEA Regulations 2016, as saved, define a marriage, civil partnership or durable partnership as one of convenience when it is entered into for

the purpose of using those Regulations, or any other right conferred by the European Union (EU) Treaties, as a means to circumvent either:

- Immigration Rules that apply to non-EEA nationals (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the UK); or
- any other criteria that the party to a marriage of convenience would otherwise have to meet in order to enjoy a right to reside under these regulations or the EU treaties

Appendix EU to the Immigration Rules defines a marriage, civil partnership or durable partnership of convenience as one entered into as a means to circumvent:

- any criterion the party would have to meet in order to enjoy a right to enter or reside in the UK under the EEA Regulations
- any other provision of UK immigration law or any requirement of the Immigration Rules
- any criterion the party would otherwise have to meet in order to enjoy a right to enter or reside in the UK under EU law
- any criterion the party would have to meet in order to enjoy a right to enter or reside in the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man

Marriages of convenience are, for immigration purposes, synonymous with sham marriages. As such, the key factor in a marriage, civil partnership or a durable partnership of convenience is that there is no genuine relationship between the parties.

When assessing whether a marriage or partnership is genuine you should refer to the direct family members guidance and the marriage investigations guidance.

Marriage of convenience - public policy framework

Paragraph 6(a) of schedule 1 to the EEA Regulations 2016, as saved, state that it is consistent with public policy and public security requirements to refuse, terminate or withdraw a right under the EEA Regulations 2016 or the Agreements, in the case of abuse of rights or fraud, including where it involves:

- entering or attempting to enter into a marriage, civil partnership or durable partnership of convenience
- assisting another person to enter or to attempt to enter a marriage, civil partnership or durable partnership of convenience

Involvement in a marriage, civil partnership or durable partnership of convenience for the purpose of circumventing the UK's immigration controls is considered to be contrary to the fundamental interest of society to prevent unlawful immigration and abuse of the immigration laws, and maintain the integrity and effectiveness of the immigration control system, as set out in paragraph 7(a) of Schedule 1 to the EEA Regulations 2016, as saved.

Where there are reasonable grounds to consider that a relevant person has participated in or facilitated a marriage, civil partnership or durable partnership of convenience (whether or not it was successful), it may be appropriate to take a public policy decision to:

- refuse admission
- refuse or revoke residence documentation
- refuse to grant leave to enter or remain
- cancel or curtail leave
- deport or exclude

applying the public policy or public security test in full, in accordance with the approach laid out in this guidance: including considering proportionality, and the appropriate level of protection depending on the length and nature of that person's residence in the UK.

You may refuse any pending EEA applications submitted on or before 31 December 2020 following involvement in a relationship of convenience, in accordance with the Free Movement Rights: direct family members of European Economic Area (EEA) nationals guidance.

Marriage of convenience provisions must be considered alongside other responses such as referral to Criminal and Financial Investigation (CFI) teams for prosecution. See Marriage of convenience – criminal investigations and Marriage investigations guidance.

Relevant persons – deportation on public policy grounds

Those with EUSS leave, EUSS Family Permits and those protected by the Grace Period Regulations 2020 who are found to have engaged in sham marriage behaviour (either as a participant or facilitator) before the end of the transition period, are liable to deportation on grounds of public policy under regulation 23(6)(b) of the EEA Regulations 2016, as saved, in accordance with regulation 27 of the those regulations.

Where a person protected by the Grace Period Regulations 2020 is found to have engaged in sham marriage behaviour after the end of the transition period a decision to deport must be made on the grounds that it is conducive to the public good under regulation 23(6)(b) of the EEA Regulations 2016, as saved, and in accordance with regulation 27A of those regulations.

In these circumstances, a 3-year time limited deportation order will generally be appropriate, although the appropriate length of deportation order should be assessed on the facts of each case. See determining duration of a deportation order.

Frontier workers found to have engaged in sham marriage behaviour before the end of the transition period, may be considered for deportation under regulation 15(1)(b) of the Frontier Workers Regulations 2020 on public policy grounds (regulation 18).

See marriage investigations: determining when relevant conduct commenced in marriage of convenience cases.

See referrals for consideration of deportation for details of marriage of convenience referral criteria and processes.

Marriage of convenience – Pending EUSS applications

If you are considering deportation following involvement in a marriage of convenience and that person has a pending application for leave under the EUSS, you must contact the UVKI EUSS senior caseworker immediately asking for the application to be put on hold and reviewed for potential refusal alongside the removal action.

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Marriage of convenience – alternative removal pathways

Where a sham marriage was material to a grant of indefinite leave obtained through the EUSS, the leave may be revoked if appropriate and proportionate to do so on the basis it was obtained by deception. For example, a third country national obtained settled status only by virtue of the sham marriage and has no other entitlement to that leave. In these circumstances, the person may be liable for administrative removal instead of deportation.

When making a public policy deportation decision against a relevant person involved in a marriage of convenience, you must also consider taking action against the other party to the claimed relationship, although it may not always be appropriate or proportionate to take action against both parties.

The removal options following involvement in a sham marriage depends on immigration status, any protection the person has under the Agreements, and when the ‘relevant conduct’ commenced. See marriage investigations: removal pathways.

Marriage of convenience – criminal investigations

There is no criminal offence of entering a sham marriage, but there are other offences for which a person could be prosecuted for involvement in a sham marriage.

To allow a joint response to be agreed with Criminal and Financial Investigations (CFI), you must notify them through your local CFI team manager at any stage where either of the following apply:

- HO databases indicates there is already CFI involvement in a case
- information you have received in relation to the case suggests that a marriage has been contracted for a criminal purpose, such as facilitation or obtaining leave by deception

See marriage investigations: criminal investigations

Fraudulently obtaining a right under the Agreements

Paragraph 6(b) of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 6(b) of the Schedule to the Frontier Workers Regulations 2020, provides that it is consistent with public policy and public security requirements to refuse, terminate or withdraw a right, where it involves fraudulently obtaining, attempting to obtain or assisting the fraudulent acquisition of a right to reside under the EEA Regulations 2016, as saved, or frontier workers' rights under Frontier Workers Regulations 2020.

Fraudulently obtaining, attempting to obtain or assisting the fraudulent acquisition of these rights is also considered contrary to the fundamental interests of society, under paragraph 7(a) of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 7(a) of the Schedule to the Frontier Workers Regulations 2020.

Examples of fraudulent behaviour to obtain a right under the Agreements include:

- submitting false evidence of relationship (such as fraudulent marriage, birth or divorce certificates)
- submitting false evidence of the exercise of rights under the EEA Regulations 2016, as saved, or the Agreements (fraudulent wage slips, bank statements, letters confirming study, claims that a person is self-employed, but His Majesty's Revenue and Customs checks confirm the person is not registered)
- the misrepresentation of facts regarding any qualifying criteria (such as permission to work for Croatian nationals)
- submitting false EEA documentation (such as registration certificate, residence card)

This list is not exhaustive. There may be other factors not listed above that constitute the fraudulent acquisition, or attempted acquisition of a right to reside under the EEA Regulations 2016, as saved, or the Agreements.

Any claim that a removal decision would interfere with a person's private and/or family life must be carefully assessed and balanced against Parliament's view of the public interest to determine whether removal would breach Article 8 of the ECHR, even if these provisions do not apply directly to relevant EEA citizens or their family members in respect of decisions made under the EEA Regulations 2016, as saved.

See also: Criminality: Article 8 ECHR cases

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Evasion of taxes and duties

The evasion of taxes and duties is considered contrary to the fundamental interests of society as set out in paragraph 7(d) of Schedule 1 to the EEA Regulations 2016, as saved, and paragraph 7(d) of the Schedule to the Frontier Workers Regulations 2020.

If a person is found to have had in their possession goods such as tobacco or alcohol in large quantities which were not consistent with personal use, consideration should be given to whether they were attempting to evade significant payment of duty.

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Related content
Contents
Marriage of convenience – criminal investigations
Referrals for consideration of deportation

Related external links
EU Settlement Scheme: Suitability requirements
marriage investigations
Criminality guidance for Article 8 ECHR cases

Consideration of public health

This section tells you about decisions made on public health grounds in respect of relevant persons.

Decisions applying the tests in regulation 27 of the EEA Regulations 2016, as saved, on the grounds of public health cannot be made in respect of persons with a right of permanent residence in the UK (see regulation 27(3) of the EEA Regulations 2016, as saved, or with indefinite leave to remain under the EUSS, or children, unless in the case of a child who is an EEA citizen, the decision is in their best interests (see regulation 27(4) of the EEA Regulations 2016).

In line with regulation 27(7) of the EEA Regulations 2016, and regulation 18(6) of the Frontier Workers Regulations 2020, decisions taken on grounds of public health can only be made in respect of diseases that either have epidemic potential as defined by the relevant instruments of the World Health Organisation (WHO) or are listed in Schedule 1 to the Health Protection (Notification) Regulations 2010.

No decision may be taken in respect of a person on public health grounds where the disease occurred more than 3 months after the person's arrival in the UK. Any decision restricting rights of entry and residence that is made in relation to a person's conduct after 23:00 GMT on 31 December 2020 must be made applying the UK's Immigration Rules. Consequently, it is not envisaged that decisions made on public health grounds will continue to be of relevance after 31 March 2021.

The use of the public health ground must be proportionate.

Related content
Contents

Related external links
Immigration (European Economic Area) Regulations 2016
Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

Decision to exclude from the UK

This section tells you about decisions to exclude individuals from the UK and should be read in conjunction with the guidance on exclusion from the UK.

From 1 January 2021 exclusion orders under regulation 23(5) of the EEA Regulations 2016 can only be made in relation to persons covered by the Grace Period Regulations 2020. From 1 July 2021 the only persons covered by the Grace Period Regulations 2020 are those who were lawfully resident in the UK immediately before the end of the transition period and who made an application to the EUSS on or before 30 June 2021 which is still pending (including any appeal). Where the conduct occurred before 23:00 GMT on 31 December 2020 the public policy or public security test in regulation 27 applies. Where the conduct occurred after 23:00 GMT on 31 December 2020 the conducive test in regulation 27A applies.

For all other relevant persons, a decision to exclude the person from the UK must be made by the Secretary of State where it is conducive to the public good and, where the conduct of the person in question was committed before 23:00 GMT on 31 December 2020 the public policy or public security test must also be met. A decision made by the Secretary of State to exclude a person from the UK is also known as an exclusion decision. Where conduct was committed after 23:00 GMT on 31 December 2020, the Secretary of State can make an exclusion decision solely on the ground it is conducive to the public good.

An exclusion decision should only be made in respect of a person who is believed to be outside the UK. If the person is in the UK, deportation will normally be the appropriate course of action.

A decision to exclude a person from the UK must be made on the particular facts of the case. The decision to exclude may be exercised by the Home Secretary, or a Minister of State acting on behalf of the Home Secretary. A decision to make an exclusion order under the EEA Regulations 2016 on the grounds of serious or persistent criminality may also be made by the Director of FNO RC acting on behalf of the Home Secretary, following a recommendation which must set out why the use of the exclusion power is appropriate.

The consequences of making an exclusion decision are serious: a person is not entitled to be admitted to the UK while the exclusion order or exclusion decision remains in place.

An exclusion order or exclusion decision made remains in place until it is revoked. For more information see the Exclusion from the UK guidance.

In every case where consideration is given to excluding a person on the grounds of public policy, public security or public health, you must follow the approach set out in Consideration of public policy and public security and Consideration of public health and consider whether the person in question qualifies for a higher threshold of protection.

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Prior to service of an exclusion decision or exclusion order on a relevant person, you must check PEGA and other databases to see if there is a pending EUSS application, and whether prior criminality has already been assessed as part of the application.

Further guidance on the exclusion of a person from the UK and rights of appeal including appeals to the Special Immigration Appeals Commission (SIAC) can be found at:

- exclusion from the UK
- rights of appeal

Related content
Contents
Revoking an exclusion order
Consideration of public policy and public security
Consideration of public health

Related external links
Exclusion from the UK
Immigration (European Economic Area) Regulations 2016
Rights of appeal

Decision to refuse admission to the UK

This section tells you about refusal of admission of relevant persons on the grounds of public policy, public security or public health due to conduct that occurred before 23:00 GMT on 31 December 2020.

See Definitions for further information on relevant persons.

Relevant persons who are covered by the Grace Period Regulations 2020 or the Frontier Workers Regulations 2020.

Where a person who is covered by the Grace Period Regulations 2020 or the Frontier Workers Regulations 2020 is not subject to a deportation order, exclusion order or exclusion decision and there are concerns about the threat they pose due to conduct which occurred before 23:00 GMT on 31 December 2020, regulation 23(1), of the EEA Regulations 2016, as saved and regulation 12(1) of the Frontier Workers Regulations 2020, enables a Border Force officer to refuse admission to that person on the grounds of public policy or public security in accordance with regulation 27 or the EEA Regulations 2016, as saved, or regulation 18 of the Frontier Workers Regulations 2020.

Admission must be refused under regulation 23(2) of the EEA Regulations 2016, as saved, and regulation 12(2) of the Frontier Workers Regulations 2020, where a person who is covered by the Grace Period Regulations 2020 or the Frontier Workers Regulations 2020 is subject to a valid deportation order, exclusion order or exclusion decision unless they are seeking to be admitted temporarily for an appeal hearing and have permission to do so. A deportation order or exclusion decision that was not made under the EEA Regulations 2016 (or the EEA Regulations 2006) does not extinguish a person's admission or residence rights under the EEA Regulations 2016, as saved.

You must follow the approach set out in Consideration of public policy or public security when considering whether to refuse admission on grounds of public policy or public security, including when:

- considering whether the person is entitled to a higher threshold of protection
- considering whether the principles set out in regulation 27(5) of the EEA regulations 2016, as saved or regulation 18(4) of the Frontier Workers Regulations 2020 are met
- taking account of any additional considerations that apply to a decision on the grounds of public policy or public security, where the person is resident in the UK - this includes where the person is temporarily outside the UK when the decision is made

Once a person has passed through immigration control, they are considered to have been admitted to the UK. However, regulation 31 of the EEA Regulations 2016, as saved, and regulation 14(1) of the Frontier Workers Regulations 2020, allows Border Force officers to revoke admission of a person who has been admitted to the UK

under regulation 11 of the EEA Regulations 2016, as saved, or regulation 6 of the Frontier Workers Regulations 2020, in circumstances in which that person was not entitled to be admitted. If information comes to light following admission, for example at the customs control, which would have resulted in that person having been refused admission under regulation 23(1), 23(2) and 23(3) of the EEA Regulations 2016, as saved, or regulation 12(1) of the Frontier Workers Regulations 2020 if that information had been available at the point of admission, then Border Force must revoke their admission.

A decision to grant admission to a relevant person does not necessarily preclude a decision from being made on public policy, public security or public health grounds at a later date. For example, a decision to allow admission to the UK does not automatically prevent a deportation decision from being made against that person.

From 1 January 2021, a person who holds EUSS leave should be dealt with **solely** on the basis of that leave. Where their leave falls to be cancelled under paragraph A3.1 (for indefinite leave) or A3.2 (for limited leave) of Annex 3 to Appendix EU to the Immigration Rules, you are no longer required to additionally refuse them admission under the EEA Regulations 2016, as saved, but should instead include a refusal of leave to enter within the notice of cancellation of leave. Euro casework does not need to be notified in that case. For more information about Annex 3 see the EU Settlement Scheme: Suitability guidance and Annex 3 to Appendix EU to the Immigration Rules.

For refusal of admission on public policy, public security or public health grounds in respect of Health visitors seeking entry under the S2 Arrangements see the S2 Healthcare Visitors guidance.

For refusal of admission and cancellation of leave to enter on public policy, public security or public health grounds in respect of persons seeking entry as a Service Provider from Switzerland, see the Service Providers from Switzerland guidance.

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Potential victim of modern slavery

You may encounter a relevant person seeking admission who you are considering refusing on public policy, public security or public health grounds, but who you also consider to be a potential victim of modern slavery. If the person is an adult and consents, you must refer the person to the National Referral Mechanism (NRM) to ensure the UK meets its obligations under the Council of Europe Convention on Action Against Trafficking in Human Beings to identify and support victims of modern slavery. Consent is not needed for a child. A decision to refuse admission must not be made until a negative reasonable grounds NRM decision or a conclusive grounds decision is made. A potential victim of modern slavery includes human trafficking (PVoT) and slavery, servitude and forced or compulsory labour).

The NRM process only operates within the UK. It therefore doesn't apply at the juxtaposed controls as these ports are not based in the UK. Where a relevant person, who you consider should be refused on public policy, public security or public health grounds, is identified as a potential victim of modern slavery at one of the juxtaposed controls, they must be referred to the French, Dutch or Belgian authorities. For further guidance see vulnerable adults and children.

Related content
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Background
Consideration of public policy or public security
Consideration of public health

Decision to refuse, renew or revoke documentation issued under the EEA Regulations 2016

This section tells you about the circumstances in which an application for an EEA document can be refused or revoked on the grounds of public policy or public security. Frontier worker permits can also be refused or revoked on the grounds of public policy or public security under the Frontier Workers Regulations 2020. The consideration process is the same when refusing to issue or revoking documents under both sets of regulations.

Overview

The powers to issue or renew residence documentation under the EEA Regulations 2016 (EEA family permit, registration certificate, residence card or derivative residence card) are saved for applications made before 23:00 GMT on 31 December 2020.

After 23:00 GMT on 31 December 2020 no new applications could be submitted under the EEA Regulations 2016, save for applications for EEA family permits by direct family members and durable partners, which could be submitted until the end of the grace period, as specified by paragraph 3 of Schedule 3 of the Consequential Regulations 2020.

Documentation under the EEA Regulations 2016

Where considering an application for EEA documentation made before 23:00 GMT on 31 December 2020 or, in the case of an application for an EEA family permit, before 00:00 GMT on 30 June 2021, under regulation 24(1) of the EEA Regulations 2016, as saved, the Secretary of State may refuse the application on the grounds of misuse of rights.

An application for EEA documentation cannot be refused on public policy or public security grounds under regulation 24(1). Where the person concerned is the subject of a decision to remove under regulation 23(6)(b), a deportation order under regulation 32(3), or an exclusion order under regulation 23(5), the EEA documentation application is invalid as set out in regulation 21(4A) of the EEA Regulations 2016.

Where an application has been made and there is evidence of criminality, UKVI must refer the case to FNO RC for consideration of enforcement action before the application is determined. If the person is outside the UK, the case must be referred for exclusion consideration.

Where deportation is considered under the EEA Regulations 2016 and the public policy or public security test is met, a decision to deport must be made before the case is referred to UKVI to inform the person that their application for EEA documentation is invalid as per regulation 21(4A) of the EEA Regulations 2016. If the public policy or public security test is not met, the case must be referred back to UKVI for consideration of whether the person would have been eligible for an EEA document. Where the person has an EUSS application pending, this will be considered.

An application for an EEA family permit made before the end of 30 June 2021 by a direct family member or durable partner will be considered under the EUSS Family Permit rules.

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A decision to issue or renew documentation does not automatically preclude a decision from being made on public policy or public security grounds or on conducive grounds if appropriate at a later date should offending or adverse behaviour that was not considered when the document was issued or renewed come to light or occur after the initial decision. For example, a decision to issue a document to a relevant EEA citizen does not necessarily mean that a deportation decision cannot be made against that person, unless their conduct or criminality was considered at the time and deemed not to satisfy the public policy or public security test where applicable, and they do not have any new convictions since that decision.

Invalid applications

Applications for EEA documentation (including EEA residence documents, EEA family permits and EEA derivative residence cards) must be rejected under regulation 21(4A) as invalid where the person making the application is subject to:

- a removal decision under regulation 23(6)(b)
- a deportation order made by virtue of regulation 32(3)
- an exclusion order made under regulation 23(5)

Regulation 21(4A) of the EEA Regulations 2016, as saved, does not apply to removal decisions, deportation orders or exclusion orders which were made outside of the EEA Regulations 2016, including removal decisions taken under section 10 of the Immigration and Asylum Act 1999 or deportation decisions made by virtue of section 3 of the Immigration Act 1971, including automatic deportation by virtue of the UK Borders Act 2007, or an exclusion decision. See also: Processes and procedures – EEA document applications

Invalidation or revocation of documentation

A registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card issued under regulations 17 to 20 of the EEA Regulations 2016 is rendered invalid under regulation 24(2) of the EEA Regulations 2016, as saved, where the holder becomes subject to:

- a removal decision made under regulation 23(6) of the EEA Regulations 2016, as saved
- a removal decision by virtue of regulation 32(4) of the EEA Regulations 2016, as saved
- a decision to revoke admission under regulation 31 of the EEA Regulations 2016, as saved

Regulation 24(1) of the EEA Regulations 2016, as saved, also provides that a decision to **revoke** a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card may be made on grounds of misuse of right.

Once the documentation has been revoked the case must be referred for enforcement action.

An exclusion order does not invalidate a certificate, card or document and the documentation needs to be revoked. Documentation must be revoked separately.

A registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card can no longer be revoked under regulation 21(1) or the EEA Regulations 2016 on grounds of public policy or public security.

Where a person has made a valid EUSS application, this will be considered having regard to the public policy or public security test in respect of conduct committed before 23:00 GMT on 31 December 2020.

See residence documentation applications for more information.

Related content
Contents
Residence documentation applications

Related external links
Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020
(Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020

Decision to deport from the UK

This section tells you about deportation on the grounds of public policy or public security.

Deportation on grounds of public policy or public security can be pursued in relation to a person who:

- is protected by the Frontier Workers Regulations 2020
- is protected by the Grace Period Regulations 2020
- has EUSS leave or an EUSS family permit (deportation considered under the Restrictions Regulations 2020)
- who has entry clearance as a Swiss Service Provider or S2 Healthcare Visitor (deportation considered under the Restrictions Regulations 2020)

in respect of conduct which occurred before 23:00 GMT on 31 December 2020.

Overview

Regulation 23(6)(b) of the EEA Regulations 2016, as saved, allows for the deportation of EEA citizens or their family members to whom those regulations still apply in respect of conduct committed before 23:00 GMT on 31 December 2020 on grounds of public policy or public security in accordance with regulation 27 of the EEA Regulations 2016, as saved.

In the case of a frontier worker, they may be deported under regulation 15(1)(b) of the Frontier Workers Regulations 2020 for conduct committed before 23:00 GMT on 31 December 2020 on grounds of public policy or public security in accordance with regulation 18 of the Frontier Workers Regulations 2020.

You must follow the approach set out in Consideration of public policy or public security when considering whether to make a deportation decision on grounds of public policy or public security.

See definitions for further information on relevant persons.

Referrals for consideration of deportation

Where a relevant person's conduct is considered to be contrary to one or more of the fundamental interests of society as set out in Schedule 1 to the EEA Regulations 2016, or in the case of frontier workers as set out in Schedule 1 of the Frontier Workers Regulations 2020, the case must be referred for deportation consideration.

Referrals for consideration of deportation can be received from various areas including UK Visas and Immigration (UKVI), Immigration and Compliance (ICE) teams in IE, Border Force Officers, the Courts, HM Prison and Probation Services,

Scottish and Northern Irish prison services and police forces. This is not an exhaustive list.

Deportation referrals for relevant persons broadly fall under 2 areas:

- referrals based primarily on **criminality** (including those with overseas convictions or with persistent offending) which are considered by FNO RC
- referrals based primarily on **non-criminal grounds** such as abuse of rights or fraud (for example those who have entered into sham marriage or fraudulently gained rights under the EEA Regulations 2016 or the Agreements) which are considered by Returns Preparation (RP) - for completeness, it may sometimes be the case that immigration abuse will fall under criminal behaviour

A referral for consideration of deportation does not automatically result in a deportation decision.

Criminality based case referrals

All foreign nationals who receive a custodial sentence are referred by the prisons to FNO RC for deportation consideration.

Relevant persons applying for leave under the EUSS, as a S2 Healthcare Visitor or as a service provider from Switzerland or for a frontier worker permit may be referred to FNO RC if they meet the criteria set out in the EU Settlement Scheme: suitability requirements or the Frontier workers guidance.

A relevant person may also be referred to FNO RC for consideration on the ground that they are a persistent offender.

Referrals on other grounds: sham marriages

Returns Preparation in IE are responsible for considering the deportation of relevant persons involved in a marriage, civil partnership or durable partnership of convenience.

Where UKVI or IE encounter a person covered by the Grace Period Regulations 2020 or who has EUSS/EUSS FP leave who has entered or attempted to enter, or who assisted another person to enter or attempt to enter, a marriage, civil partnership or durable partnership of convenience (whether they were successful or not) before 23:00 GMT on 31 December 2020, they must refer the case to Returns Preparation. For more information see ‘removal pathways’ in Marriage investigations.

Enquiries about a suspect marriage of convenience (also known as ‘sham marriage’) may be made for a number of reasons, for example as a result of:

- a referral for further investigation in connection with the ‘marriage and civil partnership referral and investigation scheme’.

- an application for leave to remain based on a marriage or a civil partnership or an applications for documentation
- encounters during an enforcement operation that raises suspicion about the genuineness of a relationship that is the basis of permission to enter or stay in the UK
- Intelligence received in relation to a sham marriage

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Returns Preparation will assess the case to determine if it is appropriate to pursue deportation on the grounds of public policy or public security.

Any non-relevant persons who are party to a sham marriage must be referred to the relevant teams for consideration of administrative removal as detailed in removal pathways in Marriage investigations.

Timing of the deportation order

A person who is liable to deportation must be notified in writing that they are being considered for deportation and given an opportunity to provide reasons as to why they should not be deported. Any representations received must be considered before a deportation decision is made. The person or their representatives must be notified immediately once a deportation decision is made.

A deportation order can be made after the deportation decision is made and once the person has exhausted their in-country appeal rights. If the decision has been certified under regulation 33 of the EEA Regulations 2016, as saved (which has the effect that the person can be removed pending their appeal), the deportation order can be made at the same time as the deportation decision and the person can be removed before the end of the 14 day period to appeal.

If a person has not been removed from the UK within 2 years of the date the deportation order was made, the decision to deport must be reconsidered and a fresh decision made.

Effects of a deportation decision

Regulation 23(9) of the EEA Regulations 2016, as saved, provides that a deportation decision made under regulation 23(6)(b) of those regulations terminates a person's right to reside in the UK under the EEA Regulations 2016. Regulation 23(9) does not

apply to a person who has been accepted as being lawfully resident immediately before the end of the transition period and who has a pending in time EUSS application which has not finally been determined, including any relevant appeal rights exhausted.

The deportation order invalidates any leave granted before the order comes into force or while it is in force. The deportation order enters into force once it has been signed.

Once a deportation order has been made, the person is required to leave the UK. If the person does not comply with the requirement to leave the UK, then the person's removal can be enforced.

Deportation orders made by virtue of a decision under regulation 23(6)(b) of the EEA Regulations 2016, as saved, remain in place until revoked by the Secretary of State or for the period specified in the order (regulation 34(2), as saved). Applications for revocation of a deportation order must be made from outside the UK.

If an EEA citizen or their family member seeks admission to the UK but is subject to an extant deportation order made under the EEA Regulations 2016, they must be refused admission under regulation 23(2), as saved. They will only be considered for admission once the deportation order has been revoked.

Liability to deportation

If a person covered by the Grace Period Regulations 2020 or who has EUSS/EUSS FP leave is liable to deportation for conduct committed before 23:00 GMT on 31 December 2020 you must notify the person in writing by sending an EEA Stage 1 combined liability notice to deportation on public policy or public security grounds and give them an opportunity to make representations, if they want to, about why they should not be deported.

For further information on relevant cohorts see About this guidance and Introduction.

Checks for those liable to deportation

Where a relevant person is liable to deportation, you must check whether the person has applied for, or been granted, leave under Appendix EU, or an entry clearance under Appendix EU (Family Permit), Appendix Service Providers from Switzerland, Appendix S2 Healthcare Visitor, or applied for or been granted a frontier worker permit prior to serving a liability to deportation notice.

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If the person has made an application under Appendix EU or Appendix EU (Family Permit) and the case meets the public policy or public security test as set out in the EEA Regulations 2016, as saved, and deportation is appropriate, you must ensure that a decision to refuse the application for EUSS leave or for entry clearance under Appendix EU (Family Permit) in accordance with rule EU15 of Appendix EU or rule FP7(1) of Appendix EU (Family Permit) is served at the same time as the deportation decision. A refusal under rule EU15 or FP7 is a consequence of a relevant deportation decision having been made. See EU Settlement Scheme: suitability requirements.

Cancellation of leave to enter or remain granted under Appendix EU or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit at port or while the holder is outside the United Kingdom under paragraph A3.2.(a) of Annex 3 to Appendix EU or under paragraph A3.4.(a) of Annex 3 to Appendix EU (Family Permit) must also be considered.

For further information see the following guidance:

- EU Settlement Scheme: suitability requirements
- Frontier workers
- S2 healthcare visitor
- Swiss service providers

Decision to serve stage 1 notice (liability for deportation)

If there are grounds that lead you to believe that deportation should not be pursued, you must escalate the case through the management chain in accordance with the current levels of authority instructions before the final decision is made. If, after reviewing the evidence and obtaining the appropriate authority, you decide that deportation should not be pursued, you must update CID and/or Atlas to indicate the reasons for the decision. In the case of a non-criminal marriage of convenience case you must consult the marriage investigations guidance to establish the relevant removal pathway, as administrative removal may be appropriate if deportation is not pursued.

In all cases where deportation under the EEA Regulations 2016, as saved, is to be pursued, you must issue a notice of liability for deportation (EEA stage 1 combined liability notice), giving the person the opportunity to raise grounds why they consider their deportation would be disproportionate.

Where the person is covered by the saved EEA Regulations 2016 in respect of conduct before 23:00 GMT on 31 December 2020 because they:

- have been granted leave under Appendix EU to the Immigration Rules or entry clearance under Appendix EU (Family Permit) to the Immigration Rules
- are a frontier worker, as defined by regulation 3 of the Frontier Workers Regulations 2020, who has been granted a frontier worker permit or who is an Irish citizen
- are a person with leave as a Swiss service provider under Appendix Service Providers from Switzerland to the Immigration Rules
- are a person with leave as a patient, or with permission to accompany or join a patient, for the purpose of completing a course of planned healthcare treatment in the UK which was authorised under the ‘S2 arrangements’ under Appendix S2 Healthcare Visitor to the Immigration Rules
- had a right of permanent residence under the EEA Regulations 2016 or were exercising Treaty rights in the UK immediately before 23:00 GMT on 31 December 2020, and have made an in time application for EUSS leave which is not finally determined or the relating appeal rights not exhausted

an EEA stage 1 combined liability notice must be issued.

If it is unclear the person has such rights, but they have made an application for EUSS leave by 30 June 2020 which is not finally determined or the related appeal rights are not exhausted, and you are unsure whether they were lawfully resident immediately before 31 December 2020, the EEA stage 1 combined liability notice must include a deportation consideration under the Immigration Act 1971 and/or UK Borders Act 2007. This does not apply where the person is being considered for deportation on the basis of non-criminal sham marriage behaviour. For more information see removal pathways in Marriage investigations.

Where the person is not covered by the saved EEA Regulations 2016, refer to the conducive guidance for deportation consideration. Where conduct is committed before 23:00 GMT on 31 December 2020 and the person has made an EUSS application, the public policy or public security test will have to be considered within the EUSS decision and a person cannot be removed until that application is finally determined or any associated appeal rights exhausted, unless the decision is certified under regulation 16 of the Citizens' Rights Appeals Regulations 2020.

Where the person is covered by the saved EEA Regulations 2016, you must complete and serve the EEA stage 1 combined liability notice (ICD.4932 / ICD.4932A, or their ATLAS equivalent) and amend the form to select the appropriate period in which the person can make further representations:

- 14 days for those in immigration detention
- 20 days for those due to be released in 14 days or less from custodial detention
- 28 days for those in custodial detention with a release date in 15 days or longer
- 28 days for those not in detention

The EEA stage 1 combined liability notice must include the basis on which it is considered that there are public policy or public security reasons or conducive grounds for their removal from the UK. You must also ensure that the liability notice contains a warning under section 120 of the Nationality, Immigration and Asylum Act 2002 and in accordance with paragraph 2 of Schedule 2 to the EEA Regulations 2016, as saved. This places a continuing obligation on that person to raise with the Home Office any reasons why they should not be deported from the UK, including any material change of circumstances, as soon as they occur.

You must also ensure that the EEA stage 1 combined liability notice requests the person to submit evidence regarding their length of residence, family, employment, application under the EUSS when relevant and any other reasons why they feel they should not be deported.

In some cases, it may be necessary to serve the EEA stage 1 combined liability notice on file in accordance with regulation 7(2) of the Immigration (Notices) Regulations 2003. See Serving deportation decisions on file guidance.

Once the EEA stage 1 combined liability notice has been served and upon reviewing any further representations, you must ascertain first whether the person has EUSS leave, has a frontier worker permit, leave under the 'S2 arrangements' or as a Swiss Service Provider. If they do, you must consider the evidence and make the decision under the public policy or public security test for conduct committed before 23:00 GMT on 31 December 2020. If they don't, you must ascertain whether the person has made an in-time application for EUSS leave.

If the person has applied for EUSS leave before or on 30 June 2020 and a decision on that application is still pending, you must consider whether they were lawfully resident before 23:00 GMT on 31 December 2020 (where this has not already been established) in order to determine the test and appropriate power to be applied when making the deportation decision.

If the person was not lawfully resident, you must make a deportation decision in accordance with the conducive deportation guidance.

If the person was lawfully resident, you must consider the evidence and make the decision under the EEA Regulations 2016, as saved, applying the public policy or public security test in regulation 27 for conduct committed before 23:00 GMT on 31 December 2020 and the conducive grounds test in regulation 27A in respect of conduct committed after 23:00 on 31 December 2020.

You can make a decision on the basis of the information already known, if you do not receive further information.

In cases where deportation is being considered, and information comes to light that there is a current pending prosecution, an assessment must be made as to whether it may be necessary to delay or suspend deportation action.

For more information, please see the Pending prosecutions section of this guidance.

Decision to serve stage 2 notice (deportation decision)

Appropriate authority must be sought if, upon receipt of a response to the EEA stage 1 combined liability notice and any other relevant evidence, it is considered that deportation is not appropriate. If you decide not to pursue deportation after you have issued the notice of liability for deportation, you must send a warning letter (ICD.0260 EEA or its ATLAS equivalent) to the person informing them that no further deportation action will be taken. Consideration must be given to the person's potential liability to other enforcement action (for example administrative removal) where the deportation threshold is not met.

If you decide that deportation is appropriate on public policy or public security grounds, taking into account all of the facts and circumstances of the case, including evidence that the conduct which led to conviction was committed before 23:00 GMT on 31 December 2020 and that the EEA Regulations 2016, as saved, do in fact continue to apply to the person), you must serve a stage 2 notice of deportation decision to make a deportation order.

Prior to serving the stage 2 notice, you must consider:

- what length of deportation order (whether time limited or indefinite) is appropriate
- whether it would be appropriate to make a decision to impose a restriction on work pending deportation
- whether the person benefits from the 30-day notice period during which they may voluntarily leave the UK

These factors must be addressed within the stage 2 notice. The stage 2 notice must also state the reasons for the deportation decision, including which threshold of the public policy or public security test has been applied, the details of the person's immigration history in the UK, and the basis on which the test is met. For levels of protection, see Additional protection levels: serious and imperative grounds.

You must also consider the best in interests of any impacted child in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009 and any human rights or protection representations made by the person in question.

Service of the deportation decision

If the EEA stage 1 combined liability notice was served on file, and the person remains out of contact with the Home Office, as defined by the Immigration (Notices) Regulations 2003 (because their whereabouts are not known, no address has been provided and you don't know the last-known or usual place of abode or business, or the address is defective, false or no longer in use, and no representative appears to be acting for the person), you must proceed with serving a stage 2 decision as appropriate. This must be served to file in accordance with regulation 7(2) of the Immigration (Notices) Regulations 2003.

Where you are serving to file, you must print the authorised stage 2 deportation decision notice and copy the documents to the main file.

Otherwise, the notice must be served in person or by hand, by fax, by post, courier or document exchange or by email to the person or their representatives.

If the person is detained, you must also ensure that the confirmation of conveyance section of the stage 2 notice is completed and attached; this will be returned to the Home Office by the place of detention with a date confirming when the notice was served.

Service of the deportation order

If the person has a right of appeal, a deportation order must only be obtained once the person has exhausted their in-country appeal rights unless the case is certified under regulation 33 of the EEA regulations 2016, as saved. Once a deportation order has been obtained, you must produce a final print of the documents. You must copy the documents to the main file, serve it on the person, along with a confirmation of

conveyance where the person is detained. If the location of the person is not known, you must serve to file. See Serving deportation decisions on file guidance.

You must not serve on file unless you have made a reasonable attempt to locate the person.

Certification of a deportation decision under the EEA Regulations 2016

Regulation 33 of the EEA Regulations 2016, as saved, allows the Secretary of State to certify that removal pending the final determination of an appeal (or where an appeal has not been lodged) would not be unlawful under section 6 of the Human Rights Act 1998. A decision to certify interim removal must also be proportionate taking into account the specific facts and circumstances of the case. The effect of certification is that an appeal lodged against a deportation decision does not suspend removal.

Certification under regulation 33 of the EEA Regulations 2016, as saved, means that a human rights or protection appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 that relates to or arises from a decision made in respect of a relevant person (or the consequences of a decision made in respect of a relevant person) must be brought from outside the UK, so there is no need to take an additional certification decision in respect of that appeal under the Nationality, Immigration and Asylum Act 2002.

Where a decision is being served to file, you must not certify the case under regulation 33 of the EEA Regulations 2016.

Case owners considering certification of a removal under regulation 33 of the EEA Regulations 2016, as saved, must refer to the Regulations 33 and 41 of the EEA Regulations 2016 guidance.

When a deportation decision is certified under regulation 33 of the EEA Regulations 2016, as saved, any pending EUSS application must also be certified under regulation 16 of the Citizens' Rights Appeals Regulations 2020.

30-day notice period to leave the UK on a voluntary basis

Regulation 32(6) of the EEA Regulations 2016, as saved, provides that a person being removed from the UK by virtue of a decision made under regulation 23(6) of the EEA Regulations 2016, as saved, must be allowed one month during which they may leave the UK voluntarily, beginning on the date on which they are notified of the decision to remove them except:

- in duly substantiated cases of urgency (for example if a prisoner was involved in prison riots)
- where the person is detained pursuant to the sentence or order of any court
- where a person has entered the UK in breach of a deportation order

If a person subject to a deportation decision chooses to leave on a voluntary basis, a deportation order must be made and they are subject to the re-entry restrictions imposed by that order.

Therefore, with the exception of people who temporarily return to the UK under the provisions of regulation 41, as saved, the person will not be able to return to the UK until the deportation order has expired, or after successful application to have it revoked.

Detention powers associated with deportation under the EEA Regulations 2016, as saved

Anticipatory powers of detention: whilst a deportation decision is pending

Regulation 32(1) provides a power of detention in cases where there are reasonable grounds for suspecting that a person is someone who may be deported from the UK under regulation 23(6)(b) of the EEA Regulations 2016, as saved. Paragraphs 17 and 18A of Schedule 2 to the Immigration Act 1971 apply, as those paragraphs apply in relation to a person who may be detained under paragraph 16 of that Schedule.

Under regulation 32(1) of the EEA Regulations 2016, as saved, the Secretary of State may detain a person to whom that regulation continues to apply pending a decision on whether they should be removed from the UK on grounds of public policy or public security, where there are reasonable grounds for suspecting that the test has been met. For more information see Purpose and definitions.

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Powers of detention: after the deportation decision has been taken

If the decision is taken to proceed with deportation action, a stage 2 notice will be served, allowing detention to continue by virtue of regulation 32(3) and Schedule 3 to the Immigration Act 1971.

Regulation 32(3) sets out that where the decision has been made to deport a person under regulation 23(6)(b), the person is to be treated as if they are a person to whom the relevant deportation provisions of the Immigration Act 1971 apply and therefore are liable to detention.

Full details on detention criteria can be found in the Detention – general guidance.

Removal action once a deportation order has been served

If the person has not made any representations against the decision to deport, has become appeal rights exhausted or the case has been certified so that the deportee does not have an in-country right of appeal, and once the deportation order has been served and travel documentation has been arranged, you can arrange removal directions.

Regulation 32(5) of the EEA Regulations 2016, as saved, requires that, where a deportation order is made against a person but they are not removed under the order during the 2-year period beginning on the date on which the order is made, you must assess whether there has been any material change in circumstances since the deportation order was made before taking action to remove the person.

A letter must be sent, advising the person that their deportation is subject to review and inviting further representations. After these representations have been made, or in the absence of further representations, if the threshold for deportation under the EEA Regulations 2016, as saved, is still met, you must serve a new stage 2 decision maintaining the deportation order. This is a new decision which attracts an in-country right of appeal under regulation 36 of the EEA Regulations 2016, as saved. As with an initial deportation decision, the appeal will be rendered non-suspensive of removal if certified under regulation 33 of the EEA Regulations 2016, as saved.

In cases where a deportation order under the EEA Regulations 2016 was made before 31 December 2020 and the person has not been removed under the order during the 2-year period beginning on the date on which the order is made, there is no right of appeal against the new decision.

Where the removal is no longer justified the deportation order must be revoked.

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Time-limited deportation orders

Regulation 23(8) of the EEA Regulations 2016, as saved, provides for the use of both indefinite and time-limited deportation orders (TLDO) where someone is subject to a removal decision under regulation 23(6)(b) of the EEA Regulations 2016, as saved. Deportation orders under the Frontier Workers Regulations 2020 can also be indefinite or time-limited.

Determining duration of a deportation order

The length of deportation order must be proportionate to the nature and severity of the threat posed by the person, considering all the facts of the case. All deportation orders in respect of whom the power in regulation 23(6) of the EEA Regulations 2016 is saved must be considered for time-limited deportation orders regardless of the referral route.

Preventing abuse of immigration laws is a fundamental interest of society. However, generally there will be no criminal conviction in abuse of rights cases (for example sham marriage or fraudulently acquired rights cases) and the risk posed will be less serious than in many criminality cases. As such, the starting point when considering the term of deportation order for relevant persons who abuse immigration laws by entering into, attempting to enter into, or facilitating a sham marriage should generally be a 3-year deportation order, although a longer term of deportation order may be proportionate in more serious cases.

Where the decision is based on other grounds of public policy or public security, or where there has been a criminal conviction, you may consider that a longer term of deportation order is appropriate, depending on the risk posed by the person. In most cases, the length of the custodial sentence provides a strong indication of the severity of the offence. A period of imprisonment usually represents the sentencing

court's view of the seriousness of the offence and may also be an indication of the risk posed by the person to society or a section of society.

As a general guide, the longer the custodial sentence, the more likely an indefinite deportation order is more suitable. Offending that would meet 'serious grounds of public policy or public security' or 'imperative grounds of public security' would also generally indicate suitability for an indefinite deportation order.

The table in this section provides an indication of the length of deportation order to be imposed - it is not prescriptive and is intended to provide caseworkers with a starting point for consideration of deportation order duration. It is a supportive framework only, and each decision must be based on the facts of the case and the risk posed by the person:

Behaviour	**Sentence**	**Length of deportation order (starting point for consideration)**
Unlawful immigration and/or facilitating immigration abuse where there is **no criminal conviction** For example, entering into, attempting to enter into or facilitating a sham marriage, or use of fraudulent documents to acquire EEA rights.	No criminal conviction	3 years
Social harm for example anti-social behaviour; or **Evasion of taxes and duties** for example customs excise evasions; or **Abusing public services** for example income tax evasions, benefit fraud; or **Persistent low-level criminality** for example where there are a number of convictions, warnings and/or cautions for low level crimes such as	Conviction(s) resulting in non-custodial sentence(s)	5 years
	Conviction(s) resulting in a custodial sentence(s) under 12 months	10 years
	Conviction(s) resulting in a custodial sentence(s) over 12 months	10 years/Indefinite

shoplifting		
Serious Criminality	Offending that would meet 'serious grounds of public policy or public security' or 'imperative grounds of public security' regardless of custodial sentence	Indefinite

After identifying the starting point, you must then consider whether the duration of the deportation order is **proportionate** to the level of risk posed, taking into account all of the facts and circumstances of the case, including the following factors:

- **the nature of the threat**. Was the offending of a violent or sexual nature? Was there involvement in organised crime, or serious drugs offences?
- **the offending history**. Is the offending persistent or escalating in severity?
- **any overseas offending**, which you should generally regard in the same way as UK offending, and where details are known these must be part of your consideration process (for example, would a comparable length sentence have been imposed had the offence occurred in the UK) to correctly identify current risk posed
- **any available professional risk assessment**, for example HM Prisons and Probation Service (HMPPS) risk reports if you don't have them, you should request them
- **the likely impact of the length of deportation order taking into account all of the facts and circumstances of the case**, including how long the person has been resident in the UK, age, health, family and economic situation, social and cultural links to the UK, integration and extent of links to country of origin
- **whether the risk can adequately be addressed by a shorter length of deportation order**

It may be necessary to increase or decrease the duration of the deportation order from the initial starting point to ensure that it is proportionate.

Your consideration and reasons for the proposed length of the deportation order must be clearly set out in your submission to an Assistant Director and you must clearly set out why you are proposing time limited deportation orders.

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Imposition of work restrictions following a deportation decision

A decision to remove a person on public policy or public security grounds is taken on the basis of a detailed consideration of their individual circumstances and the risk they pose to the fundamental principles of the society.

Regulation 32(3) of the EEA Regulations 2016, as saved, provides for a person who is subject to a deportation decision made under the EEA Regulations 2016, as saved, to be treated as if they were a person to whom Schedule 3 of the Immigration Act 1971 applies. Paragraph 2(5) of Schedule 3 to the 1971 Act specifically allows for a person to be subject to immigration bail in accordance with Schedule 10 to the Immigration Act 2016, including the imposition of one or more conditions on (for example) residence, employment or occupation and requirements to report to the Secretary of State.

You may impose a restriction on employment only **after** a decision has been taken to remove a person on public policy or public security grounds under regulation 23(6)(b) of the EEA Regulations 2016, as saved. The decision is discretionary and must be proportionate, requiring you to consider individual circumstances on a case-by-case basis.

Careful consideration needs to be given when assessing whether the restriction is proportionate where the restriction of the right to work may have a serious or irreversible impact on the person or their family members including, for example, on their long term physical and mental health.

Where a restriction on employment may have a direct impact on a child, for example where a person is the sole provider for a young family, you must also demonstrate that you have taken into account section 55 of the Borders, Citizenship and Immigration Act 2009, which requires decision makers to carry out their functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. See also: the best interests of a child.

You must evidence your considerations on CID/Atlas.

Where a person is bailed due to a pending EUSS application or pending the outcome of the appeal, the best approach is **not to apply** a bail condition restricting work. This does not apply to instances where we have made a deportation order and have certified the decision in accordance with regulation 16 of the Citizens' Rights Appeals Regulations 2020, to allow for the person's removal to proceed prior to becoming appeal rights exhausted. In these instances, the bail condition restricting work can be applied.

Related content
Contents
Consideration of public policy or public security
Consideration of public health
Pending prosecutions
Additional protection levels: serious and imperative grounds

Related external links
Immigration (European Economic Area) Regulations 2016
Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
EU Settlement Scheme: suitability requirements
Marriage and civil partnership referral and investigation scheme
Appendix EU
Appendix EU (Family Permit)
S2 Healthcare Visitor
Frontier worker permit scheme
Service providers from Switzerland guidance
Serving deportation decisions on file
Regulations 33 and 41 of the EEA Regulations 2016

Deportation: Irish citizens

This section tells you about the deportation of Irish citizens.

Overview

Irish citizens are EEA citizens and, as such, had admission and residence rights until 23:00 GMT on 31 December 2020 under the EEA Regulations 2016, when these were revoked, unless saved by the Grace Period Regulations 2020. Notwithstanding the revocation of the EEA Regulations 2016, under section 3ZA of the Immigration Act 1971 (in force from 23:00 GMT on 31 December 2020, as inserted by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020), Irish citizens do not require permission to enter or remain in the UK unless subject to a deportation order, exclusion decision or international travel ban. However, they may also be a relevant person.

An Irish citizen may have leave granted under the EUSS, even though they are not required to obtain it in order to have a right of residence in the UK. The Restrictions Regulations 2020 save and modify the deportation provisions of the EEA Regulations 2016 for those with EUSS leave, as well as some other relevant persons.

For more information on the Grace Period Regulations 2020, the Restriction Regulations 2020 or the definition of a relevant person see Purpose.

On 19 February 2007, the then Secretary of State announced in Parliament, through a Written Ministerial Statement, that the UK would not deport Irish citizens, unless in ‘exceptional circumstances’:

> "Following recent discussions with the Irish Government, I am able to confirm that the approach to be taken with Irish citizens will now be as follows.
>
> Irish citizens will be considered for deportation only where a court has recommended deportation in sentencing or where the Secretary of State concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.
>
> In reviewing our approach in this area, we have taken into account the close historical, community and political ties between the United Kingdom and Ireland, along with the existence of the Common Travel Area.” [19 Feb 2007: Column 4WS]

When to consider the deportation of an Irish citizen

Irish citizenship does not, however, provide automatic exemption from deportation. The Secretary of State may decide that, due to the exceptional circumstances of the case, deportation will be pursued for example, where a person is convicted of an

offence involving national security matters, a crime that poses a particularly serious risk to the safety of the public or to a section of the public (such as a terrorism offence, murder, or a serious sexual or violent offence), and is serving a custodial sentence of 10 years or more, or if a criminal court has recommended deportation.

This includes anyone of dual Irish and another (non-British) citizenship. It does not include EEA or non-EEA nationals who are the dependants of Irish citizens.

The Belfast ('Good Friday') Agreement and People of Northern Ireland

When considering the deportation of an Irish citizen, consideration must be given to Irish citizens who are People of Northern Ireland under the Belfast Agreement: this is all persons who were born in Northern Ireland and at the time of their birth, had at least one parent who was a British citizen, an Irish citizen or was otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.

The People of Northern Ireland have the right to hold both British and Irish citizenship. However, these Irish citizens may be solely Irish citizens either because they have renounced their British citizenship under the British Nationality Act 1981 or (in a very small number of cases) because they did not acquire British citizenship at birth. If born in Northern Ireland they are likely to have established a significant private and family life there, particularly if they have never lived outside the UK, which must be taken into account when considering whether their right to respect for private and family life (Article 8 of the European Convention on Human Rights) outweighs the public interest in their deportation. See Criminality: Article 8 ECHR cases.

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Court recommended deportation of Irish citizens

Irish citizens will also be considered for deportation if a court has recommended this in sentencing. These cases are referred in the usual way. Where a court has recommended deportation, the Home Secretary can use discretion and consider the referral. However, the referral is a recommendation only. If the person would not otherwise fall to be considered for deportation under the exceptional circumstances policy, it would not generally be appropriate to pursue deportation.

Related content
Contents

Related external links
Immigration (European Economic Area) Regulations 2016
Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020
Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020
Criminality: Article 8 ECHR cases

Practical effects of a deportation or exclusion decision and re-entry restrictions

This section tells you about the practical effects of a deportation decision or a decision to exclude a person made on public policy, public security or public health grounds and the subsequent restrictions that are applied. It also tells you about persons deported under the Immigration Acts who acquire rights under the Agreements.

Impact of a deportation order, an exclusion order, or an exclusion decision

An exclusion order is an order which was made under regulation 23(5) of the EEA Regulations 2016 prohibiting a person from entering the UK. Exclusion orders may be made from 1 January 2021 only in relation to those subject to the Grace Period Regulations 2020. For all other relevant persons from 1 January 2021 exclusion will be by way of an exclusion decision made by the Secretary of State where it is conducive to the public good and, where the conduct of the person in question was committed before 23:00 GMT on 31 December 2020, the public policy, public security or public health test is also met. For more information on the Grace Period Regulations 2020 see Purpose.

In accordance with the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (the Consequential Regulations 2020), an exclusion order made under regulation 23(5) of the EEA Regulations 2016 remains in force unless it is revoked. For further information on the impact of the exclusion order or decision on admission and residence rights see also: Exclusion from the UK.

Also in accordance with the Consequential Regulations 2020 and regulation 15(2) of the Frontier Workers Regulations 2020, a person deported from the UK on the grounds of public policy or public security under regulation 23 of the EEA Regulations 2016 or under the Frontier Workers Regulations 2020 will be prohibited from entering the UK until the deportation order is revoked or for the period specified in the deportation order.

If a person subject to an extant deportation or exclusion order made under the EEA Regulations 2016 is stopped on entry, they are deemed to have sought to enter the UK in breach of that order and they are to be refused permission to enter because the deportation or exclusion order is in force. Refusal of permission to enter will be under:

- paragraph 9.2.1 of the Immigration Rules

- under regulation 23(2) of the EEA Regulations 2016, as saved, for those covered by the Grace Period Regulations 2020
- under regulation 12 of the Frontier Workers Regulations 2020

If a relevant person subject to an extant deportation or exclusion order made under the EEA Regulations 2016 is stopped in the UK, they are deemed to have entered the UK illegally, see: Entry in breach of an extant deportation or exclusion order under the EEA Regulations 2016.

Re-admittance to make appeal submissions in person: regulation 41

Where a person has been deported under the EEA Regulations 2016, as saved, regulation 41 provides for the person to be temporarily admitted for the purpose of making submissions in person at their appeal against deportation.

A person may apply for permission to be temporarily admitted to the UK in order to make submissions in person at their appeal where all of the following apply:

- they are subject to a decision to remove (deport) made regulation 23(6)(b) of the EEA Regulations 2016, as saved
- they have appealed against that decision
- a date for the appeal hearing has been set by the First-tier Tribunal or Upper Tribunal
- they want to make submissions before the First-tier Tribunal or Upper Tribunal in person
- they are outside the UK

Further information on regulation 41 can be found in the certification for EEA deportation cases guidance.

Residence documentation applications

Any person subject to a valid deportation or exclusion order made under the EEA Regulations 2016, as saved, who intends to make an application for an EEA family permit must first apply for that deportation or exclusion order to be revoked. An application for revocation of a deportation order can only be made from outside of the UK in accordance with regulation 34(4) of the Regulations 2016, as saved. Any application for residence documentation under the EEA Regulations 2016, as saved, received whilst a valid deportation or exclusion order, or an exclusion decision is in place, will be automatically considered as invalid.

Entry in breach of an extant deportation or exclusion order under the EEA Regulations 2016

Regulation 32(4) of the EEA Regulations 2016, as saved by the Grace Period Regulations 2020, provides for those to whom the Grace Period Regulations 2020

apply to be removed as illegal entrants under Schedule 2 to the Immigration Act 1971 on the grounds:

- of entry in breach of a deportation or exclusion order made after 23:00 GMT on 31 December 2020 by virtue of a decision under the EEA Regulations 2016, as saved

that they would have been refused admission on public policy, public security, public health or abuse of right to reside grounds had they presented themselves at the border.

For more information on persons covered by the Grace Period Regulations 2020 see Purpose.

In addition, regulation 32(4) of the EEA Regulation 2016, as saved, provides for those who had leave under Appendix EU, Appendix S2 Healthcare Visitors or Appendix Service Providers from Switzerland at the time a removal decision was made under regulation 23(6)(b) to be removed as illegal entrants under Schedule 2 to the Immigration Act 1971 on the grounds of entry in breach of a deportation order made by virtue of a decision under the EEA Regulations 2016, as saved.

Regulation 16(4) of the Frontier Workers Regulations 2020 provides for those who have entered the UK in breach of a deportation order made under regulation 15(1)(b) of the Frontier Workers Regulations 2020 to be removed as illegal entrants under Schedule 2 to the Immigration Act 1971 on the grounds of:

- entry in breach of a deportation order made under regulation 15(1)(b) of the Frontier Workers Regulations 2020
- that they were not entitled to be admitted under regulation 12 of the Frontier Workers Regulations

For more information on the savings to the EEA Regulations 2016 by the Restrictions Regulations 2020, see Purpose.

For all other persons who have entered in breach of a deportation order it will be appropriate to consider removing them as an illegal entrant under section 10 of the Immigration and Asylum Act 1999, as effected by Schedule 3 to the Immigration Act 1971.

Where removal is being considered under section 10 of the Immigration and Asylum Act 1999 Act, you must use RED notice 0001 to inform the person of this decision. **You must not use ICD.5008** (or its ATLAS equivalent) when seeking to remove a person who is not being removed under regulation 32(4) of the EEA Regulations 2016, as saved.

ICD.5008 (or its ATLAS equivalent) must be used to remove all persons protected by the Grace Period Regulations 2020 where the deportation order or exclusion order was made after 23:00 GMT on 31 December 2020. This notice must be used until 30

June 2021 or until a person's EUSS application, made by 30 June 2021, is finally determined (including any appeal rights relating to this application are exhausted). It must also be used to remove under Appendix EU, Appendix S2 Healthcare Visitors or Appendix Service Providers from Switzerland at the time a removal decision was made under regulation 23(6)(b)and to remove frontier workers.

The 30-day notice window provided by regulation 32(6) of the EEA Regulations 2016, as saved, does **not** apply in cases of removal by virtue of regulation 32(4). Instead, the person is removable as an illegal entrant, with an out of country right of appeal under regulation 37. See guidance for immigration enforcement in respect of EU, other EEA and Swiss citizens and their family members for full details.

Where a person is encountered in the UK in breach of an EEA deportation or exclusion order and they have made a claim under Article 8 of the European Convention on Human Rights see Criminality: Article 8 ECHR cases.

Persons subject to an EEA deportation order who have made an application under the EUSS

Where a person is encountered in the UK in breach of an EEA deportation or exclusion order and they have made an application to the EUSS, the application must be refused on mandatory suitability grounds under rule EU15(1) as there is an EEA deportation or exclusion order in force. Certification of the refusal of the EUSS application must be considered under regulation 16 of the Citizens' Rights Appeals Regulations 2020 where there is an existing deportation decision or order. If the refusal is certified, removal can proceed pending appeal.

Deadlines for applications to the EUSS for those who were resident in the UK before the end of the transition period was 30 June 2021. Joining family members arriving in the UK from 1 April 2021 have 3 months from their date of arrival in the UK to make their application. Applications will be made late where there are reasonable grounds for the applicant's delay in making their application.

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Individuals who are encountered having entered in breach of a deportation order that was made as a result of the early removal scheme (ERS) will be returned to prison to serve the remainder of their sentence.

Individuals deported or excluded under the Immigration Acts who may nevertheless have rights under the EEA Regulations 2016, as saved

A deportation order or exclusion decision that was not made under the EEA Regulations 2016, does not extinguish any admission or residence rights a person may still have under the EEA Regulations 2016, as saved.

There may be individuals previously deported under section 3 of the Immigration Act 1971, including as a result of automatic deportation by virtue of the UK Borders Act 2007, who were lawfully resident immediately prior to the end of the transition period and have made an application to the EUSS by 30 June 2021 which has not been finally determined and who may nevertheless have a right of admission or residence under the EEA Regulations 2016, as saved, for example:

- the deportation order was made before their country of nationality became an EU member state (the non-EEA deportation order may be considered as an EEA deportation order depending on the particular provisions set out in the relevant state's accession agreement to the EU)
- they were a non-EEA national at the time the order was made but they have subsequently been granted citizenship of an EEA country
- they are now the family member of a relevant EEA citizen
- they had acquired a derivative right of residence prior to the end of the transition period

From 1 January 2021, if a person makes an application to revoke a non-EEA deportation order from overseas, the application must be considered under the Immigration 1971 Act or the UK Borders Act 2007, unless they are a person covered by the Grace Period Regulations 2020. If they are such a person, a decision to exclude must be considered under the public policy, public security or public health test for conduct occurring before 23:00 GMT on 31 December 2020 before considering the revocation application.

Where a person who has applied to revoke a deportation order made on conducive grounds in respect of conduct before 23:00 on 31 December 2020 has a pending EUSS application, the EUSS application will need to be considered and decided before or at the same as the consideration of the application to revoke the deportation order. There is no need to make a deportation or exclusion order on public policy or public security grounds in this case.

Cases where the individual is encountered in the UK in breach of a deportation order or exclusion decision

If a person who is the subject of an exclusion decision or deportation order made on conducive grounds for conduct occurring prior to the end of the transition period is encountered in the UK, you must consider whether they are a relevant person. If the

person is not a relevant person, they are an illegal entrant and are liable to removal from the UK under section 10 of the Immigration and Asylum Act 1999.

If you accept that they are a relevant person and therefore that they are protected by the Agreements or the UK's domestic implementation of the Agreements, they can only be removed from the UK in a Withdrawal Agreement compliant way. This means that where they have a pending EUSS application that was made by the relevant deadline, or where there are reasonable grounds for that deadline having been missed, the person can only be removed when the application is finally determined or any relevant appeal rights are exhausted, unless where certified under the Citizens Rights Appeal Regulations 2020. Where a person is a joining family member of someone with EUSS leave (or with a pending application for EUSS leave) removal action for entry in breach of a conducive deportation order cannot be considered within the first 3 months of their arrival.

When considering the EUSS application, you must consider whether the public policy, public security or public health test is met in accordance with regulation 27 of the EEA Regulations 2016, as saved, as where a person subject to a deportation order or exclusion decision made on conducive grounds in respect of conduct committed before 23:00 GMT on 31 December 2020 applies for leave under the EUSS, the application can only be refused on suitability grounds under rule EU15(1) of Appendix EU where the conduct in question meets that test.

Those who are eligible for indefinite leave to enter or remain under Appendix EU must have their conduct considered, applying the serious grounds of public policy threshold. Those who are EEA citizens and who are eligible for indefinite leave to enter or remain under Appendix EU and who have 10 years' continuous residence in the UK must have their conduct considered, applying the imperative grounds of public security threshold. For more information on serious grounds of public policy or imperative grounds of public security see Additional protection levels. The refusal on suitability grounds under rule EU15(1) will be made using ICD.5252 B (or its ATLAS equivalent). The existing deportation or exclusion decision must be maintained. There is no need to make a new deportation decision on public policy, public security or public health grounds. Removal pending the appeal against the EUSS refusal may take place if certified under regulation 16 of the Citizens' Rights Appeals Regulations 2020. See EU Settlement Scheme: suitability requirements for more information.

If the public policy, public security or public health test is not met, the conducive deportation order or exclusion decision must be revoked and the EUSS application granted (subject to the person meeting the validity, eligibility and other suitability criteria).

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An EUSS application where the public policy or public security test applies cannot be refused on suitability grounds if the test is not met. In this case the deportation order (or exclusion decision) must be revoked before the EUSS application is granted.

The EUSS application must be finally determined, including appeal rights exhausted, unless the refusal has been certified under regulation 16 of the Citizens' Rights Appeals Regulations 2020, before the person can be removed.

For further information on illegal entry refer to the guidance for Immigration Enforcement in respect of EU, other EEA and Swiss citizens and their family members.

Cases where an individual subject to a deportation order or exclusion decision seeks admission at the border

From 1 July 2021, if a relevant person protected by the Grace Period Regulations 2020 who is subject to a deportation order or exclusion decision on conducive grounds seeks entry at the border under the EEA Regulations 2016, as saved, consideration must be given to whether the public policy, public security or public health test is met. If the test is met, the person must be refused admission under regulation 23(1) of the EEA Regulations 2016, as saved.

If the test is not met, and the person meets the criteria for admission, they must be admitted in accordance with regulation 11 of the EEA Regulations 2016, as saved.

Persons with Temporary Protection status

An EEA citizen or their family member who was resident in the UK by 31 December 2020 will have Temporary Protection status if they make a valid application to the EUSS and, where this is after 30 June 2021, there are reasonable grounds why they missed that deadline. Temporary Protection status will last until their EUSS application is finally determined (including the determination of any appeal). For further information about Temporary Protection status, see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members and guidance for immigration enforcement in respect of EU, other EEA and Swiss citizens and their family members.

Individuals with a pending late application to an equivalent of the EUSS in a Crown Dependency must be treated the same as those with a pending late application to the UK EUSS.

Joining family members may also have Temporary Protection status. There will be different processes for assessing whether a person has Temporary Protection status depending on whether they are in-country or at the border. See the EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members guidance for a definition of joining family members.

For individuals with Temporary Protection status, you must still consider their conduct under the public policy or public security test if it occurred before 23:00 on 31 December 2020. The conducive test applies to any conduct which occurred from 1 January 2021. Where you consider that the relevant test is met, you may refuse entry under paragraph 9.3.1 of the Immigration Rules, but set out clearly in the decision that you have considered the public policy or public security test in respect of any conduct which occurred before 23:00 GMT on 31 December 2020.

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Deportation orders made by the Crown Dependencies

Subject to certain exceptions, a deportation order made by a Crown Dependency (the Bailiwick of Jersey or Guernsey or the Isle of Man), referred to here as an 'Islands deportation order', is automatically treated as if the order was made under the Immigration Act 1971, prohibiting the person from entering the UK (Schedule 4, paragraph 3(1) of the Immigration Act 1971).

Schedule 4 to the 1971 Act is amended by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 with effect from 23:00 GMT on 31 December 2020, so that the exceptions to the automatic extension of an Islands deportation order to the UK only apply to:

- a British citizen
- an Irish citizen
- the family member of a British citizen who is neither a British citizen nor an Irish citizen
- a person who is in the UK having arrived with an EUSS family permit
- a person who has EUSS leave to enter or remain in the UK, whether pre-settled or settled status
- a person who has or may be eligible for leave to enter or remain in the UK in order to receive healthcare treatment by virtue of:
  - Article 32(1)(b) of the EU Withdrawal Agreement
  - Article 31(1)(b) of the EEA EFTA Separation Agreement
  - Article 26(a)(1)(b) of the Swiss Citizens' Rights Agreement
- a person who may be eligible to enter the UK as a frontier worker
- a person who is eligible for or holds permission as a service provider from Switzerland by virtue of Article 23 of the Swiss Citizens' Rights Agreement (note: this cohort is not directly referenced in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, but they are treated as 'relevant persons' under the SI, through direct effect

The Grace Period Regulations 2020 save Schedule 4 to the 1971 Act so that EEA citizens and their family members who are within scope of those regulations are also exempted from the automatic extension. For more information on persons within scope of the Grace Period Regulations 2020 see Purpose and definitions.

With the exception of a British citizen, the Secretary of State may decide to extend an Islands deportation order to the UK in any of the other cases listed above.

Where the Islands deportation order was made against such a person on the basis of conduct that occurred before 23:00 GMT on 31 December 2020, any consideration given to extending the order to the UK must determine whether deportation is justified on grounds of public policy or public security in accordance with regulation 27 of the EEA Regulations 2016, as saved. In the case of a frontier worker consideration must be based on whether deportation is justified on grounds of public policy or public security in accordance with regulation 18 of the Frontier Workers Regulations 2020. Where the conduct occurred after 23:00 GMT on 31 December 2020 consideration must be given to whether extending the Islands deportation order is conducive to the public good.

If the subject of an Islands deportation order that has not been extended to the UK travels to the UK, a decision on whether to admit the person must be taken by Border Force at the UK border control. Border Force must consider the reason why

the Islands deportation order was made to decide whether it is appropriate to refuse entry to the UK on grounds of public policy or public security for conduct that occurred before 23:00 GMT on 31 December 2020, or on conducive grounds if the conduct occurred after that period.

If a person subject to an Islands deportation order (for conduct committed before 23:00 GMT on 31 December 2020) that has not been extended to the UK, is encountered having already entered the UK, consideration must be given to deporting the person from the UK on grounds of public policy or public security. For further information see Decision to deport from the UK. Where the conduct was committed after 23:00 GMT on 31 December 2020 see conducive deportation guidance.

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The early removal scheme (ERS)

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Conducive deportation
Immigration (European Economic Area) Regulations 2016
Exclusion from the UK
Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
Regulations 33 and 41 of the Immigration (European Economic Area) Regulations 2016
Immigration Act 1971
Free movement rights: direct family members of European Economic Area (EEA) nationals

Revocation of an EEA deportation order, exclusion order or exclusion decision

This section tells you about the revocation of a deportation order made under the EEA Regulations 2016, as saved, and the Frontier Workers Regulations 2020. It also tells you about the revocation of exclusion orders and exclusion decisions.

Deportation and exclusion orders made by virtue of the EEA Regulations 2016:

- before 1 January 2021
- from 1 January 2021 in relation to persons with rights under the Grace Period Regulations 2020
- from 1 January 2021 by virtue of the Restrictions Regulations 2020 (this is only relevant to deportation orders as there is no power to make an exclusion order under the Restrictions Regulations 2020)

may be revoked under regulation 34 of the EEA Regulations 2016, as saved.

Deportation orders made by virtue of the Frontier Workers Regulations 2020 may be revoked under regulation 17 of those regulations.

Revoking an exclusion order

Regulation 34(1) of the EEA Regulations 2016, as saved, and paragraph 2 of Schedule 3 to the Consequential Regulations 2020, stipulate that an exclusion order remains in force until it is revoked.

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 in the circumstances that justified making the order. The order must be revoked if the criteria for making such 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.

For more information see Exclusion from the UK guidance.

Revoking a deportation order made under the EEA Regulations 2016

Schedule 2 of the Consequential Regulations 2020 provides that any deportation order made:

- before 1 January 2021 by virtue of the EEA Regulations 2016

- by virtue of the EEA Regulations 2016 as they are continued in effect by the Grace Period Regulations 2020

continues to apply for the period specified in the order or until revoked. They may be revoked under regulation 34 of the EEA Regulations 2016, as saved, or in the case of frontier workers, under regulation 17 of the Frontier Workers Regulations 2020.

A person who is subject to a deportation order can apply to the Home Office for revocation of the order. Such an application must be made from outside of the UK after the person has been deported.

When considering whether to revoke the deportation order, you must consider whether there has been a material change in circumstances that justified the decision to make a deportation order (regulation 34(4) of the EEA Regulations 2016, as saved, or regulation 17(3) of the Frontier Workers Regulations 2020) and whether the criteria for making the order continue to be satisfied.

Examples which may demonstrate a material change in circumstances that mean the criteria for making such an order are no longer satisfied include (but not limited to):

- fresh information coming to light which was not before the appellate authorities or the Secretary of State
- where the applicant was relatively young when they were deported and a reasonable period of time has passed, they now have a steady job and avoided further trouble
- where the applicant could not possibly be regarded as a threat any longer, for example because of serious illness
- where the applicant has clearly rehabilitated

Where the sentence and/or conviction which led to the deportation order being signed has been quashed– each case should be assessed on its individual merits. For further information see the Appeals against conviction and sentence guidance.

Revocation requests must be made from outside the UK. There is not a specified form for the purpose of applying for a deportation order to be revoked. The request or application must be made in writing to FNO RC and should include the following information on the deportee:

- full name
- date of birth
- nationality
- current location/postal address
- Home Office reference number
- date deported
- full reasons why the deportation order should be revoked and any change in circumstances since the deportation order was originally obtained

An application for revocation of a deportation order must be decided within 6 months of the date of application (regulation 34(6)) of the EEA Regulations 2016, as saved, or regulation 17(5) of the Frontier Workers Regulations 2020) and all applications will be assessed on a case-by-case basis.

Authority levels for revocation of a deportation order

You must request authorisation where necessary at the right level, depending on the circumstances of the case:

- **Deportation no longer justified**: a decision to revoke a deportation order that has been enforced but where it is considered that deportation can no longer be justified must be signed off at Grade 6 or above

- **Deportation order invalid but deportation action to continue**: a decision to revoke a deportation order because it is invalid, but there is an intention to pursue enforcement action, can be authorised by a Senior Executive Officer (SEO) grade or above

- **Deportation no longer lawful**: where the Home Office has lost an appeal and the court determines that deportation is not lawful, any in force deportation order must be revoked and this can be authorised by a SEO

The decision to revoke a deportation order must only be made once you are satisfied that the underlying deportation decision is appeal rights exhausted. Where a deportation order has not come into force, then it can be marked as invalid by a Higher Executive Officer (HEO) or above.

Invalid deportation orders

A deportation order may be invalid for the following reasons:

- the order was improperly made
- the subject is recognised as a British citizen

Updating Home Office records

If you have made a decision to revoke a deportation order, you must ensure that paper copies of the deportation order are on file and properly marked and that any electronic copies are also marked to reflect the revocation decision.

The original deportation order will usually have been served on the subject of the deportation order, however, you must retain a file copy which is marked clearly and endorsed by a SEO or above. You must dispose of any additional paper copies of the deportation order securely.

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Service of the revocation decision

You must ensure that all decisions are served to the applicant(s) and, where applicable, their representative and that copies of all letters, including evidence that the decision has been served, must be placed on the Home Office file and the electronic records are updated with the outcome:

- refuse to revoke the deportation order
- revoke the deportation order

Informing DWP and the PNC

You will need to inform the Department for Work and Pensions and update the Police National Computer if you decide to revoke the deportation order.

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Immigration (European Economic Area) Regulations 2016
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Exclusion from the UK

Early Removal Scheme or Tariff Expired Removal Scheme: continuing liability to be returned to prison

This section explains how a person removed under the Early Removal Scheme (ERS) or Tariff Expired Removal Scheme (TERS) may continue to be liable for a return to prison.

An FNO deported from the UK by way of one of the early removal schemes or the TERS will continue to be liable to return to prison under the provisions of those schemes to serve the original sentence if they return to the UK at a time when their original prison sentence is in effect. This includes cases where the deportation order has been revoked. When an FNO's deportation is enforced, they will be made aware of their liability to be returned to prison should they re-enter to the UK.

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ERS: England and Wales

The ERS in England and Wales was introduced by Section 260 of the Criminal Justice Act 2003 (CJA 2003) and is owned by the Ministry of Justice. Under this scheme, all eligible offenders (EEA and non-EEA nationals), who have a determinate sentence (sentenced for a fixed or minimum period specified by statute) must be considered. The scheme provides a power for the Secretary of State to allow removal of offenders from prison in England and Wales at an earlier point in their sentence than would otherwise be possible for the sole purpose of removal or deportation from the UK.

Under Section 261 of the CJA 2003 a person removed under the ERS before 28 June 2022 (see below for removals on or after 28 June 2022), who then **re-enters any jurisdiction of the UK** during the currency of the original sentence (which will expire on the original sentence expiry date) is liable to be detained in pursuance of the original sentence and returned to a prison in England and Wales.

The Nationality and Borders Act 2022 (NABA 2022) introduced a 'stop the clock provision' for those offenders removed from a prison in England and Wales under the ERS from 28 June 2022. The effect is, that any remaining prison sentence is paused from the date of removal onwards, rather than expiring on the original sentence expiry date. A person covered by the provision, **who then re-enters any jurisdiction in the UK**, will be liable to be returned to a prison in England and Wales to complete the entirety of the remaining sentence.

ERS: Scotland

In Scotland, Section 19 of the Criminal Justice and Licensing (Scotland) Act 2010 introduced ERS for Scottish offenders (who are serving determinate sentences of less than 4 years), including non-EEA and EEA nationals. A person removed under the scheme who then re-enters **any jurisdiction of the UK** during the currency of their original sentence is liable to be detained in pursuance of the original sentence and returned to a prison in Scotland.

ERS: Northern Ireland

In Northern Ireland, Section 55 of the Justice Act (Northern Ireland) 2016 introduced ERS for determinate sentenced offenders who were serving sentences of at least 6 months, including non-EEA and EEA nationals. Under Section 55(3) of the Justice Act (Northern Ireland) 2016, individuals removed under the scheme are only liable to be returned to a prison in Northern Ireland **if they re-enter Northern Ireland** during the currency of their original sentence.

TERS

On 2 May 2012 the TERS was introduced when sections 32A and 32B of the Crime (Sentences) Act 1997 was amended by section 119 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The scheme applies to offenders in England and Wales who are liable to have their removal enforced and who are serving 'indeterminate sentences' - this includes all custodial sentences that do not have a fixed length of time, but which have a minimum 'tariff' which must be served before release may be considered.

Whilst release and removal under TERS applies only to eligible prisoners serving a sentence in England and Wales, the provisions in respect of liability to return to prison for a person removed under the scheme, apply to the whole of the UK. Anyone who was removed under TERS who subsequently manages to enter any jurisdiction within the UK will be liable to be detained and returned to a prison in England and Wales in pursuance of the sentence, in accordance with section 32B of the Crime (Sentences) Act 1997.

For more information, please see the ERS guidance and the TERS guidance.

Appeal rights

This section tells you about rights of appeal in respect of decisions covered in this guidance.

Overview

Where the decision was made before 1 February 2017 an appeal against the decision must be considered under the EEA Regulations 2006, as saved for this purpose by the EEA Regulations 2016 and the Consequential Regulations 2020.

Where the decision was made on or after 1 February 2017 but before 23:00 GMT on 31 December 2020 under the EEA Regulations 2016, an appeal against the decision must be considered under the EEA Regulations 2016 as they are saved by the Consequential Regulations 2020.

Where the decision is made after 23:00 GMT on 31 December 2020 under the EEA Regulations 2016 as they continue in effect by virtue of the Consequential Regulations 2020, any associated appeal rights under the EEA Regulations 2016 are saved in the Consequential Regulations 2020.

Where the decision is made after 23:00 GMT on 31 December 2020 under the EEA Regulations 2016 as they continue in effect by virtue of the Restrictions Regulations 2020, any associated appeal rights under the EEA Regulations 2016 are saved in the Restrictions Regulations 2020.

Where the decision is made after 23:00 GMT on 31 December 2020 under the EEA Regulations 2016 as they continue in effect by virtue of the Grace Period Regulations 2020, any associated appeal rights under the EEA Regulations are saved in the Grace Period Regulations 2020.

There are separate appeal and review rights for certain cohorts protected by the WA, EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement (EUSS and EUSS family permit and Travel Permit, frontier workers and S2 healthcare visitors). See Appeal Rights guidance for more information.

When a deportation decision is certified under regulation 33 of the EEA Regulations 2016, as saved, and there is a relevant appealable decision under the Citizens' Rights Appeals Regulations 2020, removal should also usually be certified under regulation 16 of the Citizens' Rights Appeals Regulations 2020. Where the relevant appealable decision is made after the deportation decision and it cannot be certified under regulation 16, because of new information or a change in circumstances, it will normally be appropriate to withdraw the regulation 33 certificate as the EUSS appeal will be a barrier to removal.

A ‘relevant appealable decision’ means any decision that can be appealed under the Citizens’ Rights Appeals Regulations 2020 that has not been certified under those regulations as having been taken in the interests of national security.

A decision to refuse to revoke a deportation order will attract an out of country right of appeal under regulation 37(1)(d) of the EEA Regulations 2016, as saved. There is no right of appeal against a decision not to revoke a deportation order made in relation to a relevant person made other than by virtue of the EEA Regulations 2016.

There is no right of readmittance to make appeal submissions in person under regulation 41, as saved, for an appeal regarding a decision to refuse to revoke a deportation order.

The Secretary of State or an immigration officer may certify a ground that could be brought in an appeal under the EEA Regulations 2016, as saved, where that ground has previously been considered in an appeal brought under the EEA Regulations 2016 or under section 82(1) of the 2002 Act (as amended) (regulation 36(7)). Where a ground is certified, a person may not bring an appeal or rely on the ground certified in an appeal under the EEA Regulations 2016.

For more information please refer to the Appeal Rights guidance.

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