



Home Office

EU Settlement Scheme: suitability requirements

Version 1.0

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About this guidance

This guidance tells you how to assess whether an applicant meets the suitability requirements of the EU Settlement Scheme.

This guidance must be read alongside the following guidance: EU Settlement Scheme - EU citizens and their family members.

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 1.0
- published for Home Office staff on 01 November 2018

Changes from last version of this guidance

This is a new piece of guidance.

Related content

[Contents](#)

Related external links

[EU Settlement Scheme - EU citizens and their family members](#)

Purpose

This section explains the purpose of this guidance.

Use of this guidance

This guidance must be used for all decisions made on applications submitted on or after 1 November 2018 when considering whether the suitability requirements in [Appendix EU to the Immigration Rules](#) are met.

Further guidance on considering applications under the EU Settlement Scheme can be found at:

- EU Settlement Scheme - EU citizens and their family members

Guidance on the consideration of the EU public policy, public security and public health test as set out in the [Immigration \(European Economic Area\) Regulations 2016](#) (EEA Regulations 2016) can be found at:

- EEA decisions taken on grounds of public policy and public security

The best interests of a child

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

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

All decisions must demonstrate that the child's best interests have been considered as a primary, but not necessarily the only, consideration. Decisions must demonstrate that consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK. You must carefully assess the quality of any evidence provided. Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests. For further guidance on the application of the section 55 duty: see the section 55 children's duty guidance.

Related content

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Introduction

This section gives you background about the EU Settlement Scheme and the draft [Withdrawal Agreement](#) (WA).

Background

The EU Settlement Scheme provides a basis, consistent with the draft WA with the European Union published on 19 March 2018, for EU citizens resident in the UK and their family members to apply for the UK immigration status which they will require to remain here beyond the end of the planned implementation period on 31 December 2020.

The immigration status granted under the EU Settlement Scheme is either indefinite leave to remain (ILR) (also referred to for the purposes of the scheme as 'settled status') or 5 years' limited leave to remain (LTR) (also referred to as 'pre-settled status') granted under [Appendix EU to the Immigration Rules](#). Eligibility for settled status is generally dependent, in particular, on the applicant having resided continuously in the UK for 5 years (or already having documented permanent residence status under the [European Economic Area \(EEA\) Regulations 2016](#) or ILR under another part of the Immigration Rules).

Withdrawal Agreement

Article 18 of the draft [WA](#) on citizens' rights sets out the circumstances when it may be appropriate to restrict the right of entry or residence of an EU citizen, a family member of an EU citizen or other persons protected by the WA after the UK has left the EU.

Article 18 of the draft WA states:

1. Conduct of Union citizens or United Kingdom nationals, their family members or other persons, exercising rights under this Title, that occurred before the end of the transition period shall be considered in accordance with Chapter VI of [Directive 2004/38/EC](#).
2. Conduct of Union citizens or United Kingdom nationals, their family members or other persons, exercising rights under this Title, that occurred after the end of the transition period may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.
3. The host State or the State of work may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Title in the case of abuse of those rights or fraud as set out in Article 35 of [Directive 2004/38/EC](#). Such measures shall be subject to the procedural safeguards provided for in Article 19 of this Agreement.

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4. The host State or the State of work may remove applicants who submitted fraudulent or abusive applications from its territory under the conditions set out in [Directive 2004/38/EC](#), in particular Articles 31 and 35 thereof, even before a final judgment has been handed down in the case of judicial redress sought against any rejection of such an application.

Articles 18.1 and 18.2 of the draft WA mean in particular that, in relation to any restriction of the right of residence in the UK of a person protected by the draft WA, their conduct (including any criminal convictions relating to it) before the end of the planned implementation period on 31 December 2020 is to be assessed according to the current EU public policy tests, as set out in the [EEA Regulations 2016](#), while their conduct thereafter (including any criminal convictions relating to it) will be considered under UK legislation.

Related content

Section 55 children's duty guidance

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Related external links

[Appendix EU to the Immigration Rules](#)

[EU Settlement Scheme - EU citizens and their family members](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[EEA decisions taken on grounds of public policy and public security](#)

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#)

[UN Convention on the Rights of the Child](#)

[Withdrawal Agreement](#)

[Directive 2004/38/EC](#)

Overview of suitability requirements

This section tells you about the suitability requirements of the EU Settlement Scheme.

Paragraphs EU15 and EU16 of [Appendix EU](#) to the Immigration Rules set out the basis on which an application under Appendix EU will or may be refused on suitability grounds, consistent with the draft Withdrawal Agreement (WA).

The assessment of suitability must be conducted on a case by case basis and be based on the applicant's personal conduct in the UK and overseas, including whether they have any relevant prior criminal convictions, and whether they have been open and honest in their application.

Rule EU15 sets out mandatory grounds of refusal:

- under EU15(a), an applicant must be refused if, at the date of decision, they are the subject of an extant deportation order or of a decision to make a deportation order
- under EU15(b), an applicant must be refused if, at the date of decision, they are the subject of an extant exclusion order or exclusion decision
- under EU15(c), an applicant must be refused if, at the date of decision, they are the subject of a removal decision under the [EEA Regulations](#) on the grounds of their non-exercise or misuse of rights under [Directive 2004/38/EC](#) (this means that the applicant is subject to a decision, on those grounds, to remove them from the UK under [regulation 23](#) or [regulation 32](#) of the EEA Regulations, unless this decision has been set aside or no longer has effect in respect of the person)

If one of the orders or decisions specified in rule EU15 applies in respect of the applicant at the date the decision on the application under the scheme is made, the application must be refused.

Applicants (aged 18 or over) are required to provide information about previous criminal convictions in the UK and overseas, and are only required to declare past criminal convictions which appear in their criminal record in accordance with the law of the State of conviction at the time of the application.

Applicants (aged 18 or over) are also required, as in other immigration applications, to declare whether they have any been involved in any terrorist related activities, war crimes, crimes against humanity or genocide.

All applications are subject to a check against the Police National Computer (PNC) and the Warnings Index (WI).

From information provided by the applicant and obtained from the PNC and WI, you must conduct an initial assessment of suitability, taking account of length of previous residence where relevant, to establish whether the application should be referred to Immigration Enforcement (IE) for full case by case consideration of the individual's

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conduct under the public policy, public security or public health test as set out in the [EEA Regulations 2016](#). If an enforcement decision is then made by IE that falls within EU15, the application must be refused.

Rule EU16 provides that you may refuse an application where you are satisfied at the date of decision that:

- in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application)
- the information, representation or documentation is material to the decision whether or not to grant the applicant leave under the scheme
- the decision to refuse the application on this basis is proportionate

Rule EU16 of [Appendix EU](#) is a discretionary provision. When considering whether to refuse under rule EU16, you must examine whether the deception is material to the decision whether or not to grant leave under the scheme. This is where the false or misleading information, representation or documentation concerns the applicant's ability to meet the eligibility or suitability requirements of Appendix EU.

Where false information, representations or documents have been submitted, whether or not to the applicant's knowledge, and which are material to the decision whether or not to grant leave under the scheme, you may refuse the application under rule EU16, provided that it is proportionate to do so.

Related content

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Related external links

[Appendix EU to the Immigration Rules](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Withdrawal Agreement](#)

[Directive 2004/38/EC](#)

Initial assessment of suitability

This section tells you about the initial assessment of suitability and referral of an application from UK Visas & Immigration (UKVI) to Immigration Enforcement (IE).

Where the result of the check of the Police National Computer (PNC), the Warnings Index (WI) or immigration records indicates that:

- the applicant has, in the last 5 years, received a conviction which resulted in their imprisonment
- the applicant has, at any time, received a conviction which resulted in their imprisonment for 12 months or more as a result of a single offence (it must not be an aggregate sentence or consecutive sentences)
- the applicant has, in the last 3 years, received 3 or more convictions (including non-custodial sentences) unless they have lived in the UK for 5 years or more
- the applicant is the subject of an existing deportation or exclusion order
- the case is of interest to Criminal Casework in respect of deportation or exclusion, for example where the applicant is in prison and the case is awaiting deportation consideration
- the applicant has entered, attempted to enter or assisted another person to enter or attempt to enter into a sham marriage, sham civil partnership or durable partnership of convenience (or IE is pursuing action because of this conduct)
- the applicant has fraudulently obtained, attempted to obtain or assisted another person to obtain or attempt to obtain a right to reside in the UK under the [EEA Regulations 2016](#) (or IE is pursuing action because of this conduct)
- the applicant has participated in conduct that has resulted in them being deprived of British citizenship

you must refer the case to IE for a case by case consideration of the individual's conduct under the public policy, public security or public health test as set out in the [EEA Regulations 2016](#).

A case is not to be referred to IE where:

- a recorded decision has been made not to pursue deportation or to revoke a deportation order in respect of the applicant and they have not committed any further offence that meets the referral criteria since that decision
- a previous decision to deport the applicant was overturned on appeal, the Home Office is not appealing that decision and the applicant has not committed any further offence that meets the referral criteria
- the applicant received a custodial sentence and at the time the applicant was in prison, the applicant's conviction did not meet the criteria for [referral to the Home Office](#) and the applicant has not committed any further offence that meets the referral criteria

Applicants with a past conviction or convictions who were not referred to the Home Office for deportation consideration at that time

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Where an applicant has a past conviction or convictions which were not referred to the Home Office for deportation consideration under the policy in place at the time, as set out in the list below, and they have not committed any further offence that meets the referral criteria, the application can be considered without referral to IE:

- prior to 1 April 2009, Home Office policy was to consider the deportation of an EU citizen (or their family member) where they had received a single custodial sentence of 24 months or more
- on 1 April 2009, this was reduced to 12 months for sexual, violent or drug-related convictions
- on 14 January 2014, the 12-month criterion was applied to all other convictions, and a further criterion was included of 6 or more custodial sentences for any offence in the last 3 years
- this was further amended on 27 January 2014 to a custodial sentence of 12 months or more for any offence and 4 or more custodial sentences for any offence in the last 3 years
- on 1 April 2015, the criterion of a single offence resulting in a custodial sentence of 12 months or more was retained, and the low level persistent offending criterion was reduced to 3 convictions in the last 3 years
- from 6 October 2015, the sentencing criterion was removed for all EU cases and since then, HM Prison and Probation Service (HMPPS) have referred all EU and non-EU citizen foreign national offenders to the Home Office for deportation consideration

Overseas criminality

Where an applicant has declared previous overseas criminality, or a check of the PNC or WI indicates that an applicant:

- was previously extradited from the UK
- is the subject of a European Arrest Warrant (EAW)
- has an overseas conviction

you must make further enquiries to establish if there is police interest (in EAW cases) or to establish further information about an overseas conviction. Further guidance on how to conduct an overseas criminal record check can be found at: Criminal casework requests to ACRO for criminal activity checks abroad. All requests must be approved by a senior caseworker.

Before conducting an overseas criminal record check, it may be necessary to contact the applicant to obtain further information about their overseas conviction. An applicant may be contacted by telephone or in writing or invited to an interview to provide additional information in person.

Once the outcome of an overseas criminal record check is known, consideration must be given to whether any previous convictions require referral to IE for a case by case consideration of a decision to deport under the [EEA Regulations 2016](#).

Pending prosecutions

Where an applicant has declared a pending prosecution or the PNC or WI check reveals a pending prosecution, you must refer to the guidance at: [Pending Prosecutions](#).

Official – sensitive: start of section

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

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[Immigration \(European Economic Area\) Regulations 2016](#)

Consideration of EU15 and EU16

This section tells you how to consider suitability under [Appendix EU](#).

EU15(a) – deportation

Where, at the date of decision, the applicant is the subject of an extant deportation order or a decision to make a deportation order, you must refuse the application.

As set out in Annex 1 of Appendix EU, a **deportation order** means:

- (a) an order made under [regulation 32\(3\)](#) of the EEA Regulations 2016
- (b) an order made under [section 5\(1\) of the Immigration Act 1971](#) (in respect of conduct after the specified date by a relevant EU citizen or other person eligible for leave under Appendix EU)
- (c) an order made in accordance with [section 32\(5\) of the UK Borders Act 2007](#) (in respect of conduct after the specified date by a relevant EU citizen or other person eligible for leave under Appendix EU)

The specified date is the end of the planned implementation period on 31 December 2020, as per the draft [Withdrawal Agreement](#) (WA).

Where the applicant has provided information about a previous overseas criminal conviction or the Police National Computer (PNC), Warnings Index (WI) or overseas criminal records check reveals conduct which has not previously been considered by the Home Office, you must consider a referral to Immigration Enforcement (IE) as per the [criteria](#) above for deportation consideration under the [European Economic Area \(EEA\) Regulations 2016](#).

Where a decision to make a deportation order in respect of the applicant is being considered, that consideration must be concluded before any decision is made on their application under the EU Settlement Scheme.

Guidance on considering whether to make a decision to deport under the [EEA Regulations 2016](#) is at:

- EEA decisions on grounds of public policy and public security

EU15(b) – exclusion

Where, at the date of decision, the applicant is the subject of an extant exclusion order or exclusion decision, you must refuse the application.

As set out in Annex 1 of [Appendix EU](#), an **exclusion order** means an order made under [regulation 23\(5\)](#) of the EEA Regulations 2016.

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An exclusion decision means, as set out in Annex 1, a direction given by the Secretary of State that a person must be refused entry to the UK on the ground that that person's presence here would not be conducive to the public good. This concerns conduct after the specified date by a relevant EU citizen or other person eligible for leave under [Appendix EU](#).

EU15(c) – removal decision

Where, at the date of decision, the applicant is subject to a removal decision under the [EEA Regulations 2016](#) on the grounds of their non-exercise or misuse of rights under the Free Movement [Directive \(2004/38/EC\)](#), you must refuse the application. This means that the applicant is subject to a decision, on those grounds, to remove them from the UK under [regulation 23](#) or [regulation 32](#) of the EEA Regulations, unless this decision has been set aside or no longer has effect in respect of the person.

If the applicant is already being considered for removal in accordance with the [EEA Regulations 2016](#) on grounds of their non-exercise or misuse of rights under [Directive 2004/38/EC](#), that consideration must be concluded before any decision is made on their application under the EU Settlement Scheme.

A person will not meet the threshold for removal under the [EEA Regulations 2016](#) on the grounds of their non-exercise of rights under [Directive 2004/38/EC](#) solely because they are a student or self-sufficient person who does not hold comprehensive sickness insurance.

During private beta phase 2, an applicant must not be referred to IE for consideration of the making of a removal decision under the [EEA Regulations 2016](#) on the grounds of their non-exercise or misuse of rights under [Directive 2004/38/EC](#) without consultation with a senior caseworker, who must consult the European Migration Policy team.

EU16 – false or misleading information or evidence

Rule EU16 of [Appendix EU](#) is a discretionary provision. Where false information, representations or documents have been submitted, whether or not to the applicant's knowledge, and which is or are material to the decision whether or not to grant the applicant leave under Appendix EU, you may refuse the application under rule EU16, provided that it is proportionate to do so.

False representation means a false statement made in the application or in supporting documents, or made verbally, including at any interview conducted under Annex 2 to Appendix EU for the purpose of deciding whether the applicant meets the eligibility requirements for indefinite leave to remain or for limited leave to remain.

Examples of false or misleading information, representations or documents include, but are not limited to the applicant:

For use during private beta phase 2

- providing false documentation, or using false information in order to acquire documentation, in respect of the applicant's claimed period of continuous residence in the UK
- falsely declaring that they have been continuously resident in the UK for 5 years
- falsely claiming a family relationship, dependence or retained right of residence that does not exist
- providing false identity and nationality documentation for an individual on whom the applicant's eligibility for the scheme depends

The requirement for a false representation to be deliberately and dishonestly made is derived from the ruling in [A \(Nigeria\) v SSHD \[2010\] EWCA Civ 773](#), which found that the interpretation of 'false' requires dishonesty or deception to be used in an application although not necessarily by the applicant.

Where there is evidence that false information, representations or documents were submitted as part of the application, whether or not to the applicant's knowledge, it may be appropriate to refuse the application under rule EU16 as well as on eligibility grounds, if the deception is material to the decision whether or not to grant the applicant leave under [Appendix EU](#).

When deciding whether to refuse under rule EU16, you must have evidence to show, on the balance of probabilities, that the applicant or a third party has provided [false or misleading information, representations or documents](#), which is [material to the decision whether or not to grant the applicant leave under Appendix EU](#). You must also consider whether a decision to refuse under rule EU16 is [proportionate](#).

You must make further enquires of the applicant, and, where necessary, others, to help you establish whether the applicant (or a third party) has provided false or misleading information or evidence. You can request more information by contacting the applicant by telephone or email, and you must ensure that the applicant is given a reasonable opportunity to provide it before a decision on the application is made.

Alternatively, where this is relevant for the purpose of deciding whether the applicant meets the eligibility requirements for indefinite leave to remain or for limited leave to remain under Appendix EU, you may invite the applicant (and/or the EU citizen with whom the applicant claims to have a family relationship) to an interview, in accordance with Annex 2 to Appendix EU.

You must not refuse an application under rule EU16 where there has been a genuine error by the applicant or a third party, as this would not constitute deliberate dishonesty and would not be proportionate.

Material to the decision

You must consider whether the false or misleading information, representation or documentation is material to the decision whether or not to grant the applicant leave under [Appendix EU](#).

For use during private beta phase 2

This is where the false or misleading information or evidence affects the applicant's ability to meet the eligibility or suitability requirements of Appendix EU, because either of the following applies:

- discounting that information, representation or documentation means that the applicant is not eligible for leave under Appendix EU (or is eligible for limited leave to remain rather than indefinite leave to remain)
- the submission of the false or misleading information, representation or documentation itself raises significant doubt as to whether the applicant should be granted leave under Appendix EU- subject to the proportionality assessment to be made in light of all the known circumstances of the case, this may lead to refusal

If the false or misleading information or evidence relates to continuity of residence in the UK, family relationship or the applicant's ability to meet other criteria set out in paragraph EU11 or EU14 of Appendix EU, the application will also fall to be refused on eligibility grounds. The decision letter must address these also.

False documents

If you have reasonable doubt as to the authenticity of a copy of a document submitted by the applicant in relation to their eligibility for leave under [Appendix EU](#), you can require the applicant to submit the original document.

If the applicant submits a document, whether in response to such a requirement or otherwise, and this document is found to be false, you must consider whether to refuse the application under the eligibility criteria of rule EU11 or EU14 and under rule EU16.

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A false document includes:

- a genuine document which has been altered or tampered with
- a counterfeit document (one that is completely false)
- a genuine document which is being used by an imposter
- a genuine document which has been fraudulently obtained or issued
- a genuine document which contains a falsified or counterfeit visa or endorsement

Proportionality

When considering whether to refuse an application under rule EU16, you must first consider whether the false or misleading information, representation or documentation is material to the decision whether or not to grant leave under the scheme. If it is, you must then consider whether refusal under rule EU16 would be proportionate, in light of all the known circumstances of the case. Factors to consider in assessing the proportionality of your decision include:

- the seriousness of the deception
- whether the applicant knew about the deception
- the impact on the applicant and their family member(s) of a refusal decision under the EU Settlement Scheme

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[Directive 2004/38/EC](#)

[Immigration Act 1971](#)

[UK Borders Act 2007](#)

[A \(Nigeria\) v SSHD \[2010\] EWCA Civ 773](#)

[EEA decisions on grounds of public policy and public security](#)

Pending prosecutions

This section tells you how to consider an application where there is a pending prosecution against the applicant.

Where the applicant has a pending prosecution which could lead to a conviction and a refusal on suitability grounds **and** does not otherwise meet the [criteria](#) for referral to Immigration Enforcement (IE) in respect of any other offence, consideration of the application must be paused by UK Visas & Immigration (UKVI) until the outcome of the prosecution is known. Once the outcome of the pending prosecution is known, the application must be considered under the scheme in accordance with this guidance.

Where the applicant has a pending prosecution and has other convictions not previously considered for deportation which, not including the pending prosecution, meet the [criteria](#) for referral to IE, the application must be referred to IE to consider deportation. Where a decision to make a deportation order in respect of the applicant is being considered, that consideration must be concluded before any decision is made on their application under the EU Settlement Scheme.

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Decision to refuse on suitability grounds

This section tells you how to refuse an application on grounds of suitability.

The application will fall for refusal if you are satisfied that any of the criteria in rule EU15 are met.

The application may fall for refusal if you are satisfied that the criteria in rule EU16 are met.

Where an application falls to be refused on the basis that a deportation or removal decision has been made under the [European Economic Area \(EEA\) Regulations 2016](#) since the application under the EU Settlement Scheme was submitted, the applicant must, where possible, be notified of the scheme decision and the deportation or removal decision at the same time.

Where an application falls to be refused on the basis that the applicant is the subject of an extant deportation order, exclusion order or removal decision made under the [EEA Regulations 2016](#) or where the applicant has previously been notified that they are to be deported, it is not necessary to set out the reasons for the earlier decision. The scheme decision letter should refer to the letter communicating the earlier order or decision to the applicant.

There is no right to apply for an administrative review of a decision made to refuse an application under [Appendix EU](#) on suitability grounds as set out in rule EU15 or EU16.

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