Home Office

EU Settlement Scheme: suitability requirements

Version 1.0

 Published for Home Office staff on 01 April 2019

Contents

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 April 2019**

Changes from last version of this guidance

This is new 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 within the UK on or after 30 March 2019 (from 0700), or outside the UK on or after 9 April 2019 (from 0700 UK time), 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.

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 and reduce the risk of trafficking and exploitation.

Specified date

Where this guidance refers to the ‘specified date’, this means 2300 GMT on 31 December 2020 where the UK withdraws from the European Union with a Withdrawal Agreement, or the date and time of withdrawal in a ‘no deal’ scenario.

Related content
Contents

Related external links
Section 55 of the Borders, Citizenship and Immigration Act 2009
UN Convention on the Rights of the Child
Section 55 children's duty guidance
Every Child Matters – Change for Children

Introduction

This section gives you background about the EU Settlement Scheme.

Background

The EU Settlement Scheme provides a basis for European Economic Area (EEA) and Swiss citizens resident in the UK and their family members to apply for the UK immigration status which they will require to remain here after the UK has left the European Union.

The immigration status granted under the EU Settlement Scheme is either indefinite leave to enter (ILE) or indefinite leave to remain (ILR) (also referred to for the purposes of the scheme as 'settled status') or 5 years' limited leave to enter (LTE) or 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 on the applicant having resided continuously in the UK for 5 years (or already having documented permanent residence status under the Immigration (European Economic Area) Regulations 2016 (EEA Regulations 2016) or existing ILE or ILR).

Withdrawal Agreement

If the UK withdraws from the European Union on the basis of the draft Withdrawal Agreement (WA), published on 14 November 2018, Article 20 will apply. This 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. There are corresponding arrangements for citizens from EEA EFTA states (Norway, Iceland and Liechtenstein) and Switzerland set out in equivalent agreements the UK has reached with those countries in Article 19 and Article 17 of those agreements respectively.

Article 20 of the draft WA states:

1. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title [Title II of Part Two of the draft WA], where that conduct occurred before the end of the transition period, shall be considered in accordance with Chapter VI of Directive 2004/38/EC.

2. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct 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 the

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 21 of this Agreement [the draft WA].

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 20.1 and 20.2 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/public security/public health test, 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.

No deal

The EU Settlement Scheme will also be the basis on which EEA and Swiss citizens resident in the UK by exit and their family members will be able to obtain UK immigration status in order to remain here in the event of the UK leaving the European Union without a deal. As set out in the policy paper on citizens' rights in a 'no deal' scenario published by the Government on 6 December 2018, the current EU public policy, public security or public health test, as set out in the EEA Regulations 2016, would continue to apply to conduct (including any criminal convictions relating to it) before exit, while conduct thereafter (including any criminal convictions relating to it) would be considered under UK legislation. The Immigration, Nationality and Asylum (EU Exit) Regulations 2019, which would come into force on exit day in a 'no deal' scenario, would make relevant legislative changes.

Related content
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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
Withdrawal Agreement
Directive 2004/38/EC
Citizens' rights in a 'no deal' scenario

Overview of suitability requirements

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

Paragraphs EU15, EU16 and EU17 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.

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.

Under rule EU15(1) an application under Appendix EU will be refused on grounds of suitability where, at the date of decision, the applicant is subject to:

- a deportation order or a decision to make a deportation order (as defined in Appendix EU)
- an exclusion order or exclusion decision (as defined in Appendix EU)

If one of the orders or decisions specified in rule EU15(1) applies in respect of the applicant at the date the decision on the application under the scheme is made, the application must be refused.

Under rule EU15(2) an application under Appendix EU may be refused on grounds of suitability where, at the date of decision, the applicant is subject to:

- an Islands deportation order
- an Islands exclusion decision,

as made under the immigration laws of the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

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 that appear in their criminal record in accordance with the law of the State of conviction at the time of the application. There is no requirement to declare spent offences, cautions or alternatives to prosecution for example fixed penalty notices for speeding.

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 additionally subject to a check against the Police National Computer (PNC) and the Warnings Index (WI). Caseworkers can where appropriate

consider evidence of criminality that they encounter on the PNC and WI even if that evidence was not declared by the applicant.

From information provided by the applicant and obtained from the PNC and WI, UK Visas and Immigration must conduct an initial assessment of suitability, taking into account the length of the applicant's previous residence where relevant, to establish whether the application is to be referred to Immigration Enforcement (IE) for full case by case consideration of the individual's conduct under the public policy and public security test as set out in the EEA Regulations 2016 (or under the UK criminality thresholds if the relevant conduct was committed after the end of the implementation period, or after exit day in the event the UK leaves the EU without a deal). If a decision is then made by IE that falls within rule EU15(1) (i.e. a decision to deport or exclude the individual), the application under the scheme will be refused by IE.

Under rule EU16 an application under Appendix EU may be refused on grounds of suitability where, at the date of decision, the decision-maker is satisfied that it is proportionate to refuse the application where either of the following applies:

- EU16(a): 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), and the information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under the scheme

- EU16(b): 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 Directive 2004/38/EC

When considering whether to refuse on the basis of rule EU16(a), the decision-maker must examine whether the deception is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under the scheme. This is where the false or misleading information, representation or documentation concerns the applicant's ability to meet the 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 the applicant indefinite leave to enter or remain or limited leave to enter or remain under the scheme, the decision-maker may refuse the application on the basis of rule EU16(a), provided that it is proportionate to do so.

When considering whether to refuse on the basis of rule EU16(b), the decision-maker may refuse the application only where it is proportionate to do so.

Under rule EU17 the application must not be refused on the basis of an order or decision as specified in EU15 or EU16 which, at the date of decision on the application, has been set aside or no longer has effect in respect of the applicant.

Related content
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Related external links
Appendix EU to the Immigration Rules
Immigration (European Economic Area) Regulations 2016
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 and Immigration (UKVI) to Immigration Enforcement (IE).

Where the result of the check of the Police National Computer (PNC), 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 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

UKVI must refer the case to IE for a case by case consideration of the individual's conduct under the public policy and public security test as set out in the EEA Regulations 2016 (for conduct pre-exit in a 'no deal' scenario or before the end of any implementation period agreed with the EU in a deal scenario, i.e. before the 'specified date' under Appendix EU) or otherwise under UK legislation.

Existing deportation or exclusion order

Where the result of the check of the PNC, WI or immigration records indicates that the applicant is the subject of an existing UK deportation decision, deportation order, or exclusion order, UKVI must refer the case to IE (or to Special Cases Unit) who, subject to the next paragraph, will refuse the application and consider whether it is appropriate to take enforcement action.

Where, in accordance with Article 33.2 of the Free Movement Directive, a UK deportation order has been made but the applicant has not been removed under that order during the two-year period beginning on the date on which the order was made, IE must consider whether there has been a material change of circumstances since the deportation order was made. If, following such an assessment, a decision is made that the removal continues to be justified on the grounds of public policy or

public security, the application under the scheme must be refused by IE. Further guidance can be found at: EEA decisions on grounds of public policy and public security

A case is not to be referred to IE where:

- a recorded decision has been made not to pursue deportation, or a recorded decision has been made to revoke a deportation or exclusion 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 did not meet the criteria for referral at the time, and they have not committed a further offence that meets the referral criteria

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 who have not committed any further offence that meets the referral criteria, the application must be considered without referral to IE:

- prior to 1 April 2009, Home Office policy was to consider whether to deport 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.

It may be necessary for that purpose 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.

Any request for an overseas criminal record check must first be approved by a senior caseworker. Whether an overseas criminal record check is required will depend on the facts of the case, but it is only to be required where it is essential. This test will not generally be met where the applicant has declared an overseas conviction, has 5 years' continuous residence in the UK, and there is no evidence of UK offending following a Police National Computer (PNC) check.

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.

Once the details of an overseas conviction or an EAW case are known, consideration must be given to whether any previous convictions require referral to IE for deportation consideration.

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 below section on pending prosecutions.

Official – sensitive: start of section

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

Official – sensitive: end of section

Related content
Contents
Pending Prosecutions

Related external links
Immigration (European Economic Area) Regulations 2016

Consideration of EU15 and EU16

This section tells you how to consider suitability under Appendix EU.

EU15(1)(a) – deportation

Where, at the date of decision on the application under the EU Settlement Scheme, the applicant is subject to a deportation order or a decision to make a deportation order, as defined by Appendix EU, Immigration Enforcement (IE) or Special Cases Unit (SCU) must refuse the application.

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

(a) an order made under section 5(1) of the Immigration Act 1971 by virtue of regulation 32(3) of the EEA Regulations 2016

(b) an order made under section 5(1) of the Immigration Act 1971 by virtue of section 3(5) or section 3(6) of that Act (in respect of conduct committed after the specified date, or conduct committed before that date where the Secretary of State has decided that the deportation order is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, irrespective of whether those Regulations apply to the person, except that for "a right of permanent residence under regulation 15" read "indefinite leave to enter or remain"; and for "an EEA decision" read "a deportation decision")

For the avoidance of doubt, (b) includes a deportation order made under the Immigration Act 1971 in accordance with section 32 of the UK Borders Act 2007

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, UK Visas and Immigration must consider a referral to IE as per the criteria above for deportation consideration.

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(1)(b) – exclusion

Where, at the date of decision on the application under the EU Settlement Scheme, the applicant is subject to an exclusion order or exclusion decision, IE or SCU 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.

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 in the UK would not be conducive to the public good:

(a) in respect of conduct committed after the specified date; or

(b) in respect of conduct committed before the specified date, where the Secretary of State is satisfied that the direction is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, irrespective of whether those Regulations apply to that person, except that for "a right of permanent residence under regulation 15" read "indefinite leave to enter or remain"; and for "an EEA decision" read "an exclusion direction"

EU15(2) – Islands deportation order or exclusion decision

Where, at the date of decision on the application under the EU Settlement Scheme, the applicant is subject to an Islands deportation order or an Islands exclusion decision, IE or SCU may refuse the application.

As set out in Annex 1 of Appendix EU, an **Islands deportation order** means a deportation order as defined in paragraph 3(6) of Schedule 4 to the Immigration Act 1971, except for such an order that was made in respect of conduct committed before the specified date (unless the Secretary of State is satisfied that the order is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to the person, except that for "a right of permanent residence under regulation 15" read "indefinite leave to enter or remain"; and for "an EEA decision" read "a deportation decision").

An **Islands exclusion decision** means, as set out in Annex 1, a direction given by the relevant Minister or other authority in the Islands that a person must be refused entry to the Island concerned on the ground that that person's presence there would not be conducive to the public good, except for such a direction made in respect of conduct committed before the specified date (unless the Secretary of State is satisfied that the direction is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to that person, except that for "a right of permanent residence under regulation 15" read "indefinite leave to enter or remain"; and for "an EEA decision" read "an exclusion direction").

EU16(a) – false or misleading information or evidence

Rule EU16(a) of Appendix EU is a discretionary provision. It provides that where, 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), and which is or are material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU, you may refuse the application, 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 enter or remain or for limited leave to enter or remain.

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

- providing false documentation, or using false information in order to acquire documentation, in respect of the applicant's claimed period of continuous qualifying period of residence in the UK
- falsely declaring that they have been resident in the UK for a continuous qualifying period of 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 deliberate dishonesty or deception to be used in an application although not necessarily by the applicant.

Where there is evidence that, whether or not to the applicant's knowledge, false or misleading information, representations or documents were submitted as part of the application (including false or misleading information submitted to any person to obtain a document used in support of the application), it may be appropriate to refuse the application on the basis of rule EU16(a) as well as on eligibility grounds, if the deception is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU.

When deciding whether to refuse on the basis of rule EU16(a), 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 indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU. You must also consider whether a decision to refuse on the basis of rule EU16(a) is proportionate.

You must make further enquiries of the applicant, and, where necessary, others, to help you establish whether the applicant (or a third party) has provided false or

misleading information, representations or documents. 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 enter or remain or for limited leave to enter or remain under Appendix EU, you may invite the applicant (and/or the EEA or Swiss citizen or the qualifying British 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(a) 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 indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU.

This is where the false or misleading information, representation or documentation affects the applicant's ability to meet the requirements of Appendix EU, because 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 enter or remain rather than indefinite leave to enter or remain).

If the false or misleading information, representation or documentation relates to continuity of residence in the UK, family relationship or the applicant's ability to meet other criteria set out in paragraph EU11, EU12 or EU14 of Appendix EU, the application may also fall to be refused on eligibility grounds. If so, 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, EU12 or EU14 and on the basis of rule EU16(a).

Official – sensitive: start of section

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

Official – sensitive: end of section

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 on the basis of rule EU16(a), you must first consider whether the false or misleading information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under the scheme. If it is, you must then consider whether refusal on the basis of rule EU16(a) 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), in particular any children under the age of 18, of a refusal decision under the EU Settlement Scheme

Official – sensitive: start of section

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

Official – sensitive: end of section

EU16(b) – removal decision

Rule EU16(b) of Appendix EU is a discretionary provision. It provides that where, at the date of decision on the application under the EU Settlement Scheme, the

applicant is subject to a removal decision under regulation 23 or regulation 32 of the EEA Regulations 2016 on the grounds of their non-exercise or misuse of rights under the Free Movement Directive (2004/38/EC), you may refuse the application where it is proportionate to do so in the particular circumstances of the case.

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.

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, or refused on grounds of suitability under paragraph EU16(b) of Appendix EU, without consultation with a senior caseworker, who must consult the European Migration Policy Team.

Related content
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EEA decisions on grounds of public policy and public security

Related external links
Appendix EU to the Immigration Rules
Immigration (European Economic Area) Regulations 2016
Withdrawal Agreement
Directive 2004/38/EC
Immigration Act 1971
UK Borders Act 2007
A (Nigeria) v SSHD [2010] EWCA Civ 773

Pending prosecutions

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

A ‘pending prosecution’ is defined for the purposes of this guidance as where a person:

- has been arrested or summoned in respect of one or more criminal offences and one or more of these offences has not been disposed of either by the police or the courts
- is the subject of a live investigation by the police for a suspected criminal offence

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, you must consider whether it is reasonable and proportionate for the application to be paused by UK Visas and Immigration until the outcome of the prosecution is known.

It will not be appropriate to pause the application in all cases, for example if the offence would not be material to whether or not the application ought to be refused or if the proceedings are likely to take a significant period of time and it would be unreasonable in the circumstances to the pause the application. It might in some cases be more appropriate to consider the application and then consider whether to deport the individual in the event that they are convicted. Where paused, 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.

Related content
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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(1) of Appendix EU are met.

The application may fall for refusal if you are satisfied that any of the criteria in rule EU15(2) or EU16 of Appendix EU are met.

Where an application falls to be refused on the basis that the applicant is subject to a 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 must refer to the letter communicating the earlier order or decision to the applicant.

Where an application falls to be refused on the basis that an order or decision to which rule EU15(1) refers has been made in respect of the applicant since their application under the EU Settlement Scheme was submitted, the applicant must, where possible, be notified of the making of that order or decision at the same time as they are notified of the scheme decision.

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.

Related content
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