



Home Office

EU Settlement Scheme: suitability requirements

Version 3.0

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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, other EEA and Swiss 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 **3.0**
- published for Home Office staff on **06 April 2020**

Changes from last version of this guidance

Amendments throughout to reflect changes to Appendix EU made by Statement of Changes in Immigration Rules: HC 120, 12 March 2020.

Related content

[Contents](#)

Related external links

EU Settlement Scheme – EU, other EEA and Swiss citizens and their family members

Purpose

This section explains the purpose of this guidance.

Use of this guidance

This guidance must be used 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, other EEA and Swiss 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. You must carefully assess the quality of any evidence provided.

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

Although the duty in section 55 only applies to children in the UK, the statutory guidance – [Every Child Matters – Change for Children](#) – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to

suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children, promote their welfare and reduce the risk of trafficking and exploitation.

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

Specified date

Where this guidance refers to the 'specified date', this means 2300 GMT on 31 December 2020.

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 30 June 2021.

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 a continuous qualifying period of residence in the UK of 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

Article 20 of the [Withdrawal Agreement](#) (WA) with the European Union, reached in October 2019, 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. There are corresponding arrangements for citizens from EEA EFTA states (Iceland, Liechtenstein and Norway) and Switzerland set out in equivalent agreements with those countries.

Article 20 of the 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 [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 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 WA mean in particular that, in relation to any restriction of the right of residence in the UK of a person protected by the WA, their conduct (including any criminal convictions relating to it) before the end of the transition period at 2300 GMT on 31 December 2020 is to be assessed according to the EU public policy, public security and 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 the UK criminality test (on the ground that it is conducive to the public good).

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

EU Settlement Scheme – EU, other EEA and Swiss 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](#)

Overview of suitability requirements

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

Rules 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 and circumstances 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 (as defined in Annex 1 to Appendix EU) or a decision to make a deportation order
- an exclusion order or exclusion decision (as defined in Annex 1 to 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 (as defined in Annex 1 to Appendix EU)
- an Islands exclusion decision (as defined in Annex 1 to Appendix EU)

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.

Applications are additionally subject to a check against the Police National Computer (PNC), where the applicant is aged 10 or over, and the Warnings Index (WI).

Caseworkers can where appropriate consider evidence of criminality that they encounter on the PNC or WI even if that evidence was not declared by the applicant.

From information provided by the applicant and obtained from the PNC or WI, UK Visas and Immigration must determine whether the application is to be referred to Immigration Enforcement (IE) for full case by case consideration of the individual's conduct. If a decision is then made by IE that falls within rule EU15(1) (such as 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](#)
- EU16(c)(i): the applicant either:

(aa) has previously been refused admission to the UK in accordance with [regulation 23\(1\) of the EEA Regulations](#)

(bb) had indefinite leave to enter or remain or limited leave to enter or remain granted under Appendix EU (or limited leave to enter granted by virtue of having arrived in the UK with an entry clearance that was granted under Appendix EU (Family Permit)) which was cancelled [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#)

And (in either case), under EU16(c)(ii), the refusal of the application is justified either:

(aa) in respect of conduct committed before the specified date, on 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 in regulation 27 for "with a right of permanent residence under [regulation 15](#)" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules" and for "an EEA decision" read "a decision under paragraph EU16(c) of Appendix EU to the Immigration Rules")

(bb) in respect of conduct after the specified date, on the ground that the decision is conducive to the public good

- EU16(d): the applicant is a relevant excluded person (as defined in Annex 1 to Appendix EU) based on conduct committed before the specified date and the Secretary of State is satisfied that the decision to refuse the application 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 in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules”)
- EU16(e): the applicant is a relevant excluded person based on conduct committed after the specified date

A sentence of imprisonment does not include a suspended sentence (unless a court subsequently orders that the sentence or any part of it, of whatever length, is activated).

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.

A refusal on the basis of rule EU16(c) may only take place where the applicant has previously been refused admission under regulation 23(1) of the EEA Regulations 2016 or had previous leave granted under Appendix EU, or by virtue of having arrived in the UK with entry clearance granted under [Appendix EU \(Family Permit\)](#), cancelled under [paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#). The decision under rule EU16(c) must be justified on grounds of public policy, public security or public health in accordance with the EEA Regulations, unless the conduct took place after the specified date, in which case it must be justified on the ground that the decision is conducive to the public good. In addition, the decision-maker may only refuse the application under rule EU16(c) where it is proportionate to do so.

Rules EU16(d) and EU16(e) of [Appendix EU](#) are also discretionary provisions and provide for the refusal of an application where, at the date of the decision, the applicant is a ‘relevant excluded person’, as defined in Annex 1 to Appendix EU, and refusing the application is proportionate.

A 'relevant excluded person' is a person either:

- in respect of whom the Secretary of State has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of the Immigration Rules to exclude them from humanitarian protection
- in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK
- who the Secretary of State considers to be a person in respect of whom either of the previous two bullets would apply except that either:
 - the person has not made a protection claim
 - the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of the Rules
- in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the UK

Where the applicant meets the definition of a 'relevant excluded person', under rule EU16(d), based on conduct committed before the specified date, then refusing the application must additionally be 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 in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a decision under paragraph EU(16)(d) of Appendix EU to the Immigration Rules").

An applicant who is refused under rule EU16(d) or EU16(e), but who cannot be deported due to a human rights reason, can be considered for a grant of restricted leave, outside the Immigration Rules.

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

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

[Appendix EU \(Family Permit\)](#)

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

[Directive 2004/38/EC](#)

[Paragraph 321B\(b\)\(i\) of the Immigration Rules](#)

[Paragraph 321B\(b\)\(ii\) of the Immigration Rules](#)

Referral to Immigration Enforcement

This section tells you when an application under the EU Settlement Scheme is to be referred 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 convictions that resulted in non-custodial sentences) unless they have lived in the UK for 5 years or more. At least one of these convictions must have taken place in the last 12 months and, where the applicant is resident in the UK, at least one of these convictions must be in the UK
- 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 as to whether or not the individual in question ought to be deported or excluded.

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 if it is a relevant decision or order as defined in Annex 1 to [Appendix EU](#) and consider whether it is appropriate to take enforcement action.

In accordance with regulation 32(5) of the EEA Regulations 2016, where a deportation order has been made by virtue of the EEA Regulations 2016 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, public security or public health, 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

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 subject to an outstanding European Arrest Warrant (EAW) or Interpol alert
- 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 is to be requested where it is essential. Such a check will not generally be required 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

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

Official – sensitive: end of section

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Related external links

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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 Annex 1 to Appendix EU, Immigration Enforcement (IE) or Special Cases Unit (SCU) must refuse the application.

As set out in Annex 1 to 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 either:
 - (i) conduct committed after the specified date
 - (ii) conduct committed before the specified 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 in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; 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 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

Guidance on considering whether to make a decision to deport under UK law is at: Deporting non-EEA foreign nationals.

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 to [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 to Appendix EU, 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 in respect of either:

- (a) conduct committed after the specified date
- (b) 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 in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; 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 to [Appendix EU](#), an **Islands deportation order** means a deportation order as defined in paragraph 3(6) of Schedule 4 to the Immigration Act 1971 that was made in respect of either:

- (a) conduct committed after the specified date
- (b) conduct committed before the specified date, where 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 in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “a deportation decision”)

An **Islands exclusion decision** means, as set out in Annex 1 to Appendix EU, 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 in respect of either:

- (a) conduct committed after the specified date
- (b) 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, irrespective of whether the EEA Regulations apply to the person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "an exclusion decision")

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), 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 or misleading information, representations or documents' means information, representations or documents provided with the intention to deceive. This might have been, for example, in the application, in supporting documents or verbally at an 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 under Appendix EU.

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

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

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

You must not refuse an application on the basis of false or misleading information, representations or documents, or of non-disclosure of material facts, unless you are satisfied that dishonesty or deception is involved. The requirement for false or misleading information, representations or documents to be deliberately and dishonestly given or 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.

An allegation of dishonesty or deception must not be made unless there is evidence to support the allegation. Relevant evidence may include, for example, discrepancies in the information provided by the applicant at various times, discrepancies between that information and information available from other sources, such as other government departments, and intelligence reports on the veracity of documents submitted.

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](#). The burden of

proof is on the applicant to show that they meet the requirements of the Rules. However, if you allege false or misleading information, representations or documents, the burden of proof is on the Home Office to show both that they are not true and that there is dishonesty or deception involved.

You must also consider whether a decision to refuse on the basis of rule EU16(a) is [proportionate](#).

You must not decide that an application falls to be refused under rule EU16(a) without first notifying the applicant in writing that you are thinking of refusing the application based on false or misleading information, representations or documents and setting out exactly what the allegation is in this regard, including making clear that it is your view that there has been dishonesty or deception. You must give the applicant a reasonable period in which to respond to the notification sent by letter or given in an interview. What is reasonable will depend on the circumstances, but in most cases 14 calendar days will be sufficient.

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 or deception and would not be proportionate. If the information or evidence provided is incorrect but there is insufficient evidence of dishonesty or deception, the application must be considered for refusal on eligibility grounds as the incorrect information or evidence may mean that the applicant does not meet the requirements of the Rules and ought to be refused on eligibility grounds.

For further guidance on false representations, including on mistakes, see: [False representations](#).

Material to the decision

When assessing whether to refuse the application under rule EU16(a), 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](#). It is material if 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 either not eligible for leave under Appendix EU or 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 rule EU11, EU12 or EU14 of Appendix EU, the application may also fall to be refused on eligibility grounds. If so, the decision letter must also address these.

Proportionality

When considering whether to refuse an application on the basis of rule EU16(a), you must also consider whether that refusal 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 dishonesty or deception
- whether the applicant knew about the dishonesty or 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
- the applicant's response to the notification in writing given to them (in any case where you are thinking of refusing the application based on false or misleading information, representations or documents) setting out exactly what the allegation is in this regard

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](#) 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, 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 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 & Citizens' Rights Unit.

EU16(c) – previous refusal of admission or cancellation of EU Settlement Scheme status

Rule EU16(c) is a discretionary provision and provides for the refusal of an application where, at the date of the decision, the applicant has previously been refused admission under [regulation 23\(1\) of the EEA Regulations](#), or where leave that was previously granted under Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) was cancelled [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#).

[Under paragraph 321B\(b\)\(i\) of the Immigration Rules](#), a person's leave granted by virtue of Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) may be cancelled at port or while the holder is outside the UK if it is justified on grounds of public policy, public security or public health in accordance with regulation 27 of the [EEA Regulations 2016](#), 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 decision under paragraph 321B of the Immigration Rules").

[Under paragraph 321B\(b\)\(ii\) of the Immigration Rules](#), a person's leave granted by virtue of Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) may be cancelled at port or while the holder is outside the UK if it is justified on the ground that cancellation is conducive to the public good, on the basis of the person's conduct committed after the specified date.

A refusal made under rule EU16(c) must be justified on grounds of public policy, public security or public health in accordance with the EEA Regulations, unless the conduct took place after the specified date, in which case it must be justified on the grounds that the decision is conducive to the public good. In addition, you may only refuse an application under rule EU16(c) where it is proportionate to do so, taking into account the particular circumstances of the case.

EU16(d) and EU16(e) – 'relevant excluded person'

Rule EU16(d) and EU16(e) of [Appendix EU](#) are also discretionary provisions that provide for the refusal of an application where, at the date of the decision, the applicant is a 'relevant excluded person' as defined in Annex 1 to Appendix EU and refusing the application is proportionate. Rule EU16(d) applies where a person is a 'relevant excluded person' on the basis of conduct committed before the specified date. Under rule EU16(d), an application can only be refused where, additionally, refusing the application is justified on the grounds of public policy, public security or public health. Rule EU16(e) applies where a person is a 'relevant excluded person' on the basis of conduct committed after the specified date.

A 'relevant excluded person' means a person either:

- in respect of whom the Secretary of State has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention

or under paragraph 339D of the Immigration Rules to exclude them from humanitarian protection

- in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK
- who the Secretary of State considers to be a person in respect of whom either of the previous two bullets would apply except that either:
 - the person has not made a protection claim
 - the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of the Rules
- in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the UK

An applicant who is refused under rule EU16(d) or EU16(e), but who cannot be deported due to a human rights reason, can be considered for a grant of restricted leave, outside the Immigration Rules. Further information can be found at: restricted leave guidance.

EU16(d): conduct committed before the specified date

A refusal on the basis of rule EU16(d) may only be made where the applicant meets the definition of ‘relevant excluded person’ based on conduct committed before the specified date, and where the decision to refuse is justified on 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 in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules”). In addition, an application may only be refused under rule EU16(d) where doing so is proportionate taking into account the particular circumstances of the case.

See EEA decisions on grounds of public policy and public security

EU16(e): conduct committed after the specified date

A refusal on the basis of rule EU16(e) may only be made where the applicant meets the definition of ‘relevant excluded person’ based on conduct committed after the specified date. In addition, an application may only be refused under rule EU16(e) where doing so is proportionate taking into account the particular circumstances of the case.

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

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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](#)

[Paragraph 321B\(b\)\(i\) of the Immigration Rules](#)

[Paragraph 321B\(b\)\(ii\) of the Immigration Rules](#)

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 either:

- 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 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 under rule EU15(1) on the basis that the applicant is subject to a deportation order, exclusion order or removal decision made under the [EEA Regulations 2016](#), 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.

Where an applicant falls to be refused under rule EU16(c) on the basis that they have previously been refused admission under the EEA Regulations 2016, or where the applicant has had previous leave granted under Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) that was cancelled [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#), the decision letter must explain why the public policy, public security and public health test, or the UK criminality test, as relevant, is met.

Where an applicant falls to be refused under rule EU16(d) or EU16(e) as a relevant excluded person, the decision letter must explain the basis on which they are considered to be a relevant excluded person, and why refusal of the application is considered proportionate. Where the refusal falls under rule EU16(d), the decision letter must also explain why the public policy, public security and public health test is met.

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

[Paragraph 321B\(b\)\(i\) of the Immigration Rules](#)

[Paragraph 321B\(b\)\(ii\) of the Immigration Rules](#)

Appeals

A person who makes a valid application under Appendix EU and is refused or is granted pre-settled status (limited leave to enter or remain), will (depending on the date of application) be able to challenge the decision by appeal.

Right of Appeal

Anyone who makes a valid application under Appendix EU on or after 11pm on 31 January 2020 will have a right of appeal against a decision to refuse their application on eligibility or suitability grounds, or to grant pre-settled status where they believe they qualify for settled status.

They may appeal on grounds that the decision:

- breaches any right they have under the Withdrawal Agreement or the other citizens' rights agreements
- was not in accordance with the Immigration Rule under which it was made

Further guidance is available in the [Rights of Appeal guidance](#).

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