

# Revocation of indefinite leave – section 76

Version 6.0

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# About this guidance

This guidance tells you about the revocation of indefinite leave to enter or remain under section 76 of the Nationality, Immigration and Asylum Act 2002.

## 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 cleared:

- version **6.0**
- published for Home Office staff on **12 October 2023**

## Changes from last version of this guidance

This guidance includes:

- changes to reflect amendments made to the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

## Related content

[Contents](#)

# Introduction

This guidance explains the circumstances when the Home Office may consider revoking a person's indefinite leave to enter or remain in the United Kingdom under [section 76 of the Nationality, Immigration and Asylum Act 2002 \(2002 Act\)](#).

## Background

The Immigration Rules provide that a person may be granted indefinite leave to remain in the UK after a certain qualifying period of residence. There will also be instances where a person may be granted indefinite leave to enter.

Indefinite leave allows the holder to stay in the UK permanently and is sometimes referred to as 'settlement' or 'settled status' or 'EUSS indefinite leave'. However, indefinite leave can be revoked under [section 76 of the 2002 Act](#) when a person:

- is [liable to deportation](#) but cannot be deported for legal reasons
- [ceases to be a refugee](#), or is the dependant of someone who ceases to be a refugee, in specified circumstances
- has obtained indefinite leave by [deception](#)

## Policy rationale

When considering revoking a person's indefinite leave, the underlying policy objective is to:

- enable alternative action to be taken against foreign national offenders or others whose deportation is considered conducive to the public good, or justified on grounds of public policy or public security but who cannot be deported because of the UK's obligations under the ECHR or the Refugee Convention
- ensure that war criminals and perpetrators of other serious crimes cannot avoid the consequences of their actions simply because they were granted indefinite leave at some point in the past
- maintain public confidence in the immigration system by ensuring that abuse is tackled and that where a person has no entitlement to hold indefinite leave it is removed from them where appropriate
- remove from those in the above categories the more favourable benefits that come from having indefinite leave where appropriate

Revocation of indefinite leave is not reliant on the ability to remove the person from the UK.

## 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 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, but not the only, consideration in immigration decisions affecting them. The duty does not impose any new functions or override existing functions. This guidance, together with the statutory guidance [Every Child Matters](#), forms 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 a decision to revoke indefinite leave, you must carefully consider any evidence provided and other information available to you concerning their best interests and the potential impact the decision may have on them, either as an individual or as part of the family unit. When assessing the quality of any evidence provided, documentary evidence from official or independent sources will generally be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

If, having revoked their indefinite leave, you intend to grant a period of limited leave to remain to a person who is a parent or legal guardian, and you are considering attaching conditions to that leave (discounting any required under the Immigration Rules), you must first consider what impact those conditions might have on the child or family unit. Where the other parent is part of the family unit and they and the child retain indefinite leave in their own right, or that parent is a British citizen, there will generally be less practical impact in so far as their rights to benefits, work or study will be unchanged. If the person whose indefinite leave is to be revoked is the child's or children's primary carer, any conditions attached on a discretionary basis, such as reporting conditions, can be set or adjusted to help accommodate their carer duties.

Your decision must demonstrate that you have considered all the information and evidence provided concerning the best interests of a child in the UK.

For further information in relation to the section 55 duty, see [every child matters](#) and introduction to children and family cases.

## **Related content**

[Contents](#)

[Dependants and family members](#)

# Legal basis for revocation of indefinite leave

This section explains the powers for revoking indefinite leave under [section 76 of the 2002 Act](#).

## Liable to deportation – section 76(1) revocation

Where a person is liable to deportation but cannot be deported for legal reasons, the Secretary of State can decide to revoke indefinite leave under [section 76\(1\)](#) of the 2002 Act.

A legal reason normally means that a person's deportation would breach the UK's obligations under the Refugee Convention or the European Convention on Human Rights (ECHR).

## Deception – section 76(2) revocation

Indefinite leave obtained through the use of deception, including by a third party, may be revoked under [section 76\(2\)](#) of the 2002 Act. The deception must be material to the grant of leave.

A person who obtains, or seeks to obtain, leave to enter or remain by deception is guilty of an offence under [section 24A](#) of the Immigration Act 1971 (1971 Act).

Where a person has been convicted under section 24A of having obtained leave by deception, it will have been proven to the criminal standard (beyond reasonable doubt) and therefore the Secretary of State will have good reason to conclude that the evidentiary requirement in respect of revoking leave (balance of probabilities) has been met.

## Cessation of refugee status – section 76(3) revocation

The Secretary of State may revoke a person's indefinite leave if that person has ceased to be a refugee, or if they are the dependant of someone who has ceased to be a refugee, for one of the reasons set out in [section 76\(3\)](#) of the 2002 Act. This includes if they:

- voluntarily avail themselves of the protection of their country of nationality
- voluntarily re-acquire a lost nationality
- acquire the nationality of a country other than the United Kingdom and avail themselves of its protection
- voluntarily establish themselves in a country in respect of which they were a refugee

Section 76(3) applies only to a person who has ceased to be a refugee, and to their dependants; it does not apply to a person whose humanitarian protection has ceased to apply. For further information see [revocation of refugee status](#).

Section 76(3) must not be used in respect of a person who was granted limited leave as the dependant of a refugee if they later obtained indefinite leave in a capacity or category other than as the dependant of that refugee.

**Related content**

[Contents](#)

# Referral of cases for revocation

This section tells you how to refer cases for possible revocation of indefinite leave.

Before referring a case for revocation of indefinite leave, you must confirm that the person has indefinite leave. If they only have limited leave to enter or remain, section 76 revocation does not apply, but cancellation (still known as curtailment in EUSS cases) may be relevant.

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**Related content**

[Contents](#)

Conducive deportation guidance

Guidance on public policy, public security and public health decisions

# How to consider revocation

This section tells you about considering cases for possible revocation of indefinite leave.

## Minded to revoke indefinite leave

When you are considering revoking indefinite leave, you must give the person and, where relevant, [dependants](#), prior notice, with reasons explaining why revocation is being considered and allowing them the opportunity to say why their indefinite leave should not be revoked. You must serve the Minded to Revoke Settlement or Settled Status notice in all cases, giving the person 28 days to respond.

After the deadline for submitting reasons has passed, you must make a decision based on the information available.

## Deportation cases

[Section 5\(1\) of the 1971 Act](#) provides that a deportation order made against a person under section 3(5) or (6) of that Act invalidates any leave to enter or remain in the UK given to the person before the order is made or while it is in force. In such cases, where a deportation order has been made, it is not necessary to use section 76(1) to revoke a person's indefinite leave.

A deportation order made in accordance with [section 32\(5\)](#) of the UK Borders Act 2007 (2007 Act) does not invalidate leave while an associated in country appeal against the refusal of their protection or human rights claim is pending (see [section 79](#) of the 2002 Act). 'Pending' has the meaning given by [section 104](#) of the 2002 Act.

Where a person is liable to deportation there may be legal reasons, for example protection or human rights reasons, why they cannot be deported from the UK. Those reasons may have been established when the person responded to a Stage 1 deportation notice, with reasons why they should not be deported from the UK. The person may for example have been able to show that they would be at risk of treatment likely to breach Article 3 of the ECHR if deported to their home country. Alternatively, it may have been decided by a court following an appeal against the refusal of a protection or human rights claim.

While a person's human rights or protection rights may prevent their deportation from the UK, that does not necessarily mean that the person is entitled to retain indefinite leave. Where there is a legal barrier to deportation you must consider whether it would be appropriate to revoke the person's indefinite leave under section 76(1) of the 2002 Act. You must consider the reasons why the person is liable to deportation, and whether in light of all the facts and circumstances of the case, the person's indefinite leave should be revoked - see [Reasons not to revoke indefinite leave](#).

For advice on how to consider an Article 8 ECHR claim made by a foreign criminal refer to the Criminality guidance for Article 8 ECHR cases.

If you decide it is appropriate to consider revocation you must issue the person with a '[minded to revoke](#)' notice, telling them why you are considering whether to revoke their indefinite leave and giving them an opportunity to respond.

If any representations received in response to the 'minded to revoke' notice show that there are good reasons not to proceed with revocation, you must tell the person, using the Revocation of Settlement or Settled Status Not Pursued notice, that their indefinite leave will not be revoked. You must update the casework system to reflect this decision. No further action is required after this has been done.

Where no representations are made, you must decide the case on the basis of the information you have.

Where any representations received do not justify ceasing revocation action, you must proceed to revoke the indefinite leave, using the appropriate EUSS or non-EUSS section 76(1) revocation decision notice. In EUSS cases this must include a consideration of whether the decision to revoke EUSS indefinite leave (settled status) is proportionate based on the information and evidence available to you.

The revocation decision will have immediate effect in non-EUSS cases. In those cases, you must therefore also grant the person a period of limited leave to remain immediately following the revocation decision.

For further information on the leave that people may qualify for, see [grants or applying for limited leave](#).

Where EUSS indefinite leave (settled status) has been revoked, the person has a right of appeal against the revocation decision.

Where the person is in the UK at the time their settled status is revoked, their leave will be extended to enable an in-time appeal to be brought and until the appeal is finally concluded. This does not apply if the removal is certified. If the person wins their appeal, you must [grant settled status](#). If the person loses the appeal, you must grant limited leave pending the removal of the barrier to deportation.

You must update the appropriate casework system to record the relevant outcomes.

## Deception cases

A person whose indefinite leave was obtained by deception may have this revoked under [section 76\(2\) of the 2002 Act](#). The legal standard of proof is 'balance of probabilities', which means it is more likely than not that the applicant or a third party used deception to obtain indefinite leave.

For the purpose of section 76(2) revocation, deception can include intentional misrepresentation or omission of the facts, making false representations, or submitting false documents, in order to make it appear that the applicant meets the requirements for a grant of indefinite leave. The deception must have been material

to the grant of leave. Deception is considered to be material to the grant if, had it not been for the deception, the leave would not have been granted. Section 76(2) cannot be used to revoke indefinite leave if the leave would have been granted irrespective of the deception.

The following are examples of some of the types of deception you may encounter. This is illustrative only and not exhaustive.

The person has:

- been granted leave as a refugee and it is subsequently established that they are not the nationality they claimed to be
- used one or more different identities or provided false personal details to avoid being correctly identified or documented
- submitted forged documents such as bank statements or employment references
- failed to comply with a specific requirement to declare that they have criminal convictions, including convictions outside of the UK where these would have led to a different outcome on the application if they had been declared at the time (the requirement to declare criminal convictions differs for EUSS applicants - see EU Settlement Scheme suitability requirements guidance)
- failed to declare that they have been involved in war crimes, crimes against humanity or genocide
- failed to declare that they are a member or supporter of a proscribed organisation
- been granted leave on the basis of marriage, civil partnership or durable partnership, and it is subsequently established that any of the following apply:
  - the marriage or civil partnership was a sham (or as defined in Appendix EU and Appendix EU (Family Permit), a marriage, civil partnership or durable partnership of convenience)
  - the letter of support was forged
  - the grant of leave was dependent on the spouse or partner being a British citizen, Irish citizen, a person with settled status or pre-settled status under the EUSS, or a person with a decision pending on an EUSS application, but they are none of these
  - the person had not disclosed that their marriage had already ended in divorce or that their civil partnership had already been legally terminated

Also see [EUSS indefinite leave obtained by deception](#).

Where indefinite leave was obtained by a third party, without the knowledge or complicity of the recipient, for example where a parent used deception to obtain indefinite leave for their child, it does not prevent you from revoking the indefinite leave provided the deception was material to the grant. You must also consider your [section 55 duty](#) if a child is involved.

The deception must not be held against the unwitting party if they later make their own application for leave.

## **EUSS indefinite leave obtained by deception**

The following are examples of some of the types of deception by which EUSS indefinite leave, also known as settled status, may have been obtained. This is illustrative only and not exhaustive:

- an EEA national or their non-EEA national family member submitted fraudulent documentation purporting to show that they meet the eligibility criteria for indefinite leave to enter or remain and the deception is discovered only after they have been granted indefinite leave
- a non-EEA national fraudulently presented themselves as an eligible EEA national and was granted indefinite leave on that basis
- a non-EEA national obtained their leave under the EUSS on the basis of being the spouse or civil partner of an EEA national but is subsequently found to have entered into a marriage, civil partnership or durable partnership of convenience
- a non-EEA national obtained indefinite leave to which they were not entitled by other means of deception, including deception employed by a third party

As before, you must consider whether the deception was material to the grant of indefinite leave and whether a decision to revoke EUSS indefinite leave (settled status) is proportionate. For more information when considering revocation of settled status see EU Settlement Scheme suitability requirements guidance.

In certain cases, involvement in a sham marriage or sham civil partnership (or as defined in Appendix EU and Appendix EU (Family Permit), a marriage, civil partnership or durable partnership of convenience) that began before the end of the transition period (23.00 GMT on 31 December 2020), may lead to consideration of deportation under the EEA Regulations 2016 rather than revocation of indefinite leave – see Marriage investigations for further information.

## **Revocation process to be followed in deception cases**

At the various stages of this process, you must ensure you obtain any clearances required for the casework decisions taken.

If the person has been charged with an offence of obtaining leave by deception and a prosecution is being pursued, you must await the outcome of the criminal trial. Check when the outcome is expected and follow up at intervals if there is still no reported outcome.

Where the person has been convicted of an offence of obtaining leave by deception, it is very likely to be appropriate to conclude that the evidentiary requirement in respect of revoking leave (balance of probabilities) is met as it will have been proven to the higher criminal standard (beyond a reasonable doubt). You must check casework databases to see whether FNO Returns Command (FNO RC) is already dealing with the case. If they are not, contact FNO Returns Command to check whether they have an interest. If FNO RC intends to pursue deportation, or are already pursuing deportation, you do not need to take revocation action. If FNO RC is not pursuing deportation, continue to consider revocation.

If the person has not been convicted, or a prosecution is not being pursued, you must decide whether the evidential standard to revoke indefinite leave is met; that it is more likely than not that the indefinite leave was obtained by deception (balance of probabilities), and that the deception was material to the grant of leave. You must be able to show sufficient reasons and evidence to support any assertion that deception has been used. Reasons for not pursuing a prosecution or for a finding of not guilty, or not proven, may be due to the evidence being insufficient to meet the criminal standard, but there may still be enough to meet the lower standard of balance of probabilities. It will still be important to consider the reasons why a prosecution was not pursued or why a person was found not guilty as this may help you to assess the likelihood of deception having been used.

Where it is appropriate to consider revocation, you must notify the person (and dependants if relevant), using the ‘minded to revoke’ notice, inviting them to submit reasons why they disagree with the deception allegation and why their indefinite leave should not be revoked.

The person may respond with reasons challenging the allegation that they used deception, or with other reasons why their indefinite leave should not be revoked. Where the deception has already been proven to the criminal standard as the result of a court finding, you should not normally engage with any disagreement with the court’s decision beyond reaffirming that the deception has already been proven beyond reasonable doubt.

If any representations received appear to amount to a protection claim, unless your casework area normally handles these, you must direct the person to information on how to claim asylum at <https://www.gov.uk/claim-asylum>.

If no representations are made within the time given for response, you must decide the case based on all the available information you have.

## Decision not to revoke indefinite leave – s76(2)

If representations made show that there are good reasons not to proceed with revocation, see reasons not to revoke indefinite leave, update the appropriate casework system and tell the person, using the Revocation of Settlement or Settled Status Not Pursued notice, that their indefinite leave will not be revoked. No further action is required after the person has been notified of this decision.

## Decision to revoke indefinite leave – s76(2)

If, having taken into account any representations made, and having had regard to the reasons not to revoke indefinite leave, a decision is taken to revoke indefinite leave, the person will only become liable to removal in non-EUSS cases. Where the person is in the UK at the time their EUSS settled status is revoked, their leave will be extended to enable an in-time appeal to be brought and until the appeal is finally concluded. This does not apply if their removal is certified. It is only at the point the appeal is finally concluded, and the person has been unsuccessful, that they become liable for removal.

Revocation of indefinite leave is not reliant on the ability to remove the person. Generally, a person who obtained leave as a result of deception material to the grant should not be entitled to retain indefinite leave, regardless of their removability.

## Service of notices – s76(2) revocation

### Non-EUSS cases

When you decide to revoke a person's indefinite leave, and that of any [dependants](#), each person must be served with:

- Revocation of Indefinite Leave s76(2) Deception
- RED.0001 notice of [liability to removal](#) containing the section 120 notice
- RED.0003

You do not need to serve the RED notices if that will be done by Returns Preparation as part of their separate consideration of removal action after you have taken and served the revocation decision. Casework or operational areas that deal with both revocation and removal may serve all the above notices.

Where appropriate grant immigration bail pending separate consideration of removal.

There is no right of appeal against the revocation decision.

### EUSS cases

Where you decide to revoke EUSS indefinite leave obtained by deception (see exception below regarding a marriage, civil partnership or durable partnership of convenience) serve either:

- Revocation of EUSS Settled Status – s76(2) – Deception
- Revocation of EUSS Settled Status and Certification of Removal Decision – s76(2) – Deception

The person will have a [right of appeal](#) against the revocation decision.

Where the person is in the UK at the time their EUSS settled status is revoked, their leave will be extended to enable an in-time appeal to be brought and until the appeal is finally concluded. This does not apply if the removal is certified.

Where the EUSS revocation decision has been certified, the individual's leave ends immediately. If the person is not detained, it will normally be appropriate to grant immigration bail using the BAIL 201 form, pending the outcome of the appeal. You must ensure you follow the correct processes for granting immigration bail – see immigration bail guidance. The person's ongoing appeal will not be a barrier to removal.

In non-certified cases, after any appeal right is exhausted, including where the person does not exercise their right of appeal, and they no longer have an alternative

basis to remain in the UK, they will be liable to removal under [section 10\(1\) of the Immigration and Asylum Act 1999](#) (the 1999 Act). The RED.0004 and RED.0003 notices should be served at this stage.

If the person wins their appeal, you must [grant settled status](#).

You must update the appropriate casework system to record the relevant outcomes.

## **Marriage, civil partnership or durable partnership of convenience**

An exception to the revocation and administrative removal action described above is where the person obtained their EUSS indefinite leave as the family member of an EEA national but is found to have relied on a marriage, civil partnership or durable relationship of convenience to become that family member.

If their involvement in the marriage, civil partnership or durable relationship of convenience started before 23.00 GMT on 31 December 2020, the person will be subject to deportation consideration under the EEA Regulations 2016, as saved. If made, the deportation order invalidates the person's indefinite leave making revocation unnecessary. For further information see Marriage investigations.

If you receive a referral, or encounter a case, where a person or couple have taken part or attempted to take part in, or have assisted another person to enter or attempt to enter into, a marriage, civil partnership or durable partnership of convenience, you must consider when the relevant conduct first started. See 'Marriage Investigations: determining when relevant conduct commenced'.

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### **Official- sensitive: end of section**

See also [reasons not to revoke indefinite leave](#), false representation, rights of appeal and removals and revocations of EEA nationals

## **Re-instatement of indefinite leave**

If a person successfully legally challenges the assertion that they obtained their indefinite leave by deception, provided the Tribunal or Court finding is final, the person must be given a fresh grant of indefinite leave.

If the Tribunal makes a decision, quashing the revocation decision, it is as if the leave was never revoked.

Where a person cannot be removed from the UK for human rights or protection reasons, but the deception assertion has been upheld or no finding has been made, there is no requirement to grant indefinite leave. The person will be eligible for limited leave to remain – see [Grants or applying for limited leave](#).

## Cessation cases

Where a person's refugee status has been revoked under [paragraph 339A \(i\)-\(vi\)](#) of the Immigration Rules, because their protection need has ceased to apply, you may be asked to consider revoking their indefinite leave under [section 76\(3\) of the 2002 Act](#).

Before considering revocation of indefinite leave you must give the person the opportunity to submit reasons why their indefinite leave should not be revoked by sending them a Minded to Revoke Indefinite Leave notice.

Inviting a person to provide reasons why their indefinite leave should not be revoked is not a means for them to revisit the decision on the revocation of their refugee status. If the person replies with protection based grounds or other submissions relating to the revocation of their refugee status, refer to the [further submissions](#) guidance for advice on what to do.

You must consider any other representations received that are related to the revocation of indefinite leave, or, if none are made, consider the case on the information available to you.

The fact that a person's refugee status was revoked does not in itself mean that their indefinite leave must be revoked. If the person ceased to be in need of international protection only after they had already acquired indefinite leave, and particularly if they have not re-availed themselves of the protection of that country, their indefinite leave would not normally be revoked unless there are significant reasons to do so. See [reasons not to revoke indefinite leave](#).

If it is apparent that a person has, without problem, been travelling to and staying in the country where they claimed to have a fear of persecution, either before or after they were granted indefinite leave, and the country situation as it relates to their protection claim has not changed, consideration can be given to revocation.

Where evidence suggests the person has been dishonest about their need for international protection it may be appropriate to consider revocation of indefinite leave under [section 76\(2\)](#) on deception grounds. You must consider each case on an individual basis.

## Service of notices – s76(3) revocation

Where you decide to revoke a person's indefinite leave, and that of any dependants, each person must be served with:

- Revocation of Indefinite Leave s76(3) No longer a Refugee
- RED.0001 notice of liability to removal containing the section 120 notice
- RED.0003

You do not need to serve the RED notices if that will be done by Returns Preparation as part of their separate consideration of removal action after you have made and served the revocation decision. Casework or operational areas that deal with both revocation and removal may serve all the above notices.

Where appropriate grant immigration bail pending separate consideration of removal.

You must update the appropriate casework system to record the outcomes.

For further information on cessation of refugee status, see revocation of refugee status.

### Related content

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Criminality: Article 8 ECHR cases

# Reasons not to revoke indefinite leave

This section describes when it would be or may be inappropriate to revoke a person's indefinite leave.

## Passage of time

The passage of time is relevant when considering information that has come to light after the person was granted indefinite leave. However, it does not automatically follow that because a person has been able to remain here for a considerable period of time before their entitlement to indefinite leave came under question, or because it has not been possible to remove them from the UK, their leave should not be revoked. For example, where there were barriers to taking revocation action such as needing to await the outcome of legal proceedings, or the person failed to co-operate with the process, revocation of indefinite leave may still be reasonable, regardless of the passage of time.

You must consider each case on its merits, taking into account any explanation the person has given for their actions.

See also [available information](#).

## Mistakes and errors

You must not revoke indefinite leave on the basis of innocent errors in the application. For example, because the person has mistakenly supplied an incorrect address or misspelt a name on their application form, with no dishonest intent. However, if an applicant has deliberately provided false information to avoid adverse detection, for example when the application is checked with other bodies, including government departments or agencies, you must normally consider this as an attempt to deceive. Where the person deliberately provides an incorrect date of birth or nationality, to make a grant of leave more likely, this must also be considered an attempt to deceive, for example a person might falsely have presented themselves as a minor.

Another example may include a failure to declare criminal convictions. You may decide not to revoke indefinite leave following a failure to declare a one-off, minor conviction, which did not result in a custodial sentence. However, it may be appropriate to consider a failure to declare multiple offences or a conviction, which they were required to disclose and would have been material to the grant, as an attempt to deceive and revoke indefinite leave accordingly. The requirements for declaring criminal convictions differ for EUSS applicants; for information on the convictions they are required to disclose as a part of the suitability assessment, see EU Settlement Scheme suitability requirements guidance.

Any allegation of deception must be put to the person when you send the 'minded to revoke' notice, giving them the chance to respond to that allegation. You must assess the nature, extent and significance of the information that was either supplied

but was false or that was omitted and any explanation the person has given. There must be clear evidence of deception and that the deception was material to the grant of leave.

## Available information

Information may have been available to the decision maker who granted indefinite leave that should or would have called into question the applicant's entitlement to that leave. This could include but is not limited to the use of fraudulent or false documents in support of an application for leave, use of false biometrics or criminality or non-conducive behaviour sufficient to have failed the relevant suitability requirements in the Immigration Rules for that leave.

If you are aware that information was previously available, which would normally have cast doubt on the applicant's entitlement to indefinite leave, you:

- must not normally revoke indefinite leave if consideration was previously given to taking revocation or other enforcement action, but it was decided not to, and no new information has since come to light to warrant revocation
- may consider revoking indefinite leave if the decision maker who granted that leave overlooked the information in error; an applicant should not benefit from their dishonesty regardless of the error, but the passage of time since the leave was granted will be relevant
- must consider revoking indefinite leave if the information was withheld or concealed by the person when making their application for indefinite leave; for example, it may become apparent that a person has a greater criminal history than was originally realised by the decision maker who granted indefinite leave or than was disclosed by the applicant

In cases where a person honestly provided information in support of their application and the decision maker had the authority to grant leave but for example overlooked that the applicant did not entirely meet the requirements of the Immigration Rules, the applicant cannot be said to have used deception and therefore the power to revoke indefinite leave under section 76(2) cannot be used.

## Exceptional circumstances

There may be exceptional circumstances in a particular case that mean it would not be appropriate to revoke a person's indefinite leave, despite the fact that they appear to fall within the remit of this policy.

Examples include, but are not limited to, persons with serious mental health issues, victims of human trafficking or victims of domestic violence. These are not automatic exemptions, and you must consider each case on its individual merits. A person may still be able to qualify for a grant of limited leave even if their indefinite leave is revoked.

### Related content

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Victims of domestic violence

# Family and private life

This section tells you about taking family and private life issues into account when considering revocation of indefinite leave.

Where indefinite leave is revoked so that the person has no leave to enter or remain in the UK, they may be liable to removal. It is however open to that person to make an application for leave to remain if they believe they have an alternative basis of stay in the UK. In the case of section 76(1) revocation, as it is accepted that the person cannot be deported for legal reasons, they will be granted a period of limited leave to remain if their indefinite leave is revoked. For further information see [grants or applying for limited leave](#).

Limited leave to remain will still allow the person to continue with their family life, private life or both. Depending on the basis on which the person is residing or remaining in the UK, it will potentially remove other benefits that derive from holding indefinite leave, such as an unrestricted ability to take employment or study, or having recourse to public funds. This does not necessarily mean that a person with limited leave will be unable to take employment or study but depending on what type of limited leave they have, it may be subject to conditions that restrict what the person can do, including whether they can access public funds.

If the immigration status of family members is not directly dependent on the person whose indefinite leave is to be revoked, you can normally expect revocation to have less of an impact on their lives than it might have if they were dependants.

## Human rights claim

In response to the ‘minded to revoke’ notice, a person may claim that revocation would breach their rights to family and private life. However, you must not consider these as a human rights claim at the revocation stage.

A human rights claim is defined in [section 113 of the 2002 Act](#) as:

“a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the UK or to refuse him entry into the UK would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention)”

As stated above, in section 76(1) revocation cases the person is granted limited leave to remain. While they can remain in the UK, a human rights claim against removal does not arise.

In section 76(2) and 76(3) cases, if a decision is taken after revocation of their indefinite leave to remove a person from the UK, and any human rights claim they make in response to removal is refused without being certified, they will have a right of appeal from within the UK. The removal decision is distinct from the revocation decision.

## Liability to removal

When indefinite leave is revoked under sections 76(2) in non-EUSS cases or section 76(3) of the 2002 Act, the person is liable to administrative removal as a person who requires but does not have leave to enter or remain in the UK. In EUSS cases the person will become liable for administrative removal at the point they are appeal rights exhausted, unless their decision is certified. This means, where no appeal has been lodged, within the time frame for bringing an appeal or, if an appeal is lodged, where it has been finally determined.

A person who did not apply to the EUSS by the relevant deadline may still be able to make a valid application to the scheme if they can show there are reasonable grounds for their delay in making their application. If a person's indefinite leave has been revoked but they have made a valid late application to the EUSS, any removal action must wait until the outcome of the application, including of any appeal, is known. If the late application to the EUSS is rejected as invalid, any removal action can continue. For further information see: Guidance for Immigration Enforcement in respect of EU, other EEA and Swiss citizens and their family members

If the person has no further basis to remain in the UK, they must be served with the relevant RED notices.

## RED notices

The RED.0001 and RED.0004 notify the person of their liability to removal under [section 10\(1\) of the Immigration and Asylum Act 1999](#). They also contain a section 120 notice that requires the person to provide any reasons why they should be allowed to remain in the UK. The person can use the RED.0003 to respond to the section 120 notice.

A person whose indefinite leave was granted under [Appendix EU to the Immigration Rules](#) has a right of appeal against the revocation decision. In such cases leave will be extended while an appeal could be brought or is pending. The person only becomes liable for removal once they are appeal rights exhausted. You must therefore not serve the RED notices unless and until the person is appeal rights exhausted. The RED.0004 and RED.0003 must be used for EUSS cases.

Before serving the RED notices, it is important to check whether anything the person raised as a reason not to revoke their indefinite leave is relevant to a decision on removal. For example, if the person provided family or private life reasons not to revoke their indefinite leave, those reasons may be relevant to the question of whether the person should be allowed to stay in the UK. You must consider any such reasons alongside any response to the section 120 notice.

For information on liability to section 10 administrative, including which RED notice to use, see Liability to administrative removal (non-EEA) - consideration and notification.

## Related content

[Contents](#)

# Dependants and family members

This section tells you about dependants and family members of people whose indefinite leave has been or is being revoked under [section 76 of the 2002 Act](#).

For the purposes of this guidance, in non-EUSS cases a dependant is considered to be the spouse, partner, or minor child (under 18 years of age) of a person granted indefinite leave to enter or remain in the UK, and the dependant was granted their indefinite leave on the basis of their family life with the main applicant.

As leave granted under Appendix EU to the Immigration Rules is granted to the applicant in their own right, they are not considered to be dependants for the purpose of this guidance, but their position as a family member, or claimed family member, may still be relevant. For information on the types of family relationships that may be relevant in EUSS cases see EUSS: EU, other EEA and Swiss citizens and their family members.

## Section 76(1)

Revocation of indefinite leave under section 76(1) applies only to the person who is liable to deportation but cannot be deported for legal reasons. The fact that a family member may have been granted indefinite leave in their capacity as that person's dependant does not warrant the revocation of their leave on that basis. If a dependant or family member was also involved in criminality or conduct that causes them to be liable to deportation, action must be taken against the person based on the circumstances of their individual case. This may include section 76(1) revocation of indefinite leave if they also cannot be deported for legal reasons.

## Section 76(2)

Where a dependant obtained their indefinite leave due to the deception of the main family member and you are considering revoking the main applicant's indefinite leave, you must consider whether it would be appropriate to also revoke that of the dependant.

It will be important to consider the circumstances of the dependent family member, including whether they had been aware of the deception, their ties to the UK, what age they are, how long they have had indefinite leave and whether they would be eligible to remain in the UK in their own right through another route. The fact that a family member was not involved in the deception does not prevent you from revoking their indefinite leave provided that the deception was material to the grant of leave; it is not necessary for the recipient to have practised deception, only to have obtained the leave as a result of deception. However, the fact that a dependant may have unwittingly benefitted from a family member's deception, which they were not actively involved in, must not be used against them if they later make their own application for leave to enter or remain.

For EUSS indefinite leave cases, where you are considering taking section 76(2) revocation action against a person who has falsely or fraudulently claimed to be an EEA national or the family member of an EEA national, you must also consider whether to take revocation action against any of their family members who were granted indefinite leave on the basis of that family relationship. For example, a person may have fraudulently presented themselves as an EEA national in applying to the EUSS and been granted indefinite leave as a result. A third country national married to that person may have been granted EUSS leave as their spouse, but in fact they are not the spouse of an EEA national and would not have met the requirements of Appendix EU, had the deception been known. Both individuals have obtained leave by deception.

## **Section 76(3)**

Where a person was granted indefinite leave on the basis of being the dependant of a refugee, but that individual has ceased to be a refugee, the dependant's indefinite leave can be revoked under section 76(3) of the 2002 Act. However, if the family member is a refugee in their own right, you must not revoke their indefinite leave unless they too cease to be a refugee for a reason set out in section 76(3).

### **Revocation of a dependant's or family member's indefinite leave**

If you are considering revoking their indefinite leave, you must prepare a separate ' minded to revoke' notice for each dependant or family member. Notices relating to minors must be sent to the legal representative acting on their behalf, or, where there is no legal representative, be sent care of the appropriate responsible parent or guardian.

A person whose indefinite leave is revoked, or their removal was certified, will be liable to removal if they do not have any other basis on which to remain in the UK. However, it is open to the main applicant and dependants to make applications for leave to remain if they consider they have a basis for remaining in the UK. The family will therefore have the possibility of making applications that might allow them to remain together in the UK as a family unit, or of choosing to leave the UK together. Alternatively, individual family members with an entitlement to live in the UK may choose to remain while others leave.

If any dependants or family members are liable to removal, follow the relevant [section 76\(2\)](#) or [section 76\(3\)](#) service of notices processes.

See also liability to administrative removal (non-EEA) - consideration and notification, [best interests of a child](#), [revocation of refugee status](#), family separations and family returns process guidance.

#### **Related content**

##### [Contents](#)

EEA and Swiss Nationals

# Appeal rights

This section tells you about rights of appeal.

## Rights of appeal

Where a decision to revoke EUSS indefinite leave is taken on or after 23.00 GMT on 31 January 2020, the person has a right to appeal that decision under regulation 4 of the [Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#) on the following grounds:

- that the decision breaches any rights which the person has under ‘the agreements’
- that the revocation of indefinite leave to enter or remain is not in accordance with section 76(1) or (2) of the 2002 Act (as the case may be)

‘The agreements’ are:

- the EU Withdrawal Agreement
- the EEA EFTA Separation Agreement
- the Swiss Citizens’ Rights Agreement

There is no right of appeal against a decision to revoke non-EUSS indefinite leave, although the decision can be judicially reviewed.

A person whose indefinite leave is revoked will, if they are subsequently considered for removal from the UK, have the opportunity to provide reasons why they should not be removed. Where those reasons amount to a human rights or protection claim, the person will have a right of appeal if that claim is refused.

As those whose indefinite leave is revoked under section 76(1) cannot be deported for legal reasons, and are granted a period of limited leave to remain, the grounds for a human rights claim will not arise unless and until removal action becomes possible at a future stage.

For further information on appeal rights, see the [appeals guidance](#).

### Related content

[Contents](#)

# Grants or applying for permission to stay

This section tells you about some of the types of permission to stay a person may be able to apply for or be granted following revocation of their indefinite leave.

## Leave under the Rules

Where indefinite leave has been revoked under [section 76 of the 2002 Act](#) the person may be able to apply for leave through an application route either under or outside of the Immigration Rules. However, to qualify for leave under the Rules, the applicant will need to meet the requirements of the relevant category. Criminality or deception may mean that the suitability requirements cannot be met in some cases. Deception used by a lead applicant must not be held against an unwitting defendant who subsequently applies for leave in their own right.

In some cases, for example where indefinite leave is revoked under section 76(1), it may be necessary to grant the person an initial period of permission to stay. The permission granted will depend on the circumstances of the case and nature of the legal reason preventing their deportation or removal from the UK.

## Article 8

Where a foreign national offender is liable to deportation but cannot be deported for Article 8 reasons (section 76(1) revocation), it may be appropriate to grant permission to stay in accordance with Part 13 of the Immigration Rules. This sets out that where an Article 8 claim by a foreign criminal is successful, permission to stay may be granted for a period of up to 30 months, subject to such conditions as the Secretary of State considers appropriate. For further information see criminality guidance for Article 8 ECHR cases.

In other cases where the person has Article 8 grounds for wishing to remain in the UK, they may be able to apply for leave under [Appendix FM: family members](#) or paragraph 276ADE, [part 7: other categories](#) of the Immigration Rules.

## Refugee leave

Where the person holds refugee status and there is no intention of revoking that status, they are normally entitled to refugee leave. This may not be the case where Article 33(2) of the Refugee Convention applies.

## Leave granted outside the Immigration Rules

If the person cannot qualify for a grant of permission to stay under the Immigration Rules, one of the following forms of leave outside of the Rules may be possible, depending on the circumstances.

## Discretionary leave

Discretionary leave must not be granted on the basis of family or private life. For further information on discretionary leave including the criteria for granting and the lengths of leave appropriate, see the guidance on discretionary leave.

## Restricted leave

Where the person's indefinite leave is revoked under section 76(1) of the 2002 Act a period of restricted leave may be appropriate where the person's conduct brings them within scope of Article 1F or Article 33(2) of the Refugee Convention, but they cannot be removed from the UK due to a human rights barrier.

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### **Official-sensitive: start of section**

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

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### **Official-sensitive: end of section**

For further information on restricted leave including the criteria for granting and the lengths of leave appropriate, see the guidance on restricted leave.

## Leave outside the Rules

For information on leave outside the Rules granted on the basis of compelling compassionate grounds that are not related to family life, medical or protection matters, see the guidance on leave outside the Rules.

### **Related content**

[Contents](#)

[Dependants](#)

Revocation of refugee status

### **Related external links**

[www.gov.uk/uk/visas-immigration](http://www.gov.uk/uk/visas-immigration)