



Home Office

Criminal casework

European Economic Area (EEA) foreign national offender (FNO) cases

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European Economic Area (EEA) foreign national offender cases

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This guidance tells criminal casework (CC) staff the process when they consider if deportation of foreign national offenders (FNOs) and their family members from the European Economic Area (EEA) is appropriate.

Deportation of EEA nationals and their family members must be considered under the Immigration (European Economic Area) Regulations 2006, see related link. Under regulation 21 of these regulations, EEA nationals can only be deported from the UK on the following grounds:

- public policy
- public security
- public health

You must be satisfied the person's conduct represents a genuine, present and sufficiently serious threat which affects one of these fundamental interests of society.

The Home Secretary decided the public interest is not generally served by enforcing the deportation of Irish nationals (citizens of the Republic of Ireland), except in the most exceptional circumstances. See link on left: Agreement about deportation of Irish FNO cases.

This guidance outlines the processes followed by the different caseworking areas in CC for considering deportation in EEA cases.

Caseworking area	Type of case managed in this area
Croydon	Cases concerning FNOs who are EEA nationals or family members of another EEA national. You can find a list of eligible countries at related link: Member states of the European

Related links
[Changes to this guidance](#)

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See also

Links to staff intranet removed

External links
[Immigration \(EEA\) Regulations 2006](#)

[Immigration Act 1971](#)

	Economic Area.
Liverpool	Non-detained EEA FNO cases.
Leeds	The minors, mothers and babies team (MMBT) manage the following types of cases: <ul style="list-style-type: none">• where the applicant is under 18• all child FNO cases, regardless of nationality

Changes to this guidance – tells you what has changed since previous versions of this guidance.

Contacts – this page explains who to contact for more help with a specific question on public funds

Information owners – tells you who the information owners are for public funds and tells how the guidance can be updated.

Safeguard and promote child welfare – explains the duty to safeguard and promote the welfare of children and tells you where to find out more.

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This page lists the changes to the 'European Economic Area (EEA) foreign national offender cases' guidance, with the most recent at the top.

Date of the change	Details of the change
06 October 2015	Change request to reflect current process.
27 January 2014	Six month review by the modernised guidance team: <ul style="list-style-type: none">• European Economic Area (EEA) foreign national offender cases:<ul style="list-style-type: none">○ the content on this page has been put into a table• minor housekeeping and plain English changes throughout
23 July 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• minor housekeeping changes
15 January 2013	Revised and modernised by criminal casework directorate process team and the modernised guidance team.

Related links

See also

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Receipt of EEA FNO cases in CC

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This page tells criminal casework (CC) caseworkers the process for receiving foreign national offender (FNO) cases believed to be European Economic Area (EEA) nationals or their family members.

The FNO's holding establishment refers all cases to the CC workflow team in Croydon, using a CCD referral form, see related link: Workflow. All EEA FNOs given one or more custodial sentences are referred for consideration of deportation. There is no longer a requirement for an EEA FNO in receipt of a custodial sentence to meet a particular threshold before being considered for deportation. This guidance applies regardless of the point at which the custodial sentence was imposed.

Those with multiple non-custodial sentences may also be referred for consideration of deportation outside of arrangements with NOMS.

If having considered the case on its individual merits the FNO is not considered suitable for deportation at the present time you must:

- send a warning letter (ICD.0260EEA on the document generator) to the prison for conveyance to the FNO with a covering note to advise them deportation will not be pursued, this may be relevant if they are eligible for Home Detention Curfew
- update CID to record your actions

You must remember the Home Secretary's agreement of 2007 not to pursue deportation of Irish FNOs except in exceptional circumstances. For more details see link on left: Agreement about deportation of Irish FNO cases.

Related links

See also

Links to staff intranet removed

European Economic Area (EEA) foreign national offender cases

Agreement about deportation of Irish FNO cases

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This page tells criminal casework (CC) caseworkers about the special agreement made by the Home Secretary in 2007 regarding deportation in the case of EEA nationals from the Republic of Ireland.

On 19 February 2007, the Home Secretary decided the public interest was not generally be served by the deportation of Irish nationals (citizens of the Irish Republic), except in special circumstances. This agreement covers Irish nationals and anyone of dual Irish and another nationality. It does not cover non-EEA nationals who are the dependants of Irish nationals.

Irish FNOs subject to a court recommendation for deportation are referred in the usual way.

It is rare that Irish FNO cases will be considered exceptional enough to merit deportation. Irish nationality does not, however, provide automatic exemption from deportation regardless of individual circumstances.

As a guide, deportation is still considered if an offence involves national security matters, or crimes that pose a serious risk to the safety of the public or a section of the public. For example, a person convicted and serving a custodial sentence of 10 years or more for:

- a terrorism offence
- murder
- a serious sexual or violent offence

If a decision is taken to deport an Irish national under the Immigration (European Economic Area) Regulations 2006, the case is dealt with in line with other EEA deportations and treated as if the decision was taken under section 3(5)(a) of the Immigration Act 1971 (as amended) on the grounds that their presence is not conducive to the public good.

Deportation of Irish nationals is only in the public interest in exceptional circumstances. If a court recommends deportation the Home Secretary can use discretion and consider the referral. Any decision to proceed must be authorised at director level or above.

This document was archived on 27 March 2018

	<p>Extant deportation orders (DOs) for Irish nationals deported before 19 February 2007 remain in force, and if they try to re-enter the UK while subject to a DO they can be removed as an illegal entrant in the same way as any other deportee whose DO is live.</p>	
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Any application from an Irish national for their DO to be revoked must be considered by CC using the policy in force after 19 February 2007.

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Transferring EEA FNO cases to the EEA casework teams

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This page tells you the process used for transferring European Economic Area (EEA) foreign national offenders (FNOs) to the dedicated EEA casework team in criminal casework (CC).

A FNO case is only sent to the EEA command if it is established the FNO is an EEA national or they are a non-EEA family member of an EEA national through documentary evidence in the form of either:

- a passport
- an identity card

The Home Office accepts confirmation from the prison where the FNO is being held that they hold the document as evidence of the FNOs nationality. The Home Office also accept nationality if they have previously seen the document.

Non-EEA nationals who qualify under the EEA Regulations 2006 as family members of EEA nationals are usually married or unmarried partners. You must establish that the FNO is a qualifying family member of an EEA national exercising their Treaty Rights in the UK, and make sure they qualify for consideration of deportation under the EEA criteria, before you forward the case to the EEA casework teams.

If the FNO says they are an unmarried partner of an EEA national you must refer the case to the European senior casework team in Liverpool, who will consider if the non-EEA FNO is in a durable relationship that brings them under the scope of the EEA Regulations.

If the FNO qualifies for a residence card as a family member, they will be issued with one, and the case will be referred to the EEA casework team for deportation consideration.

If they are refused a residence card, they do not qualify for consideration under the EEA criteria and the case will be referred to workflow to allocate to another casework team in CC who continue the consideration as a non-EEA case.

External links
[Immigration \(EEA\) Regulations 2006](#)

If the FNO says they are a married partner of an EEA national the case is referred directly to the EEA casework team. You must consider if the non-EEA FNO is in a genuine marriage that brings them under the scope of the EEA Regulations. This means seeing the passport or identity card of the EEA national, and a valid marriage certificate.

If an FNO has had a religious marriage abroad, the case must be referred to the European senior casework team in Liverpool for further investigation.

If the marriage is not recognised, the FNO can still be considered as an unmarried partner, which again would be considered by the European senior caseworker.

If it is established that someone qualifies under the EEA Regulations and does not meet the criteria for deportation in EEA cases, the original caseworker may decide to concede deportation action. A senior executive officer (SEO) senior caseworker must authorise this.

Child FNOs from EEA nationalities must be referred directly to the minors, mothers and babies (MMB) team in Leeds to manage.

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General consideration of EEA FNO cases by CC

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This page tells criminal casework (CC) caseworkers the processes for considering European Economic Area (EEA) foreign national offender (FNO) cases for deportation.

Once the prison returns the relevant forms to CC and the papers have been collated on the Home Office file by CC workflow (see link on left: Receipt of EEA FNO cases in CC), workflow must send the case to one of the casework teams.

Lengths of sentence and UK residence

If you decide to pursue deportation, you must carefully consider the length of sentence against the FNOs claimed length of residence within the context of the EEA Regulations 2006 (except for cases referred in exceptional circumstances). This helps determine if a case will be pursued.

You must assess the available evidence to support an FNO's claim of how long they have lived in the UK, and if they were exercising EEA Treaty Rights for that period. You may need to get additional evidence by getting National Insurance records and other relevant sources.

Factors for consideration

Although considering article 8 for most criminal cases was brought within the scope of the Immigration Rules (at paragraphs 396 to 400) from 9 July 2012, the UK Immigration Rules do not apply to EEA nationals.

You must consider any rights specified in the European Convention on Human Rights (ECHR) for the FNO and their family members as well as the following individual factors:

- severity of offence
- length of sentence
- age
- state of health
- length of UK residence

Related links

See also

Links to staff intranet removed

External links

[Immigration \(EEA\) Regulations 2006](#)

- strength of ties in the UK
- extent of links with the country of origin

Considering FNO cases in respect of articles 3 and 8 (and relevant case law) in particular, requires detailed analysis of the evidence available about their circumstances.

Provisions for EEA nationals are contained in the 2006 EEA Regulations as amended.

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This page tells criminal casework (CC) caseworkers about different types of removal schemes used when considering deportation in European Economic Area (EEA) foreign national offender (FNO) cases.

Early removal scheme (ERS)

Determinately-sentenced FNOs can be released from prison anytime between the halfway point of their sentence and sentence expiry date, for the specific purpose of being removed from the UK to their home country. EEA nationals can be considered under this scheme if they meet the criteria for deportation.

If they are released for removal under ERS, they will be made the subject of a deportation order (DO), and their departure is enforced under that authority.

FNOs who fall short of the EEA criteria, but the Home Office still wish to pursue their removal, are referred to the relevant local immigration team (LIT) to consider.

Tariff-expired removal scheme (TERS)

Indeterminately-sentenced FNOs can be released from prison after serving their minimum tariff, for the specific purpose of removal from the UK to their home country, without the need for authorisation from the Parole Board. EEA nationals can be considered under this scheme if they meet the criteria for deportation.

If they are released for removal under TERS, they will already be the subject of a DO, and their departure will be enforced under that authority.

For more details of ERS and TERS, see related links:

- The early removal scheme (ERS)
- The tariff-expired removal scheme (TERS)

Facilitated returns scheme (FRS)

Related links

See also

Links to staff intranet removed

This document was archived on 27 March 2018

	<p>FNOs may depart the UK on their release with a financial incentive to help re-integration into society in their home country. EEA nationals are not eligible for this scheme, and any applications they make will be rejected.</p>	
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European Economic Area (EEA) foreign national offender cases

EEA foreign national offender cases: contacts

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This page tells you about this version of the 'European Economic Area foreign national offender cases' guidance and who owns it.

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Guidance owner	Criminal Casework operational process and policy team/Free Movement and Migrant Criminality Unit
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Approval date	1 October 2015

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